

**ALLEN COUNTY FLOODPLAINS
RESTRICTIVE COVENANT
PERTAINING TO NON-CONVERSION OF SPACE BELOW FPG ELEVATION**

This Restrictive Covenant is made and entered into this _____ day of _____,
20____, by _____ (“Owner”).

RECITALS

Owner is the owner of that certain Real Property and improvements located at _____ in Allen County, Indiana, and more particularly described on Exhibit, “A” which is attached hereto and incorporated herein as if fully set forth (“Property”). The Owner took title to the Property pursuant to that certain Warranty Deed dated _____ and recorded in the Allen County Recorder’s Office on _____ as Document Number _____.

DECLARATION

NOW, THEREFORE, Owner declares that the Property is hereby subjected to, encumbered and impressed with the Restrictive Covenant contained herein and every part of the Property shall be owned, leased, transferred, developed, improved, occupied and otherwise used in compliance herewith.

1. *LOWEST FLOOR OF LIVING SPACE AT FLOOD PROTECTION GRADE.*

Owner, and each subsequent owner of the Property, shall not convert space within a regulated floodplain below Flood Protection Grade (FPG) to living space; including new or substantially improved elevated structures with an enclosure beneath the elevated floor, accessory structures, and open-sided shelters. This specifically pertains to the lowest floor elevation at or above the Flood Protection Grade _____ (FPG, NAVD88), which is two feet higher than Base Flood Elevation _____ (BFE, NAVD88) provided on the _____, dated _____, shown in attached Exhibit “B”, which is incorporated herein by

reference. The lowest floor shall be as defined in the current Floodplain Regulations; in general, describing the lowest level of the structure. Utility service, equipment, and ductwork shall not be placed below FPG elevation. Space below FPG may be used for vehicle parking, building access, and storage.

2. **ENFORCEMENT.** In the event of any breach, default or noncompliance of the covenants, limitations and restrictions contained in this Restrictive Covenant, the Allen County Floodplain Administrator shall have the option (but not the obligation) to enforce this Restrictive Covenant, at law or in equity, in the event of a breach of an obligation in this Restrictive Covenant; and in the event such an enforcement action is commenced, the Allen County Floodplain Administrator shall have the remedies allowed by the Allen County Floodplain Ordinance governing the Property at the time of the enforcement action, which remedies shall be cumulative and not exclusive. A violation of this Restrictive Covenant shall be deemed a violation of the Allen County Floodplain Ordinance governing the Property at the time of the violation; provided, however, that nothing in this Restrictive Covenant shall be construed as giving any person the right to compel enforcement of this Restrictive Covenant by the Allen County Floodplain Administrator, or any successor agency having floodplain jurisdiction over the Property. Any delay or failure to enforce any provision of this Restrictive Covenant shall not be construed or held to be a waiver.

3. **INVALID PROVISION/SEVERABILITY.** If any provision of this Restrictive Covenant is found to be invalid or unenforceable by any court with jurisdiction then, to the extent permissible under Indiana law, such provision may be amended by said court to the least extent possible in order to make said provision valid and enforceable. The invalidity or unenforceability of any particular provision of this Restrictive Covenant shall not affect the other provisions of it; and, to the extent such provision cannot be amended in accordance with the preceding sentence to be valid and enforceable, this Restrictive Covenant shall be construed in all respects as if such invalid or unenforceable provision was omitted.

4. **AMENDMENTS.** No amendments, modifications, alterations, or additions to this Restrictive Covenant or the Cut and Fill Plans shall be binding, unless such changes are made and approved in a writing signed by the Allen County Floodplain Administrator.

5. **WAIVER.** A waiver of a breach of any term in this Restrictive Covenant will not be considered (1) a waiver of a further breach of the same term, or (2) a waiver of a breach of any other term, or (3) a waiver of any party's right to declare an immediate or a subsequent default.

6. **BINDING EFFECT.** This Restrictive Covenant is a covenant running with the land and shall be binding on the Property, Owner and all of Owner's successors in title to the Property.

7. **AUTHORITY TO SIGN.** Each person signing this Restrictive Covenant in a representative capacity on behalf of a party warrants and represents to each other party that (1) the person executing this Restrictive Covenant has the actual authority and power to so sign, and to bind the person's respective principal to the provisions of this Restrictive Covenant; and (2) all entity action necessary for the making of this Restrictive Covenant has been duly taken.

8. **RECORDING.** Owner shall, at Owner's sole expense, record this Covenant, including Exhibits, with the Allen County Recorder and shall provide two copies of the recorded Covenant to the Allen County Surveyor's Office.

9. **EFFECTIVE DATE.** This Covenant shall be effective when this Covenant is recorded in the Office of the Recorder of Allen County, Indiana.

10. **TERMINATION.** This Covenant may be terminated only in a writing signed by the Allen County Floodplain Administrator.

IN WITNESS WHEREOF, the undersigned has caused this Covenant to be executed the day and year first written above.

“OWNER”

Signature

Printed Name, Title

“OWNER”

Signature

Printed Name, Title

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

Before me, the undersigned Notary Public in and for said County and State, this _____ day of _____, 20____, personally appeared _____, the above named Owner, and acknowledged the execution of the foregoing Commitment.

WITNESS my hand and Notarial Seal.

_____, Notary Public

_____ (Printed Name)

Commission Number: _____

My commission expires: _____

Resident of _____ County, Indiana

This instrument prepared by: _____,

at address _____.

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/
