

**AGREEMENT**

The undersigned agrees that upon the undersigned signing this document the Lot of the Owner shall be bound by and subject to the "Restrictions and Covenants of Harrison Hill Addition" (including without limitation the restrictive covenants and agreements and assessment provisions applicable from time to time to Harrison Hill Addition). This Agreement established herein, shall run with the land and be binding on future Owners of the Lot. The amendment and replacement of the Harrison Hill Addition known as the Restrictions and Covenants of Harrison Hill Addition shall become effective, if at all, when, as provided in the current covenants and restrictions, not less than seventy-five percent (75%) of the Owners of Lots in the Harrison Hill Addition have confirmed in writing their agreement to so amend and replace the current covenants and restrictions.

By signing this petition, I swear or affirm under the penalties of perjury that I am an Owner of the Lot below, which is located within Harrison Hill Addition and I approve this amendment/replacement of the Harrison Hill Addition as titled Restrictions and Covenants of Harrison Hill Addition, which has been provided to me and has been read by me:

Printed Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Address: \_\_\_\_\_

RESTRICTIONS AND COVENANTS  
OF  
HARRISON HILL ADDITION

The following restrictions and covenants (“Protective Covenants”) apply to all of the following subdivisions in Fort Wayne, Allen County, Indiana (as recorded in the Recorder’s Office of said County):

Harrison Hill Addition, (Lots 1-207, inclusive) originally laid out and platted as “Harrison Hill Addition” at page 116 of Plat Record B7C on July 2, 1915 and as “Amended Plat of Harrison Hill Addition”, (Lots 77, 78, 79, inclusive) at page 35 of Plat Record B8A on May 24, 1917 and Horns Subdivision, (Lots 1-5, 177, 179, inclusive) originally laid out and platted as “Harrison Hill Addition” but further subdivided at page 10 on Plat Record B11A on June 2, 1924 (collectively defined as the “Addition”).

**ARTICLE I**

**ASSOCIATION MANAGEMENT**

1. **Legal Entity:** The business of the Addition shall be conducted and governed by an Indiana not-for-profit corporation known as the Historic Harrison Hill Neighborhood Association, Inc. (the “Association”). The Association shall be non-sectarian and non-political, and shall operate for the mutual health, safety and social welfare of the residents of the Addition, and of the residents of any other subdivision or additions who agree to subject themselves to the Association. The Association shall have the authority of the original platters of the Addition, including but not limited to approval of lot uses, of lot grading and construction of improvements thereon, of the use and maintenance of easements, and for collection of annual maintenance charges.
2. **Membership:** It is agreed that each Owner of a Lot in the Addition shall, automatically upon becoming an Owner, be and become a member of the Association and shall remain a member until such time as the ownership of a Lot ceases, it being agreed that membership shall terminate when such Owner ceases to be an Owners, and membership will be transferred to the new Owner of the Lot. “Lot” shall mean and refer to each portion of real estate located in the Addition which has been developed and improved for use as a residence, it being agreed that the same shall mean only each of the residences listed on **Exhibit I** to this Amendment. “Owner” shall mean and refer to the record titleholder, whether one or more persons or entities, of a fee simply title to any Lot but shall not include any mortgagee unless and until such mortgagee has acquired title to a Lot pursuant to an action for foreclosure or any proceeding in lieu of foreclosure. Each Owner Agrees the Board may amend Exhibit I to include any Lots that may be further added to the Addition whether due to being in the Addition as outlined above or under Article III, Section 2.

3. **Board of Directors:** The Association shall be managed by a board of directors comprised of at least 7 Owners of Lots within the Addition (the "Board"). The Board shall establish a Constitution, By-Laws, and reasonable rules and regulations for the election of Board members and the conduct of the Board and Association affairs.
4. **Owner Vote:** The Owner(s) of each Lot within the Addition shall be entitled to one (1) vote for each open Director position and for each issue as outlined in the constitution or by-laws requiring Owner approval. In the event there are multiple Owners of a Lot, such Lot shall be limited to one (1) vote which may be agreed upon by said Owners in writing.

### **ARTICLE III**

#### **ASSOCIATION MEMBERSHIP AND MAINTENANCE CHARGES**

1. **Maintenance Charges:** Each dwelling house is subject to maintenance charges of \$25.00 per calendar year, which is a lien on the Lot until such maintenance charges, together with interest on delinquencies at 6% per annum, and together with reasonable attorney fees and other costs of collection, are paid in full. At the discretion of the Board, these maintenance charges may be increased by no more than 10% of the previous year's amount, except when the Association experiences non-ordinary expenses or losses. Such maintenance charges are delinquent if not paid by January 31. The lien for such maintenance charges shall be superior to all liens except real estate taxes and other governmental assessments, and except bona fide mortgages. The lien shall be enforceable in the same manner as mechanic's liens in the State of Indiana together with attorney fees and interest at the rate applicable from time to time to unpaid judgments in the State of Indiana. These mandatory maintenance charges are collected for the following purposes: private security, general beautification, maintenance projects in common and/or public areas, maintenance of the neighborhood pillars, conduct of Association and Board meetings, newsletters, mailings and other such costs and services involved in the activities of the Association, a reasonable reserve for emergencies, and other purposes for the health, safety, and general welfare of the Association and its residents.
2. **Association Additional Membership:** These restrictions and covenants shall apply to the Lots located in the Addition, subject to certain exempt properties under Article IV. The Board shall continue to ensure each Lot is meeting the obligations under these restrictions and covenants. The Board may, to the extent an Owner of a Lot in the following locations/subdivisions/additions or the subdivision as a whole desires, as amended, (a) Branning Addition, (b) Boerger Addition, (c) Boergers 2<sup>nd</sup> Addition, (d) Boergers 3<sup>rd</sup> Addition, (e) Fairmont Addition (limited to lots located on the east side fronting Fairfield Avenue, or east of Fairfield Avenue on other streets), (f) Mckinnieville Addition, (g) Harrison Hill Addition, Extended Unit A, (h) Calhoun Addition, and (i) Fieldler's Subdivision (residential lots on Lexington Avenue and Calhoun Street) (collectively "Near Neighborhood(s)"), allow the Owner of such Near Neighborhood Lot to become a part of

the Addition and to be bound by and subject to some or all of the restrictions and covenants from time to time so long as (a) the Lot Owner in a Near Neighborhood signs the Protective Covenants, (b) the addition of such Lot is allowed under Indiana law, and (c) the addition of such Lot does not materially and negatively impact the Association and/or Addition in the Board's discretion. The Board is required to hold a hearing on any such addition of a Near Neighborhood Lot and it shall only be approved with a majority vote of the Board ("Near Neighborhood Lot Approval"). In the event this Section 2 cannot be legally effectuated, and additional requirements must be met on behalf of the Addition or the Near Neighborhood for the purpose of allowing such Owner of such Near Neighborhood Lot to become a part of the Addition, the Board shall follow such process as legally required.

## **ARTICLE IV**

### **LOT AND HOUSE REQUIREMENTS**

1. **Lots:** All Lots, except Lots 180-188 for the period of time in which such Lots are owned by as exempt property by the board of education and "E 70 Lot 2 E 70 Of N 45 Lot 4" ("Exempt Lots"), within the Addition shall be used exclusively for single family residential purposes, and not for multi-family or other use, and no Lot may construct a second house, or subdivide such Lot. Any multi-family dwelling houses in existence as of the date in which these Protective Covenants are approved and recorded shall be grandfathered. All building lines as required in the original recorded plats shall continue; however, any corner lots without a second home previously built or being built as at the time these Protective Covenants are approved and recorded shall not be permitted to build a second home on said Lot.
2. **Dwelling Houses:** No new or existing dwelling house shall be constructed or altered to permit or accommodate multi-family occupancy. All buildings to be used for educational, religious, recreational or philanthropic uses may be constructed or maintained only in locations and according to plans and designs approved by the Association. Any dwelling house constructed within the Addition must have equal to at least 90% of the average value of existing dwelling houses within one block in the Subdivision unless the Board consents. No trees in good condition shall be cut down, destroyed or mutilated, except as necessary for the construction of approved buildings unless the Board otherwise consents.
3. **Utilities and Easements:** All utility and other easements established in the said original recorded plats of the Addition(s) are hereby continued, together with all proper amendments thereto subsequent to such plattings.
4. **Owner-Occupancy:** No house or other building in the Addition shall be used as a rental property, except those that are rented at the time these restrictions and covenants are approved and recorded. Any such current rentals are grandfathered until such time as the current Owner sells, conveys, or otherwise bequeaths the property ("Transfer of Ownership"). Any such Transfer of Ownership in a then current rental dwelling house or

building shall thereafter no longer be so excepted and shall be Owner occupied (collectively the "Rental Restriction"). Exceptions to this Rental Restriction are hereby granted to the following: to a spouse, ex-spouse, child, parent, or sibling of an individual titleholder; where a personal trust is titleholder, to a family member/trust beneficiary who is to be a full-time resident occupying the dwelling house; where a family corporation or other family company is titleholder, to a family member holding ownership/voting power who is to be a full-time resident occupying the dwelling house; where a not-for-profit is titleholder, to an employee who is to be a full-time resident occupying the dwelling house; and to other similarly situated individuals with the consent of the Board of the Association. The Board may consider, in its discretion, when a Home is proposed to be excepted from this Rental Restriction the following: (a) the total number of homes grandfathered under the Rental Restriction, (b) the observations and opinions of the Association concerning whether homes in and/or outside the Addition are maintained and kept up substantially the same as owner-occupied homes when they are rented or leased, and (c) any other appropriate factors; however, the Association shall not at any time consider the age, race, religion, sex, sexual orientation, or national origin of the Owner that has made the request. Land contracts are considered rental agreements for the purposes of the Rental Restriction unless there has been a cash down payment of at least 10% of the purchase price of the Home and a memorandum of the transaction in recordable form has been provided to the Association. All grandfathered Owners, exception Owners, and contract sellers under this Rental Restriction shall keep the Association informed in writing of their current addresses and telephone numbers.

## ARTICLE V

### MISCELLANEOUS

1. **Discrimination:** The Association and the Board will not practice discrimination based on race, religion, national origin, ethnic background, sex, age, sexual orientation, disability, or any other "protected class" added from time to time by either statutory or case law.
2. **Running With the Land:** Whether or not they are actually listed in a deed or contract of sale, these restrictions and covenants shall run with the land and be effective for a period of 25 years after their approval and records, after which period they shall automatically be extended and similarly effective for continuous, successive 25-year periods. These restrictions and covenants may be amended or abolished by petition to the Circuit Court of Allen County signed by the then at least 75% of Owners of Lots in the Addition with each Owner eligible for one (1) vote.
3. **Association and Board:** It is acknowledged that the Association is a legacy entity of Harrison Hill Association Inc, and that at the date of adoption of these Protective Covenants, the Association has been duly organized and validly existing as a not-for-profit corporation under the laws of the State of Indiana. The Board members shall not be personally liable for Association activities except in cases of bad faith, gross negligence or

wanton misconduct, nor shall any such director and officer have any liability for any negligent performance of their duties from which they are granted immunity under Indiana Code 34-30-4-2. The Association shall indemnify and hold harmless and defend each of its past, present, and future directors and officers against any and all liability, reasonable expenses, and legal fees to any person, firm or corporation arising out of activities and/or decisions made by the Board on behalf of the Association, except in cases of bad faith, gross negligence or wanton misconduct.

4. **Notices:** All notices or requests made under or pursuant to the terms of the Protective Covenants shall be in writing and shall be deemed to have been given when personally delivered in writing or deposited in the United States mail, certified or registered mail, postage prepaid, return receipt requested, addressed and delivered to the then registered agent of the Association.
5. **Enforcement:** The Association and any Owner of a Lot in the Addition shall each have the right to enforce, by any proceeding at law or in equity or both, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of the Protective Covenants as in effect from time to time. Failure by the Association, or any Owner to enforce these provisions as in effect from time to time shall in no event be deemed a waiver of the right to do so thereafter. In the event due to law or court order or judgement, any one of these provisions outlined in these Protective Covenants shall be invalidated, such shall in no way affect any of the other provisions which shall remain in full force and effect.

**EXHIBIT I**

120 West Branning Ave
137 West Branning Ave
4314 South Calhoun St
4426 South Calhoun St
4522 South Calhoun St
4528 South Calhoun St
4530 South Calhoun St
102 South Cornell Cir
119 South Cornell Cir
123 South Cornell Cir
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310 Radial Ln
329 Radial Ln
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