

Amendment to the
Declaration of Protective Covenants and Restrictions
Applicable to the Final Plat of Kensington Farms East P.U.D., Section Five,
and Known as
ROSEMARY VILLAS

THIS AMENDMENT is hereby made this __10th__ day of ____December , 2015, by the Owners of the Lots as described herein.

WITNESSETH:

WHEREAS, the Declaration of Protective Covenants and Restrictions Applicable to the Final Plat of Kensington Farms East P.U.D., Section Five, and Known as Rosemary Villas, are Recorded in the Office of the St. Joseph County Recorder on or about October 7, 1987 as Document No. 8731780, and were amended on or about July 28, 1989 by Document No. 8919489, on or about June 5, 1990 by Document No. 9014371, on or about April 2, 1991 by Document No. 9107575, and on or about May 18, 1992 by Document No. 9217406 (collectively, the “Restrictive Covenants”); and

WHEREAS, Rosemary Villas Homeowners’ Association, Inc. (the “Homeowners’ Association”), is an Indiana non-profit corporation created for the general benefit of all Owners of Lots within Rosemary Villas; and

WHEREAS, the Owners of the Lots desire to update and amend the Restrictive

Covenants; and

WHEREAS, the Board of Directors of the Homeowners' Association, Inc. has adopted a Resolution amending the Restrictive Covenants, by rescinding all prior covenants and restrictions, including all amendments, and restating the covenants and restrictions as stated herein.

NOW THEREFORE, the Restrictive Covenants are hereby amended, and the Owners of the Lots have agreed as follows:

1. The original Restrictive Covenants, including all amendments, are hereby repealed and rescinded.

2. The following Restrictive Covenants are hereby adopted:

The Subdivision consists of the following real estate:

The Final Plat of Kensington Farms East P.U.D., Section Five, recorded on June 5, 1987 as Document No. 8717312, in the Office of the Recorder of St. Joseph County, Indiana, and more specifically described as follows:

A parcel of land being a part of the Southeast Quarter of Section 31, Township 37 north, Range 3 East, City of South Bend, Centre Township, St. Joseph County, Indiana and being more particularly described as follows:

Beginning at the Southwest corner of Lot 58 in the plat of Kensington

Farms East, P.U.D. Section 1 as the same is recorded in the office of the Recorder of St. Joseph County, Indiana as document number 7925154; thence for the next five courses along the boundary of said Section 1, the first course being South 67°-56'-30" East, a distance of 208.16 feet; thence South 22°-03'-30" West, a distance of 37.59 feet; thence South 67°-56'-30" East, a distance of 75.43 feet; thence South 89°-53'-20" East, a distance of 155.00 feet; thence South 0°-06'-30" West, a distance of 667.64 feet; thence North 89°-48'-22" West, a distance of 542.00 feet; thence North 0°-06'-30" East, a distance of 305.00 feet; thence North 60°-00'-00" East, a distance of 126.00 feet; thence North 11°-00'-00" West a distance of 130.00 feet; thence North 09°-56'-30" East, a distance of 316.57 feet to the place of beginning containing 8.46 acres more or less.

The Final Plat of Kensington Farms P.U.D., Section Five, Part 2, recorded on May 19, 1988 as Document No. 9912963, in the office of the Recorder of St. Joseph County, Indiana, and more particularly described as follows:

Beginning at the Northwest corner of the plat of Kensington Farms East P.U.D. Section 5 recorded as instrument number 8717312 in the Office of the Recorder of the St. Joseph County, Indiana; thence for the next four (4) courses along the Western boundary of said Section 5, the first course being South 9°-56'-30" West, a distance of 316.57 feet; thence South 110°-00' East, a distance of 130 feet; thence South 60°-06'-00" West, a distance of 126.00 feet; thence South 0°-06'-30" West, a distance of 305.00 feet; thence North 89°-48'-22" West, a distance of 218 feet; thence North 11°-31'-19" East, a distance of 798.33 feet to the Southerly boundary of the plat of Kensington Farms East P.U.D. Section 1, recorded as instrument number 7925154 in said Recorder's Office; thence for the next three courses along said Southerly boundary, the first being South 56°-44'-52" East, a distance of 215.00 feet to a point on a non-tangent curve delineating the Easterly right-of-way line of Old English Court; thence Northeasterly along said curve being a curve to the right having a radius of 990.00 feet, a central angle of 0°-29'-19" and limited in length by a chord of 8.44 feet that bears North 33°-

29'-48" East ; thence South 56°-15'-33" East, a distance of 150.46 feet to the place of beginning containing 7.24 acres more or less.

Lots 112, 113, 114, 176 and 177 Kensington Farms East P.U.D, Section Five, Part 3, Phase 2 Subdivision.

All of which together shall constitute the "Subdivision."

All persons and/or entities acquiring title to or any interest in any of the lots or other property in the Subdivision (the "Owners") do hereby Covenant and agree, one with the other, that the following Restrictions pertaining to the improvement, use, occupation of and construction on each of such lots to the Subdivision for the period and with the limitations hereafter described shall govern and be applicable thereto:

- A. "Rosemary Villas" is the name by which the Subdivision shall be known.
- B. For the purpose of maintaining lawns, shrubbery, irrigation systems, fertilizer, mulch, cutting grass, snow removal from driveways, street and sidewalks, and exterior painting of shutters, garage doors, front doors, service doors and trim visible from the street in their original colors, and for the general benefit of all Owners in the Subdivision, the Owners have formed the Homeowners' Association. Each and every Owner, in accepting a deed or contract for any lot in the Subdivision, agrees to, and shall be a member of, the Homeowners' Association

and is subject to the Articles of Incorporation, By-Laws, and Rules and Regulations of the Homeowners' Association.

Membership shall terminate when a member ceases to be an Owner. Upon the transfer of ownership by a deed duly recorded in the Office of the Recorder of St. Joseph County, Indiana, membership in the Homeowners' Association shall transfer from the grantor to the grantee, without the requirement of any endorsement or assignment.

There shall be two (2) classes of membership: voting and non-voting.

- i. The voting members shall be the Owners.
- ii. The non-voting members shall be any resident who is not an Owner.

Each person holding an interest in a lot in the Subdivision shall be a member, but each lot shall only have one (1) vote.

The affairs of the Homeowners' Association shall be governed and managed by a Board of Directors.

C. The amount of all assessments, for the purposes described in Paragraph B herein, shall be paid by each Owner, as more specifically provided in the By-Laws of the Homeowners' Association. Unpaid assessments shall be a lien on the Lot of the non-paying Owner, subordinate to any then-existing purchase money mortgage on such Lot.

D. These Restrictive Covenants shall run with the land and shall be binding on all parties and all persons claiming under them until January 10, 2022, after which time said Restrictive Covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by a majority of the then Owners has been recorded agreeing to change or terminate such Restrictive Covenants in whole or in part.

E. No new building shall be erected, altered, placed or permitted to remain on any lot in Rosemary Villas other than one (1) detached single family dwelling, not to exceed one (1) story in height and a private garage for not more than four (4) cars.

F. The ground floor area of the main structure of any dwelling erected on any lot in Rosemary Villas, exclusive of one (1) story open porches and garages, shall be not less than one thousand (1,000) square feet for a one (1) story dwelling.

G. No building shall be erected, placed or altered on any Lot in Rosemary Villas until construction plans, specifications, and a plan showing the location of the structure have been approved in writing as to conformity and harmony of exterior design and otherwise with the existing structures on other Lots in this Subdivision by the Board of Directors, which shall have full authority to approve or disapprove such design and location. In the event the Board of Directors, or its designated representative, fails to approve or disapprove such design and

location within seven (7) days after said plans and specifications have been submitted, or, in any event, if no suit to enjoin the erection of such building or the making of such alterations has been commenced prior to the completion thereof, such approval shall not be required and these Restrictive Covenants shall be deemed to have been fully complied with.

H. Setbacks.

i. No building shall be erected on any lot in Rosemary Villas nearer to any side lot line thereof than six (6) feet.

ii. In addition to the requirements of sub-paragraph (i.), on a corner lot, the minimum width of any side yard along the side street lot line shall be twenty-five (25) feet at the building line. Where the rear lot line of a corner lot adjoins a side lot line in a Residential District, no part of any accessory building within twenty-five (25) feet of the common lot line shall be nearer a side street lot line than the minimum depth of any front yard requirement on such adjoining lot.

iii. No building shall be erected or increased in ground area so that more than sixty percent (60%) of this area of the lot will be covered.

I. No noxious or offensive activity shall be carried on upon any lot in Rosemary Villas, nor shall anything be done thereon which may be or become an annoyance or nuisance to

the neighborhood.

J. No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any lot in Rosemary Villas at any time as a residence, temporarily or permanently, but not to exclude modular units used only to facilitate construction, which such construction is actually underway.

K. No Lot in Rosemary Villas shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be deposited thereon, except for sanitary containers.

L. No animals, livestock or poultry of any kind shall be raised, bred or kept on any lot in Rosemary Villas, excepting dogs, cats or other household pets; provided, however, that they are not raised, bred or kept for any commercial purpose.

M. No hedge or shrub planting which obstructs sight lines at elevations between two (2) and six (6) feet above the street shall be placed or permitted to remain on any corner lot in Rosemary Villas within the triangular area formed by the street property lines and a line connecting them at points twenty-five (25) feet from the intersection of the street property lines extended. The same sight limitations shall apply on any lot within ten (10) feet from the intersection of a street property line with the edge of a driveway or alley pavement. No trees

shall be permitted to remain within such distance of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such light lines. No screen planting over thirty-six (36) inches high shall be permitted closer than twenty-five (25) feet to the street right-of-way. No fences, walls, or other screens are permitted on or near property lines, or in the yard of any Lot.

N. No swimming pools or fire pits, either temporary or permanent are permitted on any lot.

O. House trailers, motorhomes, truck campers, boats, off-road vehicles or commercial trucks and (commercial) vans shall not be parked or located on any of the lots in Rosemary Villas at any time. Service vehicles temporarily providing service to homeowners are excluded from this clause. Members who own motorhomes and/or truck campers may park them for the purpose of loading or unloading for a period not to exceed 24 hours. Members who own and use a pickup truck as a transportation vehicle must keep it parked in the garage.

P. No lot in Rosemary Villas shall be used other than for residential purposes. Each Villa Unit shall be owner-occupied and not leased to others. Owner shall occupy, establish, and

use the property as owner's principal residence after the execution of Deed and shall continue to occupy the Property as owner's principal residence. The owner will also be a voting member. Owner shall not destroy, damage or impair the Property, allow the Property to deteriorate, or commit waste on the Property.

Q. Easements as shown on the Subdivision Plat are reserved for the installation and maintenance of utilities and drainage facilities. Within such utility and drainage easements, no permanent or other structures shall be erected by the Owners of any Lot in Rosemary Villas. No planting or other material of any kind or nature shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the direction of the flow of drainage channels in such easements, or which may obstruct or retard the flow of water through drainage channels in such easements. The easement area of a lot on the Subdivision Plat and all improvements thereon shall be maintained by the Owner, except for those improvements for which a public authority or utility company is responsible.

R. Any and all other covenants, restrictions, and charges shown on the recorded Subdivision Plat are hereby incorporated herein and made a part hereof and shall be deemed

applicable to each and every lot in Rosemary Villas.

S. No sign of any kind shall be displayed to the public view on any lot in Rosemary Villas, except one (1) sign of not more than five (5) square feet advertising the property for sale or rent, or a sign announcing the presence of a security system on the property if it is placed close to the house in the flower beds.

Up to four signs, no larger than twenty-four by twenty-four inches (24"x24") in area, advocating the election or defeat of one (1) or more candidates for nomination or election to a public office, support for or opposition to a political party, or a political party's candidates, or the approval or disapproval of a public question may be displayed in a window on the Owner's property or on the ground that is part of the Owner's property, beginning no more than thirty (30) days before, and ending no more than five (5) days after, the date of the election to which the sign relates.

A member who is selling his property may, for the purpose of advertising an estate, tag, or garage sale in conjunction with the sale of the property, place a sign in the yard advertising the estate, tag, or garage sale. Such signs shall not be posted for more than two (2) days and shall be removed at the conclusion of such sale.

T. All lines for telephone and all other public utility services, either in the streets or on any lots, shall be located underground and shall not be visible. All street or lot lighting shall be situated on metal or concrete ornamental posts with no lines thereto visible.

Pursuant to IC 32-25.5-3.5, and as it may be amended from time to time, solar photovoltaic devices ("Solar Energy Systems") may be installed or maintained only upon meeting the requirements set forth in this Subsection T.

1. The applicant for a Solar Energy System ("Applicant") must submit a petition ("Petition") to the Owners for approval to install a Solar Energy System on the Applicant's dwelling or on the Applicant's property;
2. The Petition must provide the Owners with the following information:
 - a. the site plan of the Solar Energy System, including the property boundaries;
 - b. a description of the dwelling;
 - c. the color of the Solar Energy system;
 - d. the vendor and installer of the Solar Energy system; and
 - e. if requested by the Owners, the plans and specifications for the Solar Energy System;
3. The Applicant must obtain the signatures of at least sixty-five percent (65%) of the Voting Members.
4. After receiving the number of signatures required, the Applicant must present the signatures and all information provided to the members to the Homeowners Association Board of Directors.
5. The Homeowners Association Board of Directors may deny installation or require removal of the Solar Energy System if:

- a. a court finds that the Solar Energy System threatens public health or safety or does violate or would violate any law;
- b. the Solar Energy System has been or will be installed on property owned or maintained by the Homeowners Association, or property owned in common by members of the Homeowners Association;
- c. the Solar Energy System is to be installed or is installed in a location other than the roof of the Applicant's dwelling;
- d. the Solar Energy System is or would be mounted on a roof and extend above or beyond the roof by more than six (6) inches, or does not or would not conform to the slope of the roof and have a top that is not parallel to the roof line;
- e. the Solar Energy System has a frame, support bracket or visible piping or wiring that is not in silver, bronze or black tone commonly available in the marketplace;
- f. the Solar Energy System is installed in a manner that voids material warranties; or
- g. the Solar Energy System is installed in a manner that differs significantly from the information presented to the Board of Directors.

6. The Board of Directors, upon finding that the Solar Energy System does or would comply with the requirements of this Section, shall grant the Owner's request to install the Solar Energy system

U. Invalidation of any one (1) of the Covenants by judgment of a Court of competent jurisdiction shall in no way affect any of the other Covenant, and all other provisions of these Restrictive Covenants shall remain in full force and effect.

V. Enforcement of these Restrictive Covenants shall be by proceedings at law or in

equity against any person or persons attempting to violate, any Covenant, either to restrain violation or to recover damages. The right to enforce these provisions by injunction, together with the right to cause the removal by due process of law of any structure, is hereby vested in each Owner or the Board of Directors. These Restrictive Covenants may all be enforced by a civil action for damages and by any other appropriate remedy at law or in equity. If any person or persons shall violate, or attempt to violate, any such Covenants herein, it shall be lawful for any other Owner or the Board of Directors to proceed, either in law or in equity, against such person or persons violating, or attempting to violate, any such Covenants, and to enjoin them from so doing, to recover damages for such violation, and to seek all other appropriate relief. In the event that the Owner or Board of Directors should employ counsel to enforce any of the foregoing Restrictive Covenants, all costs incurred in such enforcement, including reasonable attorneys' fees, shall be paid by the Owner against whom such enforcement action is brought, and any person enforcing these Restrictions shall have a lien on such lot or lots to secure the Owner's payment of all such costs, which lien may be enforced by foreclosure of the lien by a Court of competent jurisdiction.

W. These Restrictive Covenants may be amended at anytime by recording of such amendment executed by the Owners of not less than seventy-five percent (75%) of the lots in

Rosemary Villas.

X. These Restrictive Covenants shall be deemed to be attached to and shall be considered a part of the Final Plat of Kensington Farms East P.U.D., Section Five, and shall become effective upon the recording of this document in the Office of the Recorder of St. Joseph County, Indiana.

Dated: __December 10__, 2015

Rosemary Villas Homeowners' Association, Inc.
By its President:

Joseph Mankowski

Approved by the Owners (proxies on file) of at least seventy-five percent (75%) of the lots in Rosemary Villas, as attested by those members signing below:

_____ Richard Kline Vice President

_____ Donald Nemeth Sec / Treas.