

**SECOND AMENDMENT OF THE DEDICATION, PROTECTIVE RESTRICTIONS,
COVENANTS, LIMITATIONS, EASEMENTS AND APPROVALS APPENDED TO THE PLAT OF
THE LAKES OF AT WILLOW CREEK, SECTIONS I, II AND III, A SUBDIVISION IN PERRY
TOWNSHIP, ALLEN COUNTY, INDIANA**

WHEREAS, there exists the executed, outstanding and placed of record Amended and Restated Dedication, Protective Restrictions, Covenants, Limitations, Easements And Approvals Appended To The Plat of the Lakes at Willow Creek, Section I, II and III in Perry Township, Allen County, Indiana, as set forth at Document No 205073993 as amended by a First Amendment as set forth at Document No 2014026259 all in the Office of the Recorder of Allen County, Indiana, (collectively the "Declaration"); and

WHEREAS, pursuant to Article 7.27.1 of the Declaration, sixty percent (60%) of the owners of the Villa Lots may amend the Declaration in so far as amendments that only affect or appertain to Villa Lots, and this Second Amendment only pertains to and affects Villa Lots; and

WHEREAS, capitalized terms used herein shall have the same meaning ascribed to them in the Declaration.

NOW, THEREFORE, Betty Stewart, as the Proxy _____ for greater than sixty percent (60%) of the Villa Lots hereby amends Section 5 of the Declaration in its entirety, and this Second Amendment completely supersedes and replaces Section 5 of the Declaration, as follows:

SECTION 5. THE LAKES AT WILLOW CREEK VILLA ASSOCIATION, INC. AND VILLA LOTS

- 5.1 MEMBERS AND VOTING RIGHTS.** Every Owner of a Villa Lot shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Villa Lot.
- 5.2 MEMBERSHIP TRANSFER.** Membership in the Villa Association will transfer to any successor in interest to an Owner upon delivery of a Deed, or other satisfactory evidence of conveyance.
- 5.3 CONTINUING MEMBERSHIP.** The Owner of any Villa Lot shall continue to be a member of the Villa Association as long as the Owner is the Owner of a Villa Lot for the purposes herein mentioned. Membership shall automatically pass with the transfer of title to a Villa Lot.
- 5.4 CREATION OF THE LIEN AND PERSONAL OBLIGATION OF ASSESSMENTS.** Every Owner of any Villa Lot, 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 Villa Association: (1) annual assessments, and (2) special assessments for capital improvements and other extraordinary expenses. Such assessments shall be established and collected as hereinafter

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ALLEN COUNTY RECORDER, FORT WAYNE, IN**

provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge and a continuing lien upon the Villa Lot against which each such assessment is made. Each such assessment together with interest, costs, and reasonable attorney's fees shall also be the personal obligation of the person who was the Owner of such Villa Lot at the time when the assessment fell due. The personal obligation for delinquent assessment shall pass to Owner's successors in title.

5.5 ASSESSMENTS. The assessments levied by the Villa Association shall be used exclusively to fund the Villa Association's obligation set forth herein. The maximum annual assessment may not be increased each year by more than eight percent (8%) above maximum annual assessment for the prior year, without the vote of more than fifty percent (50%) of the Villa Lot Owners.

5.6 SPECIAL ASSESSMENT FOR CAPITAL IMPROVEMENTS. In addition to the annual assessment authorized above, the Villa Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, repair or replacement of a capital improvement upon any common area or Villa Lot, including fixtures and personal property related thereto, provided that any such assessment shall have the vote of more than fifty percent (50%) of the Villa Lot Owners.

5.7 NOTICE AND QUORUM FOR ANY ACTION AUTHORIZED UNDER SECTION 5.5 AND 5.6. Any action authorized under Sections 5.5 and 5.6 shall be taken at a meeting called for that purpose, written notice of which shall be sent to Villa Lot Owners not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. If the proposed action is favored by a majority of Villa Lot Owners, Owners who were not present in person or by proxy may give their assent in writing, providing the same is obtained by the appropriate Officers of the Villa Association not later than forty-five (45) days after the date of such meeting.

5.8 UNIFORM RATE OF ASSESSMENT. Both annual and special assessments must be fixed and uniform for all Villa Lots on which a single-family residence is constructed and may be collected quarterly. The Board of Directors of the Association shall have the authority to assess Annual Assessments against Villa Lots on which no residence is constructed in an amount not to exceed twenty-five percent (25%) of the then Annual Assessment in order to defray the costs of the Villa Association for the maintenance of the Villa Lot, including mowing, sidewalks, snow removal, and other expenses of the Villa Association.

5.9 DATE OF COMMENCEMENT OF ANNUAL ASSESSMENTS. The annual assessments provided for herein shall commence as to all Villa Lots on the first day of the month following the conveyance of a Villa Lot to an Owner. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors of the Villa Association shall fix the amount of the annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto.

The due date shall be established by the Board of Directors of the Association. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an Officer of the Villa Association setting forth whether the assessments on a specified Villa Lot have been paid.

- 5.10 TAX RECOUPMENT ASSESSMENTS.** In addition to all other assessments provided for in the Declaration, the Villa Association may levy in any assessment year, an assessment (“Tax Recoupment Assessment”) applicable to that year only, for the purpose of defraying in whole or in part, any cost or expense incurred by the Villa Association in the form of a tax, and/or penalty and/or interest on a tax imposed upon, assumed by or arising out of or in any way related to the acceptance of title to, the ownership of and/or operation or maintenance of any plant or equipment (including utility lines, lift stations, and other property) for the transmission, delivery of furnishing of water, or for the collection, transmission and disposal of liquid and solid waste, and sewage, and/or the ownership of any real estate or easements or other rights with respect to real estate owned and/or possessed in connection with such plant or equipment.
- 5.11 EFFECT OF NONPAYMENT OF ASSESSMENT: REMEDIES OF ASSOCIATION.** Any assessment not paid within fifteen (15) days after the due date shall bear interest from the due date at the rate of six (6%) per month. The Villa Association may bring an action at law against any Owner personally obligated to pay the same and/or foreclose the lien against the Villa Lot. No Villa Lot Owner may waive or otherwise escape liability for the Assessments provided for herein by non-use of the Common Area of a Villa Lot.
- 5.12 SUBORDINATION OF THE LIEN TO MORTGAGE.** The Lien of the assessments on any Villa Lot shall be subordinate to the lien of any prior first mortgage. Sale or transfer of any Villa Lot shall not affect the assessment lien, however, the sale or transfer of a Villa lot pursuant to any mortgage foreclosure or any proceedings in lieu thereof, shall extinguish the lien for such assessment as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Villa Lot from liability for any assessments thereafter becoming due or from the lien thereof. The Villa Association may recover all of its attorney fees, costs and expenses in collecting on such assessment and foreclose any such lien.
- 5.13 LANDSCAPING AND GENERAL MAINTENANCE.** Each Villa Lot Owner, shall at the Owner’s sole expense, maintain the roof and exterior portion of their dwelling in good condition and repair, including painting, staining, repair and replacement of wood or vinyl siding as necessary. The Villa Association will be responsible for the removal of snow from driveways and sidewalks, and shall maintain the lawn and landscaping on each Villa Lot. The Villa Association will maintain the sprinkling system for turn on, pressure testing and turning off system in the fall. The Villa Owner will be responsible for the replacement parts and labor to maintain irrigation system in working order. The frequency and manner of performance of such maintenance shall be determined solely by the Board of Directors of the Villa Association. The Villa Association shall not be responsible for the repair or maintenance of decks and/or screened-in porches, any concrete on a Villa Lot or adjacent public sidewalk, or yard lights and other exterior lights, including replacement of bulbs, nor for window washing and glass replacement. The Board of Directors of the Villa Association

may, at its option by appropriate resolution, transfer to each Villa Lot Owner the maintenance responsibility for that portion of the lawn and/or landscaping on each Villa Lot which was not initially installed or planted.

5.14 OTHER MAINTENANCE. Except to the extent of the Villa Association's responsibility for maintenance and repair as provided above, each Villa Lot Owner shall at the Owner's sole cost and expense, maintain and repair the Villa Lot and the improvements situated thereon, keeping the same in good condition and repair, including items specifically excluded from the Villa Association's responsibilities or not expressly included among such responsibilities, as set forth above. In the event any Villa Lot Owner shall fail to maintain and repair the Villa Lot and the improvements thereon as required hereunder, the Villa Association, in addition to all other remedies available to it hereunder or by law and without waiving any of said alternative remedies, shall have the right, through its agents and employees to enter upon said Villa Lot and to repair, maintain and restore the Villa Lot and the exterior of the dwelling units and other improvements erected thereon. Each Villa Lot Owner (by acceptance of a Deed for a Villa Lot) hereby covenants and agrees to pay the Villa Association such cost expense thereof immediately upon demand. Such costs and expenses incurred and demanded by the Villa Association, together with interest, costs and attorney's fees, shall have the same status as both a continuing lien on the Villa Lot and improvements and the personal obligation of the Villa Lot Owner as an assessment made under Section 5.5 and 5.6 hereof and the failure of any Villa Lot Owner to pay the same bill shall carry with it the same rights in the Villa Association for collection thereof that apply to any failure to pay an assessment when due.

5.15 MAINTENANCE EASEMENTS. The Villa Association and the Owner of any Villa Lot whose Dwelling is constructed shall have an access easement over the adjacent Villa Lot which shall be five (5) feet in width measured from said Villa Lot line, for the entire length of said Lot line separating the two (2) Villa Lots, for the purposes of maintaining, replacing, and repairing the exterior of the dwelling so located. This access easement shall extend to the agents, employees, and independent contractors of either the Villa Association, the Owner, or both. Any damage to an adjacent Villa Lot landscaping on an adjacent Villa Lot shall be repaired at the expense of the Owner, or their respective Agents, employees or independent contractors utilizing this easement.

5.16 UTILITY EASEMENT. Easements are hereby expressly reserved and dedicated with dimension, boundaries, and locations as designated on the original recorded plat for Section I for the installation and maintenance of public utilities (including, but not limited to water, gas, telephone, electric, cable TV, storm sewer and drainage facilities, and any other utilities of a public or quasi-public nature).

5.16.1 Any utility company and Developer, their successors and/or assigns, will have the right to enter upon said easements for any lawful purpose. All easements shall be kept free at all times of permanent structures except improvements installed by the Developer, Developer's successor in interest, or an authorized utility, and removal of any obstruction by a utility company shall in no way obligate the company to restore the obstruction to its original form. The utility will restore any improvements installed by Developer or other authorized utility.

- 5.17 FENCES** No fences (except an invisible dog fence), utility sheds, clothesline, playground equipment, above or below ground pools or fire pits are permitted on any Villa Lot. Decks of natural or composite materials may be installed with Architectural Control Committee approval and only as the deck is not visible from the street.
- 5.18 ARCHITECTURAL COMMITTEE FOR VILLA LOTS.** The Architectural Control Committee for Villa Lots will consist of the Board of Directors of the Villa Association. The committee will review all structural changes to villas, and modifications or additions to any Villa. It will determine any changes to (or initial) color of siding as well as paint, will make sure all roof colors coincide to the original construction. No roof will be changed to other than that type of shingles that was originally constructed.
- 5.19 SIDEWALKS.** The Villa Lot Owner will be responsible for repairs or replacement of any sidewalk directly adjacent to and in front of that Villa's Lot. Currently this will apply only to Villa Lots 1-13 since sidewalks are installed directly adjacent to these Villas Lots. If a sidewalk has a hazard condition, then that section of sidewalk will be replaced by the directly adjacent Lot Owner.
- 5.20 HOUSING FOR PERSONS WHO ARE 55 YEARS OF AGE OR OLDER.** These provisions of Section 5.20 are in addition to the use restrictions and terms of Section 7.1 of the Declaration. All Villa Lots are intended and shall be operated as a community providing housing for older persons in compliance with the Fair Housing Act (42 U.S.C. 3601, *et seq.*) and the State of Indiana Fair Housing Act (IND CODE 22-9.5-1-1 *et seq.* and the exemptions provided in IND CODE 22-9.5-3-4, each as may be amended, from time to time. To the maximum extent lawfully allowable, each Villa Lot shall be occupied by at least one person fifty-five (55) years of age or older. Persons under the age of fifty-five (55) may occupy and reside in on a Villa Lot as long as at least one of the occupants is fifty-five (55) years of age or older. The Villa Association shall have the further authority to make rules and regulations to ensure continued enforceability of these Age Restrictions consistent with the Fair Housing Act, as amended from time to time. In the event an Owner becomes the Owner of a Villa Lot or Unit by operation of law, such as inheritance or devise, or when a Villa Lot Owner dies and the Villa Lot Owner's surviving spouse is under age fifty-five (55) and becomes the sole occupant, said persons may continue to occupy the Villa Lot even though the Owner is under the age of fifty-five (55) with the intent that at least eighty percent (80%) of the Lots and residences subject to this Declaration at such time shall be occupied in the manner required herein. Each currently existing Villa Lot Owner shall deliver to the Association within six months after the recording date of this Second Amendment documentation verifying the Owner's or the occupant's age. All persons seeking to become record title owners to a Villa Lot or seeking to occupy a Villa Lot after the effective date of this Second Amendment shall deliver to the Association documentation verifying said person's age. The Villa Association shall prepare and make available to all Owners and occupants a form (hereinafter referred to as the AVerification of Age Form@) for the use in verifying said Owner or occupant's age. It shall be the responsibility of the Owner of a Villa Lot, and not of the Villa Association, to provide a prospective purchaser, lessee or occupant with a Verification of Age Form to be completed and returned to the Association prior to the completion of any sale or lease of a

Villa Lot. The provisions of this Section 20 shall be waived as to current Villa Lots Owned or occupied by persons under age fifty-five (55) years, but shall apply to any such Villa Lot upon any subsequent transfer or conveyance.

5.21 PETS. Dogs and cats that are pets are allowed on Villa Lots but must be on a leash and restrained when outside of a residence.

Except as expressly modified or amended by this Second Amendment, all other terms and provisions of the Declaration remain unchanged and shall remain in full force and effect.

IN WITNESS WHEREOF, Betty Stewart, as Proxy for more than sixty percent (60%) of the Villa Lot Owners has executed this Second Amendment effective as of this 28 day of September, 2016. The Proxies are attached hereto and incorporated herein by reference.

BETTY STEWERT - PRESIDENT

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

Before me, the undersigned Notary Public in and for said County and State personally appeared BETTY STEWERT and acknowledged execution of the above and foregoing the 10 day of October, 2016.

My Commission Expires:
3-6-2023

Signature of Notary Public

Resident of:
Allen Co. Indiana

Printed Name of Notary Public

This instrument prepared by **VINCENT J. HEINY**, Attorney at Law, Haller & Colvin, P.C., 444 East Main Street, Fort Wayne, Indiana 46802, Telephone (260) 426-0444. I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security Number in this document, unless required by Law, /s/ Vincent J. Heiny.