

CODE OF BY-LAWS OF
SMITH MEADOWS PROPERTY OWNERS ASSOCIATION, INC.

COMES NOW the Smith Meadows Property Owners Association, Inc. (hereinafter “Association”), by its Board of Directors, and states as follows:

WITNESSETH THAT:

WHEREAS, the residential community in Zionsville, Boone County, Indiana commonly known as Smith Meadows was established upon the recording of Plats with the Office of the Recorder for Boone County, Indiana; and

WHEREAS, the Plats for Smith Meadows were originally subject to a Declaration of Covenants, Conditions and Restrictions on file in the Office of the Recorder of Boone County, Indiana on September 5, 1997; and

WHEREAS, the Association’s Board of Directors (while under the developer’s control) never adopted a Code of By-Laws for the Association and the homeowners within Smith Meadows; and

WHEREAS, it is deemed desirable for the Association to adopt a Code of By-Laws for the benefit of the current and future homeowners as well as the current and future Boards of Directors of the Association.

WHEREFORE, the following Code of By-Laws for Smith Meadows Property Owners Association, Inc. is hereby approved and adopted by the Board of Directors of the Association, after being approved by the homeowner members present in person and by proxy at a special meeting held on _____, 2013, and are effective as of the date of adoption.

CODE OF BY-LAWS OF
SMITH MEADOWS PROPERTY OWNERS ASSOCIATION, INC.

ARTICLE I

NAME

Section 1.1. Name. The name of this Association is Smith Meadows Property Owners Association, Inc. (hereinafter referred to as “Association”). The Association is an Indiana nonprofit corporation.

ARTICLE II

IDENTIFICATION & APPLICABILITY

Section 2.1. Identification and Adoption. The provisions of these By-Laws shall apply to the Smith Meadows Subdivision and the administration and conduct of the affairs of the Association. These By-Laws shall also constitute the By-Laws of the Association.

Section 2.2. Individual Application. Each of the Owners within the Smith Meadows subdivision shall automatically and mandatorily be Members in the Association and be entitled to all of the privileges and subject to all of the obligations thereof. All Owners, by their acceptance of their respective deeds to their Lots, covenant and agree to be bound by the conditions, restrictions, and obligations contained in the Declaration of Covenants, Conditions & Restrictions of Smith Meadows Subdivision, said Declaration being recorded in the Boone County Recorder’s Office on September 5, 1997, as Instrument No. 9708510 (hereafter, “Declaration”), together with all amendments or supplements thereto, the rules and regulations of the Association and of the provisions hereof. All of the Owners, future Owners, tenants, future tenants, their guests and invitees, or any other person who might now or hereafter use or occupy a Lot or any part of the common areas shall be subject to the rules, restrictions, terms, and conditions set forth in the Declaration and these By-Laws, all as the same may be amended from time to time, and to any rules and regulations adopted by the Board of Directors as herein provided. The Declaration is incorporated herein by reference. All of the covenants, rights, restrictions, and liabilities contained in the Declaration shall apply to and govern the interpretation of these By-Laws. The definitions and terms, as defined and used in the Declaration, shall have the same meaning in these By-Laws, and reference is specifically made to Article I of the Declaration containing definitions for terms, unless otherwise indicated herein. As used herein, “Member” has the same meaning as “Owner” as used in the Declaration.

ARTICLE III

MEETINGS OF ASSOCIATION

Section 3.1. Purpose of Meetings. At least annually, and at such other times as may be necessary or appropriate, a meeting of the Members shall be held for the purpose of electing the Board of Directors, approving the annual budget, and for such other purposes as may be required by the Declaration or these By-Laws.

Section 3.2. Annual Meeting. The annual meeting for the Members of the Association shall be held in the month of September or October of each year, with the specific date, time and place to be determined by the Board of Directors. At each annual meeting, the Members shall approve the next year's budget, elect the Board of Directors of the Association in accordance with the provisions of these By-Laws and transact such other business as may properly come before the meeting.

Section 3.3. Special Meetings. A special meeting of the Members of the Association may be called by the President, by resolution of the Board of Directors or upon a written petition of the Owners of not less than ten (10) of the Lots. The resolution or petition shall be presented to the President or Secretary of the Association and shall state the purpose for which the meeting is to be called. No business shall be transacted at a special meeting except as stated in the petition or resolution.

Section 3.4. Notice and Place of Meetings. All meetings of the Members of the Association shall be held at any suitable place in the Zionsville area of Boone County, Indiana, as may be designated by the Board of Directors. Written notice stating the date, time, and place of any meeting, and in the case of a special meeting the purpose or purposes for which the meeting is called, shall be delivered or mailed by the Secretary or another member of the Board of Directors of the Association to each Member entitled to vote thereat not less than fourteen (14) days prior to the date of such meeting. Any written notice delivered to the Members as part of a newsletter or other publication regularly sent to the Members constitutes a written notice. If at any meeting an amendment to the Declaration or these By-Laws is to be considered, the notice of such meeting shall describe the nature of such proposed amendment. All notices shall be mailed by first-class U.S. Mail, postage prepaid, or delivered to the Members at their respective addresses as the same shall appear upon the records of the Association. If an annual or special meeting of Members is adjourned to a different date, time or place, written notice is not required to be given of the new date, time or place so long as the new date, time and place is announced at the meeting before adjournment.

In lieu of written notices from the Association sent pursuant to the above paragraph, an Owner may elect to receive notices from the Association by electronic means. Any Owner choosing electronic means shall be deemed to have waived the right to receive notices from the Association by U.S. Mail or personal delivery. However, any such Owner shall have the right at any time to withdraw his or her election to receive notice by electronic means, and shall thereafter be sent notices by the Association pursuant to the above paragraph.

Section 3.5. Voting.

(a) Number of Votes. Each Member shall be entitled to cast one (1) vote for each Lot of which such Member is the Owner. In voting for Directors, each Owner (or his or her representative) shall be entitled to cast one (1) vote for each directorship being filled at that meeting, and the candidate(s) receiving the highest number of votes shall fill the available directorship(s); provided that no Owner shall be allowed to accumulate his or her votes. Plurality voting shall be permitted such that at a meeting, if a quorum exists, action on a matter is approved if the votes cast in favor of the action exceed the votes opposing the action.

(b) Multiple Owners. When more than one (1) person or entity constitutes the Owner of a particular Lot, all such persons or entities shall be Members of the Association, but all of such persons or entities shall have only one (1) vote for such Lot, which vote shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any such Lot.

(c) Voting by Corporation or Trust. Where a corporation or trust is an Owner or is otherwise entitled to vote, the trustees may cast the vote on behalf of the trust, and the agent or other representative of the corporation duly empowered by the board of directors of such corporation shall cast the vote to which the corporation is entitled. The secretary of such corporation or a trustee of such trust so entitled to vote shall deliver or cause to be delivered prior to the commencement of the meeting a certificate signed by such person to the Secretary of the Association stating who is authorized to vote on behalf of said corporation or trust.

(d) Proxy. An Owner may vote either in person or by his or her duly authorized and designated attorney-in-fact. Where voting is by proxy, the Owner shall duly designate his attorney-in-fact in writing, delivered to the Secretary or some other member of the Board of Directors of the Association prior to the commencement of the meeting.

(e) Quorum. Except where otherwise expressly provided in the Declaration or these By-Laws, the presence of Owners or their duly authorized representatives owning at least twenty-five percent (25%) of the total number of Lots shall constitute a quorum at all meetings. Unless otherwise required herein or by the Act, the Owners at a meeting at which a quorum is initially present may continue to do business until adjournment, notwithstanding the withdrawal of enough Owners to leave less than a quorum. As used elsewhere in these By-Laws, the term "Majority of Owners" shall mean, unless otherwise expressly indicated, more than fifty percent (50%) of the total number of Lots, and the term "Majority of the Vote" shall mean a majority of the votes of the Owners present or represented at a meeting at which a quorum is present.

Section 3.6. Conduct of Annual Meeting. The Chairman of the annual meeting shall be the President of the Association. The President shall call the meeting to order at the duly designated time, and business will be conducted in the following order:

(1) Reading of Minutes. The Secretary shall read the minutes of the last annual meeting and the minutes of any regular or special meeting of the Members held subsequent thereto, unless such reading is waived by a Majority of the Vote as defined in Section 3.5(e) hereof.

(2) Treasurer's Report. The Treasurer shall report to the Members concerning the financial condition of the Association and answer relevant questions of the Members concerning the common expenses and financial report for the prior year and the proposed budget for the next calendar year.

(3) Budget. The proposed budget for the following calendar year shall be presented to the Members for approval or amendment, as more fully described in the Declaration.

(4) Election of Board of Directors. Nominations for the Board of Directors may be made by a Member from those persons eligible to serve. Nominations for the Board of Directors can be made before or during the annual meeting. Voting for the Board of Directors will be by voice vote, unless a majority of those in attendance choose to vote by paper ballot. The ballot shall contain the name of each person nominated to serve as a Board member. Each Member may cast the total number of votes to which he or she is entitled for as many nominees as are to be elected; however, no Member shall be entitled to accumulate his or her votes. Those persons receiving the highest number of votes shall be elected.

(5) Other Business. Other business may be brought before the meeting..

(6) Committee Reports. Reports of committees designated to supervise and advise on the respective segments of maintenance and operations prescribed in the Declaration or assigned by the Board of Directors shall be presented.

(7) Adjournment. Upon completion of all business before the Association, the President, upon the motion of any Member, may adjourn the meeting; provided, however, that no annual meeting shall be adjourned until a budget is approved by the Owners for the upcoming year.

Section 3.7. Conduct of Special Meeting. The President of the Association shall act as Chairman of any special meetings of the Association. The Chairman shall call the meeting to order at the duly designated time and the only business to be considered at such meeting shall be in consideration of the matters for which such meeting was called, as set forth in the notice of such special meeting.

Section 3.8. Written Ballots. In lieu of any annual or special meeting of the Members, written ballots, including by electronic means, may be utilized in the manner prescribed in the Indiana Nonprofit Corporations Act.

ARTICLE IV

BOARD OF DIRECTORS

Section 4.1. Board of Directors. The affairs of the Association shall be governed and managed by the Board of Directors (herein sometimes collectively called “Board” and individually called “Directors”). The Board of Directors shall be composed of three (3) or five (5) persons who each own at least one (1) Lot, with the exact number to be decided by vote of the Owners at each annual meeting. In no event shall the number of Directors be less than three (3) nor more than five (5).

Section 4.2. Additional Qualifications. Where an Owner consists of more than one person or is a partnership, corporation, trust or other legal entity, then one of the persons constituting the multiple Owner, or a partner or an officer or trustee shall be eligible to serve on the Board of Directors, except that no single Lot may be represented on the Board of Directors by more than one person at a time.

Section 4.3. Term of Office and Vacancy. All members of the Board of Directors shall be elected at each annual meeting of the Association. Each Director shall serve a term of one (1) year. Any vacancy or vacancies occurring in the Board caused by a death, resignation, or otherwise other than a vacancy created by removal, shall be filled until the next annual meeting of the Members through a vote of a majority of the remaining Directors. Despite the expiration of a Director’s term, the Director continues to serve until a successor is appointed or elected and qualified.

Section 4.4. Removal of Directors. A Director or Directors elected by the Owners, or elected by the Directors to fill a vacancy, may be removed by the Owners with or without cause if the number of votes cast to remove would be sufficient to elect the Director(s) at a meeting to elect Directors. A Director or Directors may be so removed by the Owners only at a meeting called for the purpose of removing the Director(s). The meeting notice must state that the purpose of the meeting is for voting upon the removal of the Director(s). In such case, his or their successor(s) shall be elected at the same meeting from eligible Owners nominated at the meeting to serve for the remainder of the term(s) of the removed Director(s).

Section 4.5. Duties of the Board of Directors. The Board of Directors shall perform or cause to be performed, when and to the extent deemed necessary or appropriate in the Board’s business judgment, the following:

- (a) Protection, repair and replacement of the common areas, unless the same are otherwise the responsibility or duty of the Owners;
- (b) Procuring of utilities and the removal of garbage and waste if not provided by the municipality pertaining to the common areas;

- (c) Assessment and collection from the Owners of the Owners' pro-rata share of the Common Expenses;
- (d) Preparation of the proposed annual budget, a copy of which will be mailed or delivered to each Owner at the same time the notice of annual meeting is mailed or delivered;
- (e) Preparing annually a full accounting of all revenue and expenses incurred during each year, which accounting shall be delivered to any Owner upon request;
- (f) Keeping a current, accurate, and detailed record of receipts and expenditures affecting the common areas, specifying and itemizing the Common Expenses; all records and vouchers shall be available for examination by an Owner at any time during normal business hours;
- (g) Procuring and maintaining in force all insurance coverage required by the Declaration;
- (h) Performing such other duties as may be reasonably inferred from the provisions of the Declaration.

Section 4.6. Powers of the Board of Directors. The Board of Directors shall have such powers as are reasonably necessary or appropriate to accomplish the performance of its duties. These powers include, but are not limited to, the power:

- (a) To employ a reputable and recognized professional managing agent or real estate management company (either being hereinafter referred to as "Managing Agent") to assist the Board in performing its duties; provided, however, any management agreement shall be terminable with or without cause upon thirty (30) days written notice, and any such agreement may not exceed one (1) year, renewable by agreement of the parties for successive one (1) year periods;
- (b) To purchase for the benefit of the Owners such equipment, materials, labor, and services as may be necessary in the judgment of the Board of Directors;
- (c) To procure for the benefit of the Owners fire and extended coverage insurance covering the common areas to the full insurable value thereof, to procure public liability and property damage insurance and Worker's Compensation Insurance, if necessary, and to procure all such other insurance as is required or permitted under the Declaration, for the benefit of the Owners, and the Association;
- (d) To employ legal counsel, architects, engineers, contractors, accountants, and others as in the judgment of the Board of Directors may be necessary or desirable in connection with the business and affairs of the Association;

(e) To employ, designate, discharge and remove such personnel as in the judgment of the Board of Directors may be necessary for the maintenance, upkeep, repair and replacement of the Common Areas;

(f) To include the costs of all of the above and foregoing as Common Expenses of the Association and to pay all of such costs therefrom;

(g) To open and maintain a bank account or accounts in the name of the Association and to designate the signatories thereto;

(h) To adopt, revise, amend, and alter from time to time reasonable rules and regulations with respect to use, occupancy, operation, and enjoyment of the Smith Meadows Subdivision provided that the Board shall give advance written notice to the Owners of such rules and any revision, amendment, or alteration thereof;

(i) To determine the due date of assessments.

Section 4.7. Compensation. No Director or Officer shall receive any compensation for his or her services as such except to such extent as may be expressly authorized by a Majority of Owners as defined in Section 3.5(e) hereof.

Section 4.8. Meetings and Notice. Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by a majority of Directors. No written or verbal notice need be given to Directors for regularly scheduled Board meetings of which the Directors are already aware. Special meetings of the Board may be called by the President or any other member of the Board. The person or persons calling such meeting shall give written notice thereof to the Secretary, who shall either personally or by mail and at least three (3) days prior to the date of such special meeting, give notice to the Board members. The notice of the meeting shall contain a statement of the purpose for which the meeting is called. Such meeting shall be held at such place as shall be designated in the notice. A Director may conduct or participate in a regular or special meeting of the Board of Directors through the use of conference telephone or any means of communication by which all Directors participating may simultaneously hear each other during the meeting. A Director participating in a meeting by this means is considered to be present in person at the meeting.

In lieu of written notices from the Association sent pursuant to the above paragraph, a Director may elect to receive notices of Board meetings by electronic means. Any Director choosing electronic means shall be deemed to have waived the right to receive notices from the Association by U.S. Mail or personal delivery. However, any such Director shall have the right at any time to withdraw his or her election to receive notice by electronic means, and shall thereafter be sent notices by the Association pursuant to the above paragraph.

Section 4.9. Waiver of Notice. Before or after any meeting of the Board, any Director may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. The presence of any Director at a meeting shall, as to such Director, constitute a waiver of notice of the time, place, and purpose thereof. If all Directors are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting.

Section 4.10. Quorum. At all meetings of the Board, a majority of the Directors shall constitute a quorum for the transaction of business and the votes of the majority of the Directors present at a meeting at which a quorum is present shall be the decision of the Board.

Section 4.11. Bond. The Board of Directors may require the Managing Agent, Treasurer and such other officers as the Board deems necessary to provide surety bonds, indemnifying the Association against larceny, theft, embezzlement, forgery, misappropriation, wrongful abstraction, willful misapplication, and other acts of fraud or dishonesty, in such sums and with such sureties as may be approved by the Board of Directors and any such bond shall specifically include protection for any insurance proceeds received for any reason by the Board. The expense of any such bond shall be a Common Expense.

Section 4.12. Informal Action by Directors. Any action required or permitted to be taken at any meeting of the Board of Directors may be taken without a meeting, if prior to such action a written consent to such action is signed by all members of the Board and such written consent is filed with the minutes of proceedings of the Board or committee.

Section 4.13. Standards of Conduct and Liability of Directors and Officers. The standard and duty of conduct for and the standard or requirements for liability of the Directors and Officers of the Association shall be the same as set forth for directors and officers of corporations established under the Indiana Nonprofit Corporations Act.

ARTICLE V

OFFICERS

Section 5.1. Officers of the Corporation. The principal officers of the Association shall be the President, Secretary, and Treasurer, all of whom shall be elected by the Board. The Directors may appoint an Assistant Treasurer and an Assistant Secretary and such other officers as in their judgment may be necessary.

Section 5.2. Election of Officers. The officers of the Association shall be elected annually by the Board at the first meeting of the Board following each election thereof. Each officer shall hold office for one (1) year or until his successor shall have been duly elected and qualified, unless earlier removed by the Board of Directors. Upon recommendation of a majority of all members of the Board or upon an affirmative vote of a Majority of Owners (as defined in Section 3.5(e) hereof), any officer may be removed either with or without cause and his or her successor elected at any regular meeting of the Board or at any special meeting of the Board called for such purpose.

Section 5.3. The President. The President shall be elected from among the Directors and shall be the chief executive officer of the Association. The President shall preside at all meetings of the Association and of the Board, shall have and discharge all the general powers and duties usually vested in the office of the president or chief executive officer of a nonprofit corporation organized under the laws of Indiana, including, but not limited to, the power to appoint committees from among the Owners as he or she may deem necessary to assist in the affairs of the Association and to perform such other duties as the Board may from time to time prescribe.

Section 5.4. The Secretary. The Secretary shall be elected from among the Directors. The Secretary shall attend all meetings of the Association and of the Board and shall keep or cause to be kept a true and complete record of proceedings of such meetings, shall authenticate the Association's records, shall perform all other duties incident to the office of the Secretary, and such other duties as from time to time may be prescribed by the Board. The Secretary shall specifically see that all notices of the Association or the Board are duly given, mailed or delivered, in accordance with the provisions of these By-Laws.

Section 5.5. The Treasurer. The Board shall elect from among the Directors a Treasurer who shall maintain a correct and complete record of account showing accurately at all times the financial condition of the Association and such other duties incident to the office of Treasurer. The Treasurer shall be legal custodian of all monies, notes, securities, and other valuables which may from time to time come into possession of the Association. He or she shall immediately deposit all funds of the Association coming into his or her hands in some reliable bank or other depository to be designated by the Board and shall keep such bank account in the name and for the exclusive benefit of the Association. The Treasurer may permit the Managing Agent, if any, to handle and account for monies and other assets of the Association to the extent appropriate as part of its duties.

Section 5.6. Assistant Officers. The Board of Directors may from time to time designate and elect from among the Owners an Assistant Secretary and Assistant Treasurer, who shall have such powers and duties as the Officers whom they are elected to assist and shall delegate to them such other powers and duties as these By-Laws or the Board of Directors may prescribe.

ARTICLE VI

INDEMNIFICATION

Section 6.1. Indemnification of Directors and Officers. Every person (and the heirs and personal representatives of such person) who is or was a director or officer of the Association shall be indemnified by the Association to the same and fullest extent that directors and officers of Indiana nonprofit corporations are indemnified under the Indiana Nonprofit Corporation Act of 1991, as it now exists or as hereinafter amended.

ARTICLE VII

MISCELLANEOUS

Section 7.1. Fiscal Year. The fiscal year of the Association shall be the calendar year.

Section 7.2. Personal Interests. Except as permitted under Section 4.8 hereof, no Member of the Association shall have or receive any earnings from the Association; provided, however, that a Member who is an officer, director, employee, or agent of the Association may be reimbursed for expenses incurred on the Association's behalf.

ARTICLE VIII

AMENDMENT TO BY-LAWS

Section 8.1. Amendment. These By-Laws may be amended by a Majority of the Vote as defined in Section 3.5(e) hereof in a duly constituted meeting called for such purpose, except as prohibited by any provision of the Declaration, as it may be amended from time to time.

This instrument prepared by P. Thomas Murray, Jr., Attorney at Law, Eads Murray & Pugh, P.C., 9515 E. 59th Street, Suite B, Indianapolis, IN 46216. (317) 536-2565.

33
+ 75.00
cross
P. Thomas Murray, JR.

201400000374
Filed for Record in
BOONE COUNTY, INDIANA
NICOLE K. (NIKKI) BALDWIN, RECORDER
01-13-2014 At 01:02 pm.
COVENANTS 76.00

Cross References: Instrument No. 9708150; Instrument No. 9708321

**AMENDED AND RESTATED DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS FOR SMITH MEADOWS**

This Amended and Restated Declaration of Covenants, Conditions and Restrictions for Smith Meadows was made as of the date set forth below.

WITNESS THAT the following facts are true:

The Smith Meadows subdivision located in Boone County, Indiana was established by a certain "Declaration of Covenants, Conditions and Restrictions of Smith Meadows Subdivision" which was recorded on September 5, 1997, as Instrument No. 9708150 in the Office of the Recorder of Boone 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 Boone County, Indiana established a total of fifty-eight (58) residential Lots, and Common Area, comprising the Smith Meadows subdivision in accordance with the Declaration; and

Section 8.08 of the Original Declaration states that its covenants, conditions and restrictions may be amended upon approval in writing by a vote of at least sixty percent (60%) of all members of the Smith Meadows Property Owners Association ("Association"); and

A Special Meeting of the lot owners and the Association was held on November 10, 2013; and

The purpose of said Special Meeting as stated in the notice for the meeting was for the Association's members to discuss the following Amended and Restated Declaration, as well as the adoption of a Code of By-Laws for the Association and the incorporation of the Association; and

At said Special Meeting, and subsequent to the meeting, the owners of at least sixty percent (60%) of the lots gave their written approval to this Amended and Restated Declaration pursuant to the terms below, and also authorized the Board of Directors of the Smith Meadows Property Owners Association to incorporate said Association as an Indiana nonprofit corporation; and

The owners of said lots desire to amend certain provisions of the Original Declaration and to restate the same for the convenience of the Owners such that this Amended and Restated Declaration of Covenants, Conditions and Restrictions for Smith Meadows 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 Boone County Recorder's Office, the Original Declaration shall no longer be in effect and shall be replaced by the following.

The Original Declaration contained exhibits. For historical purposes, these various exhibits 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 Boone 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 at least sixty percent (60%) of the lots in Smith Meadows hereby amend and restate the Original Declaration such that all of the platted dwellings, Lots and lands located within Smith Meadows 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 Smith Meadows. 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 is applicable to all Owners and residents within Smith Meadows is hereby amended and restated as follows:

Table of Contents

ARTICLE I	Definitions.....	3
ARTICLE II	Character of Lots.....	5
ARTICLE III	Architectural Review Board (ARB).....	5
ARTICLE IV	Association and Assessments.....	10
ARTICLE V	Lot Development.....	15
ARTICLE VI	Use and Maintenance of Lots.....	21
ARTICLE VII	Easements.....	25
ARTICLE VIII	General	26
ARTICLE IX	Leasing Restrictions	29

ARTICLE I

Definitions

Section 1.01. "Declaration" shall mean this instrument, together with any amendments or changes hereto which are hereafter made and evidenced as herein required.

Section 1.02. "Lot" shall mean and refer to each plot of land shown on the recorded subdivision plats, with the exception of the Common Area, upon which one dwelling unit may be constructed.

Section 1.03. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, their respective heirs, beneficiaries, successors, assigns and personal and legal representatives, of the legal title to any Lot, including contract sellers, but excluding those having such interests merely as security for the performance of an obligation.

Section 1.04. "Driveway" shall mean that portion of any Lot developed and hard surfaced for the purpose of permitting ingress and egress to and from such Lot from any public road.

Section 1.05. "ARB" or "Architectural Review Board" shall mean and refer to a panel composed of no less than one board member (Chair) and two additional members. The Board can act as the ARB.

Section 1.06. "Association" shall mean and refer to the Smith Meadows Property Owners Association, Inc., an Indiana nonprofit corporation, and its successors and assigns.

Section 1.07. "Subdivision" shall mean the Real Estate as divided into Lots, identified as the plat of Smith Meadows Subdivision, and any subsequent plat amendment recorded thereto.

Section 1.08. "Maintenance Costs" shall mean all of the costs necessary to keep the facility or improvements which the Association has determined is for the common good, operational and in good condition, including but not limited to (i) the costs for all upkeep, maintenance, repair or replacement of all or any part thereof, (ii) payment of all insurance premiums and taxes imposed thereon and on the underlying easement or right-of-way, and any other expense related to the continuous operation thereof and (iii) costs associated with the operation of the Association or incurred in connection with the enforcement of the terms and provisions of this Declaration.

Section 1.09. "Common Area" shall mean all real property (including any improvements thereto) owned by the Association for the common use and enjoyment of the Owners, which property includes pond areas in the Subdivision.

Section 1.10. "Board" or "Board of Directors" shall mean and refer to the Board of Directors of the Association.

ARTICLE II

Character of Lots

Section 2.01. In General: Every Lot or group of Lots referred to in these covenants shall be used exclusively for single family residential purposes.

Section 2.02. Improvement and Development of Lots: No Lot shall be further divided to create any additional tract upon which a single family residence and improvements otherwise permitted hereunder may be constructed, nor shall any improvements be made thereto or construction commence, proceed or continue thereon, except in strict accordance with the terms and provisions of this Declaration. Not more than one (1) single family dwelling house, together with attached garage and such related recreational facilities as may be permitted by this Declaration shall be constructed, altered, placed or permitted to remain on any Lot referred to by the covenants. In the event of multiple Lot ownership, no single family dwelling house shall be constructed on or across a portion of more than one (1) Lot without the express written consent of the Association herein.

Section 2.03. Occupancy or Residential Use of Partially Completed Dwelling House Prohibited: No dwelling house constructed on a Lot shall be occupied or used for residential purposes for human habitation until it has been substantially completed. The determination of whether a dwelling house has been "substantially completed" shall be made by the Zionsville Building Inspector, and such decision shall be binding on all parties affected thereby.

ARTICLE III

Architectural Review Board (ARB)

Section 3.01. Creation: The Architectural Review Board (ARB) shall be a standing committee of the Association, consisting of a minimum of three (3) persons, appointed by the majority vote of the Board of Directors. The persons appointed by the Board to the ARB shall consist of Owners of Lots and may, but need not be, members of the Board of

Directors. The exception to this is that the Chair of the Architectural Review Board must be a Board member. The Board may at any time remove any member of the Architectural Review Board upon a majority vote by the members of the Board of Directors. At the Board's discretion, the Board may serve as the Architectural Review Board.

Section 3.02. Purposes and Power of Architectural Review Board: The ARB shall review and approve the design, appearance and location of all residences, structures or any other improvements, including alterations, repairs, change of colors, excavations, changes in grade or other work that in any way alters any Lot or the exterior of the improvements located thereon, placed or modified by any person on any Lot, in such a manner as to preserve the value and desirability of the Real Estate and the harmonious relationship among Residence Units and the natural vegetation and topography.

- (i) In General. Any addition or improvement requiring a building permit from the Town of Zionsville must be approved by the ARB. In addition, no residence, building, structure, antenna, walkway, fence, deck, pool*, tennis court, basketball goal, wall, patio or other improvement (e.g. paint color, siding) of any type or kind shall be erected, constructed, placed or modified, changed or altered on any Lot without the prior written approval of the Architectural Review Board. Such approval shall be obtained only after written application has been made to the ARB by the Owner of the Lot requesting authorization from the ARB. Such written application shall be in the manner and form prescribed from time to time by the Architectural Review Board and, in the case of construction or placement of any improvement, shall be accompanied by two (2) complete sets of plans and specifications for the proposed improvements. Such plans shall include plot plans showing the location of all improvements existing upon the Lot and the location of the improvement 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, estimated completion time, and any proposed landscaping, together with any other material or information which the ARB may reasonably require. The design or color scheme of a proposed improvement must be in harmony with the general surroundings of the Lot or with adjacent buildings or structures, including trim, siding, roof, and brick colors. Unless otherwise permitted by the Architectural Review Board, plot plans shall be prepared by a registered land surveyor, engineer or architect. Compliance with these covenants in no way relieves the property owner of compliance with all ordinances and zoning regulations of the Town of Zionsville and the Zionsville Plan Commission.

*No above-ground swimming pools shall be permitted in the Subdivision. Temporary "kiddie" (less than two (2) feet deep) pools are acceptable based on the discretion of the Architectural Review Board (including taking the pool down upon the request of the ARB). All other pools must receive prior approval from the ARB.

Such approval shall be in addition to, and not in lieu of, all approvals, consents, permits and/or variances required by law from governmental authorities having jurisdiction over Smith Meadows Subdivision, and no Owner shall undertake any construction activity within Smith Meadows Subdivision unless all legal requirements have been satisfied. Each Owner shall complete all improvements to a Lot strictly in accordance with the application approved by the ARB.

- (ii) Power of Disapproval. The Architectural Review Board may refuse to approve any application (a "Requested Change") made to it when:
 - (a) The plans, specifications, drawings or other materials submitted are inadequate or incomplete, or show the Requested Change to be in

violation of any of the terms of this Declaration applicable to any part of Smith Meadows;

- (b) The design or color scheme of a Requested Change is not in harmony with the general surroundings of the Lot or with the adjacent homes or Lots or related improvements; or
- (c) The Requested Change in the opinion of the ARB would not preserve or enhance the value and desirability of the Smith Meadows Subdivision or would otherwise be contrary to the interests, welfare or rights of the Association or any other Smith Meadows Owner.

In disapproving any application, the ARB shall furnish the applicant with specific reasons for such disapproval and may suggest modifications in such plan which would render the plan acceptable to the ARB if resubmitted.

- (iii) Restoration in Accordance with Original Plans. Any restoration or repair of the exterior of a Home, after a partial condemnation or damage due to fire or other casualty, shall be performed substantially in accordance with the Declaration and the original plans and specifications for the same, unless other action is approved by the Architectural Review Board.
- (iv) Rules and Regulations. The Architectural Review Board, from time to time, may promulgate, amend or modify additional rules and regulations or building policies or procedures as it may deem necessary or desirable to guide Owners as to the requirements of the ARB for the submission and approval of Requested Changes. Any such guideline or standard may be appealed to the Smith Meadows Board of Directors which may terminate or modify such guideline or standard by a two-thirds (2/3) vote of the Directors then serving.

Section 3.03. Duties of Architectural Review Board: The Requested Change must be submitted to the ARB prior to the start of the project, and the ARB shall approve or disapprove proposed improvements within thirty (30) days after all required information has been submitted and actually received by the Architectural Review Board. One copy of the submitted material shall be retained by the Architectural Review Board for its permanent files.

Section 3.04. Liability of the Architectural Review Board: Neither the ARB, the Association, the Board of Directors, nor any agent or member of any of the foregoing, 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 in connection with a Requested Change or for any decision made by it unless made in bad faith or by willful misconduct.

Section 3.05. Inspection: The Architectural Review Board or its designee may, but shall not be required to, inspect work being performed to assure compliance with this Declaration and the materials submitted to it pursuant to this section and may require any work not consistent with an approved Requested Change, or not approved, to be stopped and removed at the offending Owner's expense.

Section 3.06. Mediation: The Smith Meadows Board of Directors shall act as a mediator between the Architectural Review Board and the Owner when necessary. All questions/issues regarding a ARB ruling on a Requested Change should be provided to the Smith Meadows Board of Directors for review and will then be forwarded on (within 10 days) with the comments of support or suggested denial by the Board to the Architectural Review Board. The ARB will make the final decision on the Requested Change.

ARTICLE IV

Association and Assessments

Section 4.01. Association: In order to provide for the continuing maintenance and administration of the Subdivision, there is hereby established an association of Owners of Lots in Smith Meadows Subdivision called Smith Meadows Property Owners Association ("Association"). The Association shall be comprised of and limited in members to the Owners from time to time of the several Lots within the Subdivision. Membership in the Association shall commence immediately upon becoming an Owner and continue for so long as ownership of a Lot or Lots continues. At such time as an Owner conveys title and ceases to be an Owner, membership in the Association shall terminate. A new Owner of a Lot shall automatically become a member. Although an Owner need not participate in the administration of the Subdivision, all Owners and the ownership of any Lot or Lots shall be subject to any and all rules and regulations duly established by the Association (as well as being subject to the terms and provisions of this Declaration) and shall be liable for the payment of all assessments levied by the Association. The Association may assign or otherwise transfer its rights, responsibilities and duties under this Declaration to any legal entity which may be formed as a successor thereof. Any such assignment or transfer shall be in writing and shall be effective when written evidence thereof is duly recorded with reference to this Declaration in the office of the Recorder of Boone County, Indiana.

Section 4.02. Rights and Duties of the Association: The Association shall be responsible for the following:

- (a) The landscaping, maintenance and upkeep of the fencing installed within the areas shown on the plat and contained within the drainage and utility easements ("DE" and "UE") as well as all other common areas shown on the plat. The Association shall also be responsible for maintenance and upkeep of the signage for Smith Meadows located within the drainage and utility easement at the entrances of the Subdivision. The Association shall also be responsible for

maintenance and upkeep of the retention lakes shown as "Common Area" on the plat.

(b) Procuring of utilities used in connection with the Lots, single family residences and common areas to the extent the same are not provided and billed directly to Owners of Lots by utility companies. Further, it shall be the responsibility of the Association, unless the Town of Zionsville provides such services, to provide for common snow removal throughout the Subdivision and bill the members accordingly.

(c) Payment of insurance (if any may be required under other sections to this declaration).

(d) Determination of general and special assessments levied against the Owners.

(e) Promulgation and enforcement of the rules and regulations in this Declaration or as otherwise - duly promulgated by the Owners.

(f) Unless trash pick up is provided by the Town of Zionsville, arrange for the common pick up and removal of garbage and waste so as to assure that one waste hauler will be utilized to serve the Subdivision.

(g) Exercise of the powers vested in the Association by this Declaration or by Articles of Incorporation and Bylaws of any successor corporation thereto.

Section 4.03. Meetings of the Association and Voting Rights: Business of the Association shall be conducted at meetings of this Association. Meetings of the Association may be called by the then current Chairman or Secretary-Treasurer of the Association or upon request of the Owner(s) of at least ten (10) Lots. Written notice of any meeting of the Lot Owners shall be personally delivered or mailed by first class United States mail by the Secretary-Treasurer to all Owners at least fourteen (14) days

prior to any proposed meeting. Members shall be all Owners of Lots in the Subdivision. Each member shall be entitled to one (1) vote for each Lot of which such member is the Owner with respect to each matter submitted to a vote of members upon which the members are entitled to vote. When more than one (1) Person constitutes the Owner of a particular Lot, all such Persons shall be members of the Association, but all of such Persons shall have only one (1) vote for such Lot, which vote shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any such Lot.

Section 4.04. Assessments: The Association shall have the power to levy uniform, general and special assessments against each Owner and each Lot, without regard to the size thereof relative to any other Lot in the Subdivision.

Section 4.05. Creation of a Lien and Personal Obligation of Assessments: Each Owner of each Lot by acceptance of a deed thereto, whether or not it shall be so expressed in such deed, is deemed to covenant and agree, to pay to the Association general and special assessments, such assessments to be established and collected as provided in this Article. Until paid in full, an assessment not paid when due, together with late fees (in an amount to be determined by the Board of Directors) and costs of collection (including reasonable attorneys' fees and court costs) shall be a continuing lien upon the Lot against which such assessment is made. Each assessment, together with late fees and costs of collection as aforesaid, shall also become and remain, until paid in full, the personal obligation of the one or more persons or entities in ownership of the Lot at the time when the assessment first became due and payable. If any Owner fails, refuses or neglects to make payment of an assessment when due, the lien for such assessment on such Owner's Lot may, at any time following notice thereof by first class United States mail of the amount thereof to an Owner and the expiration of ten (10) days from the date such notice is sent, be foreclosed by the Association in the same manner in which a Mechanic's Lien is foreclosed from time to time under Indiana law, or in any other manner otherwise from time to time permissible or provided by law. The Association may, at its option, bring a suit against the Owner (and if more than one, either jointly or

severally) to recover a money judgment for any unpaid assessment without foreclosing the lien for such assessment or waiving the lien securing the same. In any action to recover an assessment, whether by foreclosure or otherwise, the Association shall be entitled to recover late fees as aforesaid and the costs and expenses of such action, including, but not limited to, reasonable attorneys' fees and court costs.

Section 4.06. Purpose of Assessment: General or special assessments levied by the Association shall be used exclusively to exercise those powers and advance those purposes for which the Association has been formed by this Declaration.

Section 4.07. Basis for Assessment: Except as provided in Section 4.09 hereof, general or special assessments levied by the Association shall be assessed uniformly against each Lot (and the Owner(s) thereof), regardless of whether any such Lot is improved or unimproved and without regard to the type of improvements constructed on any Lot, or the extent of use of the facilities and improvements for which any assessment, general or specified, is made.

Section 4.08. Annual Meeting, Adoption of Budget and General Assessment: In either September or October of each year, the Association shall hold an annual meeting with notice to all Owners in the manner required by 4.03 of this Declaration. At the annual meeting, the Owners shall elect the Board of Directors of the Association to coordinate and handle the day to day affairs of the Association and shall adopt a proposed annual budget. Following approval of the budget, the Board of Directors shall fix a uniform general assessment against each Lot (and the Owner(s) thereof) in an amount necessary to defray the expenses and obligations budgeted, together with an amount, if any, approved by the Owners to permit establishment of and/or contribution into a reserve account in order to defray anticipated future capital expenditures. Notice of the uniform general assessment shall be sent by the Secretary-Treasurer to each Lot Owner as soon as practicable following the annual meeting. The general assessment shall be paid in full to the Secretary- Treasurer of the Association by the due date set by the Board. Upon receipt of payment, the Secretary-Treasurer shall deposit the amount involved in an

account opened and maintained in the name of the Association at a federally insured bank.

Section 4.09. Special Assessments: In addition to the general assessment authorized above, the Association may levy in any assessment year a special assessment against each Lot (and the Owners(s) thereof), applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any purchase, construction, reconstruction, repair or replacement of a capital or physical improvement upon the Common Area, including fixtures and personal property, or to pay for any operating deficits, provided that such assessment shall have the consent 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 4.10. Subordination of the Lien to Mortgages: The lien of the assessments provided for herein against a Lot, shall be subordinate to the lien of a recorded bona fide first mortgage covering such Lot and subordinate to any tax or special assessment lien of such Lot in favor of any governmental taxing or assessing authority. The sale or transfer of a Lot shall not affect the assessment lien. The sale or transfer of a Lot pursuant to bona fide mortgage foreclosure proceedings or any other bona fide proceeding in lieu thereof shall, however, extinguish the lien of such assessment as to any payment which became due prior to such sale or transfer. No such sale or transfer shall release a Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 4.11. Duties of Chairman and Secretary-Treasurer of the Association: The Chairman and Secretary-Treasurer of the Association, or their designee, shall have the duties set forth in this Declaration, shall attend to and handle the day to day affairs of the Association and shall attend to handle such other duties delegated to them by the Owners. All acts taken and things done shall be measured by a standard of reasonableness and neither the Chairman nor the Secretary-Treasurer shall have any liability to an Owner, Owners or the Association unless acting in bad faith in a manner inconsistent with the terms and provisions of this Declaration.

Section 4.12. Receipt For Payment: The Association shall, within twenty (20) days after demand made at any time, furnish a receipt in writing signed by the Secretary-Treasurer of the Association, specifying that the assessment respecting a Lot has been paid or that certain assessments remain unpaid, as the case may be. Such receipts shall be conclusive evidence of payment of any assessment therein stated to have been paid.

ARTICLE V Lot Development

Section 5.01. Lot Development: Prior to the development, improvement or alteration of, or the construction on or addition to, a Lot or Lots, the Owner(s) thereof shall first obtain written approval from the Association or ARB as required by Article III of this Declaration. Any improvement, development or alteration of a Lot or Lots, and any construction thereon or addition thereto, shall strictly comply with this Article V. In the event of a conflict between a duly approved Requested Change application and the terms and provisions of this Article V, the terms and provisions of Article V shall control.

Section 5.02. Type, Size and Nature of Construction Permitted: No structure or building shall be erected, placed or constructed in the areas designated "Common Area". No single family dwelling house, garage, driveway, fence, swimming pool, tennis court or other recreational facility permitted by this Declaration shall be erected, placed or altered, including alteration of paint color, regrading of Lot, and major landscaping or hardscape installation, on any Lot without the prior written approval of the Association or ARB, as required by this Declaration. Such approval shall be obtained prior to the commencement of construction and shall be subject to the following minimum standards:

- (a) No structure or building shall be erected, altered, placed or permitted to remain on any Lot other than one single family dwelling not exceeding two and one-half (2 1/2) stories in height and one private attached garage for a minimum of two (2) vehicles, maximum of three.

(b) The minimum finished first floor area of a dwelling house constructed on a Lot, exclusive of open or screened porches, attached garages and basements or below grade levels, shall be Twelve Hundred (1,200) square feet for a two story dwelling and Two Thousand (2,000) square feet for a one story dwelling. Each two story dwelling shall have a minimum of Eight Hundred (800) square feet on the second story.

(c) No single family dwelling house, garage or accessory structure of any kind shall be moved onto any Lot and all materials incorporated into the construction thereof shall be new, except that used brick or interior design features utilizing other than new materials, may be approved by the Association or ARB. No house shall be constructed unless two-thirds ($2/3$'s) of the gross exterior is bricked, unless by written consent of the Association or ARB. No structure shall be placed or constructed on any Lot at any time for use as either a temporary or permanent residence or for any other purpose, except as reasonably required in connection with the construction of a single family dwelling on a Lot.

(d) Notwithstanding any other provisions in this Declaration that might be to the contrary, no accessory buildings, mini-barns, sheds, outbuildings, trailers, shacks, or outhouses of any kind are permitted. As of the date of the recording of this Amended and Restated Declaration, all accessory buildings, mini-barns, sheds or outbuildings previously installed are grandfathered but may not be replaced without approval from the ARB.

(e) The concrete or block foundation of any single family dwelling house or accessory structure constructed on a Lot shall be covered on the exterior with wood, brick or stone veneer so that no portion of the exterior thereof is left exposed above ground.

(f) Each attached garage shall be designed as a part of the single family dwelling house to which it is attached. Further, garage doors shall remain closed except when entering, exiting or otherwise having the need to access the garage. The garage door opening shall be designed and constructed in such a manner to minimize, to the extent possible, any direct viewing from the dedicated public streets.

(g) The roof of each single family dwelling house constructed on a Lot (excluding that portion of the roof covering the attached garage or open or enclosed porch) shall have a pitch of between 8-12 to 12-12 or greater unless otherwise approved by the Association or ARB.

(h) No house or other structure shall contain aluminum or vinyl siding. Further, no plywood or other sheets of wood with dimensions of four (4) foot by eight (8) foot may be used for exterior siding.

(i) No open loop geothermal heat pumps shall be allowed.

(j) No exterior clotheslines are permitted.

(k) No window air conditioning units are permitted.

Section 5.03. Tree Preservation: Existing mature trees (having a trunk in excess of six (6) inches in diameter measured at a point three (3) feet from undisturbed ground) shall be preserved to the extent the removal thereof is not mandatory in connection with the construction of an approved single family dwelling house or accessory building unless the removal thereof is otherwise specifically approved by the Association or ARB or any such tree is dead or decayed and dangerous.

Section 5.04. Completion of Construction: All construction or reconstruction upon a Lot shall be completed in strict accordance with the Requested Change application

approved by the Association or ARB, including deadlines for the completion of the work. Each Lot shall be kept and maintained in a sightly and orderly manner during the period of construction or reconstruction.

Section 5.05. Storage Tanks: No storage tanks, of any nature, for any use, shall be allowed on or be buried on any Lot.

Section 5.06. Mailboxes: All mailboxes installed throughout the Subdivision will be uniform and will be constructed and installed by the Owner in a material and design suitable to the Association at its sole discretion. Mailboxes shall be maintained by Owner and in good working order at all times. If a mailbox or post falls into disrepair, or if an Owner installs a non-uniform mailbox or post, the Association has the right to have the repair or mailbox and post replacement done and assess the costs to the Owner.

Section 5.07. Driveways: No Lot shall be permitted to contain more than one driveway and each Lot shall be allowed only one cut onto a public road adjoining the property. A driveway constructed on any Lot to and from the public road shall be constructed and maintained so as to provide the sole means of ingress and egress to such Lots for vehicular traffic. Circular drives which provide more than one cut onto a public road may be allowed upon approval of the Association. Driveways shall be constructed of either hard mixed aggregate, concrete, or brick. No asphalt driveways are permitted. Under no conditions shall driveways be constructed over curb inlets of the storm sewer system within the right-of-way of the public road. No concrete driveway shall be placed behind a curb containing these inlet grates.

Section 5.08. Fences, Walls, Hedges or Shrub Plantings: No fence, wall, hedge or other screening shall be erected, placed, altered or permitted to remain on any Lot other than as approved (as to location, type, materials, design and height) by the ARB under Article III of this Declaration. In no such situation shall these structures or plantings be placed within platted drainage, utility and landscape easements or within the right-of-way of a public street. As of the date of the recording of this Amended and Restated

Declaration, all fences, walls, hedges, or shrub plantings previously installed are grandfathered but may not be replaced without approval from the ARB.

Section 5.09. Sewage Disposal Systems: Private sewage disposal systems (septic systems) are prohibited on all Lots in the Subdivision as this development will be served by the Town of Zionsville Municipal Sanitary Sewage Treatment System.

Section 5.10. Ditches and Swales: The Owner of any Lot on which any part of a drainage tile, open storm drainage ditch or swale is situated shall keep the tile, ditch or swale continuously unobstructed and in good repair.

Section 5.11. Ponding and Runoff: No owner shall cause or permit any pond to be created on any Lot, including without implied limitation, from any swale, ditch, stream or creek located on the Real Estate. Further, each owner shall prevent water run-off and the depositing of soil and mud from the Lot onto the street through the use of silt fences installed during the home building process. To the extent that an Owner permits, causes or allows mud to enter onto the streets or private roadways in the Subdivision, during construction or otherwise, the Developer reserves the right to clean the streets and bill or assess the Owner for said costs. The Owner shall pay or reimburse to the Association the reasonable charge for street cleaning and maintenance within thirty (30) days after being billed or assessed thereto. The Association may utilize any and all assessments and collection remedies available under Article IV. Owner shall comply with all soil erosion plans and conditions as set out in 327 I.A.C. 15 and shall indemnify and hold the Association harmless from any and all violations by owner or owners, designated employees, representatives, contractors or sub-contractors.

Section 5.12. Antenna Discs or Other Similar Structures: Satellite dishes may be erected with the approval of the ARB.

Section 5.13. Subsurface Drains: Each Lot in the Subdivision has been provided with a four (4) inch tile drainage outlet for the purpose of accepting the flow from sump pumps

and downspout drains. These tiles flow into six (6) inch diameter interceptor drains located under the street curb and eventually they outlet into the storm sewer manholes. In no situation shall sump pump or downspout drains be outletted directly to the surface of the street. All floor drains shall drain into the sewage disposal system of the home. In no situation shall sump pumps be outletted into the sanitary sewer system of the home or in a ravine behind the home.

Section 5.14. Pond Fountains: The retention ponds shown as "Common Area" on the plat shall contain pump fountains which shall be paid for and maintained by the Association. There shall be a minimum of one (1) fountain per pond.

Section 5.15. Compacted Fill Material On Lots: Lots may contain compacted fill material. This soil, although it has been properly compacted, may not contain similar engineering properties of undisturbed soil for the purpose of foundation construction. Owners shall be solely responsible for soil compaction, or lack thereof, and each Owner shall hereby relieve the Association of any and all responsibility or liability for disturbed or undisturbed soil as it relates to the Owner's construction process, or any other. The Association makes no promises, representations or warranties, either express or implied, as to the nature, quality or compaction of the soil on any individual Lot as each Owner is responsible for testing and determining the quality and characteristics of soil on their respective Lot.

Section 5.16. Playground Equipment: Any and all playground equipment, including but not limited to swing sets, trampolines, and basketball goals must be made of materials consistent with the architectural guidelines and must be approved by the Association as to materials and placement on the Lot. The location and installation of any playground equipment shall be done only with the express written approval of the Association. As of the date of the recording of this Amended and Restated Declaration, playground equipment previously installed is grandfathered but may not be replaced without approval from the ARB.

ARTICLE VI

Use and Maintenance of Lots

Section 6.01. Vehicle Parking: Only normal passenger vehicles are permitted to be parked within Smith Meadows. Normal passenger vehicles include automobiles, vans, motorcycles, mini-bikes, sport utility vehicles, and trucks with a maximum load capacity of one ton or less. Boats or other watercraft, campers, recreational vehicles, trailers of any kind, temporary storage units, dumpsters, buses, mobile homes, commercial or business trucks or vans, or any other vehicles other than normal passenger vehicles shall not be permitted to be parked or stored anywhere within Smith Meadows, unless they are:

- a) parked or stored completely enclosed within the owner's garage;
- b) parked or stored upon the owner's lot for no more than two (2) weeks per year total; or
- c) the Owner receives the Board of Directors' approval upon a showing of extenuating circumstances. The Board's approval may include such conditions as deemed appropriate by the Board of Directors.

Commercial vehicles are vehicles, regardless of size, on which commercial lettering or equipment is visible and is being used for commercial purposes. No junk or disabled vehicle or other vehicle on which current registration plates are not displayed shall be kept in Smith Meadows, except as may be completely enclosed within a garage. No repair work shall be done within Smith Meadows on any vehicles, including passenger vehicles, except as may be completely enclosed within a garage.

Section 6.02. Home Occupations: All Lots in Smith Meadows shall be used for single family residential purposes only. No industry, business, manufacturing, mercantile, storing, trade, or any commercial activity, educational or otherwise, designed for profit, altruism or otherwise, shall be conducted, practiced or permitted within Smith Meadows;

provided, however, that an Owner may maintain an office or home business in the residence if: (1) such office or business generates no significant number of visits or unreasonable parking usage (both as determined by the Board of Directors) by clients, customers or other persons related to the business; (2) no equipment or other items related to the business are stored, parked or otherwise kept outside such Owner's residence; (3) there are no employees or independent contractors within the residence other than the Owner or other resident; (4) such Owner has obtained approvals for such use as may be required by the appropriate local and state governmental agencies; (5) the Owner complies with all provisions of municipal ordinances, including any home occupations ordinance; and (6) all other provisions of this Declaration and the rules and regulations are complied with. No Lot or residence shall be used or rented for transient, motel or hotel purposes.

Section 6.03. Signs: Unless otherwise permitted by the ARB, no sign of any kind shall be displayed to public view on any Lot except that one two-sided sign (not exceeding six (6) square feet per side) may be displayed at any time for the purpose of advertising the property for sale. No signs shall ever be placed upon the Common Area except those authorized by the Association to advertise Association events and meetings.

Section 6.04. Maintenance of Lots and Improvements: Each Owner shall be responsible for maintaining and keeping his or her Lot and all other structural improvements located on his Lot in a good, clean, neat, sanitary and well maintained condition and shall do such work thereon as is required to cause such Lot and structural improvements to be so maintained. Specifically, each such Owner shall:

- (a) Mow such portion of the Lot or Lots including any Drainage, Utility, Sanitary Sewer or Water Main Easements located on the Lot upon which grass has been planted at such times as may be reasonably required;
- (b) Remove all debris or rubbish from the Lot and keep them free of weeds, underbrush, other unsightly growths, trash or construction debris and

otherwise neat and attractive in appearance including without limitation, the proper maintenance of the exterior of any structures on such Lot;

- (c) Prevent the existence of any other condition that reasonably tends to detract from or diminish the aesthetic appearance of the neighborhood, including, but not limited to, refuse piles and unsightly objects;
- (d) Keep the exterior of all improvements in such a state of repair and maintenance as to avoid their becoming unsightly; and
- (e) Prevent or clean the migration or erosion of any soils onto roads or drainage easements from any Lot and to the extent the cleanup of any soils becomes an expense of the Association, the Owner shall reimburse the Association.

Section 6.05. Animals: No farm animals, fowl, poisonous, or dangerous animals shall be kept or permitted on any Lot within Smith Meadows. Any owner with an animal causing or creating a threat, nuisance, or unreasonable disturbance is in direct violation of the Zionsville Animal Control Ordinance (Article V, Section 9-40-9-44), and Owners are to contact appropriate authorities. Only dogs, cats and similar animals generally and customarily recognized as household pets, not exceeding a reasonable number, may be kept or maintained on any Lot as household pets. All animals kept or maintained on any Lot in Smith Meadows shall be kept reasonably confined by means of leash, invisible fencing, or other product similar thereto, so as not to become an annoyance or nuisance or to act in a threatening manner to pedestrians walking on public sidewalks. Owners are responsible for the cleanup of any animal fecal matter deposited on sidewalks, yards, and/or Common Areas. No animal shall be kept or maintained on a Lot for commercial purposes or primarily for breeding purposes.

Section 6.06. Garbage, Trash and Other Refuse: The outside burning of garbage or other refuse shall not be permitted on any Lot, nor shall any outside accumulation of

refuse or trash be permitted on any Lot. Each single family dwelling house built shall be equipped with a garbage disposal unit, and once installed, each such unit shall be kept and maintained in good working order so as to be and remain environmentally acceptable. In no event shall any Owner allow a trash receptacle to remain outside for longer than a twenty-four (24) hour period of time.

Section 6.07. Nuisances: No noxious or offensive activity shall be conducted upon any Lot, nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to the neighborhood or another Owner, including without limiting the generality of the foregoing, noise by the use of any musical instruments, radio, television, loud speakers, electrical equipment, amplifiers or other equipment or machines, or by loud persons, and objectionable odors or unreasonably bright lighting. Any owner causing or creating unreasonably loud noise or allowing unreasonable noise that adversely affects and is a detriment to the peace and enjoyment of another homeowner is in direct violation of the Zionsville Noise Ordinance (Article XII, Section 9-75-9-79) and homeowners are to contact appropriate authorities.

Section 6.08. Maintenance of Unoccupied Lots: Owners of unoccupied Lots shall at all times keep and maintain such Lots in an orderly manner, causing weeds and other growths to be reasonably cut and shall prevent the accumulation of rubbish and debris thereon.

Section 6.09. Association's Right To Perform Certain Maintenance: In the event that the Owner of any Lot in this Subdivision fails to reasonably maintain such Owner's Lot and any improvements situated thereon in accordance with the provisions of this Article VI, or as otherwise required by this Declaration, the Association, by and through its agents, employees or contractors, shall have the right, but not the obligation, following notice in writing to such Owner of an intention to do so unless reasonable maintenance as detailed in such notice is performed and the expiration of twenty (20) days thereafter without such maintenance being done, to enter upon such Lot without being a trespasser to repair, mow, clean, or perform such other acts as may be reasonably necessary to make

such Lot and the improvements situated thereon, conform to the requirements of this Article VI, or as otherwise set forth in this Declaration. The out-of-pocket costs incurred by the Association in connection therewith shall be collectible from the Owner(s) of any such Lot and shall represent a lien against any such Lot until paid in full together with interest thereon, cost of collection and attorneys fees, all without relief from valuation and appraisal laws, as if constituting an unpaid general assessment levied under Article IV of this Declaration. 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.

Section 6.10. Retention Ponds, Common Areas: Two Common Areas of the platted Subdivision consist of retention ponds that provide for the accumulation of water throughout the Subdivision. These retention ponds will be maintained by the Association with the Association to have specific easement rights to access the retention ponds for maintenance purposes. Ice fishing, ice skating or other water activities shall be specifically prohibited on any of the retention ponds. Further, swimming, boating and canoeing are similarly prohibited on the retention ponds. Fishing is allowed but limited to residents and their guests only. Water from the retention ponds may not be accessed by any Owner to supply a private irrigation system, except that the existing system on Lot #3, which was approved by the original Developer, is grandfathered but may not be replaced without approval from the ARB. The Association is not liable for damage to an Owner's lawn or landscaping due to any chemicals which may be contained in the retention pond water.

ARTICLE VII

Easements

Section 7.01. Easements: The strips of ground shown on the survey of Lots previously filed with the Boone County Recorder and designated Drainage and Utility Easements ("DE", "UE" or "D & UE") either separately or together, are hereby created for the use (including required ingress and egress necessary as a part thereof) of public utility

companies, the Town of Zionsville, Association, and the owners of Lots herein as follows:

"Drainage Easements" (D.E.) are created to provide paths and courses for area and local storm drainage, either overland or in adequate underground conduit, to serve the needs of this and adjoining ground and/or the public drainage system. No structures, including fences, shall be built on a Drainage Easement which obstruct flow from the area being served, nor shall any changes be made in the finished grade elevations of any Lot, whether in connection with the construction of improvements thereon or otherwise, so as to modify, alter or change the location or depth of any drainage swales, ditches or creeks located within any such Drainage Easement without the approval of all Federal, State, County or Municipal authorities from whom approvals are required by law, or which would in any way prohibit, impede, restrict or alter the natural flow of surface water drainage.

"Utility Easements" (U.E.) are created for the use of public utility companies, not including transportation companies, for the installation, operation and maintenance of sanitary sewers and water mains, ducts, poles, lines and wires necessary to provide utility service to a Lot or Lots, subject to the condition that following any installation or maintenance, the affected area within such Utility Easement shall be returned to the condition existing prior thereto at the cost and expense of the party responsible for having such work performed.

The Owners shall take title to the Lots subject to the foregoing easements rights in, along and through the strips of ground properly designated as hereinabove set forth on the recorded survey of the Lots for the purposes herein stated.

ARTICLE VIII

General

Section 8.01. Waiver of Damages: Neither the Association, their nominees, representatives or designees, shall be liable for any claim for damages whatsoever arising out of or by reason of any acts taken (or not taken) or things done or performed (or not

done or performed) pursuant to any authorities reserved, granted or delegated pursuant to this Declaration.

Section 8.02. Enforcement: The right to enforce the restrictions contained in this Declaration and all covenants and restrictions contained herein including, but not limited to, the right of injunctive relief, or the right to seek the removal by due process of law of structures erected or maintained in violation of this Declaration, is hereby given and reserved to the Association and the Owners from time to time of Lots and all parties claiming under them, the Zionsville Plan Commission, Town of Zionsville, all of whom shall have the right, individually, jointly or severally, to pursue any and all remedies, in law and equity available under applicable Indiana law, without being required to show actual damage of any kind whatsoever, and shall be entitled to recover, in addition to appropriate monetary damages, if any, reasonable attorneys' fees and other legal costs and expenses incurred as a result thereof.

Section 8.03. Delay or Failure to Enforce: No delay or failure on the part of any aggrieved party, including without limitation the Association, to invoke any available remedy with respect to any violation or threatened violation of any covenants, conditions or restrictions enumerated in this Declaration, in a Plat of any part of the Subdivision, or of any rules and regulations promulgated by the Board of Directors, shall constitute a waiver by that party of, or an estoppel of that party to assert, any right available to it upon the occurrence, recurrence or continuance of such violation.

Section 8.04. Severability: The provisions of this Declaration shall be severable and no provision shall be affected by the invalidity of any other provision to the extent that such invalidity does not also render such other provision invalid. In the event of the invalidity of any provision, this Declaration shall be interpreted and enforced as if all invalid provisions were not contained herein.

Section 8.05. Non-Liability of Association: The Association shall not have any liability to an Owner or to any person or entity with respect to drainage on, over, under or through

a Lot. Upon the improvement and development of a Lot, the proper handling of storm and surface water drainage shall be the responsibility of the Owner of such Lot, and each Owner by the acceptance of a deed to a Lot, shall be deemed to and does thereby release and forever discharge the Association from, and shall indemnify and hold harmless the Association against, any and all liability arising out of or in connection with the handling, - discharge, transmission, accumulation or control of storm or surface water drainage to, from, over, under or through the Lot described in such deed.

Section 8.06. Public Liability and Property Damage Insurance: Each Owner shall obtain and pay for such public liability and property damage insurance as may be desired to provide protection against loss, cost and expense by reason of injury to or the death of persons or damage to or the destruction of property occurring on or about each such Owner's Lot.

Section 8.07. Binding Effect: This Declaration, and the covenants, conditions and restrictions herein contained shall be binding upon the Association, each Owner and any person, firm, corporation or other legal entity now or hereafter claiming an interest in any Lot and their or its respective successors or assigns.

Section 8.08. Duration: This Declaration and the restrictions imposed hereby shall run with the Real Estate and shall be binding on all Owners and all persons claiming under them for an initial period of twenty-five (25) years from the date of recordation, and shall automatically extend for successive periods of ten (10) years each, unless prior to the expiration of the initial period of any ten (10) year period they are amended or changed.

Section 8.09. Amendments to Declaration: This Declaration may be amended or changed at any time with approval in writing by a vote of at least Sixty Percent (60%) of all members entitled to vote as set out in Section 4.03. The amendments shall not become binding and effective until the date of recordation in the Office of the Recorder of Boone County, Indiana.

ARTICLE IX
Leasing Restrictions

Section 9.01. One Year Waiting Period: The Association's members recognize that an owner-occupant is both psychologically and financially invested in a home to a greater extent than a renter, and thus owner occupants maintain their property better than renters generally. The Association's members wish to insure that the residents within Smith Meadows share the same proprietary interest in and respect of the Lots and the Common Areas, and to encourage residents to not only maintain property values but also to improve them by recognizing that owner occupants have more incentive to do so compared to non-owner occupants. Thus, for a period of at least one (1) year 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 IX 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 9.01, if an Owner wishes to lease a Lot prior to the end of the one year waiting period, the Owner may apply to the Board of Directors for a waiver. The Board may in its discretion, in writing, approve an earlier lease if the Owner establishes to the Board's satisfaction that the waiting period will cause undue hardship. 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 Smith Meadows due to a change of employment or retirement of at least one (1) of such Owners;
- (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;

(5) difficult real estate market conditions;

(6) other similar circumstances.

Section 9.02. General Lease Conditions: All leases, including renewals, shall be in writing, and no lease shall be entered into for a term of less than one (1) year without the prior written approval of the Board 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 promulgated 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. 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 9.03. 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 Plat Covenants, the Articles of Incorporation, the By-Laws, and any rules and regulations promulgated by the Board of Directors, or from the Owner's liability to the Association for payments of assessments or any other charges.

Section 9.04. 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) shall be provided to the Board of Directors by the Owner within thirty (30) days after execution.

Section 9.05. Violations: Any lease or attempted lease of a Lot in violation of the provisions of this Article IX shall be voidable at the election of the Association's Board of Directors or any other Owner, except that neither party to such lease may assert this provision to avoid its obligations thereunder. In the event of a violation, the Board of Directors, on behalf of the Association, or any Owner, shall have the right to exercise any and all available remedies at law or equity.

Section 9.06. Maximum Number of Lots Owned by a Single Owner: In order to encourage Smith Meadows being and remaining a community where the Owners reside on the property:

- (a) No Owner may own more than two (2) Lots within Smith Meadows at any time. This restriction shall not apply to any Owner who owns more than two (2) Lots which were purchased or with respect to which there was a binding purchase agreement prior to the recording of this restriction.
- (b) If any Owner is the Owner of more than one (1) Lot, such Owner or the majority of the principals of such Owner shall and must reside in Smith Meadows in at least one (1) of such Lots, unless otherwise approved in writing by the Board of Directors upon a showing by such Owner, satisfactory to the Board of Directors, of an undue hardship as defined in Section 9.01 above.

As defined in Article I of this Declaration, "Owner" means a person, firm, corporation, partnership, association, trust or other legal entity or any combination thereof who owns the fee simple title to a Lot. As used in this Section 9.06 above, "Owner" also means those persons or entities who comprise less than all persons or entities who own in any form or manner the fee simple title or any part thereof to any Lot and those persons or entities who have any interest in any form or manner in the fee simple title or any part thereof to any Lot. As an example, if any person or entity owns or has any interest in the ownership of two (2) Lots, whether in his, her or its name only, as joint tenants, as life

tenant or by or through any corporation, partnership, trust, limited liability company, or any other entity, that person cannot own a third Lot, whether in his, her or its name only, as joint tenants, as life tenant or by or through a corporation, partnership, trust, limited liability company, or any other entity.

Any purchase agreement, conveyance or lease or rental agreement executed subsequent to the recording of this restriction which violates any provision of this Section 9.06 shall be voidable at the election of the Association's Board of Directors or any Smith Meadows Owner, except that neither party to such agreement, conveyance or lease may assert this provision of this Article IX to avoid its obligations thereunder. In the event of a violation, the Board of Directors, on behalf of the Association, or any Smith Meadows Owner, shall have the right to exercise any and all available remedies at law or equity.

Section 9.07. Institutional Mortgagees: The provisions set forth in this Article IX 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 IX.

Section 9.08. 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 IX 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 IX, 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 IX and this Section 9.8, 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.

Executed this 10th day of JANUARY, 2013. 2014 JPM

Smith Meadows Property Owners Association, Inc., by:

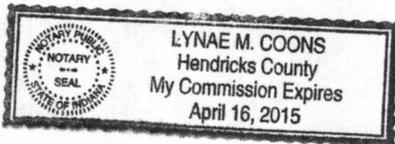
[Signature]
Patrick McGuine, President

Attest:

[Signature]
Corrine Hendershot, Secretary

STATE OF INDIANA)
COUNTY OF BOONE)

Before me, a notary public, in and for said County and State, personally appeared Patrick McGuine and Corrine Hendershot, the President and Secretary, respectively, of Smith Meadows Property Owners Association, Inc., an Indiana nonprofit corporation, who acknowledged execution of the within and foregoing for and on behalf of said corporation and its members and who, being duly sworn, stated that the Certifications and representations made therein are true. Witness my hand and notarial seal this 10th day of JANUARY, 2013. 4th 2014



[Signature]
Notary Public - Signature

Lynae M. Coons
Printed

My Commission Expires: 4.16.15

Residence County: Hendricks

"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."

P. Thomas Murray, Jr., Esq.

This instrument prepared by, and should be returned to, P. Thomas Murray, Jr., EADS MURRAY & PUGH, P.C., Attorneys at Law, 9515 E. 59th Street, Suite B, Indianapolis, IN 46216. (317) 536-2565.