

**AMENDED AND RESTATED DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS & PLAT COVENANTS
FOR GATEWOOD**

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

A. "Assessment" shall mean the share of the Common Expenses imposed on each Lot or other special assessments, as determined and levied pursuant to the provisions of paragraph 5 hereof.

B. "Association" shall mean the Gatewood Homeowners' Association, Inc., an Indiana not-for-profit corporation formed under the Indiana Not-For-Profit Corporation Act of 1971, as amended.

C. "Board" shall mean the Board of Directors of the Association.

D. "Committee" shall mean the Development Control Committee, composed of three (3) members of the Association appointed by the Board. In lieu of appointing a separate Committee, the Board of Directors of the Association may serve the functions of the Committee. The members of the Committee shall serve for one (1) year terms, but are subject to removal by the Board at any time with or without cause. Any vacancies on the Committee from time to time existing shall be filled by appointment by the Board.

E. "Common Area(s)" shall mean those areas and all improvements located thereon set aside for recreation areas, theme structures or landscaped areas or mounds at street entrances, lights, park areas, street landscaping, the Lakes, as defined herein, the shoreline area of the Lakes as shown on the Plats and any other areas so designated on the Plats.

F. "Common Expenses" shall mean the actual and estimated cost to the Association of its proportionate share of the costs for maintenance, management, operation, repair, improvement and replacement of the Common Areas, and any other cost or expense incurred by the Association for the benefit of the Common Areas or for the benefit of the Association.

G. "Lake" or "Lakes" shall mean and refer to the water retention pond(s) or lake(s) and common area portion of the shoreline area as shown on the Plats which serves or shall serve as part of the storm and surface water drainage system serving the Development, as such are more particularly described on the Plats.

H. "Limited Common Area" may appear upon the Plats designated by block letter and further identified as a "cul-de-loop" which is created for the exclusive use and enjoyment of those particular lots having public street access therefrom. Each such owner shall have an easement for ingress and egress in common with the other adjacent owners to the public street across such area. Such cul-de-loop may further have a landscaped island as may be shown on the Plats therein adjacent to the public right-of-way and such Limited Common Area shall be owned and maintained by equal undivided interests as tenants in common of the lots abutting

thereon and using the cul-de-loop as a means of ingress and egress to the public street. Such maintenance and repair shall be undertaken by a determination in writing of a majority of the lot owners having an undivided interest in the Limited Common Area, and upon the failure of any such lot owner to pay his equal contributive share for such maintenance or repair, the remaining lot owners or any one of them may advance the defaulting lot owner's contributive share upon thirty (30) days' written notice and such advancement shall constitute a lien upon the lot of the defaulting lot owner enforceable in the same manner and under the same terms as made and provided under the provisions of the Mechanics Lien Laws of the State of Indiana. Any such lien shall be subordinate to the lien of any first mortgage and any first mortgagee taking title to a lot by foreclosure or deed in lieu thereof shall take title free and clear of any such assessments for work performed prior to such mortgagee's taking title.

I. "Lot" or "Lots" shall mean any parcel(s) of real estate described by one of the Plats.

J. "Member" shall mean any person or entity holding membership in the Association as provided in this Declaration.

K. "Owner" shall mean a person who has or is acquiring any right, title or interest, legal or equitable, in and to a Lot, but excluding those persons having such interest merely as security for the performance of an obligation.

L. "Restrictions" shall mean all of the covenants, conditions and restrictions contained herein, including the Plat Covenants, and the rules and regulations adopted by the Board of Directors of the Association.

2. Organization and Duties of Association.

A. Organization of Association. The Association has been organized as a not-for-profit corporation under the laws of the State of Indiana, to be operated in accordance with the Articles of Incorporation which have been filed with the Indiana Secretary of State, and the Code of By-Laws of the Association. The membership of the Association shall consist of one class of voting members, with each Member having equal voting rights. In the event that any one Lot shall be owned by more than one person, partnership, trust, corporation, or other entity, they shall be treated collectively as one Member for voting purposes, so that as to any matter being considered by the Association, only one vote appertains to each Lot.

B. General Duties of the Association. The Association is hereby authorized to act and, shall act on behalf of and in the name, place, and stead of, the individual Owners in all matters pertaining to the maintenance, repair, and replacement, of the Common Areas, the determination of Common Expenses, and the collection of annual and special Assessments. The Association shall also have the right, but not the obligation to act on behalf of any Owner or Owners in seeking enforcement of the terms, covenants, conditions and restrictions contained in the Plats. Neither the Association nor its officers or authorized agents shall have any liability whatsoever to any Owner for any action taken under color of authority of this Declaration, or for any failure to take any action called for by this Declaration, unless such act or failure to act is in the nature

of a willful or reckless disregard of the rights of the Owners or in the nature of willful, intentional, fraudulent, or reckless misconduct.

C. Amendment of Declaration. The Association shall have the right to amend this Declaration at any time, and from time to time, in accordance with paragraph 10 of this Declaration.

D. Insurance. The Association shall maintain in force adequate public liability insurance protecting the Association against liability for property damage and personal injury. The Association may, but need not, maintain in force adequate officers and directors insurance covering the officers and directors of the Association. If appropriate, the Association shall also maintain in force adequate fire and extended coverage insurance, insuring all Common Areas against fire, windstorm, vandalism, and such other hazards as may be insurable under standard "extended coverage" provisions, in an amount equal to the full insurable value of such improvements and property. The Association shall notify all mortgagees which have requested notice of any lapse, cancellation, or material modification of any insurance policy. All policies of insurance shall contain an endorsement or clause whereby the insurer waives any right to be subrogated to any claim against the Association, its officers, Board members, any property manager, their respective employees and agents, the Owners and occupants, and also waives any defenses based on co-insurance or on invalidity arising from acts of the insured, and shall cover claims of one or more parties against other insured parties.

The Association shall maintain a fidelity bond indemnifying the Association, the Board and the Owners for loss of funds resulting from fraudulent or dishonest acts of any director, officer, employee or anyone who either handles or is responsible for funds held or administered by the Association, whether or not they receive compensation for their services. The fidelity bond should cover the maximum amount of funds which will be in the custody of the Association or its management agent at any time, but in no event shall such fidelity bond coverage be less than the sum of one (1) years' assessment on all Lots in the Development, plus the Association's reserve funds.

The Association shall cause all insurance policies and fidelity bonds to provide at least ten (10) days written notice to the Association, and all mortgagees who have requested such notice, before the insurance policies or fidelity bonds can be cancelled or substantially modified for any reason.

E. Condemnation, Destruction. In the event that any of the Common Areas shall be condemned or taken by any competent public authority, or in the event the same shall be damaged or destroyed by any cause whatsoever, the Association shall represent the interests of the Owners in any proceedings, negotiations, insurance adjustments, settlements, or agreements in connection with such condemnation, damage, or destruction. Any sums recovered by the Association shall be applied, first, to the restoration and repair of any Common Areas condemned, damaged, or destroyed, to the extent such restoration or repair is practicable, and the balance of such sums shall either be held as a reserve for future maintenance of the Common Areas or turned over to the Owners in proportion to their Pro-rata Shares (as hereinafter defined),

whichever may be determined by a majority vote of the members of the Association. Each Owner shall be responsible for pursuing his own action for damages to his Lot, either by reason of direct damage thereto or by reason of an impairment of value due to damage to the Common Areas. The Association shall notify all Mortgagees of which it has notice of any condemnation, damage, or destruction of any Common Areas.

F. Mortgagees' Rights. Any mortgagees of any Owners shall have the right, at their option, jointly or severally, to pay taxes or other charges which are in default or which may or have become a charge against the Common Areas and to pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy for the Common Areas, and mortgagees making such payment shall be owed immediate reimbursement therefor from the Association. In addition, neither the Owners nor the Association shall materially impair the right of any mortgage holding, insuring, or guaranteeing any mortgage on all or any portion of the Real Estate.

3. Powers of Development Control Committee.

A. In General. The Gatewood Development Control Committee shall generally have the duty to see that the Gatewood neighborhood remains an attractive community. No dwelling, building structure, fencing over four feet (4') in height, exterior painting (excluding repainting in the same color) or exterior improvement of any type or kind (excluding landscaping) shall be constructed or placed on any Lot without the prior written approval of the Committee. Such approval shall be obtained only after written application requesting authorization has been made to the Committee by the Owner of the Lot. Such written application shall be in the manner and form prescribed from time to time by the Committee, and the Committee may require a set of plans and specifications for any such proposed construction or improvement. The Committee may require that such plans include plot plans showing the location of all improvements existing upon the Lot and the location of the improvements proposed to be constructed or placed upon the Lot, each properly and clearly designated. The Committee may also require that such plans and specifications set forth the color and composition of all exterior materials proposed to be used and any proposed landscaping, together with any other material or information which the Committee may require. Notwithstanding anything herein to the contrary, approval of the Committee will not be required for fences not extending beyond the furthest back front corner of the residence on the Lot and not exceeding four (4) feet in height, or playground facilities, decks, patios or similar items not patently visible from the street. Chain link fences must have a black or brown factory finish. Fencing style and color shall be consistent with the Gatewood subdivision.

B. Power of Disapproval. The Committee may refuse to grant permission to construct, place or make the requested improvement, when:

- (1) The plans, specifications, drawings or other material submitted are themselves inadequate or incomplete, or show the proposed improvements to be in violation of these Restrictions;

(2) The design, proposed material or color scheme of a proposed improvement is not in harmony with the general surroundings of the Lot or with adjacent buildings or structures, including trim, siding, roof and brick colors, or with the Development in general;

(3) The proposed improvement or any part thereof would architecturally, in the reasonable judgment of the Committee, be contrary to the interests, welfare or rights of all or any other Owners.

C. Duties of Committee. The Committee shall approve or disapprove proposed improvements within thirty (30) days after all required information shall have been received. A copy of submitted materials shall be retained by the Committee for its permanent files. All notifications to applicants shall be in writing, and, in the event that such notification is one of disapproval, it shall specify the reason or reasons therefor. The Committee shall further affix its signature of approval upon two (2) site plans for purposes of obtaining an Improvement Location Permit, or similar permit, from the City of Fishers, or other applicable governmental authority, if such are required.

D. Liability of Committee. Neither the Committee nor any agent or member thereof, shall be responsible in any way for any defects in any plans, specifications or other materials submitted to it, nor for any defects in any work done according thereto.

E. Inspection. The Committee or its designated agent may inspect work being performed to assure compliance with these Restrictions and applicable regulations.

4. Remedies.

A. In General. Any party to whose benefit these Restrictions inure, including any Owner, the Association, or the Code Enforcement Division of the City of Fishers, or other applicable governmental authority, may proceed at law or in equity to prevent the occurrence or continuation of any violation of these Restrictions, but the Association shall not be liable for damages of any kind to any person for failing either to enforce or carry out any of these Restrictions.

B. Delay or Failure to Enforce. No delay or failure on the part of any aggrieved party to invoke any available remedy with respect to a violation of any one or more of these Restrictions shall be held to be a waiver by that party (or an estoppel of that party to assert) any right available to him upon the occurrence, recurrence or continuation of such violation or violations of these Restrictions.

5. Covenants for Maintenance Assessments.

A. Purpose of Assessments. The Assessments levied by the Association shall be used exclusively for the purpose of preserving the values of the Lots within the Development and promoting the health, safety, and welfare of the Owners, users, and occupants of the Development and, in particular, for the Association's obligations relating to the improvement, repairing, operating, and maintenance of the Common Areas, including, but not limited to, the

payment of taxes and insurance thereon, enforcement of the Restrictions, and for the cost of labor, equipment, material, and management furnished with respect to the Common Areas; provided that the Association shall not be responsible for the replacement, repair or maintenance of any Common Areas which are or hereafter may be dedicated to the public. Each Owner hereby covenants and agrees to pay to the Association:

(a) A Pro-rata Share (as hereinafter defined) of the annual Assessment fixed, established, and determined from time to time, as hereinafter provided.

(b) A Pro-rata Share (as hereinafter defined) of any special Assessments fixed, established, and determined from time to time, as hereinafter provided.

B. Liability for Assessment. Each Assessment, together with any interest thereon and any costs of collection thereof, including attorneys' fees, shall be a charge on each Lot and shall constitute a lien from and after the due date thereof in favor of the Association upon each Lot. Each such Assessment, together with any interest thereon, late charges and any costs of collection thereof, including attorneys' fees, shall also be the personal obligation of the Owner of each Lot at the time when the Assessment is due. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such Assessments as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any Assessments thereafter becoming due or from the lien thereof, nor shall any sale or transfer relieve any Owner of the personal liability hereby imposed. The personal obligation for delinquent Assessments shall not pass to any successor in title unless such obligation is expressly assumed by such successor.

C. Pro-rata Share. The Pro-rata Share of each Owner for purposes of this paragraph 5 shall be the percentage obtained by dividing one by the total number of Lots shown on the Plats of the Development ("Pro-rata Share").

D. Basis of Annual Assessments. The Board shall establish an annual budget prior to the beginning of each fiscal year, setting forth estimates of all Common Expenses for the coming fiscal year, together with a reasonable allowance for contingencies and reserves of the Association. A copy of this budget shall be mailed or delivered to each Owner prior to the beginning of each fiscal year of the Association.

E. Basis of Special Assessments. Should the Board at any time during the fiscal year determine that the Assessment levied with respect to such year are insufficient to pay the Common Expenses for such year, the Board may, at any time, and from time to time levy such special Assessments as it may deem necessary for meeting the Common Expenses. In addition, the Board shall have the right to levy at any time, and from time to time, one or more special Assessments for the purpose of defraying, in whole, or in part, any unanticipated Common Expense not provided for by the annual Assessments.

F. Fiscal Year; Due Dates. The fiscal year of the Association shall be established by the Association and may be changed from time to time by action of the Association. The annual Assessment shall be due and payable on the first day of each fiscal year of the Association,

unless the Board of Directors selects a different due date. Annual Assessments shall be due and payable in full as of the above date, except that the Board of Directors of the Association may from time to time by resolution authorize the payment of such Assessments in installments.

G. Duties of the Association.

(i) The Board shall keep proper books and records of the levy and collection of each annual and special Assessment, including a roster setting forth the identification of each and every Lot and each Assessment applicable thereto, which books and records shall be kept by the Association and shall be available for the inspection and copying by each Owner (or duly authorized representative of any Owner) at all reasonable times during regular business hours of the Association. The Board shall cause written notice of all Assessments levied by the Association upon the Lots and upon the Owners to be mailed or delivered to the Owners or their designated representatives as promptly as practicable and in any event not less than thirty (30) days prior to the due date of such Assessment or any installment thereof. In the event such notice is mailed or delivered less than thirty (30) days prior to the due date of the Assessment to which such notice pertains, payment of such Assessment shall not be deemed past due for any purpose if paid by the Owner within thirty (30) days after the date of actual mailing or delivery of such notice.

(ii) The Association shall promptly furnish to any Owner or any mortgagee of any Owner upon request a certificate in writing signed by an officer of the Association, setting forth the extent to which Assessments have been levied and paid with respect to such requesting Owner's or mortgagee's Lot. As to any person relying thereon, such certificate shall be conclusive evidence of payment of any Assessment therein stated to have been paid.

H. Non-Payment of Assessments; Remedies of Association.

(i) If any Assessment is not paid on the date when due, then such Assessment shall be deemed delinquent and shall, together with any interest thereon, late charges in an amount determined by the Board of Directors, and any cost of collection thereof, including attorneys' fees, become a continuing lien on the Lot against which such Assessment was made, and such lien shall be binding upon and enforceable as a personal liability of the Owner of such Lot as of the date of levy of such Assessment, and shall be enforceable against the interest of such Owner and all future successors and assignees of such Owner in such Lot, and shall be collected in the same manner as the Assessments described in paragraph (ii) hereof; provided, however, that such lien shall be subordinate to any mortgage on such Lot recorded prior to the date on which such Assessment becomes due.

(ii) If any Assessment upon any Lot is not paid within fifteen (15) days after the due date, such Assessment and all costs of collection thereof, including attorneys' fees, shall be subject to late charges in an amount determined by the Board, and may (in the Board's discretion) bear interest from the date of delinquency until paid at an annual rate

which is two times the rate in effect for ninety-day U.S. Treasury Bills at the time such Assessment is due, but in no event greater than the maximum rate allowable under any applicable usury laws, and the Association may bring an action in any court having jurisdiction against the delinquent Owner to enforce payment of the same and/or to foreclose the lien against said Owner's Lot. The Board may, at its option, bring a suit to recover a money judgment for any unpaid Assessments without foreclosing or waiving the lien securing the same. In connection with any effort to collect or in any action to recover an Assessment, regardless of whether litigation is initiated, the Board, for and on behalf of the Association, shall be entitled to recover from the Owner of the Lot, not only the delinquent Assessments, but also all late charges imposed, all interest, all court costs, all costs of collection, charges, fees and expenses incurred by the Association with respect to such collection effort or action, including but not limited to charges, costs, fees or other expenses incurred by the Association to the managing agent (property manager) for administering, monitoring or processing delinquent Owners' accounts, and reasonable attorney's fees. The Association need not accept any tender or a partial payment of an Assessment, or any installment of an Assessment, and all costs, expenses, charges and attorneys fees attributable thereto, and any acceptance of any such tender shall not be deemed to be a waiver of the Association's right to demand and receive full payments thereafter. In addition, the Board shall have the power to adopt by Board resolution additional rules and regulations or delinquency procedures, including but not limited to the Board's decision of whether to suspend a delinquent Owner's right to vote.

I. Adjustments. In the event that the amounts actually expended by the Association for Common Expenses in any fiscal year exceed the amounts budgeted and assessed for Common Expenses for that fiscal year, the amount of such deficit shall be carried over and become an additional basis for Assessments for the following fiscal year. Such deficit may be recouped either by inclusion in the budget for annual Assessments or by the making of one or more special Assessments for such purpose, at the option of the Board of Directors of the Association. In the event that the amounts budgeted and assessed for Common Expenses in any fiscal year exceed the amount actually expended by the Association for Common Expenses for that fiscal year, a Pro-rata Share of such excess shall be a credit against the Assessment(s) due from each Owner for the next fiscal year(s) unless the Board of Directors determines that is in the best interests of the Association to apply such excess toward the Association's reserve funds.

6. Effect of Becoming an Owner. The Owners of any Lot in Gatewood, by acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from the original developer of Gatewood or a subsequent Owner of such Lot, shall accept such deed and execute such contract subject to each and every restriction and agreement herein contained. By acceptance of such deed or execution of such contract, the new Owner acknowledges the rights and powers of the other Owners and the Association with respect to these Restrictions and also for themselves, their heirs, personal representatives, successors and assigns. Such Owners covenant and agree and consent to and with the Owners and subsequent owners of each of the Lots affected by these Restrictions to keep, observe, comply with and perform such Restrictions and agreements.

7. Control of the Lakes and Common Areas

A. Control by the Board. The Board shall regulate and control the use of the Lakes and Common Areas and shall provide for the maintenance thereof in such a manner so as to preserve and enhance values and to maintain a harmonious relationship among structures in the vicinity thereof and the natural or other vegetation and topography of the Lakes and Common Areas.

B. Conditions. No improvements, excavation, changes in grade or other work shall be done upon the Lakes or Common Areas by any Owner, nor shall the Lakes or Common Areas be changed by any Owner from its natural or improved existing state, without the prior written approval of the Board.

8. Restrictions, Covenants and Regulations.

A. Restrictions on Use. The following covenants and restrictions on the use and enjoyment of the Lots, the Lakes, and the Common Areas shall be in addition to any other covenants or restrictions contained herein or in the Plats and all such covenants and restrictions are for the mutual benefit and protection of the present and future Owners and shall run with the land and inure to the benefit of and be enforceable by any Owner, or by the Association. Present or future Owners or the Association shall be entitled to injunctive relief against any violation or attempted violation of any of such covenants and restrictions, and shall, in addition, be entitled to damages for any injuries or losses resulting from any violations thereof, but there shall be no right of reversion or forfeiture resulting from such violation. These covenants and restrictions are as follows:

(a) No one other than Owners who are Members in good standing with the Association, or such an Owner's occupant, tenants, guests or invitees, may use the Lakes or the Common Areas.

(b) No nuisance shall be permitted to exist on any Lot and no waste shall be committed on any Lot which shall or might damage or cause injury to the Lakes or the Common Areas.

(c) All Owners and members of their families, their guests, or invitees, and all occupants of any Lot or the Properties or other persons entitled to use the same and to use and enjoy the Lakes and the Common Areas, shall observe and be governed by such rules and regulations as may from time to time be promulgated and issued by the Board governing the operation, use and enjoyment of the Lakes and the Common Areas.

(d) No Owner shall be allowed to plant trees, landscape or do any gardening in any part of the Lakes or the Common Areas, except with express permission from the Board.

(e) The Lakes and the Common Areas shall be used and enjoyed only for the purposes for which they are designed and intended, and shall be used subject to the rules and regulations from time to time adopted by the Board. Without limiting the generality of the foregoing, the Lakes are and will be an integral part of the storm water drainage

system serving the Development, and are intended to be used for such purpose and primarily as a visual and aesthetic amenity and not as a recreational amenity. Accordingly, no use shall be made of the Lakes which in any way interferes with their proper functioning as part of such storm water drainage system. No boating, swimming, diving, skiing, ice skating or other recreational activity shall be permitted in or on the Lakes. No sewage, garbage, refuse, or other solid, liquid, gaseous or other materials or items (other than storm and surface water drainage) shall be put into the Lakes, except the Association may take steps to clear and purify the waters thereof by the addition of chemicals or other substances commonly used for such purposes or by providing therein structures and equipment to aerate the same. Fishing from the shoreline area of the Lakes by an Owner, his occupants, his invited guests and family, shall be permitted subject to rules determined by the Association and obedience and compliance with all applicable fishing and game laws, ordinances, rules and regulations. No Owner or other person shall take or remove any water from or out of the Lakes, or utilize the water contained therein for any purposes, including, without limitation, connection with any sprinkler or irrigation systems. No piers, docks, retaining walls, rafts or other improvements shall be built, constructed or located on any Lot or on the Properties which extend into, or to within twenty-five (25) feet from the shoreline of the Lakes.

(f) “Dusk-to-Dawn” Lighting. At the time of original construction, each Lot had a dusk-to-dawn light installed in the front of the home. In the interests of safety and aesthetics of the neighborhood, the Owner of each Lot shall maintain the appearance and working condition of their dusk-to-dawn lights. Such lights must be illuminated during nighttime hours (i.e., immediately following dusk and preceding dawn).

(g) Lot and Home Maintenance. The Owner of each Lot shall at all times maintain his or her Lot and his or her home so that it is attractive. This means grass and weeds shall be mowed, all debris removed, and anything else that would make the improvements appear unsightly.

B. Non-applicability to Association. Notwithstanding anything to the contrary contained herein, the covenants and restrictions set forth in subparagraph A of this paragraph 8 shall not apply to or be binding upon the Association in its management, administration, operation, maintenance, repair, replacement and upkeep of the Lakes and Common Areas to the extent the application thereof could or might hinder, delay or otherwise adversely affect the Association in the performance of its duties, obligations and responsibilities as to the Lakes and Common Areas.

9. Duration. The foregoing covenants, conditions and restrictions are to run with the land and shall be binding on all parties and all persons claiming under them for a period commencing on the date this Declaration is recorded and expiring December 31, 2024, at which time said covenants, conditions and restrictions shall be automatically extended for successive periods of ten (10) years. Changes or amendments to these covenants, conditions and restrictions may be made by Owners in accordance with paragraph 10 hereof.

10. Amendment of Declaration. This Declaration may be amended or changed, in whole or in part, at any time upon approval by the Owners of a majority of the Lots who are in good standing. For purposes of this provision, “good standing” shall mean Owners who are no more than thirty (30) days delinquent on the payment of any Special Assessments as determined by the Board at the time of the aforesaid approval. All Owners in good standing must be given the opportunity to vote on the proposed amendment(s). Such approval for an amendment to this Declaration may be obtained:

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

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

No amendment to this Declaration shall be adopted which changes the applicable share of an Owner's liability for assessments, or the method of determining the same, without, in each and any of such circumstances, the unanimous approval of all Owners and all mortgagees whose mortgage interests have been made known to the Association.

11. Severability. Every one of the Restrictions is hereby declared to be independent of, and severable from, the rest of the Restrictions and of and from every other one of the Restrictions, and of and from every combination of the Restrictions. Therefore, if any of the Restrictions shall be held to be invalid or to be unenforceable, or to lack the quality of running with the land, that holding shall be without effect upon the validity, enforceability or "running" quality of any other one of the Restrictions.

[The following provisions were not included in the original Declaration of Covenants, Conditions and Restrictions. They have been added by the Association’s attorney, Tom Murray.]

12. Plat Covenants--An Overview. When the original developer of Gatewood platted the subdivision, it filed four (4) Plats; one (1) for each Section. Those Plats were filed with the Hamilton County Recorder separately from the Declaration of Covenants, Conditions and Restrictions. The Plats depicted the “metes and bounds” layout of the community, showing from a surveyor’s point of view the exact location of the Lots, the streets, the easements, etc. However, the Plats also contained Plat Covenants which set forth restrictions applicable to the Owners. Most of the issues addressed in the Plat Covenants were not addressed at all in the Declaration of Covenants, Conditions and Restrictions. Thus, when a purchaser bought a home

in Gatewood, the new owner took title to not only the covenants and restrictions that were contained in the Declaration of Covenants, Conditions and Restrictions, but also the covenants and restrictions that were set forth in the Plat Covenants.

13. Differences in the Original Plat Covenants. The Plat Covenants included on the Plats for Sections 1 and 2 were very similar because the size and style of the homes were similar in those Sections. Likewise, the Plat Covenants included on the Plats for Sections 3 and 4 were very similar because in Sections 3 and 4, the size and style of the homes were similar in those Sections. Thus, there were some material differences between the Plat Covenants because of these differences. However, many of the provisions of the Plat Covenants were identical for all 4 Sections.

14. Plat Covenants Applicable to All Four Sections. Unless otherwise noted, the following Plat Covenants are applicable to all Sections of Gatewood:

14.1 Public Streets. The streets and public right-of-ways shown hereon. Subject to construction standards and acceptance, are hereby dedicated to the public use, to be owned and maintained by the governmental body having jurisdiction.

14.2 Residence Limitations. No trailer, shack, tent, boat, basement, garage, or other outbuilding may be used at any time as a residence, temporary or permanent, nor may any structure of a temporary character be used as a residence.

14.3 Building Location. No building or structure shall be located on any lot nearer to the front lot line or nearer to the side street lot line (corner lots) than the minimum building setback lines as shown on the within plat.

14.4 Attached Garage and Storage. No garage shall be erected on any lot herein which is not permanently attached to the residence, and no unenclosed storage area shall be erected. For the Lots in Sections 3 and 4 in Gatewood, no enclosed storage area shall be erected on any lot herein which is not permanently attached to the residence.

14.5 Conversion of Garages. No garages shall be converted to or used as living space on any Lot within the Gatewood subdivision. No attached garage shall be converted into living space until the property Owner has obtained written permission from the appropriate building officials that an attached garage of equal dimensions may be legally constructed on the premises. After said permission is obtained, the construction of the new garage space must commence concurrently with the conversion of the existing garage into living space.

14.6 Drainage, Utility and Sewer Easements. There are strips of ground as shown on the written plat marked D.U. and S.E. (Drainage Utility and Sewer Easements) which are reserved for the nonexclusive use of public utility companies, including cable television companies, but not including transportation

companies, for the installation and maintenance of mains, ducts, poles lines, wires, sewers and drains, subject at all times to the proper authorities, and to the easements herein reserved. No permanent or other structures shall be erected or maintained on said strips, except for fences, patios, decks, driveways and walkways. The Owner of such Lots in this Gatewood subdivision, however must take their title subject to the nonexclusive rights of the public utilities and other Owners of said Lots in this addition to said easements herein granted for ingress and egress in, along and through the strip so reserved. There shall be ten foot (10') drainage, utility and sewer easements on the front of each Lot unless otherwise noted (said 10' D.U. & S.E. applies to both frontages on corner Lots).

14.7 Drainage Easements. There are areas of ground on the plat marked "Drainage Easements". The Drainage Easements are hereby created and reserved for the nonexclusive use of the Association, the Hamilton County Drainage Board or any other applicable governmental authority for, access to and maintenance repair and replacement of such drainage system and common areas; provided, however, that the Owner of any Lot in the Gatewood subdivision subject to a drainage easement shall be required to keep the portion of said drainage easement on his or her Lot free from obstruction so that the surface water drainage will be unimpeded. The delineation of the drainage easement areas on the plat shall not be deemed a limitation on the rights of any entity for whose use any such easement is created and reserved to go on any Lot subject to such easement temporarily to the extent reasonable necessary for the exercise of the rights granted to by this paragraph. No permanent or other structures shall be erected or maintained on said drainage easements except for fences, patios, decks, driveways and walkways. The Owners of such Lots in this subdivision, however, shall take their title subject to the nonexclusive rights of the Hamilton County Drainage Board and other Owners of said Lots in this Gatewood subdivision to said easements herein granted for ingress and egress in, along and through the strips so reserved.

14.8 Air Easement and Right-of-Way. Gatewood is in close proximity to an airport. To assure the continued safe operation of the airport, an air easement and right-of-way allowing for the free and unconstructed passage of aircraft in, through and across the air space which lies fifty (50) feet above Gatewood exists.

14.9 Limited Common Area. Appears upon the plated lots of the subdivision designated by block letters showing the quantity of acreage contained therein and further identified as a "cul-de-loop" which is created for the exclusive use and enjoyment of those particular lots having public streets access therefrom. Each such owner shall have an easement for ingress and egress in such area. Such cul-de-loop shall further have landscaping therein adjacent to the public right-of-way and such limited common area, shall be owned and maintained by equal undivided interest as tenants in common of the lots abutting thereon and using the

cul-de-loop as a means of ingress and egress to the public right-of-way. Such maintenance and repair shall be undertaken by a determination in writing of a majority of the lots owners having an undivided interest in the limited common area, and upon thirty (30) days written notice and such advancement shall constitute a lien upon the lot of the defaulting lot owner enforceable in the same manner and under the same terms as made and provided under the provision of the mechanics lien laws of the State of Indiana. Any such lien shall be subordinate to the lien of any first mortgage and any first mortgage taking title to a lot by foreclosure or deed in lieu thereof shall take title free and clear of any such assessments for work performed prior to such mortgages taking title.

14.10 Common Area. There are areas of ground on the plat marked “common area” (CA). The common areas are hereby created and reserved:

- I. Solely for the common visual and aesthetic enjoyment of the owners;
- II. For the use as retention and detention ponds or lakes, entryways and nature parklands; and,
- III. For the ownership and use of the Association for the management and control of retention and detention ponds or lakes, entryways and playgrounds and the installation, maintenance and repair of improvement thereto.

14.11 Sight Distance at Intersections. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two feet (2’) and six feet (6’) above the street, shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines, and a line connecting points twenty-five feet (25’) from the intersection of said street lines extended. The same sight line limitations shall apply to any Lot within ten feet (10’) from the intersection of a street line with the edge of a driveway, pavement or alley line. No tree shall be permitted to remain within such distances of such intersection unless the foliage is maintained at sufficient height to prevent obstruction of the sight line.

14.12 Driveways. All driveways were paved by the builder at the time of original construction. Maintenance of driveways thereafter, including any resurfacing or repaving, shall conform with and be uniform to the surface provided at the time of original construction.

14.13 Sidewalks. Each residence constructed on a Lot shall have a continuous sidewalk from the driveway to the front porch.

14.14 Signs. Unless otherwise approved by the Committee or the Board of Directors, no sign of any kind shall be displayed to the public view on any Lot, except that one sign of not more than six (6) square feet may be displayed at any time for the purpose of advertising the property for sale or rent.

14.15 Animals and Nuisances. The owners of pets and other animals shall be subject to the requirements and restrictions set forth in the applicable ordinance then in effect for the City of Fishers. That ordinance is incorporated herein by this reference.

No noxious, unlawful, or otherwise offensive activity shall be carried out on any lot in this subdivision; nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

14.16 Motor Vehicles and Trailers. No boats or other watercraft, campers, recreational vehicles, trailers of any kind, buses, mobile homes, or any other vehicles of any description (other than normal passenger vehicles consisting of (i) trucks with a maximum load capacity of three-quarters (3/4) of a ton or less, (ii) vans or (iii) automobiles), shall be permitted, parked or stored anywhere within Gatewood; provided, however, that nothing herein shall prevent the parking or storage of such vehicles completely enclosed within a garage. No junk or derelict vehicle or other vehicle on which current registration plates are not displayed shall be kept anywhere within Gatewood except inside a garage.

14.17 Trash and Waste. No lot shall be used or maintained as a dumping ground for trash. Rubbish, garbage or other waste shall be kept in sanitary containers. All equipment for storage or disposal of such materials shall be kept clean and shall not be stored on any lot in open public view. All rubbish, garbage or other waste shall be regularly removed from a lot and shall not be allowed to accumulate thereon.

14.18 Antennas. No antenna in this subdivision shall exceed five (5) feet above a roof peak.

14.19 Gutters and Downspouts. All gutters and downspouts in this subdivision shall be painted or of a colored material other than grey galvanized.

14.20 Awnings. No metal, fiberglass or similar type material awnings or patio covers shall be permitted in this subdivision.

14.21 Swimming Pools. No above-ground swimming pools shall be permitted in this subdivision.

14.22 Solar Heat Panels. No solar heat panels shall be permitted on roofs of any structures in this subdivision. All such panels will be enclosed within fenced area and shall be concealed from the view of neighboring lots and the streets.

14.23 Street Access. All Lots shall be accessed from the interior streets of the Gatewood subdivision. No access is permitted from Allisonville Road or any other street outside of the Gatewood subdivision.

14.24 Modular Homes. Modular homes shall not be permitted in the subdivision.

14.25 Water and Sewage. No private or semi-private water supply and/or sewage disposal system (septic tanks, absorption fields, or any other method of sewage disposal) shall be located or constructed on any lot or lots in the subdivision.

14.26 Drainage Swales. Drainage swales (ditches) along dedicated roadways and within the right-of-way, or on dedicated easements, are not to be altered, dug out, filled in, tiled or otherwise changed without the written permission of the city engineer. Property owners must maintain these swales as sodded grassways, or other noneroding surfaces. Water from roofs or parking areas must be contained on the property long enough so that said drainage swales or ditches will not be damaged by such water. Driveways may be constructed over these swales or ditches only when appropriate sized culverts or other approved structures have been permitted by the city engineer. Culverts must be protected especially at the ends by head walls or metal end sections, and, if damaged enough to retard the water flow, must be replaced.

Any property owner altering, changing or damaging these drainage swales or ditches will be held responsible for such action and will be given 10 days notice by registered mail to repair said damage. After which time, if no action is taken, the city will cause said repairs to be accomplished and the bill for said repairs will be sent to the affected property owner for immediate payment.

15. Plat Covenants Applicable to Sections 1 and 2. The following Plat Covenants are applicable to Sections 1 and 2 only of Gatewood:

15.1 Outbuildings. No trailers, shacks, outhouses, detached storage sheds, or tool sheds of any kind shall be erected or situated on any Lot.

15.2 Nonexclusive Easement. Whenever a building is constructed so as to be substantially contiguous with a side Lot line, then to the extent necessary, the Owner of such Lot is hereby granted a three foot (3') access easement upon the adjoining Lot for maintenance and the encroachments by walls, eaves, roof overhang, gutters and the like. Said nonexclusive easement is hereby granted, as necessary or appropriate, for underground utility lines and utility service within said three foot (3') easement and said nonexclusive easement shall run in favor of the Owners of said Lots and to all public, private, and municipal utility companies (including cable television and the like): Provided, there shall be maintained a minimum distance between buildings of ten feet (10'), and a minimum distance between buildings backing up to each other of twenty feet (20').

15.3 Patio Easements. Certain Lots within Gatewood Section 1 and 2 were improved with a residential unit having a patio and patio area at the side of

the unit (“patio unit”) rather than the rear. In such event, the wall of the adjacent residential unit facing such patio unit shall be constructed without windows (excepting where there is a dividing patio fence) below a point which is seven feet (7’) above the finished floor elevation, and the Owners of such patio unit shall have an exclusive easement of the use of the area extending from the exterior wall of the patio unit to the exterior wall of the adjacent residential unit or to the dividing patio fence, in the case of the adjacent patio units, and running the length of the exterior of such adjacent unit. The Owner of the patio unit shall maintain such area (excluding the exterior wall of the adjacent unit). The Owner of the adjacent unit shall have the right and easement to enter such area as is necessary to maintain his or her residential unit. No fences, except those fences installed by the developer at the time of original construction, shall be erected in such area without the written consent of the adjacent Owners and the Committee.

16. Plat Covenants Applicable to Sections 3 and 4. The following Plat Covenants are applicable to Sections 3 and 4 only of Gatewood:

16.1 Outbuildings. No trailers, shacks, outhouses, detached storage sheds, or tool sheds of any kind shall be erected or situated on any Lot herein.

16.2 Development Standards. Following are the development standards for Gatewood, Sections 3 and 4, approved by the applicable Board of Zoning Appeals and accepted by the Fishers Planning Commission. All other development standards pertinent to the Fishers R-5 zoning classification are applicable.

1. Minimum lot size shall be 7,200 square feet;
2. Minimum unit size shall be 1,200 square feet of living area

16.3 Five Foot Non-Access Easement: The Plat for Section 3 indicates that there shall be no means of ingress and egress (pedestrian or vehicle) to Gatewood Lane from the east side of Lots 156, 123, 122, 120, 133 and 134.

17. Leasing Restrictions Applicable to All Sections of Gatewood

Section 17.1. Limits on the Number of Leased Lots (“Rental Cap”). No more than ten (10) of the one hundred eighty (180) Lots in Gatewood may be leased or rented to non-owner occupants at any given time, except as may be otherwise provided in this Paragraph 17. The Lots described in Section 17.2 below shall count towards the ten (10) Lot “rental cap”. If at any time such number of Lots are leased or rented, an Owner who wants to rent or lease his or her Lot which is not already rented shall be placed upon a waiting list by the Board of Directors.

Section 17.2. Effective Date of “Rental Cap” on Existing Rentals (“Grandfathered” Landlords). Neither the “rental cap” nor the other provisions in Section 17.1 above shall apply to any Lot of an Owner in Gatewood who, as of the date of recording of this provision, is renting or leasing said Lot and provides written proof thereof to the Association’s Managing Agent within

thirty (30) days after the date of said recording. Such proof shall include a copy of each executed lease by such Owner which identifies the tenant (but which may have the rental amount deleted). The Owners of record of such currently-rented Lots shall not be subject to the provisions of Section 17.1, but shall be subject to the remaining provisions of this Paragraph 17. However, when the legal owners of record of any of the above-described Lots sell, transfer or convey such Lot(s) to another Owner after the date of recording of this provision, such Lot(s) shall immediately become subject to Section 17.2.

Section 17.3. Hardship Exceptions and Waiver. Notwithstanding Section 17.1 above, if an Owner wishes to rent or lease his or her Lot, but the maximum number of Lots is currently being leased, the Owner may request the Board of Directors to waive the “rental cap” and approve a proposed lease if the Owner establishes to the Board’s satisfaction that the “rental cap” will cause undue hardship. If a majority of the entire Board of Directors approves in writing of the Owner’s request, the Board of Directors shall permit the Owner to rent or lease said Lot, subject to any further conditions or limitations imposed by the Board in the Board’s discretion, but only if the Owner satisfies all other requirements of this Paragraph 17. Such decision shall be at the sole discretion of the Board. Examples of an undue hardship include:

- (a) death, dissolution or liquidation of an Owner;
- (b) divorce or marriage of an Owner;
- (c) necessary relocation of the residence of an Owner to a point outside of a fifty (50) mile radius of the perimeter of Gatewood due to a change of employment or retirement of at least one (1) of such Owners;
- (d) necessary relocation of the residence of an Owner due to mental or physical infirmity or disability of at least one (1) of such Owners;
- (e) difficult real estate market conditions; and
- (f) other similar circumstances.

Section 17.4. General Lease Conditions.

- (a) All leases, including renewals, shall be in writing.
- (b) 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 or the Managing Agent by the Owner within thirty (30) days after execution.
- (c) All leases shall be made expressly subject and subordinate in all respects to the terms of the Declaration, By-Laws, Articles of Incorporation, and any rules and regulations adopted by the Board of Directors, as amended, to the same extent as if the tenant were an Owner and a member of the Association;

- (d) All leases 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.
- (e) The Owner shall supply copies of such legal documents to the tenants prior to the effective date of the lease.
- (f) The Owner cannot be delinquent in the payment of any assessments or other charges to the Association. If at any time an Owner becomes delinquent, the Board shall have the right to revoke said Owner's right to lease the Owner's Lot, even if during the term of a lease.
- (g) The Board of Directors shall have the power to enact such additional rules and regulations as, in its discretion, may be necessary or appropriate concerning leasing.
- (h) All Owners who do not reside in the home shall provide the Managing Agent with the name of the tenant(s) and any other residents living in the home.

Section 17.5. Two Year Waiting Period. In addition to all other provisions of this Paragraph 17, for a period of at least two (2) years after an Owner's acquisition of a Lot, said Owner cannot lease such Lot. After such time, said Lot will be eligible to be leased if all other conditions of this Paragraph 17 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 17.5, if an Owner wishes to lease a Lot prior to the end of the two year waiting period, the Owner may apply to the Board of Directors for a waiver. The Board may, in writing, approve an earlier lease if the Owner establishes to the Board's satisfaction that the waiting period will cause undue hardship in the manner as defined in Section 17.3 above.

Section 17.6. Owner is Still Liable. No lease shall provide, or be interpreted or construed to provide, for a release of the Owner from his or her responsibility to the Association and the other Owners for compliance with the provisions of this Declaration, the Articles of Incorporation, the By-Laws, and any rules and regulations promulgated by the Board of Directors, or from the Owner's liability to the Association for payments of assessments or any other charges.

Section 17.7. Violations. Any lease or attempted lease of a Lot in violation of the provisions of this Paragraph 17 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 of this Paragraph 17 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 17.8. Institutional Mortgagees. The provisions of this Paragraph 17 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 Paragraph 17.

Section 17.9. 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 Paragraph 17 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 Paragraph 17, 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 Paragraph 17 and this Section 17.9, 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.