

RESTATED DECLARATION OF HORIZONTAL
PROPERTY UNIT OWNERSHIP

FOR

STONECREEK VILLAGE HOMEOWNERS
ASSOCIATION HORIZONTAL PROPERTY
REGIME

MAY 2022

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**RESTATED DECLARATION AND BY-LAWS OF
STONECREEK VILLAGE HOMEOWNERS ASSOCIATION, INC.**

This Restated Declaration and By-Laws of Stonecreek Village Homeowners Association, Inc., (the “Restated Declaration”, executed this _____ day of _____, 2022, by the undersigned officers of the Stonecreek Village Homeowners Association, Inc. (the “Association”), as authorized by the Co-Owners at a meeting of said Owners on the __2__ day of __May____, 2022.

WITNESSETH THAT:

WHEREAS, Stonecreek Village, LLC., a limited liability company, existing under the law of the State of Indiana (“Declarant”), was the owner of certain real estate located in Clark County, Indiana, more particularly described in Exhibit “A”, a copy of which Exhibit is attached hereto and by reference made a part thereof; and

WHEREAS, Declarant submitted a certain portion of the real estate more particularly described in Exhibit “A” (the “Property”), to the provisions of the Horizontal Property Law, being Acts 1963, Chapter 349, Sections 1 through 31, as amended from time to time and codified at I.C. 32-1-6-1 et seq. (repealed), and to create thereon a horizontal property regime, (“Condominiums”); and

WHEREAS, Declarant intended that several owners, mortgagees, occupants, and other persons hereafter acquiring any interest in the Property, shall hold their interests subject to the rights, easements, privileges, covenants, and restrictions herein set forth;

WHEREAS, the original Declaration of Horizontal Property Unit Ownership (“Declaration”) was recorded in the Recorder’s Office of Clark County, Indiana, on June 8, 2001, as Document No. I 200111863, as amended on April 2, 2007, by Document No. I 200706886 (“First Amendment), on October 30, 2013, by Document No. I 201322827 (“Second Amendment”), and on December 23, 2013 by Document No. I 201326122 (“Third Amendment”); then restated and filed on August 31, 2017;

WHEREAS, the Co-Owners of the Stonecreek Village Condominiums, as members of the Association, represent that they are collectively the legal title holders to certain real estate located in the City of Jeffersonville, County of Clark, State of Indiana, as improved, which is legally described as set forth in Exhibit “A”, which is incorporated into and made a part of this Restated Declaration by virtue of this reference;

WHEREAS, the members of the Association desire to amend and restate the Declaration and By-Laws in their entirety for the purposes of updating and clarifying the terms of each, as well as ensuring that the Declaration accurately reflects their collective intentions;

NOW, THEREFORE, the members of the Association, by and through the undersigned officers of the Association, declare the following:

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1. DEFINITIONS

The following terms, as used in this Declaration, unless the context clearly requires otherwise, shall mean the following:

- a) “Act” means Indiana Code as 32-25 et seq.
- b) “Association” means the Stonecreek Village Patio Home Development Homeowners Association, which is incorporated as Stonecreek Village Homeowners Association, Inc., its successors and assigns, as more particularly described in the By-laws and Rules and Regulations.
- c) “Board of Directors” means the governing body of the Association elected by the Co-Unit Owners in accordance with the By-Laws.
- d) “Building” means any structure on the Tract in which one or more Patio Home Condominium Units are located, plus the Clubhouse. The buildings are more particularly described and identified on the plans and in Paragraph 3 of this Declaration.
- e) “By-Laws” means the By-Laws of the Association providing for the administration and management of the Property and restrictions on its use as required by and in conformity with the provisions of the Act. A true copy of the By-Laws is attached hereto as Exhibit “B” and incorporated herein by reference.
- f) “Common Areas” means the common components and facilities appurtenant to the Property as defined in Paragraph 6 of this Declaration.
- g) “Common Expenses” means expenses of administration of the Association and expenses for the upkeep, maintenance, repair, and replacement of the Common Areas and Limited Areas (to the extent provided herein) and all sums lawfully assessed against the Unit Owners by the Association or as declared by the Act, this Declaration, or the By-Laws.
- h) “Co-Unit Owners” means the Unit Owners of all the Patio Home Condominium Units.
- i) “Limited Areas” means the limited common areas and facilities as defined in Paragraph 7 of this Declaration.
- j) “Member” means every person or entity who holds membership in the Association.
- k) “Mortgagee” means the holder of a mortgage lien on a Patio Home Condominium Unit.
- l) “Patio Home Condominium Unit” means each one of the living units constituting Stonecreek Village Patio Home Development, each individual living unit being more particularly described and identified on the Plans and in Paragraphs 4 and 5 of this Declaration. “Patio Home Condominium Unit” includes the undivided interest in the Common Areas and Limited Areas appertaining to each unit. Each Patio Home Condominium Unit shall also constitute a “Unit” as described in these governing documents.

- m) "Percentage Interest" means the percentage of undivided interest in the fee simple title to the Common Areas and Limited Areas appertaining to each Patio Home Condominium Unit as specifically expressed in Paragraphs 4 and 8 of this Declaration.
- n) "Percentage Vote" means that percentage of the total vote accruing to all of the Patio Home Condominium Units, which is appurtenant to each particular Patio Home Condominium Unit and accrues to the Unit Owner thereof. The Percentage Vote to which each Unit Owner shall be entitled on any matter upon which the Co-Unit Owners are entitled to vote shall be the same percentage as the Percentage Interest appurtenant to such Unit Owner's Patio Home Condominium Unit.
- o) "Plans" or "Plat" means the site plan of the Tract and Buildings prepared and certified by Mark Pangburn, P. E. (#19034) and Blankenbeker & Son, Land surveyors (P.L.S. 900011), all of which are incorporated herein by reference filed of record on June 8, 2001, in Condominium Plat Book 1, at Page 95, in the Office of the Recorder of Clark County, Indiana.
- p) "Property" means the Tract and appurtenant easements, the Patio Home Condominium Units, the Buildings, garages, improvements, and property of every kind and nature whatsoever, real, personal, or mixed, located upon the Tract and used in connection with the operation, use, and enjoyment of Stonecreek Village Patio Home Development but does not include the personal property of the Unit Owner.
- q) "Stonecreek Village Patio Home Development" means the name by which the Property and Horizontal Property Regime shall be known.
- r) "Tract" means Stonecreek Village Patio Home Development, as shown in the plat and being more particularly described by metes and bounds on the plat thereof, together with such other portions of the Real Estate, which have, as of any given time, been subjected to the Act and this Declaration. To the extent there is any irreconcilable conflict between the metes and bounds description of Stonecreek Village Patio Home Development contained in the Plat and Plans, the Plans shall control.
- s) "Unit Owner" or "Co-Unit Owner" means the person(s), or trust who or which owns the fee simple title to a Patio Home Condominium Unit. The Unit Owner of a Patio Home Condominium Unit shall also constitute a "Unit Owner" as described in the governing documents.

2. DECLARATION

It is hereby expressly declared that the Property shall be a Horizontal Property Regime in accordance with the provisions of the Act.

3. DESCRIPTION OF BUILDINGS

There shall be twenty-six (26) Buildings, containing four (4) Patio Home Condominium Units each, and one (1) Clubhouse Building, as situated on the Tract as shown on the plans.

4. LEGAL DESCRIPTION AND PERCENTAGE INTEREST

Each Patio Home Condominium Unit is identified on the Plans by a Building number and Unit letter. The legal description for each Patio Home Condominium Unit shall consist of the Building number and Unit letter as shown on the Plans, and shall be stated as "Unit _____ in Building number _____ in Stonecreek Village Patio Home Development Property Regime." The Percentage Interest of each Unit Owner in the Common Areas and Limited areas as hereinafter defined shall be one one-hundred fourth (1/104th).

5. DESCRIPTION OF PATIO HOME CONDOMINIUM UNITS

- a) Appurtenances. Each Patio Home Condominium Unit shall consist of all space within the boundaries thereof, as hereinafter defined, and all portions of the Building situated within such boundaries, including, but not limited to, all fixtures, facilities, utilities, equipment, appliances, and structural components designed and intended solely and exclusively for the enjoyment, use, and benefit of the Patio Home Condominium Unit wherein the same are located, or to which they are attached; but, excluding therefrom that designed or intended for the use, benefit, support, safety, or enjoyment of any other Patio Home Condominium Unit, or which may be necessary for the safety, support, maintenance, use, and operation of any of the Buildings, or which are normally designed for common use; provided, however, that all fixtures, equipment and appliances designed or intended for the exclusive enjoyment, use and benefit of a Patio Home Condominium Unit shall constitute a part of such Patio Home Condominium Unit, whether or not the same are located within or partly within the boundaries of a Patio Home Condominium Unit. All interior walls and all of the floors, ceilings, and attics within the boundaries of a Patio Home Condominium Unit are considered part of the Patio Home Condominium Unit.
- b) Boundaries. The boundaries of each Patio Home Condominium Unit shall be as shown on the Plans, without regard to the existing construction measured between the interior unfinished surface of the floors, roofs, and perimeter walls of each Patio Home Condominium Unit. In the event any horizontal boundary line as shown on the Plans does not coincide with the actual location of the respective wall, floor, or roof surface of the Patio Home Condominium Unit, because of inexactness of construction, settling after construction, or for any other reasons, the boundary lines of each Patio Home Condominium Unit shall be deemed to be and treated for purposes of Unit Ownership, occupancy, possession, maintenance, decoration, use and enjoyment, as in accordance with the actual existing construction. In such case, permanent appurtenant easements for exclusive use shall exist in favor of the Unit Owner of each Patio Home Condominium Unit in and to such space lying outside of the actual boundary lines of the Patio Home Condominium Unit, but within the appropriate wall, floor, or roof surfaces of the Patio Home Condominium Unit.

6. COMMON AREAS

“Common Areas” means (i) the Tract, excluding the Patio Home Condominium Units; (ii) the foundations, main walls, trusses, and roofs of the buildings; (iii) the yards, gardens, sidewalks and parking areas, except to the extent the same are otherwise classified and defined herein as part of the Patio Home Condominium Unit or Limited Areas; (iv) central electricity, gas, water, and sanitary sewer mains serving the Buildings, if any, or unless separately metered to a particular Patio Home Condominium Unit; (v) exterior lighting fixtures and electrical service lighting the exterior of the Buildings unless separately metered to a particular Patio Home Condominium Unit; (vi) pipes, ducts, electrical wiring and conduits and public utilities lines which serve more than one Patio Home Condominium Unit; (vii) roofs and exterior perimeter walls of the Buildings, except to the extent the same are otherwise classified and defined herein as part of the Patio Home Condominium Unit or Limited Areas; and (viii) all facilities and appurtenances located outside of the boundary lines of the Patio Home Condominium Units.

7. LIMITED AREAS AND FACILITIES

Limited Areas and those Patio Home Condominium Units to which use thereof is limited are as follows:

- a) The driveways and sidewalks of each Building shall be limited to the use of the Patio Home Condominium Units of such Building.
- b) Patios and porches, and the landscaped areas adjacent to the unit shall be limited to the exclusive use of the Patio Home Condominium Unit to which they are attached or appertain; provided, however, that any Unit Owner of a Patio Home Condominium Unit desiring to make any improvements or landscaping changes to such area around his patio or porch so designated on the Plans shall first obtain written approval as to the location, size, style, material, design, color, and architecture of said improvements from the Board of Directors and, provided further, that the Unit Owner to whose Patio Home Condominium Unit said improvements are to be attached shall construct and maintain the improvements thereon, all at the Unit Owner’s expense.
- c) The exterior sides and surfaces of doors, windows, and frames surrounding the same in the perimeter walls in each Patio Home Condominium Unit shall be limited to the exclusive use of the Patio Home Condominium Unit to which they appertain.

8. UNIT OWNERSHIP OF COMMON AREAS AND PERCENTAGE INTEREST

Each Unit Owner shall have an undivided one one-hundred fourth (1/104th) interest in the Common Areas and Limited Areas, as tenants in common with all other Unit Owners, equal to his Patio Home Condominium Unit’s Percentage Interest. Each Patio Home Condominium Unit is granted an equal interest in the Common Areas and Limited Areas and, according to the Act, pays an equal portion of the expense. The Percentage Interest in the Common Areas and Limited Areas appertaining to each Patio Home Condominium Unit is set forth in Paragraph 4 of this Declaration. Except as otherwise provided or permitted herein, the Percentage Interest appertaining to each separate Patio Home Condominium Unit in the Common Areas and Limited Areas shall be of a permanent nature and shall not be altered without a ninety-five percent (95%) vote of all the Unit Owners and Mortgagees; and

then, only if in compliance with all requirements of the Act. The Percentage Interest appertaining to each Patio Home Condominium Unit shall also be the Percentage Vote allocable to the Unit Owner thereof in all matters with respect to Stonecreek Village Patio Home Development and the Association in which the Co-Unit Owners are entitled to vote.

9. ENCROACHMENTS AND EASEMENTS FOR COMMON AREAS

If, by reason of the location, construction, settling, or shifting of a Building, any Common Area or Limited Area now encroaches or shall hereinafter encroach upon any Patio Home Condominium Unit, then in such event, an easement shall be deemed to exist and run to the Co-Unit Owners and the Association for the maintenance, use, and enjoyment of such Common Area or Limited Area.

Each Unit Owner shall have an easement in common with each other Unit Owner to use all pipes, wire, ducts, cables, conduits, utility lines, and other common facilities located in any of the other Patio Home Condominium Units and serving this Patio Home Condominium Unit.

Pursuant to this Declaration, each Unit Owner shall have a right and easement of enjoyment in and to all Common Areas that shall be appurtenant to and shall pass with title to each Patio Home Condominium Unit, subject to remaining provisions of the covenants.

10. REAL ESTATE TAXES

Real Estate Taxes are to be separately assessed and taxed to each Patio Home Condominium Unit as provided in the Act. In the event that, for any year real estate taxes are not separately assessed and taxed to each Patio Home Condominium Unit but are assessed and taxed on the Property (or the Property and any other portions of the Real Estate) as a whole, then each Unit Owner shall pay his proportionate share of such taxes to the extent attributable to the Property in accordance with his respective Percentage Interest.

11. UTILITIES

Each Unit Owner shall pay for his own utilities which are separately metered. Utilities not separately metered shall be treated as and paid by the Association as part of the Common Expenses, unless otherwise agreed by a majority of the Percentage Vote of Co-Unit Owners.

12. ASSOCIATION OF CO-UNIT OWNERS

The Association of the Co-Unit Owners shall be responsible for the maintenance, repair, upkeep, replacement, administration, management, and operation of the Common Areas and Limited Common Areas as part of the Common Expenses, except as otherwise provided herein or in the By-Laws. Each Unit Owner of a Patio Home Condominium Unit shall, automatically upon becoming a Unit Owner of a Patio Home Condominium Unit, be and become a member of the Association (as defined in the By-Laws) and shall remain a member of said Association until such time as his Unit Ownership ceases, but membership shall terminate when such person ceases to be a Unit Owner and will be transferred to the new Unit Owner.

The Association shall elect a Board of Directors annually in accordance with, and as prescribed by, the By-Laws. Each Unit Owner shall be entitled to cast his Percentage Vote for the election of the Board of Directors.

The Board of Directors shall be the governing body of the Association, representing all of the Unit Owners in providing for the management, administration, operation, maintenance, repair, replacement and upkeep of the Property exclusive of the Patio Home Condominium Units.

13. MAINTENANCE, REPAIRS, AND REPLACEMENTS

Each Unit Owner shall, at his expense, be responsible for the maintenance, repairs, decoration, and replacement within his own Patio Home Condominium Unit and, as provided in the By-Laws, within Limited Areas reserved for his use. Each Unit Owner shall repair any defect occurring in his Patio Home Condominium Unit, which, if not repaired, might adversely affect any Patio Home Condominium Unit, Common Area, or Limited Area.

Maintenance, repairs, replacements, and upkeep of the Common Areas and Limited Areas shall be furnished by the Association as part of the Common Expenses, except as otherwise provided herein or in the By-Laws. The Unit Owner shall remain responsible for all maintenance and repair items for fixtures, wiring, plumbing, and other mechanisms as elaborated in the By-Laws, including but not limited to Article 4, Section 3 of the By-Laws, that lie above the floor and within the walls of the Unit, as well as for appliances and equipment installed for or at the request of the Unit Owner.

Subject to the By-Laws, the Board of Directors shall adopt Rules and Regulations concerning maintenance, repairs, use, and enjoyment of the Common Areas and Limited Areas, as it deems appropriate, and may amend and modify the same from time to time, as it deems advisable, necessary, or appropriate.

The Board of Directors, or their designated agent, shall have the right at reasonable times and upon reasonable prior notice (except in cases of emergency, in which case, no notice shall be required), to enter into any individual Patio Home Condominium Unit for the purpose of inspection of the Common Areas and Limited Areas appurtenant thereto, and replacement, repair, and maintenance of such Common Areas and Limited Areas.

14. ALTERATIONS, ADDITIONS, AND IMPROVEMENTS

No Unit Owner shall make any alterations or additions to, or which would affect, the Common Areas or Limited Areas without the prior written approval of the Board of Directors; nor shall any Unit Owner make any alteration in or to his respective Patio Home Condominium Unit, and within the boundaries thereof, which would affect the safety or structural integrity of the Building in which the Patio Home Condominium Unit is located; nor shall any Unit Owner change the color of any of the Common Areas or Limited Areas without the prior written approval of the Board of Directors. The Board of Directors shall make reasonable accommodations in the rules, regulations, or restrictions in order to afford a handicapped person equal opportunity to use and enjoy the Patio Home Condominium Unit.

15. INSURANCE

The Co-Unit Owners, through the Association, shall also purchase a master insurance policy, affording fire and extended coverage insurance, insuring the Property in an amount consonant with the full replacement value of the improvements, which, in whole or in part, comprise the Common Areas and the Limited Areas. This master policy should cover the items listed in the applicable column on the Responsibility Table – Routine Maintenance and Insurance Reconstruction table found as an attachment to the Rules and Regulations. If the Board of Directors can obtain such coverage for reasonable amounts they shall also obtain “special” coverage. The Board of Directors shall be responsible for reviewing, at least annually, the amount and type of such insurance and shall purchase such additional insurance as is necessary to provide the insurance required above. If deemed advisable by the Board of Directors, the Board may cause such full replacement value to be determined by a qualified appraiser. The cost of any such appraisal shall be a Common Expense. Such insurance coverage shall be for the benefit of each Unit Owner, and, if applicable, the Mortgagee of each Unit Owner, upon the following terms and conditions:

- a) All proceeds payable as a result of losses sustained, which are covered by insurance purchased by the Association as hereinabove set forth, shall be paid to it or to the Board of Directors, who shall act as the insurance trustees and hold such proceeds for the benefit of the individual Unit Owners and Mortgagees. The proceeds shall be used or disbursed by the Association or Board of Directors, as appropriate, only in accordance with the provisions of this Declaration; and any surety bond or bonds obtained by the Board of Directors, concerning the officer of the Association as provided in the By-Laws, shall specifically include protection for any insurance proceeds as received.
- b) The interest of each damaged Unit Owner in the trust fund of insurance proceeds shall be the ratio of the direct damage of each damaged Unit Owner to the damages of all Unit Owners directly damaged by any event insured under the said master casualty insurance policy. Notwithstanding the provisions of the immediately foregoing sentence, however, nothing in this Declaration shall operate to give any Unit Owner or any other person priority over the contractual rights of any Mortgagee holding a first mortgage lien on any Unit or Common area in the event that any insurance proceeds for casualty losses, or condemnation awards for government taking, are paid or are to be paid, to any Unit Owner(s) or the Association.
- c) Such master insurance policy and all risk coverage, if obtained, shall (to the extent the same are obtainable) contain provisions that the insurer (a) waives its right to subrogation as to any claim against the Association, the Board of Directors, its agents and employees, Unit Owners, their respective agents and guests, and (b) waives any defense based on the invalidity arising from the acts of the insured, and (c) contains an endorsement that such policy shall not be terminated for nonpayment of premiums without at least ten (10) days’ prior written notice to Mortgagees and, providing further, if the Board of Directors is able to obtain such insurance upon reasonable terms, (i) that the insurer shall not be entitled to contribution against the property/building insurance purchased by individual Unit Owners as hereinafter permitted, and (ii) that notwithstanding any provisions thereof giving the insurer an election to restore damage in lieu of a cash settlement, such option shall not be exercisable in the event the Unit Owners do not elect to restore pursuant to Paragraph 16 of this Declaration. The obligation to restore runs not only to the Condominium Unit, but also to Buildings, Common Areas and Limited Areas.

- d) The Co-Unit Owners, through the Association, shall also purchase a master comprehensive public liability insurance policy in such amount or amounts as the Board of Directors shall deem appropriate. Such comprehensive public liability insurance policy shall cover the Association, the Board of Directors, any committee or organ of the Association or Board of Directors, any managing agent appointed or employed by the Association, all persons acting, or who may come to act as, agents or employees of any of the foregoing with respect to Stonecreek Village Patio Home Development, all Unit Owners of Patio Home Condominium Units, and all other persons entitled to occupy any Patio Home Condominium Unit or other portions of Stonecreek Village Patio Home Development.
- e) The Co-Unit Owners, through the Association, shall also obtain any other insurance required by law to be maintained; including, but not limited to, workmen's compensation insurance, and such other insurance as the Board of Directors shall from time to time deem necessary, advisable, or appropriate. Such insurance coverage shall also provide for and cover cross liability claims of one insured party against another insured party. Such insurance shall inure to the benefit of each Unit Owner, the Association, the Board of Directors and any managing agent acting on behalf of the Association.
- f) The premiums for all such insurance hereinabove described shall be paid by the Association as part of the Common Expenses. When any such policy of insurance hereinabove described has been obtained by or on behalf of the Association, written notice of the obtainment thereof and of any subsequent changes therein or termination thereof shall be promptly furnished to each Unit Owner or Mortgagee whose interest may be affected thereby, which notice shall be furnished by the officer of the Association who is required to send notices of meetings of the Association.
- g) In no event shall any distribution of proceeds be made by the Board of Directors directly to a Unit Owner where there is a mortgage endorsement on the certificate of insurance. In such event, any remittances shall be to the Unit Owner and his Mortgagee jointly.
- h) Each Unit Owner shall be solely responsible for loss or damage to his Patio Home Condominium Unit and its contents, however caused, not covered under the master insurance policy, or outside the limits of the master insurance policy coverage (including, but not limited to repairs and maintenance of all doors and windows, ceilings, floor and wall coverings and fixtures, and betterments and improvements installed by him), as well as responsibility for all personal property stored in the Patio Condominium Unit and elsewhere on the Property (such as electronics, furniture, wardrobe, freestanding appliances, window treatments, garage and attic contents, outdoor furniture, cooking utensils, laundering, and temporary housing associated with the insured loss or damage). The Association shall have no liability to the Unit Owner for loss or damage to the contents of any Patio Home Condominium Unit, attic, or garage, and each Unit Owner shall be solely responsible for obtaining his own insurance to cover any such loss and risk.
- i) Each Unit Owner shall also be required to purchase such additional insurance at his own expense, including, but not limited to: (1) personal liability insurance, provided all such insurance shall contain the same provisions for waiver of subrogation as referred to in the foregoing provisions for the master casualty insurance policy obtained by the Association, and (2) condominium building insurance, also known as an HO6 policy, on his Patio Home Condominium Unit, in the amount listed in the Rules and Regulations, but such insurance shall provide that it shall be without

contribution as against the master insurance purchased by the Association. Additional optional insurance coverage types are listed in the Rules and Regulations document.

- j) If a casualty loss is sustained, and there is a reduction in the amount of the proceeds which would otherwise be payable on the insurance purchased by the Association, pursuant to this paragraph, due to proration of insurance purchased by a Unit Owner under this paragraph, the Unit Owner agrees to assign the proceeds of this latter insurance, to the extent of the amount of such reduction, to the Association to be distributed as herein provided.

16. CASUALTY AND RESTORATION

- a) Except as hereinafter provided, damage to or destruction of any Building, Limited Area or Common Area, due to fire or other casualty or disaster, shall be promptly repaired and reconstructed by the Association and the proceeds of insurance, if any, shall be applied for that purpose; provided, however, that repair and reconstruction shall not be compulsory in the event of "complete destruction of all of the Buildings" (hereinafter defined) and shall only be done in accordance with the provisions hereinafter set forth. As used herein, the term "complete destruction of all of the buildings" means a determination, made by a vote of two-thirds (2/3) of all Co-Unit Owners, at a special meeting of the Association, called for the purpose of making such determination, that total destruction of all buildings has occurred. A special meeting of the Association shall be called and held within thirty (30) days after any fire or any other casualty or disaster damaging or destroying any of the buildings, for the purpose of making the determination of whether or not there has been a complete destruction of all of the buildings. If such a special meeting is not called and held within such thirty (30) day period, or if the determination of whether or not there has been a complete destruction of all of the buildings has not been made within such thirty (30) day period, then it shall be conclusively presumed that the Co-Unit Owners determined that there was not a complete destruction of all of the buildings, and the reconstruction will proceed as herein provided.
- b) If the insurance proceeds, if any, received by the Association as a result of any such fire or any other casualty or disaster are not adequate to cover the cost of repair and reconstruction, or in the event there are no insurance proceeds, and if the Property is not to be removed from the Horizontal Property Regime, the cost for restoring the damage and repairing and reconstructing the Building or Buildings so damaged or destroyed (or the costs thereof in excess of insurance proceeds received, if any) shall be paid by all of the Unit Owners of Patio Home Condominium Units in proportion to the ratio that the Percentage Interest of each Patio Home Condominium Unit bears to the total Percentage Interest of all Patio Home Condominium Units. Any such amounts payable by the Co-Unit Owners shall be assessed as part of the Common Expenses and shall constitute a lien from the time of assessment as provided herein in the Act.
- c) For purposes of Subparagraphs (a) and (b) above, repair, reconstruction, and restoration shall mean construction or rebuilding of the Patio Home Condominium Units to, as near as possible, the same condition as they existed immediately prior to the damage or destruction and with the same type of architecture.
- d) If, under Subparagraph (a) above, it is determined by the Co-Unit owners at the special meeting of the Association referred to therein, that there has been a complete destruction of all of the Buildings, the Co-Unit Owners shall, at said same special meeting, vote to determine whether or

not such complete destruction of the buildings shall be repaired and reconstructed. The buildings shall not be reconstructed or repaired if it is the determination of the Co-Unit Owners at said special meeting that there has been a complete destruction of all of the buildings unless, by a vote of two-thirds (2/3) of all of the Co-Unit Owners, a decision is made to rebuild, reconstruct, and repair the buildings. If two-thirds (2/3) of all of the Co-Unit Owners vote and decide that the buildings are to be rebuilt, reconstructed, and repaired, the insurance proceeds, if any, received by the Association shall be contributed and paid as hereinabove provided in Paragraphs (a) and (b).

- e) If, in any case of the complete destruction of all of the buildings, less than two-thirds (2/3) of all of the Co-Unit Owners vote in favor of the rebuilding, reconstruction, and repair of the Buildings, the Buildings shall not be rebuilt, reconstructed, or repaired and, in such event, the Property shall be deemed and considered as to be removed from the provisions of the Act.
- f) Immediately after a fire or other casualty or disaster causing damage to any property for which the Board of Directors or Association has the responsibility of maintenance and repair, the Board of Directors shall obtain reliable and detailed estimates of the cost to place the damaged property in condition as good as that before the casualty. Such costs may include professional fees and premiums for such bonds as the Board of Directors desires.
- g) The proceeds of insurance collected on account of any such casualty, and the sums received by the Board of Directors from collections of assessments against Co-Unit Owners on account of such casualty, shall constitute a construction fund which shall be disbursed, if the Building or Buildings are to be reconstructed and repaired, in payment of the costs of reconstruction and repair in the following manner;
 - (i) If the amount of the estimated cost of reconstruction and repair is less than Twenty Thousand Dollars (\$20,000.00), then the construction fund shall be disbursed in payment of such costs upon order of the Board of Directors; provided, however, that upon request of a Mortgagee which is a beneficiary of an insurance policy, the proceeds of which are included in the construction, such fund shall be disbursed in the manner hereinafter provided in the following Paragraph (ii).
 - (ii) If the estimated cost of reconstruction and repair of the Building or other improvement is more than Twenty Thousand Dollars (\$20,000.00), and if insurance allows, then the construction fund shall be disbursed in payment of such costs upon approval of a single general contractor with expertise in reconstruction to serve as coordinator, and employed by the Board of Directors to supervise such work and to assist all parties, payment to be made from time to time as the work progresses. The coordinator shall be required to furnish a certificate giving a brief description of the services and materials furnished by various contractors, subcontractors, materialmen, or other persons who have rendered services or furnished materials in connection with the work, (1) that the sums requested by them in payment are justly due and owing and that said sums do not exceed the value of the services and materials furnished; (2) that there is no other outstanding indebtedness known to the said coordinator for the services and materials described; and (3) that the costs as estimated by said coordinator for the work remaining to be done subsequent to the date of such certificate, do not exceed the amount of the construction fund remaining after payment of the sum so requested.

- (iii) Encroachments upon, or in favor of, Patio Home Condominium Units, which may be created as a result of such reconstruction or repair, shall not constitute a claim or basis of a proceeding or action by the Unit Owner upon whose property such encroachment exists, provided that such reconstruction was either substantially in accordance with the plans and specifications, or as the buildings were originally constructed. Such encroachments shall be allowed to continue in existence for so long as the buildings are occupied and maintained.
- (iv) In the event that there is any surplus of monies in the construction fund after the reconstruction or repair of the damage has been fully completed and all costs paid, such sums may be retained by the Board of Directors as reserve or may be used in the maintenance and operation of the Common Areas or, in the discretion of the Board of Directors, it may be distributed to the Unit Owners in the Buildings affected and their Mortgagees who are the beneficial Unit Owners of the fund. The action of the Board of Directors in proceeding to repair or reconstruct damage shall not constitute a waiver of any rights against another Unit Owner for committing willful or malicious damage.

17. COVENANTS AND RESTRICTIONS

The covenants and restrictions applicable to the use and enjoyment of the Patio Home Condominium Units and the Common Areas and Limited Areas are set forth in the Rules and Regulations and the By-Laws of Stonecreek Village Homeowners Association, Inc., (the "By-Laws"), including the limitation that each of the Patio Home Condominium Units shall be limited to residential use and such other restrictions as are set forth in the By-Laws and in the Rules and Regulations. These restrictions are for the mutual benefit and protection of the present and future Unit Owners and shall run with the land and inure to the benefit of and be enforceable by any Unit Owner or by the Association; and, with respect to any restrictions contained in the documents, may be enforceable by any Unit Owner, by Association, or by any Member. Present or future Unit Owners or the Association shall be entitled to injunctive relief against any violation or attempted violation of these provisions and shall be entitled to damages for any injuries resulting from any violations thereof, but there shall be no right of reversion or forfeiture of title resulting from such violation.

18. HARDSHIP ALLOWANCE FOR TEMPORARY LEASING

Effective upon the recording of this Declaration, no unit may be leased or rented and no unit may be occupied by a tenant, or other person who pays rent to the Unit Owner, unless (a) the Unit Owner held legal title to the unit and the unit was being used for rental purposes on the date of the recording of this Declaration, (b) the unit is leased to a member of the owner's immediate family (parents, grandparents, children, or grandchildren), (c) the Unit Owner or the Unit Owner's spouse is transferred by his or her employer to a location more than 50 miles from the Office of the Clark County Clerk, Clark County, Indiana, (d) the Unit Owner moved to a nursing home or assisted living facility, or (e) the Unit Owner dies and there is no surviving spouse who resided with the deceased at the time of death.

Upon the occurrence of (b) above, once the lease in existence at the recording of this amendment with the unit owner's immediate family member is terminated, that unit becomes subject to the restrictions in this section 18 and may only be rented under the conditions in (c), (d), or (e).

Upon the occurrence of (c), (d), or (e), above, a unit may be leased or rented for a total period of time not to exceed one year, and a lease or rental agreement entered into upon the occurrence of (a), (b), (c), (d), or (e) shall be subject to the following restrictions.

- (i) A fully executed copy of any proposed lease shall be delivered to the Board of Directors ten days before the rental term is to begin or, if the rental term has commenced at the time of the recording of this Declaration, within 10 days of the recording; and
- (ii) Any such lease or rental agreement shall be subject to the Declaration, By-Laws, and Rules and Regulations of the Stonecreek Village Patio Home Development.

19. AMENDMENT OF DECLARATION

Except as otherwise provided in this Declaration, amendments to this Declaration shall be proposed and adopted in the following manner:

- a) Notice. Notice of the subject matter of the proposed amendment shall be included in the notice of any meeting at which the proposed amendment is considered.
- b) Resolution. A resolution to adopt a proposed amendment may be proposed by the Board of Directors or Unit Owners having the aggregate of at least a majority of the Percentage Vote.
- c) Meeting. The resolution concerning a proposed amendment must be adopted by the designated vote at a meeting duly called and held in accordance with the provision of the By-Laws.
- d) Adoption. Any proposed amendment to this Declaration must be approved by a vote of not less than sixty percent (60%) of the quorum (including proxies) as defined in the Bylaws at a properly convened meeting. In the event any Patio Home Condominium Unit is subject to a first mortgage, the Mortgagee shall be notified of the meeting and the proposed amendment in the same manner as a Unit Owner if the Mortgagee has given prior notice of its mortgage interest to the Board of Directors in accordance with the provisions of the By-Laws. Only first mortgage holders that provide an address to the Secretary of the Board must be notified. The consent of a first mortgage holder must be indicated in a written instrument signed by the mortgage holder. The voting interest represented by such a unit may only be exercised with the consent of the Mortgagee. However, a mortgage holder is considered to have consented to a proposed amendment if the mortgage holder does not respond to a written request for consent within thirty (30) days after the mortgage holder receives the request.
- e) Special Amendments. No amendment to this Declaration shall be adopted which changes:
 - (i) the Percentage Interest with respect to any Condominium for the Common Expenses, without the approval of ninety-five percent (95%) of the Co-Unit Owners and Mortgagees whose mortgage interests have been made known to the Board of Directors in accordance with item d) above, or
 - (ii) the provisions of Paragraph 16 of this Declaration, with respect to reconstruction or repair in the event of fire or any other casualty or disaster, without ninety-five (95%) approval of all

Mortgagees whose mortgage interests have been made known to the Board of Directors in accordance with item d) above or dissolves the condominium.

- f) Recording. Each amendment to the Declaration shall be executed by the President and Secretary of the Association and shall be recorded in the office of the Recorder of Clark County, Indiana, and such amendment shall not become effective until so recorded.

20. ACCEPTANCE AND RATIFICATION

All present and future Unit Owners, Mortgagees, tenants, and occupants of the Patio Home Condominium Units shall be subject to and shall comply with the provisions of this Declaration, the Act, the By-Laws appended hereto, and the Rules and Regulations, as adopted by the Board of Directors and the Association, as each may be amended or supplemented from time to time. The acceptance of a deed of conveyance or the act of occupancy of any Patio Home Condominium Unit shall constitute an agreement that the provisions of the Declaration, the Act, the By-Laws, and the Rules and Regulations, as each may be amended or supplemented from time to time, are accepted and ratified by such Unit Owner, tenant or occupant, and all such provisions shall be covenants running with the land and shall bind any person having, at any time, any interest or estate in a Patio Home Condominium Unit or the Property as though such provisions were recited and stipulated at length in each and every deed, conveyance, mortgage, or lease thereof. All persons, trusts, or other legal entities who may occupy or use, enjoy, or control a Patio Home Condominium Unit or any part of the Property in any manner shall be subject to the Declaration, the Act, the By-Laws, and the Rules and Regulations applicable thereto, as each may be amended or supplemented from time to time.

21. NEGLIGENCE

Each Unit Owner shall be liable for the expense of any maintenance, repair, or replacement rendered necessary by his negligence or by that of any member of his family or his or their guests, employees, agents, or lessees (as permitted in Paragraph 18) to the extent that such expense is not covered by the proceeds of insurance carried by the Association. A Unit Owner shall pay the amount of any increase in insurance premiums occasioned by his use, misuse, occupancy, or abandonment of his Patio Home Condominium Unit or its appurtenances, or of the Common Areas or Limited Areas.

22. GRANTING AND RESERVATION OF EASEMENTS

The Board of Directors of the Association is granted the authority to grant easements.

23. EASEMENT FOR UTILITIES AND PUBLIC AND QUASI-PUBLIC VEHICLES

All public and quasi-public vehicles, including, but not limited to, police, fire, and other emergency vehicles, trash, and garbage collection, post office vehicles, and privately owned delivery vehicles, shall have the right to enter upon the streets, Common Areas, and Limited Areas of Stonecreek Village Patio Home Development in the performance of their duties. An easement is also granted to all utilities and their agents for ingress, egress, installation, replacement, repairing and maintaining of such utilities, including, but not limited to, water, sewers, gas, cable, telephones, and electricity on the Property; provided however, nothing herein shall permit the installation of sewers, electric lines, water lines, or other utilities, except as initially designed and approved by Declarant or as thereafter may be

approved by the Board of Directors. By virtue of this easement, the electric, cable, and telephone utilities are expressly permitted to erect and maintain the necessary equipment on the Property and to affix and maintain electric and telephone wires, circuits, and conduits on, above, across, and under the buildings, and on, above, across, and under the roofs and exterior walls of the buildings.

24. RESERVATION OF RIGHTS TO THE USE OF COMMON AREAS

As more particularly set forth, the Unit Owner of any Unit shall have the benefit of the use of Common Areas or portions thereof, to include the Clubhouse and recreational facilities. The Members shall then pay for the use of such facilities in accordance with the provisions set forth or adopted hereafter. This amount shall be included in the general and special assessments.

25. COSTS AND ATTORNEYS' FEES

In any proceeding arising because of failure of a Unit Owner to make any payments required by this Declaration, the By-Laws or the Act, or to comply with any provisions of the Declaration, the Act, the By-Laws, or the Rules and Regulations adopted pursuant thereto as each may be amended from time to time, the Association shall be entitled to recover its costs and reasonable attorneys' fees incurred in connection with such default or failure.

26. WAIVER

No Unit Owner may exempt himself from liability for his contribution toward the Common Expenses by waiver of the use or enjoyment of any of the Common Areas or Limited Areas or by abandonment of his Patio Home Condominium Unit.

27. SEVERABILITY CLAUSE

The invalidity of any covenant, restriction, condition, limitation, or other provisions of this Declaration of the By-Laws filed herewith shall not impair or affect in any manner the validity, enforceability, or effect of the rest of this Declaration or the attached By-Laws.

28. PRONOUNS

Any reference to the masculine, feminine, or neuter gender herein shall, unless the context clearly requires the contrary, be deemed to refer to and include the masculine, feminine, and neuter genders. Words in the singular shall include and refer to the plural, and vice versa, as appropriate.

29. PLANS

The Plans setting forth the layout, location, identification numbers, and dimensions of the Patio Home Condominium Units and the Property are incorporated into this Declaration, by reference, and have been filed in the office of the Recorder of Clark County, Indiana, in Condominium Plat Book __1__, Page __95__, as of June 8__, 2001__.

Stonecreek Village Homeowners Association, Inc. Board of Directors DATE: _____

BY: _____ Darrell Lewis, President

_____ Wayne George, Vice President

_____ James Mayrose, Treasurer

_____ Joyce Blake, Secretary

_____ Laura Welker, At-Large

I WITNESS WHEREOF, the undersigned have caused this Declaration to be executed the day and year first above written.

STATE OF INDIANA, COUNTY OF CLARK

Before me, a Notary Public in and for said County and State, personally appeared Stonecreek Village Homeowners Association, Inc., by Robert W. DeWees, and acknowledged the execution of the above and foregoing Restated Declaration of Horizontal Property Unit Ownership on this _____ day of _____, 2022.

My commission expires: _____

Notary Public
Resident of Clark County, Indiana

PREPARED BY: _____ Robert W. DeWees III
 McClain DeWees, PLLC

EXHIBIT A

BEING a part of Survey #21 of the Illinois Grant to Clark County, Indiana, and being further described as follows:

BEGINNING at a steel pin in concrete on the west corner of said Survey #21; thence North 54 degrees 46 minutes 34 seconds East (basis of bearings) along the line dividing Survey #21 from Surveys #33 and #34, 2841.51 feet; thence South 61 degrees 14 minutes 11 seconds East, 1398.61 feet to a steel pin in the original center line of Charlestown Pike; thence South 21 degrees 09 minutes 19 seconds West, along said center line, 600.51 feet to the true place of beginning.

THENCE continuing South 21 degrees 09 minutes 19 seconds East, along said center line, 647.11 feet to the east corner of Flagstaff Subdivision, as shown in Plat Book 11, Page 9, of said County records; thence North 33 degrees 30 minutes 57 seconds West, along the northeast line of said Subdivision, 1191.86 feet to a steel pin; thence South 54 degrees 37 minutes West, along the northwest line of said Subdivision, 2.91 feet; thence North 35 degrees 20 minutes 59 seconds West, 55.67 feet to a steel pin; thence North 54 degrees 46 minutes 34 seconds East, 333.59 feet; thence South 35 degrees 54 minutes 17 seconds East, 155.07 feet; thence South 51 degrees 12 minutes 22 seconds West, 13.64 feet; thence South 38 degrees 23 minutes 43 seconds East, 100.45 feet; thence North 70 degrees 35 minutes 41 seconds East, 49.92 feet; thence South 19 degrees 54 minutes 19 seconds East, 156.42 feet; thence North 57 degrees 36 minutes 28 seconds East, 45.61 feet; thence South 33 degrees 48 minutes 29 seconds East, 98.96 feet; thence South 54 degrees 32 minutes 11 seconds West, 29.21 feet; thence South 30 degrees 37 minutes 05 seconds East, 70.07 feet; thence South 69 degrees 28 minutes 45 seconds East, 142.56 feet; thence North 21 degrees 45 minutes 24 seconds East, 7.62 feet; thence South 68 degrees 08 minutes 30 seconds East, 218.85 feet to THE TRUE PLACE OF BEGINNING.

Containing 9.895 acres and being subject to all legal highways and easements of record.