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Jennifer Hayden
HAMILTON County Recorder IN
Recorded as Presented

CROSS REFERENCE:	Instrument Nos:	1997032615	1998036511
		1997032616	1998036512
		1997045667	1999038826
		1998008925	1999052945
		1998020708	

AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF SAND CREEK WOODS

The undersigned, Sand Creek Woods Homeowners Association, Inc., an Indiana non-profit corporation (the "Association"), makes this Amended and Restated Declaration of Covenants, Conditions and Restrictions of Sand Creek Woods (the "Amended Declaration") effective as of the date set forth below.

RECITALS

WHEREAS, the Sand Creek Woods subdivision located in Hamilton County, Indiana was established by a certain Sand Creek Woods Declaration of Covenants, Conditions and Restrictions, dated August 6, 1997, which was recorded in the Office of the Hamilton County Recorder on August 8, 1997, as Instrument No. 9709732615, and amended by Instrument Nos. 1998008925, 1998020708, and 1999038826 (all of which together shall be referred to hereafter as the "Original Declaration");

WHEREAS, Plats filed with the Office of the Recorder of Hamilton County, Indiana as Instrument Nos. 1997032616, 1997045667, 1998036511, 1998036512, and 1999052945 established one hundred eighty-eight (188) Lots and Common Areas, comprising the Sand Creek Woods subdivision (hereinafter the "Development");

WHEREAS, the original developer of the Development desired to provide for the preservation and enhancement of the values and amenities in the community, and, to this end, subjected the Development to certain rights, privileges, covenants, restrictions, easements, assessments, charges and liens, for the benefit of the Development and each Owner of all or part thereof, which are provided for in the Original Declaration, as amended and supplemented;

WHEREAS, the original developer of the Development deemed it desirable for the efficient preservation of values and amenities in the community to create an agency to which would be delegated and assigned the powers of owning, maintaining and administering the common areas of the Development, administering and enforcing the covenants and restrictions contained in the Original Declaration, collecting and disbursing the assessments and charges imposed and created by the Original Declaration, performing certain maintenance, repairs and replacement of certain landscaping and other improvements, and promoting the health, safety, and welfare of the Owners of the Development, and all parts thereof;

WHEREAS, the original developer of the Development caused to be incorporated under the laws of the State of Indiana a nonprofit corporation under the name "Sand Creek Woods Homeowners Association, Inc." as such agency for the purpose of exercising such functions;

WHEREAS, under the terms of the Original Declaration, all Lots in the Development were, are

and shall continue to be held, transferred, sold, conveyed, hypothecated, encumbered, leased, rented, used, improved and occupied subject to the provisions, agreements, conditions, covenants, restrictions, easements, assessments, charges and liens set forth in the Original Declaration, all of which were and are declared to be in furtherance of a plan for preservation and enhancement of the Development, and were and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Development as a whole and for each of the Lots situated therein, and ran and shall continue to run with the Development and be binding upon all parties having any right, title or interest in any part of the Development, and upon their heirs, successors and assigns;

WHEREAS, the Owners of the Lots within the Development desire to amend certain provisions of the Original Declaration and to restate the same for the convenience of the Owners;

WHEREAS, pursuant to Section 16(A)(ii) of the Original Declaration, the Original Declaration may be amended or changed at any time by an instrument signed and recorded in the Hamilton County Recorder's Office by the appropriate officers of the Board of Directors of the Association acting pursuant to the authority granted by not less than two-thirds (2/3) vote of Class A members cast at a formal meeting duly called for the purpose of amending the Original Declaration;

WHEREAS, the Board of Directors of the Association has reviewed and affirmed that the adoption and recording of this Amended Declaration complies with each of the amendment requirements of the Original Declaration, including being approved by not less than two-thirds (2/3) vote of Class A members of the Association, as required and permitted by the Original Declaration, the Articles of Incorporation, as amended, and the By-Laws, as amended, of the Association; and

WHEREAS, the Owners, by virtue of this Amended Declaration, reaffirm that the Development is and shall be held, transferred, sold, conveyed, hypothecated, encumbered, leased, rented, used, improved and occupied subject to the provisions, agreements, conditions, covenants, restrictions, easements, assessments, charges, and liens hereafter set forth, all of which were and are declared to be in furtherance of a plan for preservation and enhancement of the Development, and were and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Development as a whole and of each of the Lots situated therein, and which ran and shall continue to run with the Development and be binding upon all parties having any right, title or interest in the Development, their heirs, successors and assigns;

NOW, THEREFORE, pursuant to its power under Section 16 of the Original Declaration, the Association does hereby amend and restate the Original Declaration as follows:

Section 1. Incorporation of Recitals and Definitions.

The recitals set forth above are hereby incorporated into this Amended Declaration as though fully set forth herein. The following terms when used in the Amended Declaration shall have the definitions set forth below:

A. "Association" – shall mean the Sand Creek Woods Homeowners Association, Inc., an Indiana not-for-profit corporation, the membership and power of which are more fully described in Section 6 of this Amended Declaration.

- B. **“Board”** or **“Board of Directors”** – shall mean the Board of Directors of the Association.
- C. **“City”** – shall mean the City of Fishers, Hamilton County, Indiana.
- D. **“Common Area”** – shall mean those areas of current plats for the common use and enjoyment of the residents of the Development.
- E. **“Committee”** – shall mean the Sand Creek Woods Architectural Control Committee, as more fully described in Section 4 of this Amended Declaration.
- F. **“Development”** – shall mean all of the Lots and Commons Areas comprising the Sand Creek Woods subdivision pursuant to the plats filed with the Office of the Recorder of Hamilton County, Indiana as Instrument Nos. 1997032616, 1997045667, 1998036511, 1998036512, and 1999052945.
- F. **“Lot”** – shall mean any parcel of residential real estate described by the plats of the Development that are recorded in the office of the Recorder of Hamilton County, Indiana.
- G. **“Owner”** – shall mean a Person who has or is acquiring any right, title or interest, legal or equitable, in and to a Lot, but excluding those persons having such interest merely as security for the performance of an obligation.
- H. **“Person”** – shall mean an individual, firm, corporation, partnership, association, trust or other legal entity or any combination thereof.
- I. **“Residence”** – shall mean any structure intended exclusively for occupancy by a single family together with all appurtenances thereto, including private garage and recreational facilities usual and incidental to the use of a single family residential lot.

Section 2. Character of the Development.

- A. **In General** - Every numbered Lot platted as a part of the Development is for residential purposes and must conform to the commitments of zoning of the real estate made in connection with the City of Fishers Plan Commission. No structure shall be erected, placed or permitted to remain upon any Lot except a single-family dwelling house. No double occupancy dwelling shall be permitted on any part of the Development. The Owner(s) of any Lot in the Development, or any Lot or real estate which is otherwise subject to this Amended Declaration, by acceptance of a deed conveying title thereto or the execution of a contract for the purchase thereof shall accept such deed and/or execute such contract subject to each and every covenant, restriction and agreement herein contained. By acceptance of such deed and/or execution of such contract, the Owner acknowledges the rights and obligations of this Amended Declaration; and also for themselves, their heirs, personal representatives, successors and assigns, such Owner covenants and agrees and consents to and with the Owners and subsequent Owners of each of the Lots affected by this Amended Declaration to keep, observe, comply with and perform such covenants, restrictions and agreements.
- B. **Occupancy or Residential Use of Partially Completed Home Prohibited** - No home constructed on any Lot shall be occupied or used for residential purposes or human habitation until a certificate of occupancy has been issued.

C. **Other Restrictions** – The entire Development, and all Lots therein, shall be subject to the easements, restrictions, and limitations of record appearing on the recorded plats and amendments thereto of the Development, on recorded easements, rights-of-way, and also all governmental zoning authority and regulation affecting the Development, all of which are incorporated herein by reference.

D. **General Easement** – The blanket easement set forth in the Original Declaration shall remain in full force and effect. The blanket easement shall go over, across, through and under the Development for ingress, egress, installation, replacement, repair and maintenance of underground utility, drainage and service lines and systems, including but not limited to: water, sewers, gas, telephones, electricity, television, cable or communication lines and systems, landscaping, lighting and irrigation (if any). By virtue of this easement it shall be expressly permissible for the Association or the providing utility or service company to install and maintain facilities and equipment on the Development and to excavate for such purposes if the Association or such company restores the disturbed area as nearly as is practicable to the condition in which it was found. No sewers, electrical lines, water lines, or other utility service lines or facilities for such utilities may be installed or relocated in a section except as proposed and/or approved by the Association. Should any utility furnishing a service covered by the general easement herein provided require a specific easement by separate recordable document, the Association shall have the right to grant such an easement on the Development without conflicting with the terms hereof. This blanket easement shall in no way affect any other recorded easements on the Development, shall be limited to improvements as originally constructed, and shall not cover any portion of a Lot upon which a Residence has been constructed.

Section 3. Use Restrictions.

The following restrictions and covenants concerning the use and occupancy of the Development shall run with the land and be binding upon every Owner or occupant, their heirs, successors and assigns, as well as their family members, guests, and invitees. Present or future Lot Owners, or the Association shall be entitled to injunctive relief against any violation or attempted violation of any such covenants and restrictions, and shall, in addition, be entitled to damages for any injuries or losses resulting from any violations thereof, including reasonable attorney's fees and costs, but there shall be no right of reversion or forfeiture resulting from such violation. Enforcement of the below use restrictions shall at all times be in compliance and subject to the requirements of the Grievance Resolution procedures set forth in Ind. Code § 32-25.5-5, if applicable.

A. Use of Lots. –

1. Single Family Residential Usage, Minimum Square Footage. - Except as otherwise permitted herein, each Lot shall be occupied and used exclusively for single-family, residential purposes and purposes customarily incidental to a Residence. Each single-story Residence shall have a minimum square footage of living space of One Thousand Three Hundred (1,300) finished square feet; and each two-story Residence shall have a minimum square footage of living space of One Thousand Six Hundred (1,600) square feet (minimum of Eight Hundred (800) finished square feet on the first floor and a minimum of Six Hundred (600) finished square feet on the second floor). The “finished” square footage

calculation of a Residence shall not include porches, terraces, garages, basements, or any area below ground level.

2. Diligence in Construction. - Every building whose construction or placement on any residential Lot in the Development is begun shall be completed within nine (9) months after the beginning of such construction or placement. For the purposes of this paragraph, construction of a residence will be deemed "completed" when the exterior of the residence (including but not limited to the foundation, walls, roof, windows, entry doors, gutters, downspouts, exterior trim, paved driveway, landscaping and garage/yard light) has been completed in conformity with the approved plans. No improvement which has partially or totally been destroyed by fire or otherwise shall be allowed to remain in such state for more than three (3) months from the time of such destruction or damage, or, if approval of the applicable casualty insurance is pending, then within three (3) months after such approval is forthcoming. Owners may request in writing, and the Committee may grant, at its discretion, additional time to construct a Residence in the event of a documented hardship.

3. Prohibition of Used Structures. - All structures constructed or placed on any Lot shall be constructed with substantially all new materials, and no used structures shall be relocated or placed on any such Lot, except that used brick or other exterior design features utilizing other than new materials may be used if specifically approved by the Committee.

B. **Use of Common Area**. – The Common Area may be used only in accordance with the purposes for which they are intended and for any reasonable purposes incidental to the residential use of a Lot. The retention ponds shall be for drainage and passive recreational purposes only; and no wading, swimming, boating, or ice skating, either therein or thereupon, are permitted. All uses of the Common Area shall benefit or promote the health, safety, welfare, convenience, comfort, recreation, and enjoyment of the Owners and occupants, and shall comply with the provisions of this Amended Declaration, the laws of the State, and any rules promulgated by the Association or the Committee. No sewage, garbage, refuse, or other solid, liquid, gaseous or other materials or items (other than storm surface water drainage) shall be put into any drainage structure or pond, except the Association may take steps to clear and purify the waters thereof by the addition of chemicals or other substances commonly used for such purposes or by providing therein structures and equipment to aerate the same. No Owner or other Person shall take or remove any water from or out of any pond, or utilize the water contained therein for any purposes, including, without limitation, connection with any sprinkler or irrigation systems. No Owner or any other Person shall do or permit any action or activity which could result in the elevation of the level of any pond. No Owner or other person shall construct or place any dock, flotation device or structure in or around any pond. Except as otherwise provided, no Person using a pond, if any, has the right to cross another Lot or trespass upon property not within a Common Area owned by the Association, subject to the rights of the Association and its successors and assigns as set forth in the Amended Declaration. Any Person utilizing a park located adjacent to a pond does so at their sole risk. Each Lot Owner abutting a lake or pond shall indemnify and hold harmless the Association, the Committee, the Board of Directors, and each other Owner against all loss or damage incurred as a result of injury to any Person, pet or damage to any property, or as a result of any other cause or

thing, arising from or related to use of, access to, a lake or pond or park, by any Person who gains access thereto from, over or across such Owner's Lot, inclusive of damage from lake chemicals used for algae containment, or other, or damage relating to any Lot or building resulting from damage from water or erosion.

C. **Sidewalks.** – Each Residence shall have a continuous 4-foot (4') wide by a minimum of four inches (4") thick concrete sidewalk adjacent to all interior dedicated street frontage. The back edge of all sidewalks shall be ten (10) feet from the back edge of the street curbing. All maintenance, repair and replacement, if necessary, of all sidewalks located on a Lot within the Development shall be the sole responsibility of the Lot Owner. If such sidewalks are deemed unsatisfactorily maintained, repaired or replaced by the Lot Owner, the Association may perform said maintenance, repair or replacement following thirty (30) days' notice to the Lot Owner. All costs relating to said maintenance, repair or replacement shall be assessed to the Lot Owner by the Association.

All maintenance, repair and replacement, if necessary, of all concrete sidewalks and/or asphalt walking trails located in Common Areas within the Development are the responsibility of the Association, unless otherwise assumed by the City.

D. **HVAC Units.** – No heat pumps, air conditioning units or gas meters shall be installed on the front of a Residence.

E. **Vents.** – All metal and PVC roof or range vents shall be painted to blend with roof color. Every effort must be made to locate such roof vents on the rear of the Residence. All plumbing vent stacks shall be placed on the rear of the Residence.

F. **Garages and Driveways.** – All Residences shall have at least a two-car enclosed garage. Detached garages are not permitted. All driveways shall be concrete and a minimum of fourteen feet (14') wide.

G. **Dusk to Dawn Lighting.** – Each Lot shall maintain and operate at least two (2) continuous dusk-to-dawn lights to be controlled by a photocell, in lieu of public street lighting, installed on each side of the garage doors.

H. **Sump Pump Discharges.** – All sump pump discharge lines shall be connected to underground subsurface drains or storm sewers.

I. **Sanitary Sewer Easement.** – No storm water (subsurface or surface) shall be discharged into sanitary sewers. No driveways, walks, patios, etc. shall be constructed within twelve inches (12") of any sanitary manhole.

J. **Visual Obstructions and Healthy Tree Removal.** – No fence, wall, gate, hedge, tree or shrub planting which obstructs sight lines and elevations between three to twelve feet (3'-12') above the street shall be placed or permitted to remain on any corner lot within the triangular area formed by the street right-of-way lines and line connecting points twenty-five feet (25') from the intersection of said street lines or in the case of a rounded property corner, from the intersection of the street right-of-way lines extended. The same sight-line limitations shall apply to any Lot within ten feet (10') from the intersection of a street line with the edge of a driveway pavement or alley

line. Each Lot shall have in its front yard at all times at least one deciduous tree that has a mature height of no-less than 25 feet (25').

K. Nuisances, Noxious, Offensive, or Hazardous Actions or Materials. – No noxious or offensive activities shall occur upon any Lot in the Development, nor shall anything be done on any Lot that shall be or become an unreasonable annoyance or nuisance to any Owner of another Lot in the Development. No Residence or Lot shall be used in any unlawful manner or in any manner which might cause injury to the reputation of the Development, or which might be a nuisance, annoyance, inconvenience or a cause of damage to other Owners and occupants of Residences or neighboring property, including without limiting the generality of the foregoing, noise by the use of any musical instruments, radio, television, loud speakers, electrical equipment, amplifiers or other equipment or machines, loud persons, or animals. Nothing shall be done or kept in or on any Lot or in or on any portion of the Common Area that is unlawful or hazardous, that might reasonably be expected to increase the cost of casualty or public liability insurance covering the Common Area or that might unreasonably disturb the quiet occupancy of any person residing on any other Lot. No outside toilets shall be permitted on any Lot (except during a period of construction and then only with the consent of the Committee), and no sanitary waste or other wastes shall be permitted to be exposed.

L. Exterior Antenna and Satellite Dishes. - No television, radio or other antennas, nor any obtrusive object may be erected by any Owner or occupant on the exterior of a Residence or on a Lot. Satellite dishes of Twenty-Four inches (24") in diameter or less may be permitted provided the installation location is approved by the Committee, but in no event permitted to be higher than the roof ridge. Satellite dishes must be removed from any Lot if not in use.

M. Signs. – With the exception of Permitted Signs (described hereinafter in this subsection), all signs including but not limited to those advertising a garage sale, must be approved by the Association before the sign is placed upon any Lot or Common Area. Permitted Signs shall include only those professionally constructed signs advertising a home for sale on a Lot for sale and less than or equal to six (6) square feet in size. No more than one Permitted Sign may be displayed in the community by an entity owning multiple Lots. All Permitted Signs advertising a Lot for sale shall be removed within three (3) business days of the conveyance of the Lot.

Nothing in this Section shall be deemed to prohibit any sign from being placed on a Lot that is expressly permitted by State or Federal law.

N. Animals. – No animals may be housed outside of the Residence of a Lot (except as permitted in writing by the Committee, at its sole and absolute discretion). Excessive barking of dog(s) or vicious animal(s) shall constitute a nuisance and may be ordered removed from the Development by the Association.

O. Vehicles Parking. – The Association shall be entitled to create and enforce reasonable rules concerning the parking of any vehicles on Lots, Common Areas, and within the right-of-ways of the public streets within the Development. The parking or storage of semi-trucks, recreational vehicles (RV), busses, boats, trailers, campers, snowmobiles, jet skis, mobile homes, and any similar vehicles (other than those vehicles or equipment of contractors working within the Development) shall be prohibited on the streets of the Development, in the driveway of any Lot,

or in any Common Areas within the Development for any time period exceeding seventy-two (72) hours in any thirty (30) day period. However, the above prohibition shall not apply to the reasonable use of any such vehicles as may be necessary during the construction of any Residence on a Lot.

Unlicensed or inoperable vehicles are prohibited from being parked or stored on any Lot's driveway, any street in the Development or any Common Area. Additionally, no vehicle may be parked or stored on any Lot's driveway, any street in the Development, or in any Common Area, whether licensed or unlicensed, operable or inoperable, if it is covered with any protective tarp or canvas, plastic sheeting or temporary tent or storage structure of any kind.

P. Garbage and Other Refuse. – No burning, burying, or storage of trash, garbage or other refuse of any kind shall be permitted on any Lot or Common Area unless approved by the Committee. All trash and waste shall be deposited in covered, sanitary containers, screened from view. All houses built in the Development shall be equipped with a garbage disposal unit. Any receptacle for ashes, trash, rubbish or garbage shall be so placed and kept so as to be minimally visible from any street within the Development at any time, except at the times when refuse collections are being made. No Lot shall be used or maintained as a dumping ground for trash, nor shall any accumulation of refuse or trash, including but not limited to compost, be permitted on any Lot or Common Area. However, each Lot shall be permitted to maintain one compost bin following an Owner's written request, which shall include the proposed location on the Lot of the compost bin, and the Committee's written approval for the same.

Q. Fuel Tanks. – External propane tanks, except portable tanks (less than five (5) gallons) for gas grills, shall not be permitted.

R. Temporary Structures and Outbuildings. – No temporary house, trailer, tent, or other temporary outbuilding shall be placed or erected on any Lot. Additionally, no permanent structure shall be erected on any Lot other than one Residence, and one detached storage shed, mini-barn, or other similar detached structure (collectively referred to hereinafter as "Storage Shed") unless otherwise permitted by this Amended Declaration. All plans for a proposed Storage Shed must be reviewed and approved by the Committee before construction or installation can begin. All Storage Sheds are subject to the provisions of this Amended Declaration and may be subject to further rules and regulations of the Association and Committee pursuant to their powers set forth in this Amended Declaration. In addition to any further rules or regulations regarding Storage Sheds adopted by the Association or the Committee, all Storage Sheds shall: (1) be constructed so as not to encroach upon any easements or setback lines; (2) be constructed on a Committee-approved concrete or similar foundation and in a location approved by the Committee; (3) not alter drainage patterns of any Lot; (4) not have a base dimension footprint that exceeds a square footage to be established by rules and regulations of the Committee; (5) not exceed a height limit, determined by the highest point of the Storage Shed measured from the pad floor, to be established by rules and regulations of the Committee; (6) be located so as to be minimally visible from the front of the Lot; (7) The construction, materials, and colors must match or be compatible with the quality and design of the Lot's Residence; and (8) must be designed to respect the visual rights of neighboring properties and cannot be offensive to the Development. No metal siding or metal roofing is permitted. Only one Storage Shed per Lot is permitted.

Prior to the Board approving any Storage Shed, the Owner seeking approval of a Storage Shed shall notify the Owners of all adjacent Lots in writing of the planned Storage Shed. The written notice shall instruct the Owners of all adjacent Lots that they have no less than ten (10) days from the date of their receipt of the written notice to notify the Committee of any objections they have to the proposed Storage Shed. The written notice shall provide direct contact information for at least one Committee member.

S. **Open Drainage, Ditches and Swales.** – Drainage swales (ditches) along dedicated roadways and within the right-of-way, or on dedicated drainage easements, are not to be altered, dug out, filled in, tiled, or otherwise changed, without the written permission of the appropriate jurisdictional agency and the Association. Owners must maintain these swales as grassways or other non-eroding surfaces. Any damage to a swale or drainage structures located on a Lot must be repaired or replaced by that Lot's Owner. Any Owner altering, changing, or damaging any drainage swale or ditch will be held responsible for such action and will be given ten (10) days' notice, by registered mail, to repair said damage, after which time, if no action is taken, the appropriate jurisdictional agency, or the Association may cause said repairs to be accomplished and the charges for such repairs will be invoiced to the affected Owners for immediate payment. If immediate payment is not received, the Association shall have the right and remedy to collect the outstanding amount as a special assessment.

T. **Wells and Septic Tanks.** – Water wells shall not be drilled on any Lot, except as required to irrigate Common Areas, nor shall any septic tank be installed on any Lot.

U. **Home Based Businesses.** – No trade or business may be conducted in or from any Lot, except that an Owner or occupant resident on a Lot may conduct business activities within a Residence so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Residence; (b) no sign or display is erected that would indicate from the exterior that the Residence is being utilized in part for any purpose other than that of a Residence; and (c) the business activity does not involve persons coming onto any Lot who do not reside in the Development or door-to-door solicitation of residents of the Development.

V. **Basketball Goals.** - Basketball goals will not be permitted on any Lot without written approval from the Committee. The location of a basketball goal on a Lot is subject to approval of the Committee. Temporary basketball goals may be used, but must be stored when not in regular use. Owners may be asked by the Association to move the location goal of a temporary goal if a neighboring Owner or occupant expresses concerns regarding property damage or safety.

W. **Swimming Pools.** – Installation of hot-tubs, saunas and in-ground pools on any Lot will not be permitted without approval from the Committee. Notwithstanding the foregoing, no above-ground pool shall be permitted upon any Lot, with the exception of a temporary pool designed for use by a child, which said pool does not exceed twenty four (24) inches in height, is located in the rear yard, is at least eight (8) feet away from any abutting Lot line, and is not left outdoors on the Lot for more than five (5) consecutive days.

X. **Hotel/Transient Uses.** – No Lot may be used for hotel or transient uses, including without limitation, uses in which the occupant is provided customary hotel services such as room service

for food and beverage, maid service, furnishing laundry and linen, or similar services, or leases to roomers or boarders.

Y. Compliance with Rules. – All Owners and members of their families, their guests, or invitees, and all occupants of any Residence, or other persons entitled to use the same shall observe and be governed by this Amended Declaration and such rules and regulations as may from time to time be promulgated and issued by the Association or its authorized Committee(s) governing the operation, use and enjoyment of the Development.

Z. Marathon Pipeline Easements Recorded April 7, 1941, April 19, 1941, and May 9, 1941. – (Restatement of the covenants, conditions and restrictions set forth in the First Amendment to Declaration of Covenants, Conditions and Restrictions for Sand Creek Woods, dated January 12, 1998, and recorded on February 25, 1998, as Instrument No. 1998008925 in the Office of the Recorder of Hamilton County.) There currently exists a buried pipeline within the Development. The operator of the pipeline, Marathon Ashland Pipeline L.P., or its successors or assigns (“Marathon”), holds easements along said pipeline. Any Lots which bear any portion of said easement, labeled on the Secondary Plat as the Marathon Pipeline Easement, will comply with the requirements listed in the “Code of Federal Regulations, Transportation, Section 49 Liquid Pipelines, Parts 190, 194, 195, and 199”, and any supplemental restrictions set forth by Marathon. Any improvements to be placed with the easement, such as, but not limited to, play structures, fences, walls, and landscaping must be approved, in writing, by the Association and Marathon prior to their placement. Landscape plantings and trees will not be permitted within the easement if the mature plant, bush or shrub will exceed 3’ in height, and no improvements will be permitted within the portion of the easement that is also labeled as “Drainage Utility and Sewer Easement.”

Periodic inspections within the boundaries of the easement will be performed by Marathon. If any work is performed along said pipeline by Marathon, any costs related to repair and replacement of paved driveways or sidewalks that are located within the easement that were initially installed under the approval of the Developer (as defined in the Original Declaration), the Association and Marathon will be the responsibility of the Association unless otherwise assumed by Marathon. Repair and replacement of any other improvements will be the responsibility of each individual Lot Owner.

AA. Sanitary Sewer Infrastructure. - (Restatement of the covenants, conditions and restrictions set forth in the Second Amendment to Declaration of Covenants, Conditions and Restrictions for Sand Creek Woods, dated April 20, 1998, and recorded on April 21, 1998, as Instrument No. 1998020708 in the Office of the Recorder of Hamilton County.) No mounding, lighting, fencing, signs, retaining/landscaping/entrance walls, irrigation lines, etc. shall be placed within ten (10) feet of the center of the sanitary sewer infrastructure install per the construction plans by Schneider Engineering Corporation dated 11/3/95, last revised 8/19/97 and approved by Hamilton Southeastern Utility on 7/21/97. Any of the above listed items placed within easements or rights-of-way are at risk of being removed by Utility Companies with no obligation for replacement.

(Restatement of the covenants, conditions and restrictions set forth in the Third Amendment to Declaration of Covenants, Conditions and Restrictions for Sand Creek Woods, dated June 24, 1999, and recorded on June 30, 1999, as Instrument No. 1999038826 in the Office of the Recorder

of Hamilton County.)

1. Sanitary sewer and utility easement allow for the construction, extension, operation, inspection, maintenance, reconstruction, and removal of sanitary sewer facilities and give Hamilton Southeastern Utilities, Inc., its successors or assigns (“HSE”) the right of ingress/egress. HSE is granted the right of ingress/egress over and across all paved or concrete surfaces within these easements.

2. Pavement or concrete, including driveways and sidewalks, shall not be constructed on or within one (1) foot horizontal distance of any sanitary sewer manhole or cleanout casting.

3. No mounding, lighting, fencing, signs, retaining walls, landscaping walls, entrance walls, irrigation lines, etc. shall be placed within ten (10) feet of the center of the sanitary sewer infrastructure. Any of the above listed items placed within easements or right-of-ways is at risk of being removed by HSE without the obligation of replacement.

4. The discharge of clear water sources, including, but not limited to, foundation drains, sump pumps, roof drains, etc. to the sanitary sewers is prohibited.

5. Grade changes across sanitary sewer facilities must be approved in writing by HSE.

6. All trees must be located a minimum of fifteen (15) feet from the center of sanitary sewer mains, laterals and manholes and no trees shall be planted directly over building sewers (laterals). All shrubs must be planted a minimum of three (3) feet from the center of sanitary sewer mains, laterals and manholes. Any landscaping placed within easements or right-of-ways is at risk of being removed by HSE without the obligation of replacement.

BB. Mailboxes. – All mailboxes and posts must be approved by the Committee and shall be standard in size, location, post, design, height, material, composition and color. No separate newspaper box shall be permitted other than those approved by the Committee. The Owner of any Lot in the Development is solely responsible for the maintenance, upkeep and, if necessary, replacement of any mailbox and post serving their Lot. Where a mailbox post serves more than one Lot, maintenance, upkeep and, if necessary, replacement of the post shall be the joint and several responsibility of all Lot Owners for which the mailbox post serves. Notwithstanding the above, the Association may, but shall not be required to, maintain a reserve fund for the regular maintenance, upkeep and replacement, if necessary, of mailboxes in the Development at the Board’s discretion, and may maintain, upkeep or replace any mailbox or post in the Development at its discretion.

CC. Rental Restrictions. – In order to ensure that all occupants within the Development share

the same proprietary interest in and respect for the Lots and the Common Areas, the following limitation is imposed on the leasing or rental of Lots or the Residences thereon:

1. Thirty-Six (36) Month Waiting Period. For a period of at least thirty-six (36) months after an Owner's acquisition of a Lot, the Owner may not rent or lease that Lot or the Residence thereon for exclusive occupancy by one or more non-owner tenants. After such time, said Lot will be eligible to be leased or rented if the Owner and the Lot are otherwise in compliance with all other conditions of this Amended Declaration. For purposes of this Subsection, a Lot or Residence is exclusively occupied by one or more non-owner tenants if the Owner does not also correspondingly occupy the Lot or Residence as his/her principal place of residence. Prior to the execution of any lease, and in addition to any other requirements set forth in this Subsection, the Owner must notify the Board of the Owner's intent to lease his/her Lot. After receiving such notice, the Board shall advise the Owner if the Lot may be leased, which approval shall not be unreasonably withheld as long as the Owner has owned the Lot for more than thirty-six (36) months and the Lot is in full compliance with the other terms of this Amended Declaration. In the case of the transfer of ownership of a Lot, which was properly leased under these rules by the previous Owner, the new Owner can continue with such lease only to finish the then-current term of not more than one (1) year. When that term ends, the Owner, if he/she wants to lease his/her Lot, must meet all requirements the same as other Owners who are not exempted.

2. General Lease Conditions. All leases, including renewals, shall be in writing, and no lease shall be entered into for a term of less than one (1) year without the prior written approval of the Board. No portion of any Lot or Residence thereon other than the entire Lot, and Residence thereon, may be leased for any period. No subleasing is permitted. No Owner shall be permitted to lease or rent his/her Lot or Residence if the Owner is delinquent in paying any assessments or other charges due to the Association at the time the lease is entered. All leases shall be made expressly subject and subordinate in all respects to the terms of the Association Documents, including, but not limited to this Amended Declaration and any rules and regulations promulgated by the Board, as amended. Any tenant shall be liable to the Association to the same extent as if the tenant were an Owner and a member of the Association, and any lease shall provide for direct action by the Association and/or any Owner against the tenant with or without joinder of the Owner of such Lot. Additionally, the lease shall provide that any violation of this Amended Declaration, the By-Laws, or the rules and regulations of the Association shall constitute a breach of the lease, which may be directly enforced by the Association. All Owners who lease their Lot(s) shall provide the Board with the name of the tenant(s) and any other residents living at the Lot. The Owner shall supply copies of this Amended Declaration, the By-Laws and all rules and regulations of the Association to the tenant prior to the effective date of the lease.

3. Exceptions During Period of Good Faith Sale or Significant Hardship. The Board may, in its discretion, grant an exception, for not more than one (1) year at a time, to the Rental Restrictions set forth in this Subsection to an

Owner if the Board determines that the Owner is actively and in good faith trying to sell or otherwise dispose of his or her Lot, or if the Board, by majority vote of the entire Board, determines that the Owner has a "Significant Hardship." For purposes of this subparagraph, examples of a Significant Hardship may include:

- (a) death of an Owner;
- (b) divorce of an Owner;
- (c) temporary, necessary relocation of the primary residence of an Owner to a location no less than fifty (50) miles away from the Owner's Lot due to a change of employment or retirement; or
- (d) temporary, necessary relocation of the primary residence of an Owner due to mental or physical infirmity or disability of at least one (1) of the Owners.

4. Owner is Still Liable. No lease shall provide, or be interpreted or construed to provide, for a release of the Owner from his/her responsibility to the Association and to the other Owners for compliance with the provisions of this Amended Declaration, the By-Laws and any rules and regulations promulgated by the Board, or from the Owner's liability to the Association for payment of assessments.

5. Approval of Form of Lease. Any Owner desiring to enter into a lease for his/her Lot or Residence thereon shall submit the form of the proposed lease to the Board (which form is not required to include the rental amount) for review for compliance with the requirements of this Subsection. The Board may employ an attorney in connection with any such review, and a reasonable fee may be charged to the Owner to offset the expense so incurred. In the event the Board fails to approve or disapprove the form of the lease within thirty (30) days after submission by the Owner, the form of the lease shall be deemed approved. A copy of each executed lease by an Owner (which may have the rental amount deleted) shall be provided to the Board of Directors by the Owner within thirty (30) days after execution.

6. Violations. If any Owner leases or rents his/her Lot or Residence thereon in violation of the provisions of this Subsection, the Association may bring a legal action to enjoin the improper conduct. The Association shall be entitled to an award of its reasonable attorney's fees, in addition to any other damages, if it is the prevailing party in such legal action.

7. Effective Date of these Rental Restrictions. The Rental Restrictions set forth in this subsection shall not apply to any Lot whose Owner, at the time of the recording of this Amended Declaration, is renting or leasing said Lot for exclusive occupancy by one or more non-owner tenants, so long as such Lot continues to be owned by the same Owner and is not occupied as a primary

residence by such Owner. In order for this exception to apply, said Owner must deliver a copy of the executed lease, which is in effect at the time of the recording of this Amended Declaration, to the Board within thirty (30) days after the recording of this Amended Declaration, and shall furnish a copy of any subsequent lease within thirty (30) days after its execution. Such copy may have the rental amount deleted. Failure of such an Owner to timely deliver a copy of any such lease to the Board shall result in said Owner's Lot being subject to these Rental Restrictions, at the Board's reasonable discretion. However, in this latter circumstance, these Rental Restrictions shall not apply to any Lease executed prior to the recording date of this Amended Declaration or to any renewals thereof provided in such lease so long as the occupants remain the same. Upon the conveyance to a new Owner of any Lot receiving an initial exception pursuant to this subpart 7, the Rental Restrictions set forth in this Amended Declaration shall take full force and effect upon such Lot.

8. Institutional Mortgages. The provisions of this Subsection shall not apply to any institutional mortgage holder of any Lot which comes into possession of the Lot by reason of any remedies provided by law or in equity or in such mortgage or as a result of a foreclosure sale or other judicial sale or as a result of any proceeding, arrangement or deed in lieu of foreclosure.

Section 4. Architectural Control.

There shall be an Architectural Control Committee (the "Committee") appointed by the Board of Directors of the Association, which shall be composed of an odd number of at least three (3) persons from among its members of the association, limited to one voting member per lot. The Committee shall regulate the external design, appearance, use, location and maintenance of lands and improvements thereon, in such a manner as to preserve and enhance values and to maintain a harmonious relationship among structures and the natural vegetation and topography. The Committee shall have the exclusive authority, by action of a majority of the members thereof, at a private or public meeting to determine the architectural standards which shall govern the construction of any and all improvements within the Development, so long as the standards are in compliance with the Amended Declaration. Each Owner covenants and agrees by acceptance of a deed to a Lot, to comply with, and to cause his/her Lot and any occupant thereof to comply with the standards promulgated by the Committee. No improvement shall be placed, erected or installed within the Development, and no construction (which term shall include in its definition staking, clearing, excavation, grading, and other site work) shall commence until and unless the Lot Owner first obtains the written approval thereof of the Committee and otherwise complies with the provisions of this Amended Declaration.

A. **Generally.** - No dwelling, building, fence, wall, screen, pool, deck, patio, structure, addition, remodeling, reconstruction, or improvement of any type or kind shall be constructed or placed on any Lot or Common Area within the Development without the prior written approval of the Committee. Such approval shall be obtained only after written application has been made to the Committee (no less than thirty (30) days prior to the anticipated start of construction) by the Lot Owner or the contractor requesting authorization by the Committee.

B. Duties of the Committee. - The Committee shall make a good faith effort to review all applications and render a written decision within thirty (30) days after the date upon which all required information (and all supplemental information reasonably requested by the Committee) shall have been submitted to it. All notifications to applicants shall be in writing and, in the event that such notification is one of disapproval, it shall specify the general reason or reasons for such disapproval. However, failure of the Committee to issue a decision within thirty (30) days shall not constitute approval until and unless the Lot Owner submits a written request thereafter for a written decision to the Committee, and after receiving such request, the Committee's failure to issue a decision continues for thirty (30) additional days.

Additionally, the Committee shall codify its architectural standards in writing and shall on a yearly basis revise such standards and make reasonable efforts to promulgate such revisions to all Owners and residents.

The following improvements must be included in the codified standards but the Committee may provide additional standards pursuant to their powers.

1. Fences
2. Outbuildings
3. Decks
4. Pools
5. Landscaping and Lawn Maintenance
6. Roofs

C. Power of Disapproval. - The Committee may refuse to grant permission to construct, place or make any requested improvement when:

1. The plans, specifications, drawings or other materials submitted are themselves inadequate or incomplete, or show the proposed improvement to be in violation of the applicable restrictions.
2. The design or color scheme of a proposed improvement is not in harmony with the general surroundings of the Lot or with adjacent buildings or structures.
3. The proposed improvement or any part thereof would, in the opinion of the Committee, be contrary to the interests, welfare or rights of all or any part of the other Lot Owners.

D. Variances. - To avoid unnecessary hardship and/or to overcome practical difficulties in the application of the provisions of this Amended Declaration, the Committee shall have the authority to grant reasonable variances from the standards contained in this Amended Declaration, provided that the activity or condition is not prohibited by applicable law, ordinance, or code; and provided further that in their judgment, the variance is truly in the best interests of the Development, the other Lot Owners and is in the spirit of the standards of the Committee. The Committee must include in the written approval the reason why a variance was granted. No variance granted pursuant to this Section shall constitute a waiver of any provision of this Amended Declaration as applied to any other person or any other part of the Development.

E. **Liability of the Committee.** Neither the Committee nor any agent thereof shall be responsible in any way for any defects in any plans, specification or other materials submitted to it, nor for any defects in any work done according thereto. Further, any action or inaction of the Committee shall not be deemed as any representation or warranty as to the suitability or advisability of the design, the engineering, the method of construction involved, or the materials to be used.

F. **Inspection.** The Committee may inspect work being performed with its permission to assure compliance with this Amended Declaration, and/or the submitted plans and applicable regulations.

Section 5. Lot Owner's Responsibility for Building and Grounds Maintenance - Remedies for Violation.

The Owner and/or any Person in possession of any Lot in the Development shall conform to the following standards:

A. Even prior to occupation of the Lot, keep and maintain such Lot in an orderly manner, causing weeds and other vegetation to be reasonably cut and preventing the accumulation of rubbish and debris thereon.

B. Seed, treat, and mow the lawn on the Lot at such times as is consistent with good property management as determined by the Committee;

C. Promptly remove all debris, such as leaves, tree limbs, grass clippings, trash or rubbish from the Lot;

D. Prevent the existence of any other condition that reasonably tends to detract from or diminish the aesthetic appearance of the Development as determined by the Committee;

E. Prune and cut all trees and shrubs consistent with good property management as determined by the Committee;

F. Cut down and promptly remove dead limbs and dead or diseased trees;

G. Where applicable, prevent debris, foreign material, toxic, hazardous, or damaging materials or substances, from entering drainage areas, swales, and/or storm sewers;

H. Paint, clean and/or otherwise keep the exterior of all improvements in such a state of repair and maintenance as to be consistent with good property management as determined by the Committee;

I. Comply fully and promptly with all provisions of these Restrictions, and the rulings and decisions of the Association and/or the Committee.

In the event that any Owner and/or Person in possession of a Lot shall fail to maintain his/her/its Lot and any improvements situated thereon in accordance with the provisions of these Restrictions, the Association shall have the right, but not the obligation, by and through its agents or employees or contractors, to enter upon said Lot and repair, mow, clean, remove, reconstruct, modify, or

perform such other acts as may be reasonably necessary to make such Lot and the improvement(s) situated thereon, if any, conform to the requirements of the Restrictions. The cost thereof shall be an expense of the Lot Owner, and the Association, as applicable, shall make a Special Assessment against the Lot, and also a lien against said Lot for such costs, including but not limited to the actual costs incurred, reasonable related costs and expenses, prejudgment interest, court costs, and actual attorney's fees. Such lien may be formalized via a recorded Notice of Lien being recorded against the Lot; but the lien shall be valid even without the actual recordation of same. The Association, its Board members, or any agents, employees or contractors shall not be liable for any damage which may result from any work performed pursuant to the foregoing provisions. Enforcement of the above restrictions shall at all times be in compliance and subject to the requirements of the Grievance Resolution procedures set forth in Ind. Code § 32-25.5-5, if applicable.

Section 6. Sand Creek Woods Homeowners Association, Inc. A property owners association has been created and named Sand Creek Woods Homeowners Association, Inc. (the "Association"), an Indiana nonprofit corporation, which has all rights and obligations otherwise set forth in or contemplated by this Amended Declaration, Ind. Code §23-17, Ind. Code §32-25.5, the Association's By-laws and the Association's Articles of Incorporation.

A. **Membership.** – Each Owner shall be entitled and required to be a member of the Association and shall enjoy the privileges and be bound by the obligations contained herein and in the Articles and By-Laws of the Association (the "Association Documents"). Each Owner acknowledges the rights and obligations of this Amended Declaration, and, for himself, his heirs, personal representatives, successors, and assigns, covenants, agrees, and consents to and with the Association, and the Owners and subsequent Owners of each Lot encumbered by this Amended Declaration, to keep observe, perform and comply with the terms and provisions of this Amended Declaration. Any Person becoming an Owner shall then be subject to all the requirements and limitations imposed by this Amended Declaration on other Owners, including those provisions with respect to the payment of Assessments.

B. **Powers.** – The Association shall have such powers as are set forth in this Amended Declaration and in the Association Documents, including, but not limited to, the power to levy assessments against the Lots. Additionally, the Association may exercise any other right or privilege given to it expressly by the laws of the State and this Amended Declaration and every other right or privilege reasonably implied from the existence of any right or privilege granted in this Amended Declaration or reasonably necessary to effect any such right or privilege.

C. **Classes of Members.** - The Association shall have one (1) class of voting membership, Class A, as follows:

1. **Class A.** Every Person or group of Persons who is a record owner of a fee interest in a Lot shall, by this Amended Declaration, be subject to assessment by the Association and classified as a Class A member of the Association; provided however, that any such Person or group of Persons who holds such interest solely as security for the performance of an obligation shall not be a member. A Class A membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment. Class A members shall be entitled to one

(1) vote for each Lot in which they hold the interest required for membership. In the event that more than one Person or group of Persons is the record owner of a fee interest in any Lot, then the vote for the membership appurtenant to such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot. In the event agreement is not reached, the vote attributable to such Lot shall not be cast.

D. **Reserve for Replacements.** – The Board of Directors shall establish and maintain a reserve for replacements by the allocation and payment to such reserve fund of an amount determined annually by the Board to be sufficient to meet the cost of periodic maintenance, repairs, renewal and replacement of the Common Area and mailboxes. In determining the amount, the Board shall take into consideration the expected useful life of the Common Area and mailboxes, projected increases in the cost of materials and labor, interest to be earned by such fund and the advice of such consultants as the Board may employ.

E. **Limitations on Action by the Association.** – Unless at least two-thirds (2/3) of the Class A members have given their prior written approval, the Association, the Board of Directors and the Owners may not:

1. By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area (but the granting of easements for public utilities or other public purposes consistent with the intended use of the Common Area shall not be deemed transfer for the purposes of this clause);

2. Fail to maintain fire and extended coverage on insurable Common Area on a current replacement cost basis in an amount at least one hundred percent (100%) of the insurable value (based on current replacement cost);

3. Use hazard insurance proceeds for losses to any Common Area for other than the repair, replacement or reconstruction of the Common Area;

4. Change the method of determining the obligations, assessments, dues or other charges that may be levied against the Owner of a Residence;

5. By act or omission change, waive or abandon any scheme of regulations or their enforcement pertaining to the architectural design or the exterior appearance of Residences, or the maintenance and upkeep of the Common Area; and

6. Fail to maintain the reserve for replacements in the amount required by this Amended Declaration.

F. **Rules and Regulations.** – The Association may make and enforce reasonable rules and regulations governing the use of the Development and the Common Area (the “Rules”), which may be in addition to and shall not be inconsistent with this Amended Declaration and the Association Documents. The Association shall have the power to impose sanctions on Lot Owners, including without limitation: (i) reasonable monetary fines which shall be considered Lot Assessments, (ii) suspension of the right to vote as a Member of the Association, and (iii)

suspension of the right to use the Common Area. In addition, the Board shall have the power to seek relief in any court for violations or to abate unreasonable disturbances. If the Board expends funds for attorneys' fees or litigation expenses in connection with enforcing this Amended Declaration, the Association Documents or the Rules against any Lot Owner, tenant, guest or invitee of any Lot Owner, the amount shall be due and payable by such Lot Owner and shall be a Lot Assessment against such Owner's Lot. Owners shall be bound by all such Rules promulgated by the Association the same as if specifically included herein and recorded herewith.

G. **Condemnation.** – The Association shall represent the Lot Owners in any condemnation proceedings or in negotiations, settlements and agreements with the condemning authority for acquisition of the Common Area or any portion thereof. Each Owner hereby appoints the Association as its attorney-in fact for such purpose. The awards or proceeds of any condemnation action shall be payable to the Association, to be held in trust for the benefit of the Lot Owners.

Section 7. Assessments.

A. **Creation of Lien and Personal Obligation of Assessments.** - Each Owner of any Lot in the Development by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association the following assessments provided for in this Section.

B. **Collection.** – All assessments, together with interest thereon, late fees, and costs of collection thereof, including, but not limited to, the Association's reasonable attorney's fees and court costs, shall be a charge on the Lot, a personal obligation of the Lot Owner, and shall be a continuing lien upon the Lot against which each assessment is made until paid in full. Each assessment, together with interest thereon, late fees, and costs of collection thereof, including reasonable attorney's fees, shall also be the personal obligation of the Person who was the Owner of the Lot at the time when the assessment became due.

C. **One-Time Assessment.** – A one-time assessment of \$100.00 per Lot is assessed by the Association to the initial homebuyer at closing. This assessment shall be collectible for all future re-sales of Lots.

D. Annual Dues/Assessment -

1. Purpose of Annual Assessments. The annual assessment levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the Owners of the Lots and for the improvement, maintenance and operation of the Common Area, plus other maintenance and services provided by the Association deemed appropriate by the Board of Directors (the "Annual Assessment").

2. Amount and Uniform Rates. Unless otherwise authorized by the Board, the

Board shall fix the amount of the Annual Assessment against each Lot at least thirty (30) days in advance of each Annual Assessment period and provide the membership due notice thereof. Annual Assessments may be made payable at more frequent periods than one (1) year by resolution of the Board. Both Annual and Special Assessments (further discussed below) shall be fixed at a uniform rate for all Lots, unless said Special Assessment(s) are necessary to reimburse the Association for funds spent related to the enforcement of these covenants against specific Lot(s), whereupon said uniform rate requirement for similarly situated Lots shall not apply, or as otherwise specified herein. The Board of Directors shall establish the date(s) the Annual Assessment shall become due, and the manner in which it shall be paid.

3. Right to Increase Annual Assessments. Because of uncertainties in usual and ordinary Common Area expenses due to Indiana real property reassessment, costs of energy, insurance, maintenance and landscaping costs or other unforeseeable operating expenses, the Board of Directors of the Association may increase the budgeted Annual Assessment by a sum not to exceed ten percent (10%) per annum without vote of the membership. However, any such increases shall be documented by normal accounting procedures and distributed to the membership to demonstrate that such increases are attributable to increases in operating expenses and the monies received shall be entirely expended on Association expenses.

E. **Special Assessment.** - In addition to such other assessments as may be authorized herein, the Board of Directors may levy in any year a special assessment(s) for the purpose of enforcing these covenants and restrictions, for legal expenses, for collection expenses, other activity that is the responsibility of the Lot Owner hereunder but which such Owner has not undertaken as required hereunder, and/ or defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any capital improvement which the Association is required to maintain or for operating deficits which the Association may from time to time incur, provided that any such assessment shall have the assent of a majority or the votes of the members who are voting in person or by proxy at a meeting duly called for this purpose.

F. **Effect of Nonpayment of Assessments; Remedies of the Association.** – Any assessment not paid within thirty (30) days after the due date shall incur a late fee not exceeding twenty five percent (25%) of the outstanding assessment. The Association shall be entitled to initiate any lawful action to collect delinquent assessments, plus any expenses or costs, including attorneys' fees, incurred by the Association in collecting such assessment. If the Association has provided for collection of any assessment in installments, upon default in the payment of any one or more installments, the Association may accelerate payment and declare the entire balance of said assessment due and payable in full. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of their Lot.

G. **Liens, Charges and Subordination.** - Any charge levied or assessed against any Lot, together with interest, reasonable attorney's fees and other charges and costs herein provided, shall become and remain a lien upon that Lot until paid in full, subordinate only to the lien of a first mortgage, and shall also be a personal obligation of the owner or owners of the Lot at the time the

charge fell due. Such charge shall bear interest as a late charge at a rate of two percent (2%) per month until paid in full. If, in the opinion of the Board of Directors of the Association, such charge has remained due and payable for an unreasonably long period of time, the Board may, on behalf of the Association, institute such procedures, either at law or in equity, by foreclosure or otherwise, to collect the amount owing in any court of competent jurisdiction.

The Owner of the Lot or Lots subject to the charge shall, in addition to the amount of the charge at the time legal action is instituted, be obliged to pay the expense or costs, including reasonable attorney's fees and costs of collection, incurred by the Association in collecting the same. Every owner of a Lot in the subdivision and any person who may acquire any interest in such Lot, whether as an owner or otherwise, is hereby notified that by acquisition of such interest such person agrees that any such liens which may exist upon said Lot at the time of the acquisition of such interest are valid liens and shall be paid; and shall be held to have conclusively covenanted to pay the Association all charges that the Association shall make pursuant to these covenants and restrictions.

The lien of assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. In addition, no sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof. However, a first mortgagee is not, at any time, obligated to perform the duty of collection of assessments.

H. **Certificates.** – The Association shall, upon reasonable demand by a Lot Owner, at any time, furnish a letter in writing signed by an officer of the Association, as to the accounting status of assessments.

I. **Annual Budget.** – By majority vote of the Directors, the Board of Directors shall adopt an annual budget for the subsequent fiscal year, which shall provide for the allocation of expenses in such a manner that the obligations imposed by this Amended Declaration and all supplemental declarations can effectively be met. The annual budget shall be submitted to all interested Lot Owners at least thirty (30) days prior to the start of the fiscal year.

J. **Suspension of Privileges of Membership.** – Notwithstanding any other provision contained herein, the Board of Directors shall have the right to suspend the voting rights, if any, and the services to be provided by the Association together with the right to use the facilities of the Association, of any member: (i) for any period during which any of the Association's charges or any fines/fees assessed pursuant to this Amended Declaration or the Association Documents owed by the member remains unpaid; and (ii) during any period of a continuing violation of the restrictive covenants for the Development or of any obligation under this Amended Declaration or the Association Documents, after the existence of the violation shall have been declared by the Board of Directors.

Section 8. Enforcement of Restrictions. – In the event there shall be any violation or attempted violation of any of the covenants, conditions, restrictions, or other obligations set forth in this Amended Declaration, it shall be lawful for the Association, or for any person owning any real property in the Development, to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any such covenant, condition, restriction, or

other obligation, and either to prevent him or them from doing so or to recover damages from such violation, but the Association shall not be liable for damages of any kind to any person for failing either to abide by, enforce or carry out any of these covenants, conditions, restrictions, or other obligations. No delay or failure on the part of any aggrieved party to invoke any available remedy with respect to a violation of any one or more of the covenants, conditions, restrictions, or other obligations set forth in this Amended Declaration shall be held to be a waiver by that party (or an estoppel of that party to assert) any right available to him/her/it upon the occurrence, recurrence or continuation of such violation or violations of this Amended Declaration. These Restrictions may also be enforced by the City, the Hamilton County Plan Commission, or its successors or assigns, pursuant to whatever powers or procedures are statutorily available to it for such purposes.

Further, the Association hereby adopts the “grievance resolution process” set forth in Indiana Code Sec. 32-25.5-5, as the same may be amended from time to time, as though the same was incorporated herein by this reference.

Section 9. Amendment of this Amended Declaration. - This Amended Declaration may be amended at any time by an instrument signed by the President and Secretary of the Association certifying approval, in writing, of a majority of all of the Lot Owners in the Development of the amendment. The Association shall keep copies of the written consents of the Owners to the amendment in the books and records of the Association.

Section 10. Headings and Gender. – The headings preceding the various sections and subsections of this Amended Declaration are for the convenience of reference only, and none of them shall be used as an aid to the construction of any provisions of this Amended Declaration. Wherever and whenever applicable to give effect the purposes herein, the singular form of any work shall be taken to mean or apply to the plural, and the masculine form shall be taken to mean or apply to the feminine or to the neuter.

Section 11. Severability. – Every one of the provisions of the Amended Declaration is hereby declared to be independent of, and severable from, the rest of the provisions and of and from every other one of the provisions, and of and from every combination of the provisions herein. Therefore, if any of the provisions herein shall be held to be invalid or to be unenforceable, or to lack the quality of running with the land, that holding shall be without effect upon the validity, enforceability or the quality of running with the land of any other provision.

Section 12. Duration. – The easements, rights, restrictions, and conditions set forth herein shall be perpetual in duration.

[Signature Page to Follow.]