



**DEDICATION, PROTECTIVE  
RESTRICTIONS, COVENANTS, LIMITATIONS, EASEMENTS AND  
ARCHITECTURAL RESTRICTIONS APPENDED TO THE PLAT OF  
MILAGRO, SECTION I, A SUBDIVISION IN PERRY TOWNSHIP,  
ALLEN COUNTY, INDIANA**

NWM Corp an Indiana corporation (the "Developer") by Joseph L. Zehr, President, declares that it is the owner of the real estate shown and legally described in this Plat ("Real Estate"), and lays off, plats and subdivides the Real Estate in accordance with the information shown on the certified Plat attached to and incorporated by reference in this document. The platted Subdivision shall be known and designated as Milagro, Section I, a Subdivision in Perry Township, Allen County, Indiana (the "Subdivision").

The Lots shall be subject to and impressed with the restrictions, covenants, limitations, easements and architectural restrictions hereinafter set forth. The provisions herein contained shall run with the land and shall inure to the benefit of the Owners of the Lots in the Subdivision and all land included therein, and shall be binding upon each Owner and their respective legal representatives, successors, grantees, heirs and assigns.

The Lots shown on the Plat are numbered from 1 through 42 inclusive, and all dimensions are shown in feet and decimals of a foot on the Plat. All streets and easements specifically shown or described are expressly dedicated to public use for their usual and intended purposes.

**PREFACE**

In addition to the recordation of the Plat and this document, there will also be recorded articles of incorporation for an Indiana not-for-profit corporation to be known as Milagro Community Association, Inc. (the "Association"), and each Owner of a Lot in the Subdivision of Milagro shall become a member of the Association, and be bound by its articles of incorporation and bylaws, upon acquisition of title to a Lot. Developer reserves the right to subdivide and plat, and to consent to allow third parties to subdivide and plat nearby and/or adjacent real estate as additional Sections of the Subdivision, and the lots in such additional Sections subsequently platted and subdivided may also be permitted or required to be members of the Association upon acquisition of title to a lot to such additional sections as may be more particularly provided in the recorded Plats of such additional Sections of the Subdivision, if any.

**Section 1. DEFINITIONS.** The following words and phrases shall have the meanings stated, unless the context clearly indicates that a different meaning is intended:

1.1 "Articles". The articles of incorporation of the Association approved by the Indiana Secretary of State, including any and all amendments to those articles.

1.2 "Association". Milagro Community Association, Inc., an Indiana non-profit corporation, its successors and assigns.

1.3 "Builder". An individual or entity who is licensed to build single-family residential dwellings in the county in which the subdivision is located and is the Owner of a Lot in the Subdivision.

1.4 "Board of Directors". The duly elected or appointed board of directors of the Association.

1.5 "Bylaws". The Bylaws adopted by the Association, including any and all amendments to those Bylaws.

1.6 "Committee". The Architectural Control Committee established under Section 6 of these Covenants.





1.7 "Common Area". All real property owned by the Association for the common use and enjoyment of Owners.

1.8 "Covenants". This document and the restrictions, limitations and covenants imposed under it and the Plat.

1.9 "Developer". NWM Corp an Indiana corporation, and any Successor Developer designated by the Developer.

1.10 "Lot", and in plural form, "Lots". Any of the platted lots in the Plat, or any tract(s) of Real Estate which may consist of one or more Lots or part(s) of them upon which one single family residence may be or is erected in accordance with the Covenants, and any applicable zoning ordinance; provided, however, that no tract of land consisting of part of a Lot, or parts of more than one Lot, shall be considered a "Lot" under these Covenants unless the tract has a frontage of at least 80 feet in width at the established front building line as shown on the Plat and further meets the requirements of Section 7.4.

1.11 "Owner", and in the plural form, "Owners". The record owner(s) (whether one or more persons or entities) of fee simple title to a Lot or Lots, including land contract buyers, but excluding those having an interest in a Lot merely as security for the performance of an obligation.

1.12 "Zoning Authority". The applicable governmental Plan Commission and/or Zoning Authority, or its successor agency, then having zoning authority and jurisdiction over the Real Estate to issue improvement location permits, and to issue certificates of occupancy for residences constructed on Lots.

1.13 "Plat". This recorded secondary Plat of Milagro, Section I, including the dedication, protective restrictions, covenants, limitations, easements and architectural restrictions.

1.14 "Subdivision". The Subdivision of Milagro, including all existing and future sections of such subdivisions.

## **Section 2. PROPERTY RIGHTS.**

2.1 Owners' Easements of Enjoyment. Each Owner shall have the right and an easement of enjoyment in the Common Area that is appurtenant to and passes with the title to every Lot, subject to the following rights which are granted to the Association.

2.1.1 To charge reasonable admission and other fees for the use of any recreational facility located in the Common Area.

2.1.2 To impose reasonable restrictions, limitations, conditions, rules, and regulations regarding Owner's use and enjoyment of the Common Area as well as those permitted in Section 7.6.

2.1.3 To suspend the voting rights and right to the use of the Common Area and/or any recreational facilities in the Common Area for any period during which any assessment against an Owner's Lot remains unpaid, or an Owner is in violation of the Covenants, the Articles, the Bylaws, or any rule or regulation of the Association.

2.1.4 To dedicate or transfer all or any part of the Common Area or any interest or easement therein to any public agency, authority or utility upon the vote and approval of at least two-thirds (2/3) of each class of Association members. Provided however, that Developer, without such vote and approval, may, prior to the time when fee simple title to all Lots have been conveyed by Developer, transfer, dedicate or convey such portions of the Common Area to adjoining Lot Owners as may be necessary to allow such adjoining lot owners to comply with the requirements of the Zoning Authority, permit requirements, or with provisions of Section 7.4 and the Developer may convey easements in, on and over any Common Area to a public utility.



before the Authority Transfer Date, but no such easement shall be granted over areas on which structures or buildings then exist. No such dedication or transfer, except those made by Developer as provided above, shall be effective unless an instrument signed by at least two-thirds of each class of Association members agreeing to such dedication or transfer, is recorded.

2.2 Delegation of Use. An Owner may delegate, in accordance with the Bylaws, the Owner's right to use and enjoy the Common Area and any recreational facilities located thereon, to members of the Owner's family residing on the Owner's Lot, and tenants or land contract purchasers who reside on the Owner's Lot.

### **Section 3. MEMBERSHIP AND VOTING RIGHTS**

3.1 Membership of Owner. All Owners shall be members of the Association, and shall be subject to and bound by the Articles and By Laws of the Association from the commencement of ownership to a Lot. Membership shall be appurtenant to and may not be separated from ownership of a Lot.

3.2 Association Classes of Membership. The Association shall have the following two classes of voting memberships:

3.2.1 **Class A.** Class A membership consists of all Owners, except Developer. Class A members shall be entitled to one vote for each Lot owned after and only after the Authority Transfer Date set forth in Section 4.1. Prior to the Authority Transfer Date, Class A Lot Owners shall have no voting rights in the Association. When more than one person holds an interest in a Lot, all such persons shall be members. The vote, when applicable and effective, for such Lot shall be exercised as its Owners among themselves determine; but in no event shall more than one vote be cast with respect to each Lot.

3.2.2 **Class B.** Class B membership consists of Developer. The Class B member shall be entitled to 300 votes less that number of votes which Class A members are entitled to exercise. Class B membership shall cease upon the happening of either of the following events, whichever occurs first:

3.3.2.1 When fee simple title to all Lots have been conveyed by Developer; or

3.3.2.2 on December 31, 2025; or

3.3.2.3 When Developer executes and records an irrevocable disclaimer of its Class B membership.

3.2.3 **Additional Sections.** The Developer reserves the right to subdivide and plat, and to consent to and allow third parties to subdivide and plat nearby and/or adjacent real estate as additional Sections of the Subdivision, and each Owner of a Lot in such additional Sections shall, pursuant to the terms of that recorded Plat and covenants, also be members of the Association as provided therein, and provided further that Developer shall have Class B voting rights for its lots in such additional Sections in a ratio of not more than three to one (3:1).

### **Section 4. INITIAL MANAGEMENT AND CONTROL BY DEVELOPER.**

4.1 Definition of "Authority Transfer Date". The Authority Transfer Date is that date upon which Class A members of the Association shall have and hold voting rights for each Lot as set forth in section 3.2 hereof and in the Articles and By-Laws of the Association. The Authority Transfer Date shall be the earlier of:

(a) When title to 75% of all of the Lots in the Subdivisions have been conveyed by Developer to a third party. For purposes of Section 4.1(a), the term "Subdivisions" includes all lots in additional or future sections of the Subdivision, if any, which are shown as such in the final primary Plat of this Subdivision as future sections, or





(b) Twelve (12) years from the date of recording of this Plat, or

(c) When Developer, in its sole and absolute discretion, so determines and provides sixty days' prior Notice to the Owners.

4.2 Prior to the Authority Transfer Date. Prior to the Authority Transfer Date as defined above, the Developer shall appoint all members of the Board of Directors of the Association, and the Class A members shall have no voting rights in the Association. Directors appointed by the Developer shall serve at the will of the Developer and shall be deemed to be Owners only for the purpose of serving on the Board. Meetings of the Board of Directors, prior to the Authority transfer Date, shall not be required to be held open to Lot Owners, and notice of such meetings to Owners shall not be required. In addition, prior to the Authority Transfer Date, the Board shall not be required to seek Owner approval of the budget or the Annual Assessment.

4.3 Assessment limitations. Prior to the Authority Transfer Date, the Board may increase the annual assessment, but not by more than 8% above the annual assessment for the previous year.

## Section 5. COVENANT FOR MAINTENANCE ASSESSMENTS

5.1 Creation of the Lien and Personal Obligation of Assessments. Each Owner, except Developer and a Builder that has been temporarily exempted as provided hereinafter, by acceptance of a deed for a Lot, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges; (2) special assessments for capital improvements and professional accounting, and legal fees of the Association. Such assessments shall be established and collected as provided in these Covenants and the Bylaws. The annual and special assessments, together with interest, costs and reasonable attorney fees, shall be a charge on a Lot and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney fees shall also be the personal obligation of the Owner of such Lot at the time when the assessment became due. Notwithstanding any other provision herein to the contrary, Developer shall have the absolute and unrestricted right from time to time to temporarily exempt a Builder as a Lot Owner from the obligation to pay any Assessments or any lien for any such Assessments. A temporary exemption, if so granted by Developer to a Builder shall terminate at the earlier of: (i) six (6) years from the date of acceptance of a deed from Developer; (ii) thirty days after the Developer provides the Builder with written notice of the revocation of the temporary exemption; (iii) the date on which the Builder first conveys title to the Lot, to a successor-in-interest, but nothing contained herein shall prevent Developer from granting the successor-in-interest a temporary exemption if the successor-in-interest is a Builder; or is holding the Lot in inventory for sale; or (iv) the date on which a residence located on a Lot is occupied by residents living therein. A Lot Owner first acquiring title from a Builder that was granted a temporary exemption shall be obligated to pay the prorated remaining portion (based upon a per diem basis) of any Assessment at the time of and concurrently with the successor in interest's acquisition of title to the Lot from the Builder. The prorated remaining portion of the Assessment due from the Owner first acquiring title from a Builder shall be a lien against a Lot, and shall not be subordinate to the lien of any first mortgage.

5.2 Purpose of Annual Assessments. The annual assessments levied by the Association shall be used exclusively to promote the recreation, health and welfare of the residents in the Subdivisions, for the maintenance and improvement of Common Areas in the Subdivisions, the proportionate cost of the maintenance of any Common Impoundment Basins located in any Common Areas into which the Subdivision's storm waters drain and attendant water level control structures, for professional accounting and legal fees of the Association, and for solid waste disposal as provided in Section 8.

5.3 Maximum Annual Assessments. Until January 1 of the year immediately following the first conveyance by Developer of a Lot, the maximum annual assessment shall be \$275.00 per Lot plus weekly refuse/garbage pickup services, if any, as provided in Section 8. Prior to and





after the Authority Transfer Date, the Board of Directors may increase the maximum annual assessment by a percentage not more than 8% above the annual assessment for the previous year. Prior to the Authority Transfer Date, the maximum annual assessment may be increased by a percentage in excess of 8% only by the vote or written consent of a majority of the votes of each class of members of the Association. From and after the Authority Transfer Date, the maximum annual assessment may be increased by a percentage in excess of 8% only by the vote or written consent of a majority of each class of members of the Association.

5.4 Special Assessments for Capital Improvements. In addition to the annual assessments authorized in Section 5.3, the Association may levy, in any assessment year, a special assessment applicable to that year for the purpose of defraying, in whole or in part, the cost of any new construction, or repair or replacement of an existing capital improvement in the Common Area, including fixtures, related personal property and for professional accounting and legal fees; provided that any such special assessment shall require the written consent of at least 75% of the votes of each class of members of the Association in the Subdivisions including the written consent of 75% of the votes of each class of members of the Association in any subsequently platted additional Sections, if any, of the Subdivision

5.5 Notice and Quorum for Any Action Authorized Under Subsections 5.3 and 5.4. Any action authorized under Sections 5.3 and 5.4 shall be taken at a meeting of the Association called for that purpose, written notice of which shall be sent to all members not less than thirty (30) days, nor more than sixty (60) days, in advance of the meeting. If the proposed action is favoured by a majority of the votes cast at such meeting, but such vote is less than the required percentage of each class of members, members who were not present in person or by proxy may give their consent in writing, provided the same is obtained by an officer or agent of the Association within sixty (60) days of the date of such meeting.

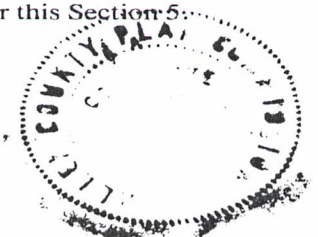
5.6 Uniform Rate of Assessment. Except for irrigation fees permitted in Section 7.6, and except for any parcel not contained within the Subdivision, all annual and special assessments must be fixed at a uniform rate for all Lots, including any additional Sections and may be collected on a monthly, quarterly, or yearly basis, provided, however, Lots owned by Developer upon which there is no residence constructed and Builders granted a temporary exemption pursuant to Section 5.1 shall not be subject to annual or special assessments.

5.7 Date of Commencement of Annual Assessments Due Dates. Annual assessments made under Section 5.3 shall commence as of the first day following the first conveyance of a Lot by Developer, excepting Lots owned by the Developer and Builders whose Lots are temporarily exempted. The first annual assessment shall be pro-rated to the date of closing. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of the date the annual assessment is due. Written notice of the annual assessment shall be given to every Owner. The due dates shall be established by the Board of Directors. The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer of the Association stating whether an assessment on a Lot has been paid.

5.8 Effect of Non-payment of Assessments/Remedies of the Association.

5.8.1 Any assessment not paid within thirty (30) days after its due date shall bear interest from the due date at the rate of 12% per annum or at the maximum legal rate permitted by the State of Indiana whichever is lesser.

5.8.2 The Association may bring an action against each Owner personally obligated to pay the same, and foreclose the lien of an assessment against a Lot. No Owner may waive or otherwise escape liability for the assessments made under the Covenants by non-use of the Common Area or abandonment of a Lot. The lien for delinquent assessments may be foreclosed in the same manner as mortgages are foreclosed in Indiana. The Association shall also be entitled to recover attorney fees, third party collection fees and all other costs and expenses incurred because of the failure of an Owner to timely pay assessments made under this Section 5.





5.9 Subordination of Assessment Lien to First Mortgage Liens. Except as otherwise provided in Article 5.1 hereof, the lien of the assessments made under the Covenants shall at all times be subordinate to the lien of any first mortgage. Any sale or transfer of any Lot shall not affect the assessment lien against it. No sale or transfer shall relieve an Owner or Lot from liability for any assessment subsequently becoming due, or from the lien of an assessment. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to assessments which become due prior to such sale or transfer.

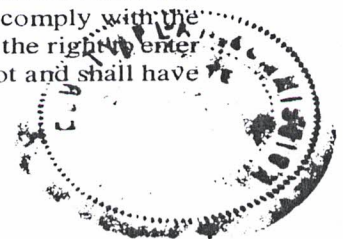
5.10 Storm Water System Maintenance. The Association shall be obligated to maintain, repair and/or replace, as necessary, the storm water drainage system, all storm water quality amenities, and any current or future Storm Water Detention Basin together with outlet and water level control structures located on the Common Areas, as filed and approved by the Allen County Plan Commission, the Allen County Surveyor's Office and the Allen County Drainage Board. All of these drainage systems and approvals have been granted for the use and benefit of this Section of the Subdivision and any future Sections of Milagro. The cost of all such repair, maintenance and replacement shall be assessed in accordance with Section 5.2 hereof.

The Allen County Drainage Board and/or the Allen County Surveyor's Office, or its successor agency, shall have the right to order the Association to carry out its obligations to maintain, repair or replace the Storm Water Drainage System, all water quality amenities, and any current or future storm water detention system improvements as provided hereinabove. Assessments which have been collected by the Allen County Drainage Board from Lots in the Subdivision will be utilized by the Allen County Drainage Board and or by the Allen County Surveyor for maintenance, repair and replacement of the regulated storm pipe system prior to the Associations incurring such maintenance, repair or replacement obligations.

## **Section 6. ARCHITECTURAL CONTROL**

6.1 Construction Approval. No structure or improvement, including but not limited to, building, residence, garage, fence, wall, in-ground swimming pool and spa, exterior lighting, swing set, play equipment, permanent basketball goals or other structures for sports and recreation, statues, lawn ornaments, or other non-living landscaping ornamentation device or any other structure (individually a "structure" and collectively "structures") shall be commenced, erected or maintained upon a Lot, nor shall any exterior addition change or alteration be made to a structure on a Lot unless and until the plans and specification showing the structure's nature, kind, shape, height, materials and location are submitted to and approved by the Architectural Control Committee in writing as to the structure's harmony of external design and location in relation to the surrounding structures and topography in the Subdivision. The Developer shall serve as the Architectural Control Committee until residences are constructed on all Lots in the Subdivision at which time the Board of Directors of the Association shall serve as the Architectural Control Committee. Until the Association succeeds to the Architectural Control Committee's responsibilities pursuant to Section 6.5, the Developer may from time to time, in writing, appoint another entity, individual, or group of individuals to act as its representative for the Developer in some or all matters regarding its rights, duties, and responsibilities under Section 6. The burden of proof shall be upon the party submitting the plans and specifications (including any landscaping plans) to conclusively establish that the plans and specifications were actually submitted for approval and approved as to that structure's harmony of external design and location in relation to the surrounding structures and topography in the Subdivision. The Developer shall have the right to temporarily exempt any Builder or Lot Owner from submitting landscaping plans. Such exemption may be revoked at any time by the Developer and the Lot Owner shall thereafter be required to submit for approval a landscaping plan and to install the approved landscaping pursuant to these covenants, including Section 6.6 hereof.

6.2 Lawn. In the event the Owner of a Lot fails to commence construction on a Lot within twelve (12) months after the purchase of said Lot, the Lot Owner shall seed the entire Lot with grass and regularly mow and maintain same. Should the Lot Owner fail to comply with the requirements as set forth herein, the Architectural Control Committee shall have the right to enter upon the Lot and seed the entire Lot with grass, and to mow and maintain the Lot and shall have





the right to claim a lien upon the Lot and to recover personally from the Lot Owner for all costs, expenses and attorney fees incurred as a result of any default or breach of this covenant, which lien shall be subject to the same collection rights and remedies granted to the Association in Section 5. The Lien shall not become effective against bona fide purchasers for value without notice thereof, unless and until said lien is duly recorded in the Recorder's Office of Allen County, Indiana.

6.3 Dwelling Façade. The entire front façade, except soffits, of every residence constructed on any Lot shall be either brick, stone masonry, vinyl with a minimum thickness of .042 or such other materials as may be approved by the Architectural Control Committee from time to time.

6.4 Committee Authority. The Architectural Control Committee shall have the exclusive authority and responsibility to review plans for construction of all structures proposed to be constructed in the Subdivision. The Developer from time to time may delegate to its representative or to the Board of Directors (or such other entity designated in the Articles or Bylaws) of the Association the authority and responsibility to review plans for construction of fences, residential yard playground equipment and basketball poles in the Subdivisions. Such delegation shall be made in writing, signed by the Developer, and delivered or mailed to the Association's registered office.

6.5 Board of Directors Authority. After residences are constructed on all Lots in the Subdivision, the Board of Directors (or such other entity designated under its Articles or Bylaws) of the Association shall then succeed to the Architectural Control Committee's responsibilities of Developer under this Section 6 to review construction, modifications and additions of any and all improvements and structures in the Subdivision, including by way of illustration and not limitation, the improvements and structures described in Section 6.1 hereof.

6.6 Time Constraint. In the event the Architectural Control Committee (or Board of Directors of the Association or other representative acting under Sections 6.1, 6.3 or 6.4) fails to act to approve, modify, or disapprove the design, harmony and location of a proposed improvement or structure within 30 days after said plans and specifications have been submitted to it, approval will not be required, and approval under this Section 6 will be deemed to have been given.

6.7 Landscaping/Construction Activity. Once construction of any structure is commenced on any Lot, there shall be no lapse of construction activity greater than sixty (60) consecutive days (excluding any days where construction is delayed or not possible due to adverse weather conditions). All Owners, except Developer, shall Landscape or cause to be landscaped, the Owner's Lot in a manner so as to maintain consistency with the harmony, design and integrity of landscaping generally contained on other Lots in the Subdivision on which residences have been constructed. The burden of proof shall be upon the party submitting the plans and specifications to conclusively establish that the plans and specifications were actually submitted for approval and that the landscaping was installed in compliance with these landscape covenants. Upon completion of a residence, all landscaping as approved in the plans and specifications shall be installed promptly, and in no event, later than one hundred eighty (180) days following the issuance of the certificate of occupancy for the residence constructed thereon or fifteen (15) months from the initial commencement of construction, whichever is earlier. In the event landscaping plans were not submitted to the Architectural Control Committee for approval, or in the event landscaping plans were submitted and approved by the Architectural Control Committee but the Landscaping was not installed in accordance with the approved landscaping plans and specifications, then and in either of such events, the Developer shall have the right, upon thirty (30) days prior written notice to a Lot Owner, to require the Lot Owner to install the previously approved, or to submit landscaping plans and specifications for approval by the Architectural Control Committee and install such landscaping. In the event the Architectural Control Committee denies approval of such landscaping plans and specifications, the Architectural Control Committee shall have the right to determine and require that landscaping be installed consistent with the harmony, design and integrity of landscaping generally contained on other Lots in the Subdivision on which residences have been constructed. The Developer shall have the right to file an action to enforce





compliance and recover all its costs, expenses, and attorney fees as well as to require the Lot Owner to install landscaping pursuant to plans and specifications imposed by the Developer upon the Lot Owner, within thirty (30) days from the date of the Developer's written demand. In the event a Lot Owner fails to comply therewith, the Developer and any contractor or agent of the Developer shall be and is hereby granted a license to enter upon the Lot, to install the landscaping, to recover the costs thereof, together with interest and attorney fees from the Lot Owner, in the same manner and pursuant to the same procedures that Assessments may be recovered and liens foreclosed against a Lot Owner pursuant to these Covenants.

**6.8 Non-liability of Architectural Control Committee.** Plans and specifications are not reviewed for engineering or structural design or quality of materials, or to assure that any improvements constructed pursuant thereto are located within recorded set backs established by either the Plat, the Covenants, or in accordance with applicable zoning ordinances, or designed or constructed pursuant to Covenants or building codes, and by approving such plans and specifications, neither the Architectural Control Committee, the Developer, its representative, nor the Association assumes liability or responsibility therefore for any defect in any structure constructed from such plans and specifications, nor for any actions of any Builder in connection therewith. Neither the Architectural Control Committee, the Developer, its representatives, the Association, the Board of Directors, nor any officers, directors, members, employees, agents, or any appointed representative of any of them shall be liable by way of legal or equitable relief or in damages to anyone by reason of mistake in judgment, negligence, or nonfeasance arising out of or in connection with the approval, modification, or disapproval of any such plans and specifications.

Every Lot Owner, for himself and for all parties claimed by or through such Lot Owner, agrees not to bring any action or suit against Architectural Control Committee, the Developer, its representative, the Association, the Board of Directors, or the officers, directors, members, employees, agents, or appointed representatives of any of them to recover seeking legal or equitable relief or damages and hereby releases all claims, demands, and causes of action arising out of or in connection with any judgment, negligence, or nonfeasance and hereby waives the provisions of any law which provide that a general release does not extend to claims, demands, and causes of actions not known at the time this release is given.

**6.9 Fence and Landscaping Restrictions.** No fence, tree, bush, shrubbery or other planting or sight obstruction shall be erected, planted or maintained in the rear yard of Lots 11, 13, 14 and 16 through 19 and 40 through 42 that obstructs the sight or view of lakes and ponds in the Subdivision unless approved by the Architectural Control Committee in its sole and absolute discretion. In exercising its discretion, the Architectural Control Committee may, in its discretion, approve reasonable sight or view obstructions of lakes and ponds in such rear yards in the Subdivision, such as by way of illustration and not limitation, certain types of trees, or black wrought iron fences not exceeding three (3) feet in height, and may deny approval of unreasonable sight or view obstruction, such as stockade or chain link fences, spruce trees or arborvitae plantings. The Architectural Control Committee and the Association reserve the right to come on the above referenced Lots to remove sight obstructions, including removing fences or trimming or removing trees, bushes, shrubbery and other plantings located in such rear yards that obstruct the sight or view thereon at the Lot Owner's expense if the Lot Owner fails to promptly eliminate or reduce the sight or view obstruction after written request from the Architectural Control Committee. For purposes of this Section, the rear yard is defined as any portion of these Lots that is located between the rear of the exterior of the residence located on the Lot and the rear Lot line.

## **Section 7 GENERAL PROVISIONS**

**7.1 Use.** Lots may not be used for any uses and purposes other than for single-family residential uses and purposes and for a home occupation that meets the requirements set forth hereinafter. No building shall be erected, altered, placed, or permitted to remain on any Lot other than one single-family residence not to exceed two and one-half stories in height as well as one Auxiliary Building, as permitted in Section 6.1.1. Each residence shall include a garage attached as part of the residence, which garage shall have a floor area of not less than six hundred sixty (660) square feet; to accommodate not less than three cars which attached garage shall have two (2) or more overhead garage doors which have an aggregate width of not less than twenty (24) feet for all such overhead garage doors; such overhead doors to be located on the exterior





wall of the garage which is accessed by the driveway. No Lot shall be used for any purpose other than as a single-family residence, provided however, Developer shall have the sole authority to approve a Builder using the home on any Lot as a model for the purpose of selling homes in the Subdivision constructed or to be constructed by the Builder. Developer shall further have the sole authority to approve outdoor signage and/or flagpoles in connection with the Builder's model home. A home occupation may be permitted so long as:

- (i) the Owner has obtained any and all required governmental approvals necessary or required in order to conduct the home occupation on the Lot;
- (ii) the Architectural Control Committee has been provided with written notice of the proposed home occupation at the earlier of forty-five (45) days prior to the commencement of the home occupation in the residence or forty-five (45) days prior to the date of filing of any required application with any applicable governmental agency, if required;
- (iii) any such home occupation use shall be conducted entirely within the residence and such home occupation shall be clearly incidental and secondary to the use of the residence for single-family dwelling purposes and shall not change the character thereof;
- (iv) there shall be no sign attached to the exterior of the residence or free standing sign or display that indicates from the exterior that the residence is being utilized in whole or in part for any purpose other than that of a single-family residence;
- (v) there shall be no vehicle or equipment related to the operation of the business ungaraged and visible at any time except for the purpose of ingress and egress from the property;
- (vi) there shall be no customers that come in, on or to the residence nor shall there be any employees of the home occupation other than the Lot Owner and direct family members provided, however, intermittent or occasional customers and employees that park only in the driveway of the Lot with the home occupation shall be permitted; and
- (vii) the operating of the Association shall not be considered a business activity under this Section 7.1.

7.2 Dwelling Size. No residence shall be built on a Lot having a ground floor area upon the foundation, exclusive of any open porches, breezeways or garages, of less than 2000 square feet for a one-story residence, or a total living area exclusive of open porches, breezeways and garages of less than 2400 square feet for a residence that has more than one story.

7.3 Building Lines. No residence shall be located on a Lot nearer to the front building setback line shown on the Plat nor nearer to the side yard building setback line than the minimum building setback lines established in these Covenants. For Lots abutting two (2) public streets (corner Lots) or Lots abutting a Common Area, the Plat may show two (2) front yard setbacks, one being twenty (20) feet and the other being thirty (30) feet from the front Lot line. For any such Lots showing two (2) different front building setback lines on the Plat (an "interior Lot"), the front side of the residence constructed thereon (determined by the side of the street Post Office address), shall be deemed to be the front Lot line, the opposite of the front Lot line shall be deemed to be the rear Lot line, and the other Lot lines shall be deemed to be the side yard Lot lines. For any interior Lot: (i) the front yard setback shall be thirty (30) feet; (ii) the side yard setback for any side abutting a public street or a Common Area shall be twenty (20) feet; (iii) all other side yards shall be five (5) feet. (iv) The rear yard setback shall be twenty-five (25) feet for Lots 11, 12, 14, 15, 20 through 39 and the rear setback shall be fifteen (15) feet for Lots 1 through 10, 13, 16 through 19 and 40 through 42. No residence shall be located nearer than a distance of five (5) feet to a side yard Lot line and except for interior Lots, the aggregate width of both side yards shall be a minimum of twelve (12) feet or the minimum then specified in the Allen County Control Subdivision Ordinance, whichever is the greater.

7.4 Minimum Lot Size. No residence shall be erected or placed on a Lot having a width





of less than eighty (80) feet at the front Lot building setback line, nor shall any residence be erected or placed on any Lot having an area of less than ten thousand (10,000) square feet.

**7.5 Utility Easements.** Easements for the installation and maintenance of utilities and drainage facilities are reserved as shown on the Plat. No Owner shall erect on a Lot, or grant to any person, firm or corporation the right, license, or privilege to erect or use, or permit the use of, overhead wires, cable, poles or overhead facilities of any kind for any utility service or for electrical, telephone or television service (except such poles and overhead facilities that may be required at those places where distribution facilities enter and leave the Subdivision). Nothing contained in these Covenants shall be construed to prohibit street lighting or ornamental yard lighting serviced by underground wires or cables. Electrical service entrance facilities installed for any residence or other structure on a Lot connecting it to the electrical distribution system of any electric public utility shall be provided by the Owner of the Lot that constructs the residence or structure, and shall carry not less than three (3) wires and have a capacity of not less than two hundred (200) amperes. Any public utility charged with the maintenance of underground utility installations and facilities shall have access to all easements in which said installations are located for operation, maintenance, repair and replacement of such utilities.

**7.5.1 Non-Obstruction of Easements.** All easements dedicated on the Plat or these Covenants shall be kept free of all permanent structures, and any structure, shrubbery, trees, or other installation thereon, whether temporary or permanent, shall be subject to the paramount right of the entities for which such easements are intended to benefit, to install, repair, maintain or place any utilities, including but not limited to electrical, phone, water and sewage utilities, and the removal of any such obstructions by utilities or sewage treatment works shall in no way obligate them either in damages or to restore the easement or any obstruction thereon to its original form.

**7.6 Surface Drainage Easements.** Surface drainage easements and Common Area used for drainage purposes as shown on the Plat are intended for either periodic or occasional use as conductors for the flow of surface water runoff to a suitable outlet, and the grading of the drainage easements shall be constructed and maintained so as to achieve this purpose. Such easements shall be maintained in an unobstructed condition and the County Surveyor (or any other proper public authority having jurisdiction over storm drainage) shall have the right to determine if any obstruction exists, and to repair and maintain, or require such repair and maintenance, as shall be reasonably necessary to keep the drainage easements and conductors unobstructed.

All Lots directly abutting any retention pond located on any Common Area may be permitted by the Association to access and use the water in the pond for an open loop geothermal heating and cooling system. No Lot shall be permitted to use any such retention pond for a closed loop geothermal system. Access to and use of the retention pond for an open loop geothermal system by directly abutting Lots shall require the prior written approval of the Association. As a condition of approval, the Association shall be entitled to impose reasonable conditions of approval, such as by way of illustration and not limitation, size and location of water intake inlet, pump and water line location and size, as well as screening and/or burying of any line and pump. Neither the Developer nor the Association shall have any liability to any Lot Owner due to the inadequacy of the water or inability of the water level or volume to service any Association approved geothermal system.

No Lot abutting any retention pond shall be permitted to access, use, or draw water from any pond for irrigation purposes without the prior written consent of the Association which approval may be withheld or conditioned in its sole and absolute discretion. Any approval so granted may impose conditions and restrictions as well as the requirement to pay an annual or monthly fee, and any such approval may be revoked at any time upon fifteen (15) days prior written notice to the Lot Owner. Any fee charged for irrigation need not be uniform for each Lot and differential irrigation fees may be based upon Lot size, irrigation water usage, and whether the Lot Owner has an open loop geothermal system that discharges into the pond.

**7.7 Nuisance.** No noxious or offensive activity shall be carried upon any Lot, nor shall anything be done thereon which may be or become an annoyance or nuisance to residents in the





Subdivision.

7.8 Structures Other Than Single-Family Residence. Except as specifically permitted in this Plat and Covenants, no structure, whether temporary, permanent, or otherwise, shall be erected, maintained, or used on any Lot other than one single-family residence. Prohibited structures include, by way of illustration and not limitation, shack, or storage shed. Notwithstanding the foregoing, the Architectural Control Committee may, subject to compliance with Section 6, permit to be erected and maintained in its sole and absolute discretion residential playground equipment such as swing sets, in-ground swimming pools, cabanas, gazebos and fences. In exercising such discretion, the Architectural Control Committee may establish, maintain, and revise from time to time guidelines for consideration and evaluation of such structures, and shall endeavour to act reasonably consistent in the application of its guidelines then in effect in the consideration and evaluation of any such requested approvals. The decision of the Architectural Control Committee shall not be subject to appeal or challenge.

7.9 Outside Storage. No boat, boat trailer, jet ski, snowmobile, recreational vehicle, motor home, truck, bus, camper, any motor vehicle not currently titled, registered, or having a current license plate, or any non-operable motor vehicle shall be permitted to be parked outside an enclosed garage. No boat, boat trailer, jet ski, snowmobile, recreational vehicle, motor home, truck, bus, camper, any motor vehicle not currently titled, registered, or having a current license plate, or any non-operable motor vehicle shall be permitted to be parked outside an enclosed garage on a Lot or on any public or private street in the Subdivision for periods in excess of 48 hours, or for a period which is the aggregate is in excess of sixteen (16) days per calendar year. The term "truck" as used in this Section 7.9 is defined to mean any motor vehicle which has a gross vehicle weight in excess of 8,700 pounds or which is rated at a load carrying capacity of one-ton or more. In determining the 48-hour or sixteen-calendar day requirements of this Section, there shall be included any temporary removal or moving of such prohibited parking or storage where the primary purpose of such removal or moving is to avoid or evade the requirements of this Section.

7.10 Free-Standing Poles. Except as provided in Section 7.1, no clotheslines or clothes poles, or any other free standing, semi-permanent or permanent poles, rigs, or devices, regardless of purpose, with the exception of: (i) a flag pole displaying the United States federal or state flag; or (ii) a permanent basketball pole; or a yard lighting pole shall be constructed, erected, or located or used on a Lot unless that the installation and location thereof are approved by the Architectural Control Committee under Sections 6 and 7.8.

7.11 Signs. Except as provided in Section 7.1, no sign of any kind shall be displayed to the public view on a Lot except one professional sign of not more than five square feet, advertising a Lot for sale or rent, or signs used by a Builder to advertise a Lot during the construction and sales periods.

7.12 Antennas. Subject to lawfully binding applicable federal statutes, no radio or television antenna with more than twenty-four (24) square feet of grid area, or that attains a height in excess of 6 feet above the highest point of the roof of a residence, shall be attached to a residence on a Lot. No free-standing radio or television antenna shall be permitted on a Lot. No solar panels (attached, detached or free-standing) are permitted on a Lot. Satellite receiving disk or dish shall be permitted on a Lot, provided however, that the installation and location of a satellite dish must be approved by the Architectural Control Committee under Sections 6 and 7.8.

7.13 Oil Drilling. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted on or in a Lot. No derrick or other structure designed for boring for oil or natural gas shall be erected, maintained or permitted on a Lot.

7.14 Animals. No animals, livestock or poultry of any kind shall be raised, bred, maintained or kept on a lot, provided that any acceptable animals are not kept for any commercial purpose. In case of a dispute or disagreement, the Architectural Control Committee is herewith granted the authority to conclusively determine whether an animal is acceptable or is not permitted.





7.15 Garbage/Dumping. No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage and other waste shall not be kept except in sanitary containers. No incinerators shall be kept or allowed on a Lot. Garbage cans shall not be placed at the street for collection and pick-up earlier than 4:00 p.m. on the day prior to the scheduled pickup. Garbage cans shall be located inside an enclosed garage except when placed at the street for trash pick up.

7.16 Workmanship and Maintenance of Lots and Dwelling Units. All structures on a Lot shall be constructed in a substantial, good and workmanlike manner and of new materials. No roof siding, asbestos siding or siding containing asphalt or tar as one of its principal ingredients shall be used in the exterior construction of any structure on a Lot, and no roll roofing of any description or character shall be used on the roof of any residence or attached garage on a Lot. No Lot, lawn, landscaping or structure shall be permitted to become overgrown, unsightly or fall into disrepair. Should the Lot Owner fail to comply with the requirements as set forth within, the Architectural Control Committee shall have the right to make any necessary alterations, repairs or maintenance approved by the Architectural Control Committee to carry out the provision herein. The Association shall have the right to claim a lien upon the Lot, and to recover personally from the Lot Owner, for all of their costs, expenses and attorney fees.

7.17 Driveways. All driveways on Lots from the street to the garage shall be poured concrete and not less than 16 feet in width, provided however, in the event the driveway serves a side loading garage, then in that event, the driveway shall be poured concrete and not less than fourteen (14) feet in width at the street.

7.18 Individual Utilities. No individual water supply system or individual sewage disposal system shall be installed, maintained or used on a Lot in the Subdivision except that an individual water system may be used for the purpose of a swimming pool or lawn irrigation.

7.19 Street Utility Easements. In addition to any utility easements dedicated in the Plat and Covenants, utility easements in the streets as shown on the Plat are reserved and granted to all public utility companies, the Owners of the Real Estate and their respective successors and assigns, to install, lay, erect, construct, renew, operate, repair, replace, maintain and remove every type of gas main, water main and sewer main (sanitary and storm), electric, telephone, or cable TV service, or any other public utility with all necessary utility facilities, subject, nevertheless, to all reasonable requirements of any governmental body having jurisdiction over the maintenance and repair of said streets.

7.20 Storm Water Runoff. No rain and storm water runoff, sump pump, or such things as roof water, street pavement and surface water caused by natural precipitation, shall at any time be discharged or permitted to flow into the sanitary sewage system serving the Subdivision, which shall be a separate sewer system from any storm water and surface water runoff drainage sewer system. No sanitary sewage shall at any time be discharged or permitted to flow into the Subdivision's storm and surface water runoff sewer system.

7.21 Completion of Infrastructure. Before any residence on a Lot shall be used and occupied as such, the Developer shall install all infrastructure improvements serving the Lot as shown on the approved plans and specifications for the Subdivision filed with the Zoning Authority and other governmental agencies having jurisdiction over the Subdivision. This covenant shall run with the land and be enforceable by the Zoning Authority or by any aggrieved Owner.

7.22 Certificate of Compliance. Before a Lot may be used or occupied, such user or occupier shall first obtain from the Zoning Authority the improvement location permit and certificate of occupancy or compliance then required by the Zoning Authority.

7.23 Enforcement. Except as otherwise provided in these Covenants, the Association, Developer and any Owner (individually or collectively) shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, Covenants, reservations, liens and charges now or subsequently imposed by the provisions of these Covenants or the Plat. Failure to



the Association, Developer or an Owner to enforce any provisions in the Covenants shall in no event be deemed a waiver of the right to do so later.

7.24 Invalidation. Invalidation of any one of these Covenants by judgment or court order shall not affect the remaining provisions, and such provisions shall remain in full force and effect.

7.25 Duration of Covenants. These Covenants shall run with the land and be effective for a period of twenty (20) years from the date the Plat and these Covenants are recorded; after which time the Covenants shall automatically be renewed for successive periods of ten (10) years.

7.26 Amendments. Any provision of these Covenants may be amended, but such amendment is subject to the following requirements and limitations:

7.26.1 Except as otherwise provided in Section 7.26.2 and 6.27, in order to amend any provisions of these Covenants, the amendment shall require the written consent of at least 75% of the votes of each class of members of the Association in the Subdivision, including the written consent of 75% of the votes of each class of members in any subsequently platted additional Sections, if any, of the Subdivision. For purposes of this Section 7.26.1, the term "Owner" and "Lots" shall have the same meaning with respect to "Owners" and "Lots" in such future sections, as the term "Owner" and "Lots" is defined in Sections 1.10 and 1.11. Further, until single-family residences are constructed on all Lots in the Subdivision and certificates of occupancy are issued for those residences, in order to amend these Covenants, the Developer, in addition to those persons whose signatures are required under this Section 7.26.1, also must approve and sign the amendment in order for the amendment to be valid and effective.

7.26.2 Notwithstanding the provisions of Section 7.26.1, Developer and its successors and assigns shall have the exclusive right for a period of six (6) years from the date this Plat and these Covenants are recorded, to modify, amend or revoke any of the terms or provisions of the plat or the Covenants, provided however such amendment shall not serve to reduce the minimum Lot size or other requirements contained in Section 7.2, without the written consent of at least 75% of the Lot Owners.

7.27 Lot Size Alterations. No Lot or combination of Lots may be further subdivided until approval for such subdivision has been obtained from the Zoning Authority; except, however, the Developer and its successors in title shall have the absolute right to increase the size of any Lot by adding to such Lot a part of an adjoining Lot (thus decreasing the size of such adjoining Lot) so long as neither of the Lots from which land was added or deleted violates the limitations imposed under Section 1.10 and the requirements of Section 7.4.

**Section 8. MANDATORY SOLID WASTE DISPOSAL.** Unless weekly refuse/garbage pickup services are provided by a governmental entity having jurisdiction thereof, the Association shall be obligated to select a contractor for the disposal of garbage and other solid waste and may pay for the cost of such disposal through assessments established under Section 5, provided however the Association may elect to have the selected contractor bill each Lot Owner directly. An Owner who privately arranges for solid waste disposal to service the Owner's Lot shall not be exempt from payment of any part of an assessment attributable to the cost of waste disposal for which the Association contracts under this Section 8.

**Section 9. ATTORNEY FEES AND RELATED EXPENSES.** In the event the Association, Developer, an Owner, or the Zoning Authority is successful in any proceeding, whether at law or in equity, brought against an Owner to enforce any restriction, Covenant, limitation, easement, condition, reservation, lien, or charge now or subsequently imposed by the provisions of these Covenants or the Plat, the successful party seeking enforcement thereof shall (except as limited hereinafter) be entitled to recover from the party against whom the proceeding was brought, the reasonable attorney fees and related litigation costs and expenses incurred in such proceeding; and provided further, however, in no event shall the Developer or the Association or their respective officers, directors, agents, or employees ever be held liable for any attorney fees or litigation costs and expenses of any other party in any legal proceeding.





**Section 10. SIDEWALKS.** Plans and specifications for the Subdivision approved by and on file with the Zoning Authority require the installation of concrete sidewalks within the street rights-of-way in front of Lots 1 through 12, 21 through 23 and 31 through 42. The obligation to install such concrete sidewalk is the obligation of the Owner of the Lot exclusive of Developer. The sidewalk to be installed on a Lot shall be completed in accordance with such plans and specifications prior to the issuance of a certificate of occupancy for such Lot. This Covenant is enforceable by the Zoning Authority, the Developer, the Association, or an Owner, by specific performance or other appropriate legal or equitable remedy. Should a certificate of occupancy be issued to Developer for a Lot on which a sidewalk is required to be constructed, then and only then shall Developer be considered as an Owner subject to enforcement of this Covenant and then only with respect to that particular Lot.

**Section 11. FLOOD PROTECTION GRADES.** In order to minimize potential damage to residences from surface water, minimum flood protection grades are hereby established as set forth below. All residences on such Lots shall be constructed so that the minimum elevation of the first floor, or the minimum sill elevation of any opening below the first floor, equals or exceeds the applicable minimum flood protection grade established in this Section 11. The flood protection grades shall be Mean Sea Level ("MSL") and are as follows:

Lots 2 and 3.....	840.2 feet MSL
Lots 6 and 7.....	836.8 feet MSL
Lot 10.....	839.7 feet MSL
Lots 11 and 13.....	841.9 feet MSL
Lot 14.....	844.0 front and 841.9 rear feet MSL
Lot 15.....	844.2 feet MSL
Lots 16 through 19.....	841.9 feet MSL
Lots 22 and 23.....	844.2 feet MSL
Lot 36.....	844.0 feet MSL
Lot 39.....	840.7 feet MSL
Lots 40 and 42.....	838.2 feet MSL

**Section 12. ZONING ORDINANCE REQUIREMENTS.** Notwithstanding any other provision herein to the contrary, in the event any applicable zoning ordinance (as modified by any variance that may have been granted with respect to any Lot or the Subdivision) in effect at the time of the recordation of these Covenants contains more stringent requirements than these Covenants, the more stringent zoning ordinance requirements (but as modified by any granted variance) in effect on the date of recordation of these Covenants shall apply; provided, however, nothing contained herein shall prohibit any Lot or the Subdivision from applying for or from being granted a variance with respect to any current or future enacted zoning ordinance, but no variance may be granted which would establish less stringent requirements than the terms and provisions of these Covenants.

**IN WITNESS WHEREOF,** NMW Corp an Indiana corporation, by its duly authorized President, Joseph L. Zehr, Owner of the Real Estate, has signed this document on this 15<sup>th</sup> day September, 2014.

**DEVELOPER:**

NMW Corp.

By:

Joseph L. Zehr  
1st President

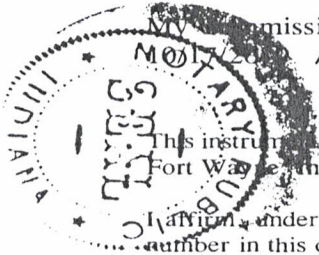
STATE OF INDIANA       )  
  ) §  
COUNTY OF ALLEN       )

Before me, a Notary Public in and for said County and State, this 15<sup>th</sup> day of September, 2014, personally appeared Joseph L. Zehr, known to me to be the duly authorized President of

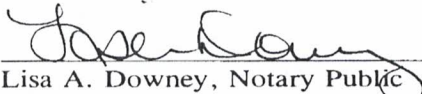


NWM Corp., and acknowledged the execution of the above and foregoing as his voluntary act and deed and on behalf of said corporation for the purposes and uses set forth in this document.

Witness my hand and notarial seal.



My Commission Expires:  
NOV 17 2011 Allen Co Res

  
\_\_\_\_\_  
Lisa A. Downey, Notary Public

This instrument prepared by Vincent J. Heiny, Attorney at Law, Haller & Colvin, P.C., 444 East Main Street, Fort Wayne, Indiana 46802, Telephone: (260) 426-0444.

I affirm under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. /s/ Lisa A. Downey.

