

LAFAYETTE PLACE ADDITION RESTRICTIVE COVENANTS

This Indenture, Made this 19th day of June 1915, by and between Lafayette Place Company, a corporation, organized under the Laws of the State of Indiana, having its principal place of business in the City of Fort Wayne, Allen County, Indiana (hereinafter the Seller), and Lee. J. Ninde, of Allen County, Indiana (hereinafter called the Buyer), Witnesseth, That

Whereas, the Seller, owns a tract of land in Allen County, Indiana, known as Lafayette Place Addition, as shown on the recorded plat thereof, in the Recorder's Office of Allen County, and

Whereas, the Seller intends to develop and improve said tract of land and open up and lay out the streets shown on said plat, and after reconveyance to it of said property to off for sale the lots and parcels of land included in said tract, and desires to subject all of said tract of land and lots and parcels shown on said plat, to certain covenants, agreements, easements, restrictions, conditions, limitations, and charges, as hereinafter set forth, and to make said covenants, agreements, restrictions, conditions, limitations, and charges binding and of full force and effect upon all the land included in said tract, and upon the present and future owners and occupants of the same.

Now Therefore, the said Lafayette Place Company, Conveys and Warrants to the said Lee J. Ninde, for and in consideration of \$1.00, the receipt whereof is hereby acknowledged, the following described real estate in Allen County State of Indiana, to-wit:

All of the tract of said land known as Lafayette Place Addition adjoining the City of Fort Wayne, as shown on the recorded plat thereof, including lots numbered from One (1) to Four Hundred and Forty-four (444), both inclusive, together with the improvements thereon, and all rights and appurtenances thereto.

Subject to the following covenants, agreements, easements, restrictions, conditions, limitations, and charges, which it is hereby covenanted and agreed shall be binding upon the Seller, its successors and assigns, and upon the Buyer, his heirs, executors, administrators, grantees, and assigns, and upon all the land included in said tract.

1. The seller will pay the current taxes assessed against said lots, which are payable in the years 1915 and 1916. The Buyer shall pay all current taxes against said lots payable in the year 1917 and subsequent years, and shall also pay all assessments levied after May 1st, 1915, against said premises, as the same become due.

2. The seller hereby agrees:

(A) That there will be constructed a sewer system, water main system, and gas main system for the use of all lots in said addition, and also that cement sidewalks will be constructed upon the streets in from of all lots of said Addition, and that pavements of a character to be determined by the Seller shall be constructed upon all the streets lying within said Addition. It shall be optional, with the Seller to place said water, gas, and sewer main systems in the streets, or upon the rights-of-way or easements reserved upon and over the lots.

(B) To plant trees and shrubbery in the parks, park ways or parking, play grounds and Community Center, all of said work to be completed by December 1st, 1919.

(C) To equip the play ground shown on said plat with a field house, slides, teeter boards, wading pools and basket ball grounds, provided, however, that the Seller shall not be called upon to expend more than \$1000.00 in providing such equipment; said equipment to be provided by December 1st, 1920; or as soon thereafter as 25 dwelling houses shall have been completed and occupied upon lots in said Addition.

(D) To provide a club house and tennis courts upon the tract known as Community Center shown on said plat at a cost not less than \$5000.00 by December 1st, 1920, provided that within such time 50 dwelling houses shall have been erected and occupied upon the lots in said Addition, and if such number of dwelling houses shall not have been erected and occupied by said date, then as soon thereafter as such number shall have been erected and occupied.

(E) To care for the parks, park ways, play grounds, Community Center tract and vacant lots in such manner as in the opinion of the Seller is necessary or desirable to keep the property neat and in good order; such care to continue for a period of not more than 5 years from the date hereof, or until the organization of an improvement association, as hereinafter described, if such association is organized prior to the end of said period. The Seller shall not be obligated to expend in such work more than the annual charge of \$5.00 against each of the lots sold, as hereinafter set forth.

(F) To provide, should the Seller so desire, an ornamental lighting system upon the streets in said Addition, together with the necessary posts, connections and attachments therefore, but nothing herein shall be considered as binding the Seller to provide such lighting system, except at its own option, and providing further that in no event shall the seller install, or cause to be installed, such lighting system if the Buyers or owners of 51% or more of the lots in said Addition shall present a written remonstrance to the Seller against such installation at any time before the contract therefore is let. The cost of such system to be borne by the Buyer as hereinafter specified.

(G) To encourage and assist so far as it is able in the organization of an improvement association to be known as Lafayette Improvement Association, or by some other appropriate title, which shall consist of such owners of lots in said Addition as shall join therein, and shall be organized for the purpose of maintaining and caring for the general interests of said Addition, and in particular caring for and maintaining the parks, park ways, play grounds, Community house, and tract known as Community Center therein.

3. The Seller reserves the right at any time within 5 years from the date hereof to enter upon said premises for the purpose of grading, excavating, filling or taking soil, gravel, or sand therefrom in order to grade the streets, or maintain sidewalks, sewers or carrying on its general plan of grading and improving and preparing for occupancy of said Addition, it being understood, however, that in no event, shall the level of any lot be excavated below the grade of the street upon which it abuts.

4. All the lots sold in said Addition shall be subject to annual maintenance charges of \$25.00 per lot, to be paid by the owner of each lot on the 1st day of January of each year hereafter, to Lafayette Place Improvement Association, for the purpose of creating a fund to be known as a maintenance Fund and used by said Association as it may determine in caring for and maintaining said Addition; and said Association shall have the right by a resolution of two-thirds (2/3) of its Board of Directors and ratification by a simple majority of those resident owners present at the annual meeting of the general membership of said Association to recodify said annual maintenance charge as the need arises for a specific or definite period. Notwithstanding the above provisions, said maintenance charge, however, shall never be reduced below a sum less than \$5.00 annually per lot unless two-thirds of the resident owners shall unite in signing and executing an agreement or resolution to that effect which agreement or resolution shall, upon being recorded in the proper records of the Recorder's Office of Allen County, Indiana, be valid and binding upon the Seller and Owners of all of said lots, and upon all other persons. The terms of this paragraph shall control the adjustment of the annual maintenance charge, notwithstanding the provisions of paragraph 16 as previously amended.

5. The cost of install and constructing the water, gas, and sewer systems, and the sidewalks and pavements, which are to be constructed as specified in Paragraph 2 above shall be apportioned upon the lots of said Addition in the following manner:-

The cost of constructing sidewalks and pavements shall be apportioned upon the same basis, and according to the same rules as street and sidewalk improvement costs are now apportioned in and by the City of Fort Wayne under the Statutes of the State of Indiana, except that the cost of pavements at street intersections, and the cost of pavements and sidewalks upon streets in front of parks, play grounds and Community Center tract, shall be apportioned among the lots upon the basis of the area thereof, as more specifically described in the next succeeding paragraph in reference to sewer costs.

The cost of constructing a sewer system shall be apportioned among the lots upon the basis of the area thereof, that is to say, each lot shall bear the same proportion to the total cost of such sewer system as its area in square feet bears to the aggregate area in square feet of the whole number of lots to be sold as shown on the plat of said Addition.

The cost of installing and constructing a water and gas system shall be apportioned among the lots upon the basis of the total cost of said improvements, divided by the total number of lots to be sold as shown on said plat.

The cost of constructing the ornamental electric lighting system shall be apportioned among the lots upon the basis of the frontage thereof; that is to say, each lot shall bear the same proportion to the total cost of said lighting system as its frontage upon the street or streets in said Addition in linear feet bears to the aggregate frontage in linear feet of all the lots to be sold as shown on the plat of said Addition.

The amount due from the owner of each lot calculated upon the above basis, together with the interest at the rate of 6% per annum, and attorney fees, from the time each of said improvements is completed, shall be a lien upon such lot from such time, and shall be paid by the owner thereof, to the seller, at the rate of \$10.00 per month, beginning with the month next succeeding that upon which they payments upon the purchase price of such lots are completed, and after the completion of such improvements.

6. It is expressly agreed that the improvement and maintenance charges referred to in Paragraphs 4 and 5 hereof, shall be held to be liens or encumbrances on the said premises, and may be enforced by foreclosure proceedings, in the same manner as real estate mortgages are foreclosed, and by acceptance of title to said premises by the grantee or any subsequent grantees, such grantee shall be held to have covenanted and agreed to pay to the Seller all charges provided for in said Paragraphs both charges due and unpaid at the time of acquiring the title to said premises, and all charges thereafter falling due, as long as he shall hold such title. A certificate in writing signed by an officer of the Seller shall be given on demand to any Buyer or owner setting forth the status of said Buyer or Owner, and of said Premises, with respect to said charges, such certificate in favor of any one relying thereon to his damage shall be binding on the seller.

7. The seller reserves the right, should it so desire, to procure the construction of the sewers, sidewalks and pavements, or any portion of the same, by the municipal authorities of the City of Fort Wayne, and in that event, to bond the same premises, or any part thereof, for the cost of such improvements at intersections, and in front of parks, play grounds and Community Center tract shall be apportioned among the lots as above set out; and the Buyer or owner shall be held to have agreed not to object to, or remonstrate against, any such improvements, but on the contrary, shall use his influence in favor thereof. Should such bonds be issued against said premises, then the Buyer or owner shall assume the payment thereof, and shall pay the installments thereof as the same come due. It is understood and agreed that the agreements herein contained as to such sewer, pavement, and sidewalk improvements are for the mutual benefit and profit of all the buyers and owners present and future, of lots in said Addition, and should the Seller fail or refuse to carry out such improvements in the manner herein specified, then the agreements herein shall be construed as extending to and being binding upon each Buyer or Owner in favor of and against every other Buyer or Owner, may be enforced by or against such Buyer or Owner; and in particular, it is understood and agreed that should any such improvements be contemplated or proposed to be installed at any time by the municipal authorities of the City of Fort Wayne, the agreement above set out as to using his influence in favor of and not objecting to or remonstrating against such proposed improvements shall be binding against each Buyer or Owner, in favor of any other Buyer or Owner. Provided, however, that any such improvement may be prevented if the owners of 75% of all lots in said Addition shall remonstrate against the same.

8. The Seller reserves the title to all parks, park ways, play grounds and the tract known as Community Center in said Addition, and shall have the right to dedicate to public use, and the right to convey to any public authority, or to any corporation having power to acquire the same, all its right, title and interest in and to such parks, park ways, play grounds, or the tract known as Community Center, subject only to the rights of the owners of any lots of said Addition to the reasonable use and enjoyment of such tracts.

9. The Seller shall have authority to make and enforce reasonable rules and regulations for the use of parks, park ways, play grounds, and the tract known as Community Center, and also for the protection and preservation of all trees and shrubbery in the same, and the right of the Buyer to make use of said tracts shall be conditioned upon his respecting and conforming to such rules and regulations. Such authority shall continue during such period as the Seller continues to care for said tracts as set forth in Paragraph E above; but if, and when, the said Improvement Association shall be formed and take over said duties, the same Authority shall be vested and continue in it.

10. Easements and rights of way are hereby expressly reserved in and over the rear 4 feet of each lot shown on the plat of said Addition, and also in and over a 4 foot strip lying next to the side of any lot, when such line is at the same time the rear line, or any part thereof, of any other lot, and in and over the tracts of ground used, or to be used, for parks, park ways, play grounds and other tracts used for community purposes, for the following purposes: - For the erection, construction and maintenance of poles, wires, and conduits, and the necessary or proper attachments in connection therewith, for the transmission of electricity and for telephone and other purposes; also for the construction and maintenance of drains, sewers, pipe lines for supplying gas, water and heat, and for any other public or quasi-public utility or function maintained, furnished, or performed by or in any method beneath the surface of the ground. The company, or any municipal, public, or quasi-public corporation, engaged in supplying any one of more of the above utilities will have the right to enter upon said strips of land for any purpose for which said easements or rights of way are reserved.

11. Said premises, or any part thereof, except Lots 11 and 14, which Lots the seller reserves the right to sell free of any or all restrictions or conditions, shall never be used or permitted to be used, for other than residence purposes, with the exception of lots fronting upon Calhoun Street and Lafayette Street, as hereinafter specifically set out.

12. No building, or part thereof, not including open porches, shall never be erected or maintained, on any lot in said Addition, nearer to the front property line thereof, than is set forth in the following schedule; it being understood that where lots are designated by number, such description shall control the general description of lots facing upon certain streets: Not nearer than 40 feet on Lots 396-397-398-399-400 and 401. Not nearer than 35 feet on Lots 395 and 402. Not nearer than 30 feet on Lots 394 and 404, and on lots facing upon the North and South ends of Lafayette Esplanade. Not nearer than 25 feet on lots 393 and 404, and on lots facing East or West on Lafayette Esplanade. Not nearer than 20 feet on Lots 372-391-392 and 405 and on lots facing on Champlain Drive, Marquette Drive, Kenilworth Street, Wilmette Street, Calhoun Street, Lafayette Street, McKinnie Avenue, McKinnie Circle, Calumet Avenue, and Montclair Avenue. Not nearer than 15 feet on lots facing on Glencoe Avenue, Fleming Avenue, Maple Grove Avenue, and the South side of Cottage Avenue. Not nearer than 10 feet on Lots 357-415-422 and lots facing on Congress Avenue, and on the North side of Cottage Grove Avenue. No building shall ever be constructed or maintained upon any of the lots facing either the North or South end of Lafayette Esplanade, costing less than \$4500.00, or constructed or maintained upon lots facing East or West upon Lafayette Esplanade, or upon Marquette Drive, costing less than \$3500.00; or constructed or maintained upon any of the other lots in said Addition costing less than \$2500.00 to construct; nor shall any building ever be constructed or maintained upon any lot in said Addition for other than the purpose of a single private dwelling house, and the outbuildings appertaining thereto, and used in connection therewith, as hereinafter more specifically limited and set forth; now shall there ever be constructed or maintained more than one such dwelling house on any one lot in said Addition; except upon corner lots at the intersection of two streets upon which there shall be constructed not more than two such dwelling houses upon any one such lot, but this exception shall not apply to lots 25-

29-44-77-88-108-113-242-366-372-385-391-406-415 and 438 upon each of which lots not more than one such building shall be erected.

13. No stables or other outbuildings shall be erected on any part of said premises, except private garages for the sole use of the respective owners, or occupants of the lots upon which such garages are erected.

14. No fences shall be constructed upon said premises upon any part thereof, nearer to the front property line than the building line of said lot as above set forth, nor shall any bill boards, or other advertising signs, or devices, be erected on any part of said premises; and any fences erected thereon shall be no more than 72 inches in height and that said fencing shall be esthetically compatible with the subject lot as well as all surrounding lots and that any property owner erecting said fence, strictly adhere to all city permit requirements, lot lines and restrictions of record.

15. The restrictions herein contained, so far as limiting the use of the lots of said Addition fronting on Calhoun Street, for residence purposes only; and the forbidding the use of same for business purposes, and restricting the nature and price of the buildings to be constructed upon said premises, and the location thereof, may be changed at any time after January 1st, 1926, in any or all of the said particulars by the then owners of said lots, providing that the owners of not less than 75% of the lots fronting on said street shall unite in signing and executing an agreement or resolution to that effect, which agreement or resolution shall, upon being recorded in the proper records of Allen County, Indiana, be valid and binding upon the Seller and the owners of any and all lots in said Addition, and the same provisions shall apply upon like conditions to all lots fronting on Lafayette Street in said Addition; provided, however, that the provisions of this paragraph shall not apply to lots 75 and 76 on Calhoun Street, and lots 108 and 136 on Lafayette Street.

16. All restrictions and conditions herein contained shall be valid and binding, and continue in full force forever, provided however, that such conditions and restrictions or any of them, may be changed or abolished in any or all particulars by the then owners of the lots in said Addition whenever two-thirds of the resident owners shall unite in signing and executing an agreement or resolution to that effect, provided further that such signers shall number not less than 50, which agreement or resolution shall, upon being recorded in the proper records in the Recorder's Office of Allen County, Indiana, be valid and binding upon the Seller and owners of all of said lots, and upon all other persons.

Nothing in this Paragraph, or in Paragraph 6 above contained shall be construed as applying in any manner to easements and right-of-way reserved as above set forth in Paragraph One hereof.

17. Amendment recorded with the Allen County Recorders Office April 21, 2006 as follows:

(A) No property within the Lafayette Place Addition to the City of Fort Wayne Indiana may be used for any purpose other than owner occupancy.

(B) Properties which are not owner occupied at the time this covenant becomes effective shall be permitted to remain in their current use so long as they are owned by the current owner.

(C) Properties which are owner occupied at the time this covenant becomes effective may be rented by the current owner but not by subsequent owners.

(D) Those lots excluded from the single family residence requirements in the original covenants by paragraphs 11 and 15, being lots 11 and 14, and all those lots fronting on Calhoun or Lafayette Streets shall be included in this restriction.

The provisions herein contained are for the mutual benefit and protection of the owners present and future, of any and all lots in said Addition, and they shall run with, and bind the land, and shall inure to the benefit of, and be enforceable by the Seller or by the owner or owners of any land or lot included in said tract, their respective legal representative, heirs, successors, grantees and assigns. The restrictions, conditions, and limitations heretofore imposed shall remain in full force and effect in so far as concerns enforcement of the same by the respective owners of lots in said Addition through appropriate legal action for damages or injunctive relief in the event of violation.