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Jennifer Hayden
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AMENDED AND RESTATED
DECLARATION OF RESTRICTIONS
FOR
PLUM CREEK FARMS

**AMENDED AND RESTATED DECLARATION OF
RESTRICTIONS FOR PLUM CREEK FARMS**

This Amended and Restated Declaration of Restrictions was executed as of the date set forth below.

Witness the following:

The Plum Creek Farms subdivision located in Hamilton County, Indiana was established by a certain "Declaration of Restrictions" which was recorded on October 13, 1998, as **Instrument No. 9809857624** in the Office of the Recorder of Hamilton County, Indiana, said Declaration together with all amendments and/or supplements thereto being hereafter referred to as the "Original Declaration"; and

Plats filed with the Office of the Recorder of Hamilton County, Indiana established a total of two hundred twenty (220) Lots, and Common Area, comprising the Plum Creek Farms subdivision in accordance with the Declaration; and

Section 15 of the Original Declaration states that its covenants and restrictions may be amended upon approval by the Owners of at least a majority of the Lots; and

The Board of Directors of Plum Creek Farms Home Owners Association, Inc. sent written, mail-in ballots to all Owners pursuant to Indiana Code Section 23-17-10-8, asking for the Owners to Vote on whether to approve this Amended and Restated Declaration; and

More than a majority of the Owners of the total number of Lots voted to approve this Amended and Restated Declaration; and

The Owners of said Lots desire to amend certain provisions of the Original Declaration and to restate and consolidate the same for the convenience of the Owners such that this "Amended and Restated Declaration of Restrictions" for Plum Creek Farms in no way nullifies or changes the Original Declaration, or the effective date of the Original Declaration. However, upon the date of recording of this Amended and Restated Declaration with the Hamilton County Recorder's

Office, the Original Declaration shall no longer be in effect and shall be replaced by the following.

Any exhibits contained in the Original Declaration, for historical purposes, may be referred to from time to time, and therefore, for cross-reference purposes, one should refer to them as they were filed with the Hamilton County Recorder. Those exhibits, however, are not exhibits to this Amended and Restated Declaration. Except as to any exhibits to the Original Declaration that may remain relevant, all other provisions of the Original Declaration are hereby modified in their entirety, and superceded by this Amended and Restated Declaration.

NOW, THEREFORE, the Owners of more than a majority of the total number of Lots in Plum Creek Farms hereby amend and restate the Original Declaration such that all of the platted dwellings, Lots and lands located within Plum Creek Farms as they have been platted are held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, subject to the following restrictions, all of which were and are declared and agreed to be in furtherance of a plan for the improvement and sale of said dwellings, Lots and lands in Plum Creek Farms. Such restrictions below 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 said dwellings and Lots situated therein. All of the restrictions shall run with the land and shall be binding upon the Owners and upon the parties having or acquiring any right, title or interest, legal or equitable, in and to the real property or any part or parts thereof subject to such restrictions, and shall inure to the benefit of all successors in title to any real estate in the development. Now, therefore, the Original Declaration which are applicable to all Owners and residents within Plum Creek Farms is hereby amended, restated and consolidated as follows:

ARTICLE 1
DEFINITIONS

The following are definitions of the terms as they are used in this Declaration:

Section 1.1. "ACC" shall mean the Plum Creek Farms Architectural Control Committee composed of three members appointed by the Board of Directors of the Association who shall be subject to removal by the Board at any time with or

without cause. Any vacancies from time to time existing shall be filled by appointment of the Board.

Section 1.2. "CCC" shall mean the Plum Creek Farms Compliance Control Committee, composed of a minimum of three (3) members appointed by the Board of Directors of the Association, who shall be subject to removal by the Board at any time, with or without cause. Any vacancies from time to time shall be filled by appointment of the Board.

Section 1.3. "Association" shall mean the Plum Creek Farms Home Owners Association, Inc., an Indiana not-for-profit corporation, the membership and powers of which are more fully described in Article 10 of this Declaration.

Section 1.4. "Lot" shall mean any parcel of real estate excluding common areas described by one of the plats of the Plum Creek Farms development which is recorded in the Office of the Recorder of Hamilton County, Indiana.

Section 1.5. Approvals, determinations, permissions, or consents required herein shall be deemed given if they are given in writing, signed with respect to the Association, by the President or a Vice President thereof, and with respect to the Committee, by the chair of such Committee.

Section 1.6. "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.

Section 1.7. "Corn Crib" means the structure described in the City of Carmel Ordinance O-2465-19.

ARTICLE 2 **CHARACTER OF THE DEVELOPMENT**

Section 2.1. In General. Every Lot in Plum Creek Farms is a residential Lot and shall be used exclusively for single-family residential purposes. No structures shall be erected, placed or permitted to remain upon any of said residential Lots except a single-family dwelling house.

Section 2.2. Outbuildings Prohibited. No accessory outbuildings shall ever be allowed.

Section 2.3. Easements and Other Restrictions. All tracts of ground in Plum Creek Farms shall be subject to the easements, restrictions and limitations of

record appearing on the recorded plat of the subdivision, on recorded easements, rights-of-ways, and also to all governmental zoning authority and regulation affecting Plum Creek Farms, all of which are incorporated herein by reference. All easements as shown on the recorded plats of the subdivided sections of Plum Creek Farms shall be non-exclusive and inure to the benefit of all residential Lots in Plum Creek Farms.

ARTICLE 3
RESTRICTIONS CONCERNING SIZE, PLACEMENT
AND MAINTENANCE OF
DWELLING HOUSES AND OTHER STRUCTURES

Section 3.1. Minimum Living Space Areas. The minimum square footage of living space of dwellings constructed on various residential Lots in Plum Creek Farms, exclusive of porches, terraces, or garages shall be 2,000 square feet. Basements shall not be included in the computation of the minimum living area.

Section 3.2. Residential Set-Back Requirements.

(i) In General. Unless otherwise provided in these Restrictions or on the record plat, no dwelling house or above-grade structure shall be constructed or placed on any residential Lot in Plum Creek Farms except as provided herein.

(ii) Front Yards. The front building set-back lines shall be the designated number of feet from the right-of-way of the road upon which the Lot abuts as set forth upon the plats of Plum Creek Farms.

Section 3.3. Fences and Trees. In order to preserve the natural quality and aesthetic appearance of the existing geographic areas within Plum Creek Farms, any fence must be approved by the ACC as to size, location, height and composition before it may be installed. Privacy fences, or those designed to prohibit visibility, shall be prohibited except to the extent that they are used to screen private seating areas. Where allowed, privacy fences shall be screened by landscaping in a manner acceptable to ACC as defined in the following Article 8. Only wrought iron fencing or a reasonable equivalent shall be permitted on Lots which abut the Plum Creek Golf Course. Every Lot must have one (1) tree in the front yard.

Section 3.4. Basketball Goals. No basketball goals will be allowed to be mounted upon any structure. Basketball goals shall be of a free-standing variety and must be approved by the ACC as to their type and location.

Section 3.5. Exterior Construction. The finished exterior of every building constructed or placed on any Lot shall be of masonry, wood siding, wood product, or vinyl siding. All driveways must be paved with asphalt or concrete from their point of connection with the abutting street or road.

Section 3.6. Garages. Every house in Plum Creek Farms must have a minimum two-car attached garage.

Section 3.7. Diligence in Construction. No home or other improvement on a Lot 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. Any reconstruction must adhere to the requirements of these Restrictions and the By-Laws and be harmonious with the rest of the Plum Creek Farms neighborhood.

Section 3.8. Maintenance of Lots and Improvements. The Owner of any Lot in Plum Creek Farms shall at all times maintain the Lot and any improvements situated thereon in such a manner as to prevent the Lot or improvements from becoming unsightly; and, specifically, such Owner shall, in compliance with the CCC:

- (i) Mow the Lot at such times as may be reasonably required in order to prevent unsightly growth of vegetation and noxious weeds and in compliance with current City of Carmel Ordinances.
- (ii) Remove all debris or rubbish.
- (iii) Prevent the existence of any other condition that reasonably tends to detract from or diminish the aesthetic appearance of Plum Creek Farms.
- (vi) Cut down and remove dead trees and overgrown bushes as directed by the CCC.
- (v) Keep the exterior of all improvements in such a state of repair or maintenance as to avoid their becoming unsightly.

Section 3.9. Association's Right to Perform Certain Maintenance. In the event that the Owner of any Lot fails to maintain his Lot and any improvements situated thereon in accordance with the provisions of these Restrictions and notice from the CCC as described in Article 9 below of this Declaration of 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 or perform such other acts as may be reasonably necessary to make such Lot and improvements situated thereon, if any, conform to the requirements of these Restrictions. The cost therefor to the Association shall be added to and become a part of the annual charge to which said Lot is subject and may be collected in any manner in which such annual charge may be collected. Neither the Association nor any of its agents, employees, or contractors shall be liable for any damage which may result from any maintenance work performed hereunder.

ARTICLE 4
PROVISIONS RESPECTING DISPOSAL OF SANITARY WASTE

Section 4.1. Nuisance. No sanitary waste or other wastes shall be permitted to enter any storm drain. By purchase of a Lot, each Owner agrees that any violation of this provision constitutes a nuisance which may be abated by the Association in any manner provided at law or in equity. The cost or expense of abatement, including court costs and attorney's fees, shall become a charge or lien upon the Lot, and may be collected in any manner provided by law or in equity for collection of a liquidated debt. Neither the Association, nor any officer, agent, employee or contractor thereof, shall be liable for any damage which may result from enforcement of this provision.

Section 4.2. Construction of Sewage Lines. All sanitary sewage lines on the Lots shall be designed and constructed in accordance with the provisions and requirement of the Hamilton County Board of Health. No storm water (subsurface or surface) shall be discharged into sanitary sewers.

ARTICLE 5
INDIVIDUAL YARD LIGHTS REQUIRED ON
EACH LOT IN THE DEVELOPMENT

Section 5.1. Every Owner must have an operational dusk to dawn yard light in the front yard of his Lot. The design, type and location of the yard light shall be subject to the approval of the ACC which may require, for the purpose of

uniformity and appearance, that said yard light be purchased from one or more vendors selected by the Board of Directors of the Association.

ARTICLE 6
MAILBOXES

Section 6.1. Owners of a Lot shall install or cause to have installed a mailbox which shall be in accordance with the design, type and location of a mailbox approved by the ACC. The ACC may require, for the purpose of uniformity and appearance, that the mailbox be purchased from one or more vendors selected by the Board of Directors.

ARTICLE 7
GENERAL PROHIBITIONS

Section 7.1. In General. No noxious or offensive activities shall be carried on on any Lot, nor shall anything be done on any said Lots that shall become or be an unreasonable annoyance or nuisance to any Owner of another Lot.

Section 7.2. Signs. No signs or advertisements shall be displayed or placed on any Lot or structures in Plum Creek Farms without the prior written approval of the ACC except for real estate sales signs no larger than a 3' x 3' sign with a maximum height of 6', or political signs permitted by Indiana law.

Section 7.3. Animals. No animals shall be kept or maintained on any Lot in Plum Creek Farms except the usual household pets, and, in such case, such household pets shall be kept confined so as not to become a nuisance as per Carmel Ordinance 6-99(j), Chapter 6-Public Health & Safety, Article 5-Nuisances.

Section 7.4. Vehicles and Parking. No campers, trailers, boats, or similar vehicles shall be parked on any street or Lot. No truck, one (1) ton or larger in size, or any commercial vehicle, regardless of size, shall be parked for overnight or longer storage on any Lot in Plum Creek Farms, unless the same shall be parked in such a manner that it is not visible to the occupants of other Lots, or the users of any street in Plum Creek Farms. Carmel Ordinance 6-109, Chapter 6-Public Health & Safety, Article 5-Nuisances shall apply to on-street parking restrictions.

Section 7.5. Garbage and Other Refuse. No Owner of a Lot in Plum Creek Farms shall burn or permit the burning out of doors of garbage or other refuse, nor shall any such Owner accumulate or permit the accumulation out of doors of such refuse on his Lot except as may be permitted in Section 7.6 below.

Section 7.6. Trash Receptacles. Any receptacle for ashes, trash, rubbish or garbage shall be so placed and kept as not to be visible from any street within Plum Creek Farms at any time, except at the times when refuse collections are being made.

Section 7.7. Temporary Structures. No temporary structure of any kind, such as a house trailer, tent, or other outbuilding shall be placed or erected on any Lot nor shall any overnight camping be permitted on any Lot.

Section 7.8. Ditches and Swales. It shall be the duty of the Owner on every Lot in Plum Creek Farms on which any part of any open storm drainage ditch or swale is situated to keep such portion thereof as may be situated upon the Lot continuously unobstructed and in good repair, and to provide for the installation of such culverts upon said Lot as may be reasonably necessary to accomplish the purposes of this subsection. All Owners, if necessary, shall install dry culverts between the road rights-of-way and their Lots in conformity with specifications and recommendations of the City of Carmel, Hamilton County, Indiana.

Section 7.9. Utility Services. No utility services shall be installed, constructed, repaired, replaced and/or removed under finished streets except by jacking, drilling or boring and shall require the approval of the City of Carmel where the streets are public and by the property owners where there are private drives.

Section 7.10. Wells and Septic Tanks. No water wells shall be drilled on any of the Lots nor shall any septic tanks be installed on any of the Lots in Plum Creek Farms.

Section 7.11. Prohibition of Antennas. To the extent allowed by federal law, no exposed radio, cable and television antennas and/or dishes shall be permitted within Plum Creek Farms, without the approval of the ACC.

Section 7.12. Swimming Pools. No above ground swimming pools shall be permitted. In ground pools may be permitted when approved through the process outlined in Article 8.

ARTICLE 8
ARCHITECTURAL CONTROL COMMITTEE

Section 8.1. Statement of Purposes and Powers. The ACC shall regulate the external design, appearance, use, location and maintenance of lands subject to

these Restrictions 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.

(i) Generally. No dwelling, building structure, access, driveway, or improvement of any type or kind shall be constructed or placed on any Lot in Plum Creek Farms without the prior approval of the ACC. Such approval shall be obtained only after written application has been made to the ACC by the Owner of the Lot requesting authorization from the ACC. Such written application shall be in the manner and form prescribed from time to time by the ACC and shall be accompanied by two (2) complete sets of plans and specifications for any such proposed construction or improvement. Such plans shall include plot plans showing the location of all improvements existing upon the Lot and the location of the improvements proposed to be constructed or placed upon the Lot, each properly and clearly designated. Such plans and specifications shall set forth the color and composition of all exterior materials proposed to be used and any proposed landscaping, together with any other materials or information which the ACC may require. All building plans and drawings required to be submitted to the ACC shall be drawn to a scale of 1/4" = 1' and all plot plans shall be drawn to scale of 1" = 30', or to such other scale as the ACC shall require.

(ii) Power of Disapproval. The ACC may refuse to grant permission to construct, place or make the requested improvement when:

(a) The plans, specifications, drawings or other material submitted are themselves inadequate or incomplete, or show the proposed improvement to be in violation of these restrictions;

(b) 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;

(c) The proposed improvement, or any part hereof, would in the opinion of the ACC be contrary to the interests, welfare or rights of all or any part of other Owners.

(d) In particular, Owners of Lots backing on the golf course or Common Areas must be considerate of their neighbors when designing landscaping and screens. Most neighbors have purchased

these Lots to be able to enjoy the open spaces they afford. These vistas are not the sole property of any one resident and must be shared. In cases where, by the relative location of one home to another and to the vista, an outdoor living area is blocking the view of another, it is important to consider the method of providing privacy as needed. In general, view blocks should not exceed the size limitations of rear yard fences. Columnar conifers (which are narrow and upright) would be preferable to evergreens where neighbors' sight lines are concerned, evergreens being more appropriate around the home's foundation rather than out in the yard. Hedgerows should be treated as fences. Shrubbery should be kept trimmed and/or replaced when it becomes overgrown. In all cases where elements intended to provide privacy are concerned, the evaluation and decision of the ACC will be final.

(iii) Power to Grant Variances. The ACC may allow reasonable variances or adjustments of these Restrictions where literal application would result in unnecessary hardship, but any such variance or adjustment shall be granted in conformity with the general intent and purposes of these Restrictions and no variance or adjustment shall be granted which is materially detrimental or injurious to other Lots in Plum Creek Farms.

Section 8.2. Duties of the ACC. The ACC shall approve or disapprove proposed improvements within thirty (30) days after all required information shall have been submitted to it. One copy of submitted material shall be retained by the ACC for its permanent files. All notification to applicants shall be in writing, and, in the event that such notification is one of disapproval, it shall specify the reason or reasons.

Section 8.3. Liability of the ACC. Neither the ACC nor any agent thereof shall be responsible in any way for any defects in any plans, specifications or other materials submitted to it, nor for any defects in any work done according thereto. Further, the ACC does not make 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.

Section 8.4. Inspection. The ACC may inspect work being performed with its permission to assure compliance with these Restrictions and applicable regulations.

Section 8.5. New Home Construction. Builders of new homes who purchase Lots shall be subject to a separate review conducted by the ACC.

ARTICLE 9
COMPLIANCE CONTROL COMMITTEE

Section 9.1. Statement of Purposes and Powers. The CCC shall regulate the external appearance and maintenance of lands subject to these Restrictions and improvements thereon, in such a manner as to preserve and enhance values and to maintain a harmonious relationship among the homes, and the natural vegetation and topography.

Section 9.2. Duties of the CCC. The CCC shall monitor the exterior appearance of all homes and Lots in compliance with Section 9.1 above.

Section 9.3. Composition of the CCC. The CCC shall consist of at least one (1) member of the Association's Board of Directors, and at least one (1) Lot Owner from each of the three (3) sections within Plum Creek Farms.

Section 9.4. Inspection and Monitoring. In accordance with the grievance resolution process that is applicable to all Indiana homeowners associations and is included as part of the Indiana Homeowners Association Act (presently found at Indiana 32-25.5-5), the CCC shall monitor and respond to violations following this process:

- (a) The CCC shall send the Owner a first notice of the violation of these Restrictions, which will specify the Restriction that corresponds with the violation. The first notice shall also clearly state what the CCC expects the Owner to do to compliance with the Restrictions. The CCC's first notice will give the Owner ten (10) days to comply.
- (b) If the Owner fails to comply with the CCC's first notice, the CCC shall send the Owner a second notice reiterating the violation as well as offering the Owner the opportunity to meet with the Board of Directors to discuss the violation with the hopes of arriving at an amiable resolution to all parties. In the second notice, the CCC will give the Owner ten (10) days to either correct the violation or submit a written request to have the meeting.

- (c) If necessary, the CCC will send the Owner a final notice, again reiterating the violation and offering the Owner to request arbitration and/or mediation at his or her own expense to discuss the CCC's claim of violation. In this final notice, the CCC shall state that the Owner has ten (10) days to correct the violation or request the arbitration/mediation.

- (d) If neither the CCC nor the Owner can come to an amiable resolution, the CCC shall notify the Board of Directors that the CCC assumes that there is an impasse. In that case, the Board of Directors may decide to engage legal counsel to enforce the provisions of these Restrictions. If such action results in litigation being filed in Court, the Association will request an award of its attorneys fees and costs incurred in such action.

- (e) The above procedures and timeframes may be varied according to the exceptions that are included in the Indiana Homeowners Association Act.

ARTICLE 10
RULES GOVERNING BUILDING ON SEVERAL
CONTIGUOUS LOTS HAVING ONE OWNER

Section 10.1. Whenever two or more contiguous Lots in Plum Creek Farms shall be owned by the same person, and such Owner shall desire to use two or more of said Lots as a site for a single-dwelling house, he shall apply in writing to the Committee for permission to so use said Lots. If permission for such a use shall be granted, the Lots constituting the site for such single-dwelling house shall be treated as a single Lot for the purpose of applying these Restrictions to said Lots, so long as the Lots remain improved with one single-dwelling house.

ARTICLE 11
PLUM CREEK FARMS HOME OWNERS ASSOCIATION, INC.

Section 11.1. In General. There has been created, under the laws of the State of Indiana, a not-for-profit corporation known as the Plum Creek Farms Home Owners Association, Inc., referred to as the "Association". Every Owner of a Lot shall be a member of the Association and shall be subject to all the requirements and limitations imposed in these Restrictions on other Owners of Lots within Plum Creek Farms and on members of the Association, including those provisions with respect to the payment of an annual charge.

Section 11.2. Single Class of Membership. The Association has a single class of membership. Members shall be all owners and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

Section 11.3. Board of Directors. The Board of Directors shall be elected in the manner described in the Association's Code of By-Laws.

Section 11.4. Professional Management. No contract or agreement for professional management of the Association shall be for a term in excess of three (3) years. Any such agreement or contract shall provide for termination by either party with or without cause without any termination fee by written notice of ninety (90) days or less.

Section 11.5. Responsibilities of the Association.

(i) The Association shall procure and maintain liability insurance (including director's and officer's insurance) and such other insurance as it deems necessary or advisable.

(ii) The Association may contract for such service as management, snow removal, security control, trash removal, and such other services as the Association deems necessary or advisable, unless any of such services are provided by the municipality.

(iii) The Association shall maintain in a neat, clean, presentable and safe condition the Corn Crib along with all other recreational facilities to the extent such facilities are within Plum Creek Farms.

(iv) The Association shall maintain and repair any and all common areas as shown on the various plats of Plum Creek Farms including any lakes, retention ponds, landscaping, lighting facilities or entry way structures which were installed either by the original developer or by the Association within the common areas or within any landscaping easements which may appear within the various plats of Plum Creek Farms.

(v) The Common Areas along and adjacent to 126th Street and Hazel Dell Road shall be for use and enjoyment of Plum Creek Farms residents only or as approved by the Board of Directors. The pathways throughout

Plum Creek Farms shall be accessible to the surrounding neighborhoods. Signage prohibiting or restricting access may be erected upon the Common Areas. Reference is made to the attached letter from the City of Carmel, Docket No. 19050030 PP Amend.

ARTICLE 12
COVENANT FOR MAINTENANCE ASSESSMENTS

Section 12.1. Creation of the Lien and Personal Obligation of Assessments. Each Owner of any Lot in the subdivision, by acceptance of a deed therefor, 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 pro-rated from the date of title transfer; and (2) special assessments for capital improvements and operating deficits; such assessments to be established and collected as hereinafter provided. The annual special assessments, together with interest, late fees, costs of collection, and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, late fees, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due.

Section 12.2. Purpose of Annual Assessments. The assessments levied by the Association shall be used exclusively to promote the upkeep and enhancement of property values of the Lots and homes in Plum Creek Farms and other purposes as specifically provided herein.

Section 12.3. Special Assessments for Capital Improvements and Operating Deficits. In addition to the annual assessments authorized above, the Association may levy a special assessment for the purpose of 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 of the votes of the members who are voting in person or by proxy at a meeting duly called for this purpose at which a regular quorum is represented.

Section 12.4. Date of Commencement of Annual Assessments; Due Dates. The annual assessment provided for herein shall commence for each Lot on the date of conveyance to the Owner by deed. The Board of Directors shall fix any increase in the amount of the Annual assessment at least thirty (30) days in

advance of the effective date of such increase. Written notice of special assessments and such other assessment notices as the Board of Directors shall deem appropriate shall be sent to every Owner subject thereto. The due dates for all assessments shall be established by the Board of Directors.

Section 12.5. Effect of Non-Payment of Assessments; Remedies of the Association. Any charge levied or assessed against any Lot, together with interest and other charges or costs as hereinafter provided, shall become and remain a lien upon that Lot until paid in full and shall also be a personal obligation of the Owner or Owners of that Lot at the time the charge fell due. Such charge shall bear interest at the rate of twelve percent (12%) per annum 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, impose a late fee and 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 any expense or costs, including attorneys' fees, incurred by the Association in collecting the same. Every Owner of a Lot in Plum Creek Farms and any person who may acquire any interest in such Lot, whether as an Owner or otherwise, is hereby notified, and by acquisition of such interest 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. Every person who shall become an Owner of a Lot in Plum Creek Farms is hereby notified that by the act of acquiring, making such purchase or acquiring such title, such person shall be conclusively held to have covenanted to pay the Association all charges that the Association shall make pursuant to this provision of the Restrictions.

In connection with any effort to collect or in any action to recover an Assessment, regardless of whether litigation is initiated, the Board, for and on behalf of the Association, shall be entitled to recover from the Owner of the Lot, not only the delinquent Assessments, but also all late fees imposed, all court costs, all costs of collection, charges, fees and expenses incurred by the Association with respect to such collection effort or action, including but not limited to charges, costs, fees or other expenses incurred by the Association to the Managing Agent for administering, monitoring or processing delinquent Owners' accounts, and reasonable attorney's fees. The Association need not accept any tender or a partial payment of an Assessment, or any installment of an Assessment, and all costs,

expenses, charges and attorneys fees attributable thereto, and any acceptance of any such tender shall not be deemed to be a waiver of the Association's right to demand and receive full payments thereafter. In addition, the Board shall have the power to adopt by Board resolution additional rules and regulations or delinquency procedures.

The Association shall, upon demand, at any time, furnish a certificate in writing signed by an officer of the Association that the assessments on a specified Lot have been paid or that certain assessments against said Lot remain unpaid, as the case may be. A reasonable charge may be made by the Board of Directors of the Association for the issuance of these certificates. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 12.6. Subordination of the Lien to Mortgage. The lien of the 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. No sale or transfer shall relieve such Lot from liability for any assessment thereafter becoming due or from the lien thereof. Provided, however, the sale or transfer of any Lot pursuant to the foreclosure of any first mortgage on such Lot (without the necessity of joining the Association in any such foreclosure action) or any proceedings or deed in lieu thereof shall extinguish the lien of all assessments becoming due prior to the date of such sale or transfer.

Section 12.7. Suspension of Privileges of Membership. Notwithstanding any other provisions contained herein, the Board of Directors of the Association shall have the right to suspend the voting rights if any, and the services to be provided by the Association, of any member (i) for any period during which any of the Association's charges or any fines assessed under these Restrictions owed by the member remains unpaid if the Owner is more than six (6) months delinquent, (ii) during the period of any continuing violation of the restrictive covenants for Plum Creek Farms, after the existence of the violation shall have been declared by the Board of Directors of the Association; and (iii) during the period of any violation of the Articles of Incorporation, By-Laws or regulations of the Association.

ARTICLE 13
REMEDIES

Section 13.1. In General. The Association or any Owner may proceed at law or in equity to prevent the occurrence or continuation of any violation of these Restrictions, but the Association shall not be liable for damages of any kind to any person for failing wither to abide by, enforce or carry out any of these Restrictions.

Section 13.2. Delay or Failure to Enforce. 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 these Restrictions shall beheld to be a waiver by that party (or an estoppel of that party to assert) any right available to him upon the occurrence, reoccurrence or continuation of such violation or violations of these Restrictions.

ARTICLE 14
EFFECT OF BECOMING AN OWNER

Section 14.1. The Owners of any Lot subject to these Restrictions by acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from the original developer or a subsequent Owner of such Lot, shall accept such deed and execute such contract subject to each and every Restriction and agreement herein contained. By accepting of such deed or execution of such contract, the Owner acknowledges the rights and powers of the Committee, the Board of Directors and of the Association with respect to these Restrictions, and also, for themselves, their heirs, personal representatives, successors and assigns, such Owners covenant and agree and consent to and with the Committee, the Board of Directors and the Association and to and with the Owners and subsequent Owners of each of the Lots affected by these Restrictions to keep, observe, comply with and perform such Restrictions and agreements.

ARTICLE 15
TITLES

Section 15.1. The titles preceding the various Articles and Sections and sub-sections of the Restrictions are for convenience of the construction of any provisions of the Restrictions. Wherever and whenever applicable, the singular form of any word 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.

ARTICLE 16
DURATION

Section 16.1. The foregoing Covenants and Restrictions are to run with the land and shall be binding on all parties and all persons claiming under them until January 1, 2030, at which time said Covenants and Restrictions shall be automatically extended for successive periods of ten (10) years, unless changed in whole or in part by vote of those persons who are then the Owners of a majority of the numbered Lots in Plum Creek Farms.

ARTICLE 17
SEVERABILITY

Section 17.1. Every one of the Restrictions is hereby declared to be independent of, and severable from, the rest of the Restrictions and of and from every other one of the Restrictions, and of and from every combination of the Restrictions. Therefore, if any of the Restrictions 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 “running” quality of any other one of the Restrictions.

ARTICLE 18
LEASING OF LOTS

Section 18.1. Limits on the Number of Leased Lots (“Rental Cap”). In order to insure that the residents within Plum Creek Farm share the same proprietary interest in and respect of the Lots and the Common Areas, no more than six (6) of the Lots may be leased or rented to non-owner occupants at any given time, except as may be otherwise provided in this Article 18. The Lots described in Section 18.2 below shall count towards the six (6) Lot “cap”. If at any time such number of Lots are leased or rented, an Owner who wants to rent or lease his or her Lot which is not already rented shall be placed upon a waiting list by the Board of Directors. When an existing tenant moves out, the Owner of that Lot shall immediately notify the Board of Directors of such fact and that Lot cannot be re-rented until all prior Owners on the waiting list, if any, have had a chance to rent their Lots. Prior to the execution of any lease, and in addition to the requirements set forth below, the Owner must notify the Board of Directors as to that Owner's intent to lease his or her Lot. After receiving such notice, the Board of Directors shall advise the Owner if Lots may be leased or whether the maximum number of Lots within Plum Creek Farm is currently being leased. If the

maximum number of Lots is being leased, the Board of Directors shall also notify the Owner of that Owner's position on the waiting list.

Section 18.2. Effective Date of “Rental Cap” on Existing Rentals. Within thirty (30) days after the date on which this new Amended & Restated Declaration is filed in the Office of the Recorder of Hamilton County (the “Recording Date”), the Board of Directors shall provide written notice to all Owners setting forth the Recording Date. The Rental Cap provisions of Section 18.1 shall not apply to the Owner of any Lot which, as of the Recording Date, is rented or leased by its Owner to a non-owner occupant, so long as the Owner-landlord mails or otherwise delivers to the Board (at the address shown in the notice of the Recording Date), within sixty (60) days after the Recording Date, a copy of each executed lease of such Owner-landlord’s Lot (or Lots) which is in effect as of the Recording Date. Those Lots will be referred to as “Grandfathered Lots”. Such lease copies may have the rental amount deleted, together with any personal identifying information such as social security numbers. The Owners of Grandfathered Lots shall not be subject to the provisions of Section 18.1, but shall be subject to the remaining provisions of this Article 18. However, when the legal owners of record of any Grandfathered Lot sells, transfers or conveys such Lot to another Owner after the Recording Date, such Lot shall immediately become subject to Section 18.1. Any Lot that falls under the exception of this Section 18.2 shall, nevertheless, be counted as one of the six (6) maximum Lots that may be rented at any given time even though such maximum does not apply to restrict the Owner of a Grandfathered Lot.

Section 18.3. Hardship Exceptions and Waiver. Notwithstanding Section 18.1 above, if an Owner wishes to rent or lease his or her Lot, but the maximum number of Lots is currently being leased, the Owner may request the Board of Directors to waive the “rental cap” and approve a proposed lease if the Owner establishes to the Board’s satisfaction that the “rental cap” will cause undue hardship. If a majority of the entire Board of Directors approves in writing of the Owner’s request, the Board of Directors shall permit the Owner to rent or lease said Lot, subject to any further conditions or limitations imposed by the Board in the Board’s discretion, but only if the Owner satisfies all other requirements of this Article 18. Such decision shall be at the sole discretion of the Board. Examples of an undue hardship include:

- (1) death, dissolution or liquidation of an Owner;

- (2) divorce or marriage of an Owner;
- (3) necessary relocation of the residence of an Owner to a point outside of a fifty (50) mile radius of the perimeter of Plum Creek Farms due to a change of employment of at least one (1) of such Owners; and
- (4) necessary relocation of the residence of an Owner due to mental or physical infirmity or disability of at least one (1) of such Owners;

Section 18.4. General Lease Conditions. All leases 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 of Directors. No portion of any Lot other than the entire Lot shall be leased for any period. No subleasing shall be permitted. All leases shall be made expressly subject and subordinate in all respects to the terms of this Declaration, the By-Laws, Articles of Incorporation, and any rules and regulations adopted by the Board of Directors, as amended, to the same extent as if the tenant were an Owner and a member of the Association; and 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. If such provision is not in the lease, it will be deemed to be in such lease. The Owner shall supply copies of such legal documents to the tenants prior to the effective date of the lease. In addition, the Board of Directors shall have the power to adopt and communicate such additional rules and regulations as, in its discretion, may be necessary or appropriate concerning leasing. All Owners who do not reside in the home shall provide the Board of Directors with the name of the tenant(s) and any other residents living in the home.

Section 18.5. Two Year Waiting Period. In addition to all other provisions of this Article 18, for a period of at least two (2) years after an Owner's acquisition of a Lot, said Owner cannot lease such Lot. After such time, said Lot will be eligible to be leased if all other conditions of this Article 18 are satisfied and provided further that the Owner is not delinquent in the payment of any assessments or other charges to the Association. Notwithstanding this Section 18.5, if an Owner wishes to lease a Lot prior to the end of the two year waiting period, the Owner may apply to the Board of Directors for a waiver. The Board may, in writing, approve an earlier lease if the Owner establishes to the Board's satisfaction that the waiting period will cause undue hardship in the manner as defined in Section 18.3 above.

Section 18.6. Owner is Still Liable. No lease shall provide, or be interpreted or construed to provide, for a release of the Owner from his or her responsibility to the Association and the other Owners for compliance with the provisions of this Declaration, the Articles of Incorporation, the By-Laws, and any rules and regulations adopted by the Board of Directors, or from the Owner's liability to the Association for payments of assessments or any other charges.

Section 18.7. Association's Copy of Lease. A copy of each executed lease by an Owner which identifies the tenant (but which may have the rental amount deleted as well as any personal identifying information such as a social security number) shall be provided to the Board by the Owner within thirty (30) days after execution.

Section 18.8. Violations. Any lease or attempted lease of a Lot in violation of the provisions of this Article 18 shall be voidable at the election of the Association's Board of Directors or any other Plum Creek Farm Owner, except that neither party to such lease may assert this provision of this Article 18 to avoid its obligations thereunder. In the event of a violation, the Board of Directors, on behalf of the Association, or any Plum Creek Farms Owner, shall have the right to exercise any and all available remedies at law or equity. The Association shall be entitled to recover its reasonable attorneys fees, expenses and costs incurred in enforcing this Article 18.

Section 18.9. Institutional Mortgagees. The provisions set forth in this Article 18 shall not apply to any institutional mortgagee 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. However, when a Lot is sold or conveyed by such an institutional mortgagee to a subsequent purchaser, that subsequent purchaser shall be bound by the provisions of this Article 18.

Section 18.10. Burden of Proof. Anything to the contrary herein notwithstanding, if at any time a Lot is not occupied by one of the Owners thereof, there shall be a presumption that the Lot is being leased and subject to the provisions of this Article 18 and the Owners shall have the burden of proving to the satisfaction of the Board of Directors that the occupancy is not in violation of the terms of this Article 18, including but not limited to the delivery to the Board of directors of a written statement of the nature and circumstances of the

occupancy and any written document or memorandum that is the legal basis for the occupancy. For purposes of this Article 18 and this Section 18.10, any occupancy (including occupancy pursuant to a rent-to-buy contract or similar arrangement or pursuant to any option to purchase) by anyone other than an Owner shall be deemed to be a lease, rental or other similar arrangement, unless the Owner delivers to the Board of Directors a written purchase contract, conditional sales contract or similar contract whereby the occupant is unconditionally and presently legally obligated to purchase the Lot by a date certain.

Section 18.11. Certain Lots Not Counted as Rentals. The provisions of this Article 18 will not apply to any situation where a Lot is occupied by one or more family members of the Lot Owner. Thus, this kind of occupancy will not be considered a “rental”.

ARTICLE 19
AMENDMENTS

Section 19.1. Amendments. This Declaration may be amended or changed, in whole or in part, at any time upon approval by the Owners of a majority of the Lots who are in good standing. For purposes of this provision, “good standing” shall mean Owners who are no more than six (6) months delinquent on the payment of any Assessments as determined by the Board at the time of the aforesaid approval. All Owners in good standing must be given the opportunity to vote on the proposed amendment(s). Such approval for an amendment to this Declaration may be obtained:

- (a) at a meeting of the members of the Association duly called and held in accordance with the provisions of the Association’s By-Laws; or
- (b) by written consents or approvals received from the Owners; or
- (c) pursuant to any other procedure recognized under Indiana law, including those recognized under the Indiana Nonprofit Corporations Act of 1991, as amended, including, but not limited to, written mail-in ballots; or
- (d) any combination of the above.

The President and Secretary of the Association shall execute the amendment, certifying that the Owners of a majority of the Lots who are in good standing approved such amendment. Thereafter, the amendment shall be filed with the County Recorder.

