



COPY

**AMENDED AND RESTATED
DEDICATION, PROTECTIVE RESTRICTIONS, COVENANTS,
LIMITATIONS, EASEMENTS AND APPROVALS APPENDED
OF THE PLAT OF HEARTHSTONE VILLAGE, SECTION I AND SECTION II
A SUBDIVISION IN WASHINGTON TOWNSHIP, ALLEN COUNTY, INDIANA**

This Amended and Restated Dedication, Protective Restrictions, Covenants, Limitations, Easements and Approvals ("Amended and Restated Covenants") Appended to the Plat of Hearthstone Village, Section I and Section II ("Subdivision") is made effective as of August ____, 2019, by the Hearthstone Village Community Association, Inc. and at least seventy-five percent (75%) of the Lot Owners in the Subdivision, all of whom have executed these Amended and Restate Covenants.

The Lots in the Subdivision are numbered from 1 through 218 inclusive, and all dimensions are shown in feet and decimals of a foot on the plats for Section I and Section II.

RECITALS

WHEREAS, on April 19, 1990, the Secondary Plat of Hearthstone Village, Section I ("Section I Plat") and the Dedication, Protective Restrictions, Covenants, Limitations, Easements and Approvals Appended of the Plat of Hearthstone Village, Section I ("Section I Covenants") were recorded in the Allen County Recorder's Office as Document No. 90-014880 in Plat Book B, Page 19; and

WHEREAS, on November 29, 1990, the First Amendment to the Section I Covenants ("First Amendment to Section I Covenants") was recorded in the Allen County Recorder's Office as Document No. 90-047532; and

WHEREAS, on May 30, 1991 Articles of Incorporation for the Hearthstone Village Community Association ("Association") were filed in the Office of the Indiana Secretary of State; and

WHEREAS, on June 3, 1991, the Secondary Plat of Hearthstone Village, Section II ("Section II Plat") and the Dedication, Protective Restrictions, Covenants, Limitations, Easements and Approvals Appended of the Plat of Hearthstone Village, Section II ("Section II Covenants") were recorded in the Allen County Recorder's Office as Document No. 91-022086 in Plat Cabinet B, Page 59; and

WHEREAS, both the Section I Covenants and the Section II Covenants each provide that these restrictive covenants may be altered or amended by the Lot Owners of seventy-five percent (75%) of the Lots in Section I and Section II, respectively.

Dean Gersbach
2/24 P.M.

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WHEREAS, the Lot Owners desire to provide for the preservation and enhancement of the values and amenities in the Subdivision and, to this end, the Lot Owners desire to subject Section I and Section II to the certain rights, privileges, covenants, restrictions, easements, assessments, charges and liens, each and all to the extent provided in these Amended and Restated Covenants, for the benefit of the Subdivision and each Lot and the Lot Owners, and their successors and assigns.

NOW, THEREFORE, at least seventy-five percent (75%) of the Lot Owners of Lots 1 through 131 in Section I and of Lots 132 through 218 in Section II hereby declare that the Subdivision is and shall be owned, held, transferred, sold, conveyed, mortgaged, encumbered, leased, rented, used, improved and occupied subject to the provisions, agreements, conditions, covenants, restrictions, easements, assessments, charges and liens hereinafter set forth, all of which are declared to run with the land and to be in furtherance of a plan for preservation and enhancement of the Subdivision and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Subdivision as a whole and of each of the Lots situated therein.

Section 1. **DEFINITIONS.** The following words and phrases shall have the meanings stated, unless the context clearly indicates that a different meaning is intendeds

1.1 **Articles.** The articles of incorporation adopted by the Association and approved by the Indiana Secretary of State, and all amendments to those articles.

1.2 **Association.** Hearthstone Village Community Association, Inc. an Indiana, not-for-profit corporation, and its successors and assigns.

1.3 **Board of Directors.** The duly elected board of directors of the Association.

1.4 **Bylaws.** The bylaws adopted by Hearthstone Village Community Association, Inc., and all amendments to those bylaws.

1.5 **Committee.** The Architectural Control Committee established under Section 5 of the Amended and Restated Covenants.

1.6 **Common Area.** All real property owned by the Association for the common use and enjoyment of Owners in the Subdivision, including but not limited the areas designated as "blocks" on the face of the Section I Plat and the Section II Plat.

1.7 **Covenants.** These Amended and Restated Covenants and the restrictions, limitations and covenants imposed under it.

1.8 Lot(s). Any of the platted lots in the Section I Plat and the Section II Plat, or any tract(s) of real estate which may consist of one or more Lots or part(s) of them upon which a residence is erected in accordance with the Covenants, or such further restrictions as may be imposed by any applicable zoning ordinance, provided, however, that no tract of land consisting of part of Lot, or parts of more one Lot, shall be considered a "Lot" under these Covenants unless the tract has a frontage of at least 70 feet in width at the established front building line as shown on the Section I Plat or the Section II Plat.

1.10 Owner(s). The record owner(s) (whether one or more persons or entities) of fee simple title to the Lots, including contract sellers, but excluding those having an interest in a Lot merely as security for the performance of an obligation.

1.11 Plan Commission. The Fort Wayne Plan Commission, or its successor agency.

1.12 Plat. The Section I Plat and the Section II Plat.

1.12 Subdivision. The platted Subdivision of Hearthstone Village, Section I and Section II.

Section 2. PROPERTY RIGHTS.

2.1 Owners' Easements of Enjoyment. Each Owner shall have the right and an easement of enjoyment in the Common Area that is appurtenant to and passes with the title to every Lot, subject to the following rights which are granted to the Association.

2.1.1 To charge reasonable admission and other fees for the use of any recreational facility located in the Common Area.

2.1.2 To suspend the voting rights and right to the use of the recreational facilities in the Common Area for any period during which any assessment against the owner's Lot remains unpaid, or an Owner is in violation of the Covenants, the Articles, the Bylaws, or any published rule of the Association.

2.1.3. To dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Association's members. No such dedication or transfer shall be effective unless an instrument signed by at least two-thirds of each class of Association members agreeing to such dedication or transfer, is recorded.

2.2 Delegation of Use. Any Owner may delegate, in accordance with the Bylaws, the Owner's right to use and enjoy the Common Area and recreational facilities in it to members of the owner's family who reside on the Owner's Lot.

Section 3. MEMBERSHIP AND VOTING RIGHTS

3.1 Every Owner shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of a Lot.

3.2 The Association shall have one class of voting memberships. All Owners shall be entitled to one vote for each Lot owned. When more than one person holds an interest in a Lot, all such persons shall be members. The vote for such lot shall be exercised as its Owners among themselves determine, but in no event shall more than one vote be cast with respect to a Lot.

Section 4. COVENANT FOR MAINTENANCE ASSESSMENTS

4.1 Creation of the Lien and Personal Obligation of Assessments. Each Owner, except Developer, by acceptance of a deed for a Lot, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements. Such assessments to be established and collected as provided in these Covenants and the Bylaws. The annual and special assessments, together with interest, costs and reasonable attorney fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney fees, shall also be the personal obligation of the person who was owner of such Lot at the time when the assessment became due. The personal obligation for delinquent assessments shall not pass to an owner's successors in title unless expressly assumed by them.

4.2 Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health and welfare of the residents in the Subdivision, and for the improvement of facilities in the Subdivision. In addition, assessments shall be levied to provide for the proportionate burden of the maintenance of the common impoundment basin into which the Subdivision's surface waters drain.

4.3 Maximum Annual Assessments. Until January 1 of the year immediately following the first conveyance by Developer of a Lot, the maximum annual assessment shall be Eighty-Five Dollars (\$85.00) per Lot. Subsequent assessments may be made as follows:

4.3.1 From and after January 1 of the year immediately following such first conveyance of a Lot, the maximum annual assessment may be increased each year by the Board of Directors, by a percentage not more than 8% above the annual assessment for the previous year, without a vote of the membership.

4.3.2 From and after January 1 of the year immediately following such first conveyance of a Lot, the maximum annual assessment may be increased by a percentage in excess of 8%, only by the vote or written assent of a majority of each class of members of the Association.

4.4 Special Assessments For Capital Improvements. In addition to the annual assessments authorized in section 4.3, the Association may levy, in any assessment year, a special assessment applicable to that year for the purpose of defraying, in whole or in part, the cost of any new construction, or repair or replacement of an existing capital improvement, in the Common Area, including fixtures and related personal property provided that any such assessment require the vote or written assent of 75% of each class of members of the Association, and provided, further, that no such special assessment for any such purpose shall be made if the assessment in any way jeopardizes or affects the Association's ability to improve and maintain its Common Area, or pay its pro rata share of the cost of maintaining the common impoundment basin.

4.5 Notice and Quorum For Any Action Authorized Under Subsections 4.3 and 4.4. Any action authorized under sections 4.3.2 and 4.4 shall be taken at a meeting of the Association called for that purpose, written notice of which shall be sent to all members not less than 30 days, nor more than 60 days, in advance of the meeting. If the proposed action is favored by a majority of the votes cast at such meeting, but such vote is less than the requisite majority of each class of members, members who were not present in person or by proxy may give their assent in writing, provided the same is obtained by an officer of the Association within 30 days of the date of such meeting.

4.6 Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly or yearly basis.

4.7 Date of Commencement of Annual Assessments/Due Dates. The annual assessments allowed under section 4.3 shall commence as to all Lots then subject to an assessment, on the first day of the month following the conveyance of the Common Area. The first annual assessment shall be prorated according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least 30 days in advance of the date the annual assessment is due. Written notice of the annual assessment shall be given to every Owner. The due dates shall be established by the Board of Directors. The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer of the Association stating whether an assessment on a Lot has been paid.

4.8 Effect of Nonpayment of Assessments/Remedies of the Association.

4.8.1 Any assessment not paid within 30 days after its due date shall bear interest from the due date at the rate of 12% per annum, or the legal rate of interest in Indiana, whichever is higher.

4.8.2 The Association may bring an action at law against each owner personally obligated to pay the same, and foreclose the lien of an assessment against a Lot. No Owner may waive or otherwise escape liability for the assessments made under the Covenants by non-use of the Common Area or abandonment of a Lot. The lien for delinquent assessments may be foreclosed in Indiana. The Association shall also be entitled to recover the attorney fees, costs and expenses incurred because of the failure of an Owner to timely pay assessments made under this Section 4.

4.9 Subordination of Assessment Lien to First Mortgages Liens. The lien of the assessments made under the Covenants shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien against it. No sale or transfer shall relieve an owner or Lot from liability for any assessment subsequently becoming due, or from the lien of an assessment. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which become due prior to such sale or transfer.

Section 5. ARCHITECTURAL CONTROL

5.1 No building, fence, wall, in-ground swimming pool, or other structure shall be commenced, erected or maintained upon a Lot, nor shall any exterior addition, change, or alteration be made to a structure until the plans and specifications showing the structure's nature, kind, shape, height, materials and location are submitted to and approved by the Committee in writing as to the structure's harmony of external design and location in relation to surrounding structures and topography in the Subdivision. The Board of Directors shall appoint the members of the Committee annually. In the event of death or resignation of any member of the Committee, the Board of Directors shall appoint a successor to fulfill the remaining term of this member.

5.2 The Committee shall have the exclusive authority and responsibility to review plans for construction of all primary residences in the Subdivision. The Committee may delegate to the Board of Directors (or to such other entity designated in the Articles or Bylaws) the authority and responsibility to review plans for construction of fences and other structures (excluding primary dwellings) in the Subdivision. Such delegation shall be made in writing, signed by a majority of the Committee members, and delivered or mailed to the Association's registered office.

5.3 In the event the Committee fails to approve or disapprove the design and location of a proposed structure within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required, and approval under this Section 5 will be deemed to have been given.

Section 6. GENERAL PROVISIONS

6.1 Use. Lots may not be used except for single-family residential purposes. No building shall be erected, altered, placed, or permitted to remain on any Lot other than one detached single-family residence not to exceed two and one-half stories in height. Each residence shall include not less than a two-car garage, which shall be built as part of the residence and attached to it.

6.2 Dwelling Size. No residence shall be built on a Lot having a ground floor area upon the foundation, exclusive of one-story open porches, breezeways or garages, of less than 1,300 square feet for a one-story residence, or less than 900 square feet on the ground floor of a residence that has more than one-story.

6.3 Building Lines. No structure shall be located on a Lot nearer to the front Lot line, or nearer to the side street line than the minimum building setback lines shown on the Plat. In any event, no building shall be located nearer than a distance of 7 feet to an interior Lot line. No dwelling shall be located on an interior Lot nearer than 25 feet to the rear Lot line.

6.4 Minimum Lot Size. No residence shall be erected or placed on a Lot having a width of less than 70 feet at the minimum building setback line, nor shall any residence be erected or placed on any Lot having an area of less than 7,500 square feet.

6.5 Utility Easements. Easements for the installation and maintenance of utilities and drainage facilities are reserved as shown on the Plat and over the rear 10 feet of each Lot. No Owner of a Lot shall erect or grant to any person, firm or corporation, the right, license or privilege to erect or use, or permit the use of, overhead wires, poles or overhead facilities of any kind for electrical, telephone or television service (except such poles and overhead facilities that may be required at those places where distribution facilities enter and leave the Subdivision). Nothing in these Covenants shall be construed to prohibit street lighting or ornamental yard lighting serviced by underground wires or cables. Electrical service entrance facilities installed for any residence or other structure on a Lot connecting it to the electrical distribution system of any electric public utility shall be provided by the Owner of the Lot who constructs the residence or structure, and shall carry not less than 3 wires and have a capacity of not less than 200 amperes. Any public utility charged with the maintenance of underground installations shall have access to all easements in which said installations are located for operation, maintenance and replacement of service connections.

6.6 Surface Drainage Easements. Surface drainage easements and Common Area used for drainage purposes as shown on the Plat are intended for either periodic or occasional use as conductors for the flow of surface water runoff to a suitable outlet, and the surface of the real estate shall be constructed and maintained so as to achieve this intention. Such easements shall be maintained in an unobstructed condition, and the County Surveyor (or proper public authority having jurisdiction over storm drainage) shall have the right to determine if any obstruction exists,

and to repair and maintain, or require such repair and maintenance, as shall be reasonably necessary to keep the conductors unobstructed.

6.7 Nuisance. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done there which may be or become an annoyance or nuisance to residents in the Subdivision.

6.8 Temporary structures. No structure of a temporary character, trailer, boat trailer, camper or camping trailer, basement, tent, shack, garage, barn or other outbuilding shall be constructed, erected, located or used on any Lot for any purpose (including use as a residence), either temporarily or permanently, provided, however, that basements may be constructed in connection with the construction and use of a single-family residence building.

6.9 Outside Storage. No boat, boat trailer, recreational vehicle, motor home, truck, camper or any other wheeled vehicle shall be permitted to be parked ungaraged on a Lot for periods in excess of 48 hours, or for a period of which is in the aggregate is in excess of 8 days per calendar year. The term "truck" as used in this Section 6.9 means every motor vehicle designed, used, or maintained primarily for the transportation of property, which is rated one-ton or more.

6.10 Free-Standing Poles. No clothes lines or clothes poles, or any other free standing, semi-permanent or permanent poles, rigs, or devices, regardless of purpose, shall be constructed, erected, or located or used on a Lot.

6.11 Signs. Except as otherwise allowed by Indiana law, no sign of any kind shall be displayed to the public view on a Lot except one professional sign of not more than one square foot, or one sign of not more than five square feet, advertising a Lot for sale or rent, or signs used by a builder to advertise a Lot during the construction and sales periods.

6.12 Antennas. No radio or television antenna with more than 30 square feet of grid area, or that attains a height in excess of 6 feet above the highest point of the roof of a residence, shall be attached to a residence on a Lot. No free-standing radio or television antenna shall be permitted, unless the Owner can show that reception would be impossible or substantially degraded if attached to the residence. No satellite receiving disk or dish exceeding one (1) meter in diameter shall be permitted on a Lot. No freestanding solar panels are permitted on a Lot and all solar panels must be attached to the roof of the residence.

6.13 Oil Drilling. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted on or in a Lot. No derrick or other structure designed for boring for oil or natural gas shall be erected, maintained or permitted on a Lot.

6.14 Animals. No animals, livestock or poultry of any kind shall be raised, bred or kept on a Lot, except that dogs, cats or other household pets may be kept, provided that they are not kept, bred or maintained for any commercial purpose.

6.15 Dumping. No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage and other waste shall not be kept except in sanitary containers. No incinerators shall be kept or allowed on a Lot.

6.16 Workmanship. All structures on a Lot shall be constructed in a substantial, good and workmanlike manner and of new materials. No roof siding, asbestos siding or siding containing asphalt or tar as one of its principal ingredients shall be used in the exterior construction of any structure on a Lot, and no roll roofing of any description or character shall be used on the roof of any residence or attached garage on a Lot.

6.17 Driveways. All driveways on Lots from the street to the garage shall be poured concrete and not less than 16 feet in width.

6.18 Individual Utilities. No individual water supply system or individual sewage disposal system shall be installed, maintained or used on a Lot in the Subdivision.

6.19 Street Utility Easements. In addition to the utility easements designated in this document, easements in the streets, as shown on the Plat, are reserved and granted to all public utility companies, the owners of the Real Estate and their respective successors and assigns, to install, lay, erect, construct, renew, operate, repair, replace, maintain and remove every type of gas main, water main and sewer main (sanitary and storm) with all necessary appliances, subject, nevertheless, to all reasonable requirements of any governmental body having jurisdiction over the subdivision as to maintenance and repair of said streets.

6.20 Storm Water Runoff. No rain and storm water runoff or such things as roof water, street pavement and surface water caused by natural precipitation, shall at any time be discharged or permitted to flow into the sanitary sewage system serving the Subdivision, which shall be a separate sewer system from the storm water and surface water runoff sewer system. No sanitary sewage shall at any time be discharged or permitted to flow into the Subdivision's storm and surface water runoff sewer system.

6.21 Completion of Infrastructure. Before any residence on a Lot shall be used and occupied as such, all infrastructure improvements serving the Lot as shown on the approved plans and specifications for the subdivision filed with the Plan Commission and other governmental agencies having jurisdiction over the Subdivision shall be completed and installed. This covenant shall run with the land and be enforceable by the Plan Commission or by any aggrieved owner.

6.22 Certificate of Occupancy. Before a Lot may be used or occupied, such user or occupier shall first obtain from the Fort Wayne Zoning Administrator the improvement location permit and certificate of occupancy required, by the Fort Wayne Zoning Ordinance.

6.23 Enforcement. The Association and any Owner (individually or collectively) shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or subsequently imposed by the provisions of these Covenants. Failure by the Association or any Owner to enforce any provisions in the covenants shall in no event be deemed a waiver of the right to do so later.

6.24 Invalidation. Invalidation of any one of these Covenants by judgment or court order shall not affect any other provisions, and such provisions shall remain in full force and effect.

6.25 Duration of Covenants. These Covenants shall run with the land and be effective for a period of 20 years from the date the Plat and these Covenants are recorded; after which time the Covenants shall automatically be renewed for successive periods of 10 years.

6.26 Amendments. Amendment to these Amended and Restated Covenants shall be proposed and adopted in the following manner:

6.26.1 Notice. Notice of the subject matter of any proposed amendment shall be included in the notice of the Association meeting at which the proposed amendment is to be considered.

6.26.2 Resolution. A resolution to adopt a proposed amendment may be proposed by the Board of Directors or a majority of the Lot Owners.

6.26.3 Meeting. The resolution concerning a proposed amendment must be adopted by the designated vote at an Association meeting duly called and held in accordance with the provisions of the By-Laws and these Amended and Restated Covenants.

6.26.4 Adoption. Any proposed amendment to these Amended and Restated Covenants must be approved by a vote of not less than seventy-five (75%) of the Lot Owners.

6.26.5 Recording. Each amendment to these Amended and Restated Covenants shall be executed by the President and Secretary of the Association and shall be recorded in the office of the Recorder of Allen County, Indiana, and such amendment shall not become effective as to bona fide purchasers without actual notice thereof until so recorded.

6.27 Subdivision. No Lot or combination of Lots may be further subdivided until approval for such subdivision has been obtained from the Plan Commission.

6.28 Discretion of the Board of Directors or the Association. Whenever these Amended and Restated Covenants refers to an act, omission, consent, approval, denial, or any other action taken by the Board of Directors or the Association in its discretion, all such acts, omissions, consents, approvals, denials, and any other actions taken by the Board of Directors or the Association shall be construed to mean in the Board of Director's or the Association's sole and absolute discretion.

Section 7. Attorney Fees and Related Expenses. In the event the Association, or any Owner is successful in any proceeding, whether at law or in equity, brought to enforce any restriction, covenant, limitation, easement, condition, reservation, lien, or charge now or subsequently imposed by the provisions of these Covenants, the successful party shall be entitled to recover from the party against whom the proceeding was brought, the attorney fees and related costs and expenses incurred in such proceeding.

Section 8. Sidewalks. Plans and specifications for the Subdivision approved by and on file with the Plan Commission require the installation of concrete sidewalks within the street rights-of-way in front of Lots 19 through 27, 52 through 59, 73 through 80, 94 through 116, 125 through 131, 143 through 150, 151 through 155, 167 through 184 and 198 through 206, as shown on the approved plans. Installation of such sidewalks shall be the obligation of the Owners of those Lots. The sidewalk to be located on a Lot shall be completed in accordance with such plans and specifications prior to the issuance of a certificate of occupancy for such Lot. A violation of this Covenant is enforceable by the Plan Commission or its successor agency, by specific performance or other appropriate legal or equitable remedy.

Section 9. Flood Protection Grades. In order to minimize potential damage to residences from surface water, minimum flood protection grades of 826.00 feet Mean Sea Level are established for Lots 1, 8, 9, 29, 30, 115 through 121 and 131 in Section I and for Lots 140 through 142 and 164 through 166 in Section II. All residences constructed so that the minimum elevation of a first floor, or the minimum sill elevation of any opening below the first floor, equals or exceeds the applicable minimum floor protection grade established in this Section 9.

Section 10. Owner Occupancy/Leasing/Rental.

10.1 Additional Definitions. The following definitions shall apply to these Amended and Restated Covenants:

10.1.1 "Application" shall mean any written submission for approval to the Committee, pursuant to Section 5 above, and to the Board of Directors pursuant to this Section 10.

10.1.2 "Disguised Lease Land Contract" shall mean a land contract where (1) the Lot Owner has not received in cash, at the time the land contract is entered into with the land contract buyer, in an amount equal to ten percent (10%) of the land contract purchase price; and/or (2) the

land contract was not recorded within thirty (30) days after the date the land contract was entered into between the Lot Owner and the land contact buyer.

10.1.3 "Residence" shall mean and refer to the single-family residential structure and related improvements constructed and located upon a Lot, including the garage and any appurtenances.

10.1.4 "Nonowner Occupied Residence" shall mean:

10.1.4.1 A Residence that is rented or leased by the Lot Owner where during the rental period (A) the Lot Owner of the Residence, or (B) the Lot Owner's spouse, or (C) one or more of the Lot Owner's parents or a parent of the spouse of the Lot Owner, or (D) one or more of the Lot Owner's children or a spouse of one of the Lot Owner's children is not a full-time occupant of the Residence; or in the case of a Residence owned by a trust, where a settlor or material beneficiary of such trust is not a full-time occupant of the Residence during the rental period; or in the case of a Residence owned by a for-profit corporation or a limited liability company or other entity (but specifically excluding a not-for-profit corporation), where a person that holds directly or indirectly at least fifty and one one-hundredth percent (50.01%) of the ownership and voting power of such entity is not a full-time occupant of the Residence during the rental period; or in the case of a not-for-profit corporation, where a person who is an officer, manager, or director of the not-for-profit corporation's local, regional or national unit or chapter (as determined by the Board of Directors, in its discretion) is not a full-time occupant of the Residence during the rental period; and/or

10.1.4.2 A Residence that is being sold on a "Disguised Lease Land Contract" basis.

10.1.4.3 Notwithstanding anything herein to the contrary, when a former Lot Owner rents back to a purchaser of the Lot after closing pursuant to a bona fide real estate residential purchase agreement for a period of less than sixty (60) days prior to delivering possession to the purchaser, this transaction shall not be deemed a Nonowner Occupied Residence and shall be expressly permitted by these Amended and Restated Covenants.

10.2 Purpose. The purpose of this Section 10 is to: (1) be in the best interest of all Lot Owners in the Subdivision, all of whom have similar proprietary (property) interests in their Residences; (2) protect the Lot Owner's long-term investment in his Residence and Lot; (3) preserve high standards of accountability and responsibility for the maintenance and care of the Subdivision between and among the Lot Owners; (4) avoid the temporary and transient nature of leasing property and to encourage a low turnover of occupancy; and (5) to encourage and realize the other benefits that accrue from restricting the Subdivision to single family residential use and to avoid any commercial transition of the Subdivision caused by using or occupying the Lots for solely for rental or leasing purposes.

10.3 No Nonowner-Occupied Residences in Subdivision. In accordance with the purposes set forth in Section 10.2 above, no Residence shall be used or occupied as a Nonowner-Occupied Residence, unless the Board of Directors, in its discretion, first approves a Residence to be a Nonowner-Occupied Residence in accordance with this Section 10.

10.4 Guidelines. In determining whether to approve a Residence to be a Nonowner-Occupied Residence, the matters the Board of Directors may consider, in its discretion, shall include, but not be limited to, the following: (i) the total number of Nonowner-Occupied Homes at the time of consideration of the request; (ii) the observations and opinions of the Board of Directors or Lot Owners concerning whether Residences in and/or outside the Subdivision are maintained substantially the same as a Lot Owner occupied Residence when they are rented or leased or sold under a Disguised Lease Land Contract; (iii) whether the disapproval of the Nonowner-Occupied Residence would create an unnecessary hardship on the Lot Owner because of circumstances outside the Lot Owner's control; or (iv) any other factors or circumstances which the Board of Directors believes appropriate for consideration, in its discretion; provided, however, that the Board of Directors shall not at any time consider the age, race, color, creed, religion, sex, sexual orientation, familial status, disability, or national origin of the Lot Owner that has made the Application or the person(s) to whom the Residence is proposed to be rented or leased or sold under a Disguised Lease Land Contract, or of any other person. In all instances whether a person is a full-time occupant of a Residence shall be determined by the Board of Directors, in its discretion.

10.5 Review of Nonowner-Occupied Residence. In the event a Lot Owner requests a Residence to be approved as a Nonowner-Occupied Residence, the Lot Owner must submit an Application to the Board of Directors. The Application shall be on a form prescribed by the Board of Directors from time to time and shall in detail state: (i) the reasons and basis the Lot Owner desires to rent or lease (or to sell under a Disguised Lease Land Contract, as the case may be) the Residence; (ii) the contact information of the Lot Owner; (iii) the name and address of the proposed tenant/occupant and any other persons that will occupy the Residence on a regular basis; (iv) and such other information as the Board of Directors may lawfully request. A copy of the proposed written lease under which the Lot Owner will be leasing the Residence if the Application is granted by the Board of Directors (or a copy of the proposed land contract in the case of a Disguised Lease Land Contract) shall be attached to the Application. The proposed lease (or the proposed land contract, as the case may be) shall affirmatively state in the body of the proposed lease (or in the body of the proposed land contract, as the case may be) in all capital, underlined letters that: (A) a copy of these Amended and Restated Covenants, and the By-Laws, and its rules and regulations (including all amendments thereto) are attached to the proposed lease (or to the proposed land contract, as the case may be); (B) the tenant/occupant (or land contract buyer, as the case may be) agrees to abide by these Amended and Restated Covenants, the By-Laws, and rules and regulations while the lease or contract is in force and effect; (C) such documents shall actually be attached to the proposed lease (or the proposed land contract, as the case may be); and (D) that there shall be no more than two (2) persons (the same to include adults and minors) who will make

the Residence their regular residence for each bedroom in the Residence. The number of bedrooms in each Residence shall be determined by the Association Board, in its discretion.

10.6 Action by the Board of Directors. Except as expressly limited herein, the Board of Directors shall have the right in its discretion to: (i) approve or disapprove any Application that a Residence be authorized to be a Nonowner-Occupied Residence, and (ii) make any determinations the Board of Directors deems necessary or appropriate in determining whether to approve or disapprove an Application. The Board of Directors shall in good faith attempt to meet to begin consideration of an Application within twenty (20) days of receipt of an Application that is in the form contemplated herein. No failure on the part of the Board of Directors to take action on or failure to consider any Application for a Residence to be Nonowner-Occupied Residence Home, or any failure of the Association to be active, or to have a Board of Directors, shall provide any basis or grounds for contending that a Residence may be leased or rented or sold under a Disguised Lease Land Contract, or otherwise.

10.7 Limitation on Authority of Board of Directors. Notwithstanding anything in these Amended and Restated Covenants to the contrary: (i) the Board of Directors shall not have any authority to approve a Residence to be a Nonowner-Occupied Residence for a lease term of less than twelve (12) consecutive months; and (ii) the Board of Directors shall have no authority to approve a Residence to be a Nonowner-Occupied Residence if at that time there are already two (2) Residences previously approved as Nonowner-Occupied Residences under these Amended and Restated Covenants; provided, however, that Residences which are registered as nonconforming Nonowner-Occupied Residences under Paragraph 10.10 shall not be included as any of the two (2) Residences under this Section 10.7.

10.8 Appeal of Board of Director's Decision. Any Lot Owner may appeal the Board of Director's decision to approve or disapprove a Nonowner-Occupied Home to the members of the Association. The Association shall review the Application and the decision of the Board of Directors and for the purposes of this review the Association shall be deemed to have all of the powers, duties, and authority of the Board of Directors. The Association shall not be deemed to have taken action on an Application for a Residence to be a Nonowner-Occupied Residence, unless at least seventy-five percent (75%) of all the then members of the Association vote and sign a written resolution. Any vote or action that is less than seventy-five percent (75%) of the full Association membership shall be deemed to affirm the decision of the Board of Directors.

10.9 Approval Shall Run with the Occupant/Lot Owner. In the event the Board of Directors or the Association approves an Application for a Residence to be a Nonowner-Occupied Residence, any such approval shall be limited only to: (i) the proposed written lease and tenant (or proposed Disguised Lease Land Contract and buyer, as the case may be) that was submitted as part of the Application and any leasing (or proposed Disguised Lease Land Contract sale, as the case may be) to any other person or entity other than the specific tenant, person or entity expressly identified in the approved Application must first be presented to the Board of Directors for

consideration for approval in the manner Applications are to be considered pursuant to Section 10 of these Amended and Restated Covenants; and (ii) be for the benefit of only the Lot Owner at the time the Application is submitted for approval, and any such approval to lease shall not run with the land and shall expressly run with the specific person making the Application to the Board of Directors; provided however, that the term of the lease submitted to and approved by the Board of Directors or the Association as part of the Application shall be permitted to continue through either the earlier of: (A) the next applicable termination date of the lease (or land contract, as the case may be), with no further extensions or renewals of any kind whatsoever; or (B) twelve (12) months from lease commencement. Any renewal or extension of a lease shall require the Lot Owner to submit a new Application in accordance with this Section 10.

10.10 Existing, Leased and Occupied Nonowner Occupied Residences. Within thirty (30) days after the recording of these Amended and Restated Covenants, the Board of Directors shall send written notice to every Lot Owner in the Subdivision stating that if the Lot Owner's Lot is being occupied and leased as a Nonowner Occupied Residence, then the Lot Owner shall have sixty (60) days after the Lot Owner's receipt of such written notice to apply to register with the Board of Directors such Nonowner Occupied Residence, which was existing, leased, and occupied at the time of the recording of these Amended and Restated Covenants.

10.10.1 In order to register a Nonowner Occupied Residence, which was existing, leased, and occupied at the time of the recording of these Amended and Restated Covenants, the Lot Owner must submit the following information to Board of Directors: (A) a copy of the written lease predating the recording of these Amended and Restated Covenants; (B) the contact information of the Lot Owner; (C) the name and address of the existing tenant/occupant and any other persons occupying the Residence and the date such occupancy began; and (D) such other information as the Board of Directors may lawfully request.

10.10.2 If the Board of Directors (or the Association upon appeal) determines that the Nonowner Occupied Residence was existing, leased, and occupied at the time of the recording of these Amended and Restated Covenants, then the Board of Directors (or the Association upon appeal) shall issue a written decision notifying the Lot Owner of the approval of the legal nonconforming status of such Nonowner Occupied Residence and the Board of Directors (or the Association upon appeal) shall cause the nonconforming Nonowner Occupied Residence to be registered in the records of the Association.

10.10.3 If approved, the Lot Owner shall have a duty to update the information provided in Section 10.10.1 above, including but not limited to any new tenants, new leases or other such information. This updated information shall be provided within thirty (30) days of the event causing the change or update.

10.10.4 If the Board of Directors determines that the Nonowner Occupied Residence was not existing, leased, and occupied at the time of the recording of these Amended

and Restated Covenants, then the Board of Directors shall issue a written decision notifying the Lot Owner of the rejection of the nonconforming status for the Nonowner Occupied Residence. The Lot Owner may appeal the Board of Director's rejection to the Association as provided in these Amended and Restated Covenants.

10.10.5 A Nonowner Occupied Residence that was existing, leased, and occupied at the time of the recording of these Amended and Restated Covenants, and that timely applies for and is registered with the Association under this Section 10.10 shall be allowed to continue as a Nonowner Occupied Residence until the earlier of: (A) the date the Lot Owner sells the Residence to another person; or (B) the Nonowner Occupied Residence is vacant for a total of six (6) months in any one year, whether or not these months are consecutive.

10.10.6 A Nonowner Occupied Residence that either: (A) fails to qualify as an existing, leased and occupied Nonowner Occupied Residence as of the time of these Amended and Restated Covenants; or (B) loses its status as an existing, leased and occupied Nonowner Occupied Residence under Section 10.10.4 above, shall be subject to these Amended and Restated Covenants and no Nonowner Occupied Residence shall be allowed on the Lot, except as expressly approved under these Amended and Restated Covenants.

10.10.7 A Nonowner Occupied Residence that fails to apply timely for registration under this Section 10.10 shall be subject to these Amended and Restated Covenants and no Nonowner Occupied Residence shall be allowed on the Lot, except as expressly approved under these Amended and Restated Covenants.

10.11 Existing Land Contracts. Notwithstanding anything herein to the contrary: no land contract entered into prior to the recording of these Amended and Restated Covenants shall at any time be deemed a Disguised Lease Land Contract.

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