

Cross Reference: **Instrument No. 006689 in Book 053, Page 34**
 Instrument No. 27043 in Book 060, Page 484
 Instrument No. 27151 in Book 060, Page 489
 Instrument No. 95001357 in Book 068, Page 177
 Instrument No. 2004-020684

SECOND AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS SECOND AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS was made and executed as of the date set forth below by the Villa Green Association, Inc.

WITNESSETH:

WHEREAS, the planned development in Johnson County, Indiana commonly known as Villa Green was established upon the recording of certain Plats with the Office of the Recorder of Johnson County, Indiana; and

WHEREAS, the Plats for Villa Green were originally subject to a certain "Declaration of Covenants, Conditions and Restrictions," which was recorded on July 17, 1979 in the Office of the Recorder of Johnson County, Indiana as **Instrument No. 006689 in Book 053, Page 34**, as subsequently amended (hereafter, referred to as the "Original Declaration"); and

WHEREAS, the Original Declaration was amended by a "Restated Declaration of Covenants, Conditions and Restrictions," which was recorded on July 13, 2004 in the Office of the Recorder of Johnson County, Indiana as **Instrument No. 2004-020684** (hereafter, referred to as the "Restated Declaration"); and

WHEREAS, the developer of Villa Green established the Eden Estates Home Owners Association, Inc., an Indiana nonprofit corporation, for the purposes of administering and overseeing the affairs of the community and its Dwellings, which corporation was renamed Villa Green Association, Inc. pursuant to the filing of Articles of Amendment with the Indiana Secretary of State on June 27, 1988 (hereafter, the "Association"); and

WHEREAS, Article VIII of the Restated Declaration sets forth that the document may be amended upon the signed consent of a majority of the Owners in Villa Green; and

WHEREAS, at least a majority of the Owners in Villa Green consented to and approved this Second Amended and Restated Declaration, as evidenced by the signatures attached hereto and filed herewith; and

WHEREAS, the Owners of said Lots desire to amend certain provisions of the Restated Declaration and to restate the same for the convenience of the Owners such that this Second Amended and Restated Declaration in no way nullifies or changes the Original Declaration or the Restated Declaration, or the effective date(s) of those documents. However, upon the date of recording of this Second Amended and Restated Declaration with the Johnson County Recorder's Office, the Restated Declaration shall no longer be in effect and shall be replaced by the following; and

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

NOW, THEREFORE, the Owners in Villa Green hereby amend and restate the Declaration such that all of the platted Dwellings, Lots, Common Areas and lands located within Villa Green as they have been platted are held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, subject to the following restrictions, all of which were and are declared and agreed to be in furtherance of a plan for the improvement and sale of said Dwellings, Lots, Common Areas and lands in Villa Green. Such restrictions below were and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the development as a whole and of each of said homes and Lots situated therein. All of the restrictions shall run with the land and shall be binding upon the Owners and upon the parties having or acquiring any right, title or interest, legal or equitable, in and to the real property or any part or parts thereof subject to such restrictions, and shall inure to the benefit of all successors in title to any real estate in the development. Now, therefore, the Restated Declaration which is applicable to all Owners and residents within Villa Green is hereby amended and restated as follows:

ARTICLE I
DEFINITIONS

Section 1. "Declaration" shall mean and refer to this Second Amended and Restated Declaration of Covenants, Conditions and Restrictions.

Section 2. "Association" shall mean and refer to VILLA GREEN ASSOCIATION, INC., an Indiana not-for-profit corporation, its successors and assigns.

Section 3. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 4. "Properties" shall mean and refer to that certain real property described in Exhibit "A" of the original DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS, which was recorded as Instrument No. 006689 in Book 053, Page 34, in the Recorder's Office of Johnson County, Indiana, and such additions thereto as were thereafter or as may hereafter be brought within the jurisdiction of the Association.

Section 5. "Lots" shall mean and refer to any residential Dwelling so designated as shown upon any recorded plat of the Properties.

Section 6. "Dwelling" shall mean and refer to a single-family residence on a Lot within the Properties' boundaries.

Section 7. "Common Area" shall mean all the real estate (including improvements thereto) owned by the Association for the common use and enjoyment of the Owners.

Section 8. "Limited Common Area" means and includes those Common Areas designated on the recorded plat as reserved for the predominant use of certain Lots and Lot Owners.

Section 9. "Board of Directors" or "Board" shall mean and refer to the Board of Directors of the Association.

Section 10. "Good Standing" shall mean Owners who are no more than thirty (30) days delinquent on the payment to the Association of any regular assessments or special assessments as determined by the Board.

Section 11. "By-Laws" shall mean and refer to the By-Laws of Villa Green Association, Inc., as the same may be amended from time to time.

Section 12. "Common Expenses" shall mean and refer to expenses of administration of the Association, and expenses for the upkeep, maintenance, repair and replacement of all Common Areas, and all sums lawfully assessed against the Owners by the Association, and all sums, costs, and expenses declared by this Declaration to be Common Expenses.

Section 13. "Member" shall mean and refer to those persons entitled to membership as provided in herein.

ARTICLE II

PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area, which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- (a) The right of the Association to promulgate reasonable rules and regulations governing the use of the Properties;
- (b) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of the Members agreeing to such dedication or transfer has been recorded.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the Properties.

Section 3. Association's Easement for Maintenance, Repair and Access. Certain utility lines, sewer, drainage and other facilities and other improvements located on one Lot may serve other Lots or the Common Areas. The Association and any member thereof whose enjoyment of the use and occupancy of his/her Lots is affected thereby, shall have an easement thereto and shall have the right, at reasonable times and at any time in case of emergency, to go upon any other Lots for the purpose of maintaining or causing to be maintained or repaired any party walls, utility lines, sewer or other facilities which serve more than one Lot. An easement is also established with respect to the Common Areas to applicable municipal governments for municipal and private services such as fire and police protection, emergency medical services

and trash removal. The Association shall have an easement for access to all Lots for ingress and egress as required by its officers, directors, employees and their agents and independent contractors, in order to perform its obligations and duties as set forth in this Declaration.

ARTICLE III

ASSOCIATION, MEMBERSHIP AND VOTING RIGHTS

Section 1. Operation of Common Area. Subject to the rights of Owners reserved herein, the operation and management of the Common Area shall be by the Association.

Section 2. One Class of Membership. The Association shall have one (1) class of Membership. Every person, group of persons or entity who is a record Owner of a fee interest in any Lot which is or becomes subject, by covenants of record, to assessment by the Association, shall automatically be a Member of the Association; provided, however, that any such person, group of persons or entity who holds such interest solely as security for the performance of an obligation shall not be a Member. A Membership in the Association shall be appurtenant to and may not be separated from ownership of any Lot that is subject to assessment. All Members shall be entitled to one (1) vote for each Lot in which they hold the interest required for Membership. In the event that more than one person, group of persons or entity is the record Owner of a fee interest in any Lot, then the vote for the Membership appurtenant to such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

ARTICLE IV

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed therefore, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for maintaining Limited Common Areas, and (3) special assessments for capital improvements, repairs and replacements, such assessments to be established and collected as hereinafter provided.

All sums assessed by the Association shall be established by using generally accepted accounting principles applied on a consistent basis and may include the establishment and maintenance of a replacement reserve fund for capital expenditures, repairs and replacements of the Common Areas, as approved by the Board of Directors. This fund for capital expenditures, if established, shall be maintained in a separate interest-bearing account with a bank or savings and loan association authorized to conduct business in Johnson County, Indiana.

The annual and special assessments, together with interest penalties noted in Section 5, late charges, costs of collection, court filing costs, and reasonable attorney's fees, shall be a charge on the Lot, and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest penalties, late charges, costs of collection, court filing costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them, but such delinquent accounts shall remain a lien upon the Lot subject to foreclosure.

No Owners may waive or otherwise escape liability for the assessments provided herein by non-use of the Common Area or abandonment of their Lots.

The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessment on a Lot is binding upon the Association on the date of its issuance.

Section 2. Purpose of Assessments. The assessments levied by the Association on a Lot shall be used exclusively to promote the recreation, health, safety and welfare of the residents in the Properties and for the improvement and maintenance of the Common Area, and of the Dwellings situated upon the Properties.

Section 3. Annual Assessments: Due Dates. The regular assessment against each Lot shall be paid in advance in equal monthly installments, commencing on the first day of the first month of each fiscal year and monthly thereafter through and including the first day of the last month of such fiscal year. Owners may elect to pay monthly assessments quarterly, semi-annually or annually, in advance.

Section 4. Uniform Rates of Assessments. Both annual and special assessments for capital improvements shall be fixed at a uniform rate for all Lots. Special assessments for maintenance to Limited Common Areas shall be uniform, but only as to Lots which are exclusively served by such Limited Common Areas.

Section 5. Effect of Nonpayment of Assessments. No Owner may exempt himself or herself from paying the regular assessment. No Owner may exempt himself or herself from a special assessment, when such an assessment has been levied in accordance with the procedures outlined herein.

Each Owner shall be personally liable for the payment of all regular and special assessments. Where the Owner constitutes more than one person, the liability of such persons shall be joint and several. If any Owner shall fail, refuse or neglect to make any payment of regular or special assessments, a lien for such assessment(s), together with late fees, collections costs and attorney's fees, may be recorded by the Board for and on behalf of the Association as provided by law, which lien shall become and remain a lien upon that Lot until the amounts owed are paid in full, as provided by law.

Upon the failure of an Owner to make payment of any regular assessment or special assessment within ten (10) days after such assessments are due, the Board may: (1) impose a late charge of up to \$20 per month until the delinquency is cured; (2) accelerate the entire balance of the unpaid assessments and late fees for the remainder of the fiscal year and declare the same immediately due and payable, notwithstanding any other provisions hereof to the contrary; (3) suspend the Owner's right to participate on any Association committees or Boards; (4) suspend the right of an Owner to vote as provided in the Indiana Nonprofit Corporation Act of 1991, as amended; and/or (5) suspend the right of an Owner to use some or all of the Common Areas and facilities. If, in the opinion of the Board, such charge has remained due and payable for an unreasonably long period of time, the Board may, on behalf of the Association, institute such procedures, either at law or in equity, by foreclosure of its lien or otherwise, to collect the amount owing in any court of competent jurisdiction. The Board may, at its option, bring a suit to recover a money judgment for any unpaid regular assessment or special assessment, without foreclosing or waiving the lien securing the same. In any action to recover a regular assessment and/or special assessment, whether by foreclosure or otherwise, regardless of whether litigation is initiated by the Association, the Board, for and on behalf of the Association, shall be entitled to recover from the Owner of the respective Lot all costs and expenses incurred in connection with such action, including attorney's fees, court costs and costs of collection. Upon a showing of good cause, the Board of Directors may waive the late charge.

Section 6. Annual Assessment. The annual assessment as of the recording date of this Declaration is One Thousand Three Hundred Twenty Dollars (\$1,320). The Board of Directors may increase the assessment by a sum not to exceed ten percent (10%) per year with a majority vote of the Board and without vote of the Membership. However, any such increases shall be documented by normal accounting procedures, which documentation shall be available, upon request, to the membership to demonstrate that such increases are attributable to increases of the budget for operating expenses and reserves. An increase of the assessment exceeding ten percent (10%) must be approved by a majority of all Owners in Villa Green. This vote shall occur at a duly called meeting of the Members of the Association at which a quorum must be present.

Written notice of the annual assessment shall be sent to every Owner subject thereto at least thirty (30) days, and not more than sixty (60) days, in advance of each annual assessment

period. Such notice may be included in a newsletter universally distributed to the Owners.

Section 7. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy a special assessment for the purpose of defraying, in whole or in part, the cost of any expense of an unforeseen or unexpected nature affecting the Dwellings, or for construction, reconstruction, repair or replacement of a capital improvement upon the Common Area or Dwellings, including fixtures and personal property related thereto. A special assessment must be approved by a majority of all Owners in Villa Green. This vote shall occur at a duly called meeting of the Members of the Association at which a quorum must be present. Special assessments may be applicable to a single year or spread over such number of years as the Board of Directors may deem appropriate.

Section 8. Subordination of the Lien to Mortgages. The lien of the assessments provided for in this Article shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. 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 became 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.

Section 9. Special Assessment for Limited Common Areas. As shown on the Plats of Villa Green, there may be certain Limited Common Areas reserved for the use and benefit of individual Owners. From time to time, in its discretion, the Board may levy special assessments for maintenance, repairs or replacements to the Limited Common Areas. For special assessments attributable to Limited Common Areas or provision of services to only a portion of the Dwellings or certain Owners, the special assessment shall be imposed upon only such Owners benefitted by such Limited Common Areas or provision of such services.

ARTICLE V

MAINTENANCE

Section 1. Maintenance by Owners. The Owner shall furnish and be responsible for, at his or her own expense, all the maintenance, repairs, decorating and replacements within his or her Dwelling, including the heating and air conditioning system and any partitions and interior walls. Maintenance, repairs and replacements of the refrigerators, ranges and other kitchen appliances and lighting fixtures, including the original outside landscape/security lighting or Board-approved replacement, shall be at the expense of each Owner. Each Owner shall further be responsible for the maintenance, repair and replacement of all windows in his/her Dwelling and the doors leading into the Dwelling, and all other maintenance, repair and replacements of the property and improvements on his or her Lot and Dwelling unless otherwise provided herein.

If, because of the negligent act or omissions of an Owner, or of a member in his family, his household pet, a guest or other authorized occupant or visitor of such Owner, damage shall be caused to the Common Area or to a Lot owned by others, then such Owner shall pay for such damage, as may be determined by the Association, unless such loss is covered by the Association's insurance with such policy having a waiver of subrogation clause. Any such cost to be paid by the Owner shall be a special assessment against such Owner and his Lot.

To the extent that equipment, facilities and fixtures within any Lot shall be connected to similar equipment, facilities or fixtures affecting or serving other Lots or any Common Area, then the use thereof by the Owner of such Lot shall be subject to the rules and regulations of the Association. The authorized representatives of the Association or Board of Directors or managing agent for the Association, shall be entitled to reasonable access to any Lot as may be required in connection with maintenance, repairs or replacements of or to the Common Area or any part thereof, or any equipment, facilities or fixtures affecting or serving other Lots or any Common Area.

Section 2. Maintenance of Common Area. The Association shall be responsible for the maintenance, repair and replacement of all the Common Area and improvements thereon.

Section 3. Exterior Maintenance Obligations of Association with Respect to Lots. In addition to maintenance upon the Common Area, the Association shall provide exterior surface maintenance upon each Lot that is subject to assessment hereunder, as follows: paint, repair, replace and care for roofs, gutters, downspouts, mailboxes and mailbox posts, including original skylight exteriors, exterior building surfaces, and other exterior improvements. Such exterior maintenance shall not include glass surfaces, doors, doorways, windows, window frames, driveways, sidewalks, patios, party walls, or any additions or improvements made by an Owner to his Dwelling.

The Board of Directors shall determine, after first consulting with the painting contractor chosen, whether to paint garage doors when Dwellings are being painted. Any disputes arising among Owners regarding color choice for their building shall be decided by the Board in its discretion.

The Association's obligation includes snow removal from the Common Areas used as private lanes and driveways. In order to facilitate snow removal, Owners, their family members, guests or other authorized occupants or visitors, shall remove any motor vehicles from any lanes and driveways, and failure to do so may prevent snow removal from such Owners' Lots.

The Association shall also be responsible for the grass cutting on each Lot, with each Lot Owner having the option to handle his or her own grass cutting but at no reduction in

assessments unless such reduction is specifically approved by two-thirds (2/3) of all Owners in Villa Green. The Lot Owner shall exercise this option in writing no later than March 1 of each year and can only revoke same thereafter upon thirty (30) days written notice to the Board of Directors. Trash removal shall be each Lots Owner's responsibility.

In the event that the need for maintenance or repair is caused through the willful or negligent act of the Owner, his family, guests, or invitees, the costs of such maintenance or repairs shall be added to and become a part of the assessment to which such Lot is subject.

ARTICLE VI INSURANCE

Section 1. Casualty Insurance. The Association shall purchase a master casualty policy affording fire and extended coverage in an amount consonant with the full replacement value of the improvements that comprise the Dwelling on each Lot (from the unfinished drywall surfaces outward) and also the improvements that in whole or in part comprise the Common Areas, and facilities maintained as part of the Common Expenses; and such other terms and provisions pertaining to insurance which may reasonably be deemed necessary or appropriate (1) to assure that all Common Areas and all Dwellings are insured and that there will be proceeds of insurance to repair or restore the same in the event of a casualty loss thereto; or (2) otherwise to assist to simplify problems of coordinating insurance coverage between the Owners and the Association. All policies of physical damage insurance shall contain waivers of subrogation and of any reduction of pro rata liability of the insurer as a result of any insurance carried by Owners in Villa Green or of the invalidity arising from any acts of the insureds or any Owner in Villa Green, and shall provide that such policies may not be canceled or substantially modified without at least thirty (30) days' prior written notice to all of the insureds at least thirty (30) days prior to expiration of the current policies. Prior to obtaining any casualty policy or any renewal thereof, and at least once every five (5) years, the Association shall obtain an insurance appraisal of the full replacement value of the Dwellings and the Association's Common Areas.

Section 2. Other Insurance. The Board shall have authority to and shall obtain comprehensive public liability insurance in such limits as it deems desirable, and worker's compensation insurance, and other liability insurance as it deems desirable, insuring each Owner and the Association, its Board of Directors, and any of its employees or agents from liability in connection with the Common Area. Where agreeable to the insurer, all liability insurance policies shall contain cross-liability endorsements to cover liability of the Owners collectively to an Owner individually. Such insurance shall inure to the benefit of the Association, its Board and any managing agent (if any) acting on behalf of the Association.

Section 3. Owner's Responsibility. Each Owner shall be solely responsible for insuring all property within his or her Dwelling (from the unfinished drywall surfaces inward, and from the unfinished surfaces of the floors to the unfinished surfaces of the ceiling), and may obtain such insurance as he or she deems necessary or desirable, at his or her own expense, affording coverage for additional living expenses, coverage on his personal property, the contents of his Dwelling, his personal property stored anywhere on the Properties, and for his personal liability. Owners shall provide proof of insurance at the Association's request.

Section 4. Casualty and Restoration. In the event of damage or destruction of the Property by fire or other casualty, the Association shall cause the Properties to be promptly repaired and restored. The proceeds of insurance carried by the Association shall be applied to the cost of such restoration. If the insurance proceeds are inadequate to cover the cost of reconstruction, or in the event there are no proceeds, the cost for restoring the damage shall be paid by the Owners of the Lots directly affected by the damage in such proportion as the Board of Directors shall deem fair and equitable in light of the damages sustained by such Lots; provided, however, if the damages are to any improvements which are a part of the Common Area and not a part of a Lot, the deficiency, if any, shall be assessed against all Owners. If any Owner refuses or fails to make the required payments, the Association shall complete the restoration and pay the costs thereof, and the cost attributable to the Owner or Owners who refuse or fail to make such payment at the time required by the Board of Directors shall become a lien on such defaulting Owner's Lot, and may be foreclosed in the same manner as provided for a lien for Common Expenses. In the event the insurance proceeds exceed the cost of reconstruction, such excess shall be paid over to the Owners or their respective mortgagee in such proportion as the Board of Directors deems fair and equitable in light of the damage sustained by such Lots.

The restoration referred to in this paragraph shall mean construction or rebuilding of the Lots and Dwellings thereon in the same condition as they existed immediately prior to the destruction, and with the same type of architecture.

Section 5. Premiums. The premiums for all insurance obtained by the Association shall be a Common Expense.

ARTICLE VII

PATIO PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the attached single-family Dwellings upon the Properties and placed on the dividing line between the Lots shall constitute a party wall. To the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls, and liabilities

for property damage due to negligence or willful acts or omissions shall apply.

Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

Section 3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use.

Section 4. Weatherproofing. Owners are responsible for maintaining the party walls between Dwellings. Notwithstanding any other provisions of this Article, an Owner who by his/her negligent or willful act damages the party wall or fails to maintain his/her side shall bear the whole cost of repair or replacement.

Section 5. Right to Contribute Runs with Land. The right of any Owner to a contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 6. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators at the expense of the parties bringing the arbitration.

ARTICLE VIII

GENERAL PROVISIONS

Section 1. Enforcement. These covenants, conditions and restrictions may be enforced by the Association or any Owner. Enforcement of these covenants, conditions and restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant, condition or restriction, either to restrain or enjoin violation or to recover damages, and against the land to enforce any lien created by these covenants; and the failure or forbearance by the Association or any Owner to enforce any covenant, condition or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. There shall be and there is hereby created and declared to be conclusive presumption that any violation or breach, or any attempted violation or breach, of these covenants and restrictions cannot be adequately remedied by action at law or recovery of damages. In any proceeding arising because of failure of an Owner to make any payments required or to comply with any provision of this Declaration or the By-Laws, or the rules and regulations adopted pursuant thereto, as each may

be amended from time to time, the Association is entitled to recover its costs and attorney's fees incurred in connection with such default or failure from the defaulting or violating Owner.

Section 2. Severability. Invalidation of any one of these covenants, conditions or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 3. Duration. Except where permanent easements or other permanent rights or interests are herein created, the covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, or the Owner of any Lots subject to this Declaration, their respective legal representatives, heirs, successors and assigns from the date of recordation of this Declaration.

Section 4. Amendment. This Declaration may be amended by an instrument signed by a majority of the Lot Owners in Good Standing. For the purpose of this provision, "Good Standing" shall mean those Owners who are no more than thirty (30) days delinquent on the payment to the Association of any regular assessments or special assessments as determined by the Board. Any amendment must be recorded in the Office of the Recorder of Johnson County, Indiana. No such agreement to amend, in whole or in part, shall be effective unless written notice of the proposed agreement is sent to every Owner at least thirty (30) days in advance of any action taken and no such agreement shall be effective with respect to any permanent easements or other permanent rights or interest relating to the Common Areas herein created.

ARTICLE IX

HARMONY AND ENVIRONMENTAL CONTROLS

Section 1. Architectural Control. Except for original construction, or as otherwise provided in these covenants, no building, above-ground fence, sidewalk, drive, walk or other structure shall be created, placed, altered or maintained upon the Properties, nor shall an exterior addition to or change (including any change in color) or alteration therein be made until the proposed building plans, specifications, exterior color and finish, Lot plans (showing the proposed location of such building or structure, drives and parking areas), general contractor and all subcontractors, and construction schedule shall have been submitted via the Architectural Change Request form and approved in writing by the Board.

- (a) Refusal of approval of plans, location or specification by the Board may be based upon any grounds, including, without limitation, lack of harmony of external design, color, location or relation to surrounding structures and topography, or purely aesthetic considerations which, in the sole discretion of the Board, shall be deemed sufficient.

- (b) No alterations may be made in such plans after approval of the Board except by and with the Board's prior written consent.
- (c) A copy of all plans, specifications and related data shall be furnished to the Board for its records.
- (d) Notice of approval or disapproval shall be by electronic or US mail.
- (e) The Board shall have the right to demand reversal at Owner expense of any exterior addition or alteration made in violation of these procedures. The Board shall, in addition to or in lieu of requiring reversal, have the right to require the Owner to sign a waiver assuming liability for any present or future damages that can be traced to the unapproved addition or alteration, both in the Owner's Dwelling and in the exteriors and interiors of the three (3) adjoining Dwellings.
- (f) The Owner who initiated the unapproved addition or alteration shall be responsible for any attorney fees and court costs the Association incurs in enforcement of architectural controls or any other provisions of this Declaration.

Section 2. Prohibited Uses and Nuisances.

- (a) No noxious or offensive trade or activity shall be carried on upon any Lot or within any Dwelling situated upon a Lot, nor shall anything be done therein or thereon which may be or become an annoyance or nuisance to the neighborhood or the other Owners of the Lots.
- (b) All Lots shall be used for single-family, residential purposes. No trade or business may be conducted on or from any Lots, except that an Owner or occupant of a Lot may conduct business activities within the Dwelling so long as:
 - (i) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Dwelling;
 - (ii) the business activity conforms to all zoning requirements for the Properties;
 - (iii) the business activity does not involve pedestrian or vehicle traffic to and from the Lots for the purpose of the business or door-to-door solicitation of residents of the Lots; and

- (iv) the business activity is consistent with the residential character of the Lots and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Properties.
- (c) The maintenance, keeping, boarding and/or raising of animals, livestock, exotic animals, reptiles, snakes, or poultry of any kind, regardless of number, shall be and is hereby prohibited on any Lot or within any Dwelling situated upon the Properties, except that this shall not prohibit the keeping of dogs, cats and/or caged birds or other unobjectionable domestic pets provided they are not kept, bred or maintained for commercial purposes.
- (i) When outside, pets must be kept under leash or other restraint and must be attended by their Owners at all times. The tethering of pets in areas outside the Owner's Dwelling shall not constitute "attended."
 - (ii) Underground invisible fencing is allowed but must be approved before installation via the Architectural Change Request form. Owners of pets contained with underground invisible fencing should be home when pets are outside in the contained area, but they do not have to be present in the yard. The presence of underground invisible fencing should be posted with signage in foundation flowerbeds, and other residents should take care not to enter these areas when pets are outside, unless invited by the Owner.
 - (iii) The Association has the right to prohibit any pet which constitutes a nuisance to the community or any Owner. For the purposes of this provision, nuisance shall be defined as:
 - 1. Pet(s) running at large, unleashed on any sidewalk, lane, roadway, Common Area or any Lot other than the Owner's.
 - 2. Pet(s) defecating (without cleanup of same), damaging, spoiling or defiling any property in Villa Green (including the Owner's Lot).
 - 3. Pet(s) causing unsanitary, dangerous or offensive conditions or causing obnoxious odors within the community.
 - 4. Pet(s) creating or causing constant noise that is determined by the Board to be an unreasonable and ongoing disturbance to other residents or the community (i.e. excessive barking).

5. Pet(s) displaying vicious or overly aggressive behavior or otherwise interfering with the freedom of movement of any other person or other pets within the community Common Areas.

(d) No burning of any trash and no accumulation or storage of litter, new or used building materials, or trash of any kind shall be permitted on any Lot. All trash containers shall be stored within the garage on non-pickup days.

(e) Except as elsewhere provided herein, no junk or derelict vehicles, inoperable, unlicensed or improperly licensed vehicle, motorcycle, commercial vehicle, trailer truck, semi-truck, cargo truck/van, camper, camper truck, recreational vehicle, house trailer, boat or the like shall be kept upon the Properties (except in enclosed garages) nor (except for bona fide emergencies) shall the repair or extraordinary maintenance of automobiles or other vehicles be carried out thereon. Commercial vehicles shall be defined as vehicles, regardless of size, on which commercial lettering or equipment and/or supplies are visible.

(i) In order to facilitate the free movement of traffic, no motor vehicles shall be parked on the paved portion of any joint driveway or private lanes, except during bona fide temporary emergencies. No motor homes or other recreational vehicles or trailers shall be parked at any time on the lanes or driveways within the Properties. Where provided, the two parking spaces at the end of a lane are reserved solely for the use of the Owners or occupants of the two adjacent Lots at the end of said lane. At no time are motor vehicles to be parked on the islands between the Dwellings or on any unpaved area.

(ii) Except as may be approved in writing by the Board of Directors or their designated committee, no structure of a temporary character, trailer, tent, shack, barn or other outbuilding shall be used or erected on any portion of the Lot at any time.

(iii) Except for entrance signs, directional signs, Dwelling "theme" and the like, no signs of any character shall be erected, posted or displayed upon, in or about any Lots situated upon the Properties, unless specifically permitted by the Board of Directors. One (1) real estate for sale sign may be placed in the "flowerbed area" (between the sidewalk and the Dwelling) of a Lot and not in the lawn. Political signs of reasonable size and number may be placed on a Lot thirty (30) days before an election and

must be removed no later than five (5) days after election day. The Owner or occupant shall keep areas surrounding birdfeeders clean and swept.

- (iv) No structure, planting or other material other than driveways or sidewalks shall be placed or permitted to remain upon any portion of the Properties which may damage or interfere with any easement for the installation or maintenance of utilities, or which may change, obstruct or retard direction or flow of any drainage channels. Any major landscaping or paving changes, such as the planting of trees or large bushes outside of foundation flowerbeds or concreting over utility easements between driveways, must be approved by the Board prior to their installation.
- (v) Owners shall maintain in their original form and shape all party and knee walls, driveways and sidewalks. The Board may define acceptable materials to be used when replacing party and knee walls, patios, driveways and sidewalks; however, Owners shall submit requests for and obtain Board approval, pursuant to Article IX, Section 1 of this Declaration, before contracting for any work to be done.
- (vi) Satellite dishes for the reception of TV or internet signals which are circular or oval in shape and no greater than one (1) meter (approximately 39") in diameter, such as those sold by Direct TV or Dish Network, are permitted if installed in a location acceptable to the Board. Board approval for such dishes shall not be required prior to installation; provided, however, that installation shall be subject to guidelines adopted from time to time by the Board regarding location, placement and screening, so long as such guidelines are permitted by applicable state and federal law. If the satellite dish installer certifies that a TV and/or internet signal cannot be received by the satellite dish from a location acceptable to the Board, the Board must be notified in order to assist and supervise the installation of the satellite dish at a location where a signal can be obtained. Radio or ham radio tower antennas are not permitted. Satellite dishes, TV or radio antennas shall not be installed on roofs. Any antennas installed in violation of this provision or the guidelines adopted by the Board are subject to being removed or relocated by the Association at the Owner's expense.
- (vii) There shall be no violation of any rules for the Common Area, which may from time to time be adopted by the Board of Directors or promulgated among the Membership by them in writing, and the Board of Directors is hereby and elsewhere in the By-Laws authorized to adopt such rules.

- (viii) Owners are responsible for the control of their pets and are required to police and dispose of their pet's waste in their own private waste receptacles.
- (ix) In addition to the foregoing restrictions, all restrictions of any recordation which involve the use of the Properties are incorporated by reference herein as restrictions of this Declaration.

Section 3. Limited Number of Rental Dwellings Allowed and Sale of Dwellings on Contract. In order to preserve the harmony and positive environment of the Properties, no more than five (5) Dwellings within the confines of the Properties may be rented at any one time. The Board of Directors shall monitor this restriction and shall keep records of those Dwellings currently being rented. All Owners who desire to lease out their Dwelling must register their intent in writing with the Board of Directors and may only lease said Dwelling if the maximum number of five (5) rental Dwellings has not been reached.

- (a) **"Rent" and "Leased" Defined:** The "Rental Cap" as described in this Section 3 is intended to apply to all forms of non-Owner occupancies, except as specifically provided herein. For the purposes of this Article IX, Section 3, "rent" or "leased," as used interchangeably herein, shall mean leased or rented or occupied, whether or not for compensation of any kind, by anyone other than an Owner of the Lot together with members of his or her household or temporary guest. However, the "Rental Cap" provided in Section 3(b) will not apply to any situation where a Dwelling is solely occupied by members of the Owner's immediate family. For purposes of this Section 3, "immediate family" shall only include the Owner's parents, children, stepparents, stepchildren, sibling, stepsibling, or spouse. This kind of "family" occupancy will not be considered to be a "rental" in the context of the "Rental Cap." However, the Owner and occupants will still be subject to the remaining provisions and requirements of this Section 3. Any Lot owned by a Trustee or by a Fiduciary shall not be deemed to be a rental, provided that the resident is the Trustee, the Fiduciary of an Estate, or a beneficiary of the Trust or Estate. The Trustee or Fiduciary shall submit a certificate to the Association indicating who is authorized to reside in the Dwelling.
- (b) **Limits on the Number of Rented Lots ("Rental Cap").** No more than five (5) Dwellings in Villa Green may be leased or rented to non-Owner occupants at any given time, except as may be otherwise provided in this Section 3 (the "Rental Cap"). If at any time such number of Dwellings are leased or rented, an Owner who wants to rent or lease his or her Dwelling which is not already rented shall be placed upon a waiting list by the Board of Directors. When an existing tenant moves out, the Owner

of that Lot shall immediately notify the Board of such fact. Additionally, when an existing tenant moves out, the Owner must re-rent the Dwelling within sixty (60) days of the tenant vacating the Dwelling. If the Owner does not re-rent the Dwelling or move into the Dwelling within sixty (60) days of the tenant moving out, the Owner will go to the back of the waiting list and that Dwelling cannot be re-rented until all prior Owners on the waiting list, if any, have had a chance to rent their Dwellings. Prior to the execution of any lease, and in addition to the requirements set forth below, the Owner must notify the Board as to that Owner's intent to lease his or her Dwelling. After receiving such notice, the Board shall advise the Owner if the Dwelling may be leased.

(c) Hardship Exceptions and Waiver. Notwithstanding the Rental Cap set forth in Subsection (b) above, if an Owner wishes to rent or lease his or her Dwelling, but the maximum number of Dwellings is currently being leased, the Owner may request the Board 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 the Board approves in writing of the Owner's request, the Board shall permit the Owner to rent or lease said Dwelling, 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 Section 3. Such decision shall be at the sole discretion of the Board and shall be subject to further conditions and limitations as the Board may deem appropriate. The duration of a hardship exception will be determined by the Board and will not generally be longer than one year unless there are extenuating circumstances as determined by the Board. An undue hardship is specifically defined as:

- (i) temporary relocation of the residence of an Owner to a point outside of a fifty (50) mile radius of the perimeter of Villa Green made necessary due to a change of employment of at least one (1) of such Owners, which must be documented by written confirmation from the Owner's employer; or
- (ii) necessary relocation of the residence of an Owner due to mental or physical infirmity or disability of at least one (1) of such Owner.

If an Owner desires to request an exception based upon hardship circumstances other than those specifically defined as an "undue hardship" in this Subsection (c), the Owner must submit a written request describing, with reasonable particularity, the nature of the alleged hardship and the alleged need to rent. The Board may approve or deny such requests as it deems appropriate, and such decisions shall be final and binding.

(d) General Lease Conditions.

- (i)** Owners may not lease, rent, or otherwise operate their Dwelling on a hotel, transient or short-term rental basis. For the purpose of this Subsection (d), "short-term rental" is defined as any term of less than one (1) year. This short-term rental prohibition includes, but is not limited to, the use of a short-term rental platform through which unaffiliated parties offer to rent a Dwelling or portion thereof to an occupant and collects consideration for the rental from the occupant.
 - (ii)** A copy of each executed lease or occupancy agreement by an Owner which identifies the tenant (but which may have the rental amount deleted) shall be provided to the Board within thirty (30) days after execution.
 - (iii)** No portion of any Dwelling other than the entire Dwelling shall be leased or rented for any period. No subleasing shall be permitted.
 - (iv)** All leases shall be made expressly subject and subordinate to the terms of the Declaration, By-Laws, and any rules and regulations promulgated by the Board, as amended, to the same extent as if the tenant were an Owner and a member of the Association. The Owner shall supply copies of such legal documents to the tenants prior to the effective date of the lease.
 - (v)** 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.
 - (vi)** All Owners who do not reside in the Dwelling shall provide the Board with the name of the tenant(s) and any other occupants living in the Dwelling.
 - (vii)** 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 Dwelling, even if during the term of a lease.
- (e) 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 the Declaration, 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.

- (f) **Violations.** Any lease or attempted lease of a Dwelling in violation of the provisions of this Section 3 shall be voidable at the election of the Board or any other Owner, except that neither party to such lease may assert this provision of this Section 3 to avoid its obligations thereunder. In the event of a violation, the Board, on behalf of the Association, or any Owner, shall have the right to exercise any and all available remedies at law or equity.
- (g) **Burden of Proof.** Anything to the contrary herein notwithstanding, if at any time a Dwelling is not occupied by one of the Owners thereof, there shall be a presumption that the Dwelling is being leased and subject to the provisions of this Section 3, and the Owners shall have the burden of proving to the satisfaction of the Board that the occupancy is not in violation of the terms of this Section 3, including but not limited to the delivery to the Board 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 Section 3 and this Subsection (g), any 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 subject to the restrictions of Section 3. Any purported land contract, contract for deed, or similar agreement must be recorded with the Johnson County Recorder to be deemed valid. If such land contract, or a validly executed memorandum thereof, is not recorded at the time of execution, it will be considered a rental agreement for purposes of this Section 3.

Section 4. Right of Association to Remove or Correct Violations. The Association may, in the interest of the general welfare of all the Owners of the Lots and after reasonable notice to the Owner, enter upon any Lot or the exterior of any Dwelling at reasonable hours on any day for the purpose of removing or correcting any violations or breach or any attempted violation of any of the covenants and restrictions contained in this Declaration, or for the purpose of abating anything herein defined as a prohibited use or nuisance, provided, however, that no such action shall be taken without a resolution of the Board of Directors of the Association.

Section 5. Perpetual Easement for Encroachments. If any portion of the Common Area shall encroach upon any Lot, or if any Lot or any improvement, building, overhang, fixture or other structure or improvements of whatever type shall for any reason encroach upon any other Lot or upon any portion of the Common Area as a result of the construction of the building or improvements, a valid, perpetual easement for the encroachment and for its maintenance is

retained for the benefit of the Association and any Owner of a Lot whose Lot is affected thereby and shall exist perpetually. In the event the building or the improvement shall be partially or totally destroyed as a result of fire or other casualty or as a result of condemnation or eminent domain proceedings, and then rebuilt, any resulting encroachment shall be permitted, and a valid easement for such encroachments is hereby reserved by the Association and any Owner of a Lot whose Lot is affected thereby and shall exist perpetually.

ARTICLE X

ADULT COMMUNITY DWELLING RESTRICTION

In the interest of maintaining the value of the property and in the interest of maintaining the peace and quietude of the Dwellings, the Lot Owners agree to restrict the use of their Lots to exclude the residency of any minor children, and all the Owners, occupants and Members agree to be bound by this restriction and shall be subject to the same penalties as other breaches of any other covenant, conditions, restrictions or By-Laws.

It is the intent of the Association's members to have the Association qualify as an exempt adult Dwelling under the Housing for Older Persons Act of 1995 ("HOPA").

Accordingly, the Lots Owners covenant and agree to restrict the sale or rental of their Dwellings to households having at least one occupant who is at least fifty-five (55) years of age or older at the time of the sale or inception of the rental lease. All Owners and Members agree to be bound by this restriction and shall be subject to the same penalties as other breaches of any other covenants, conditions, restrictions or By-Laws.

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Certification. The undersigned officers of Villa Green Association, Inc. hereby represent and certify that all requirements for and conditions precedent to the foregoing Second Amended and Restated Declaration of Covenants, Conditions and Restrictions have been fulfilled and satisfied, and that the signatures attached hereto are true and accurate copies of the original signatures on file with the Association's records.

In witness whereof, VILLA GREEN ASSOCIATION, INC. has caused this document to be executed by two of its officers.

VILLA GREEN ASSOCIATION, INC.

BY *Anna K. McCartney*
Anna ~~K. McCartney~~ McCartney, President

BY *Anna McWilliams*
Anna McWilliams, Secretary

STATE OF INDIANA)
) SS:
COUNTY OF Marion)

Before me, a notary public in and for said County and State, this day personally appeared Anna ~~K. McCartney~~ McCartney and Anna McWilliams, President and Secretary of Villa Green Association, Inc., respectively, and acknowledged the execution of the foregoing Second Amended and Restated Declaration of Covenants, Conditions and Restrictions, for and on behalf of Villa Green Association, Inc.

WITNESS my hand and Notarial Seal this 27 day of May, 2020.

Rose Kennedy
Rose Kennedy Notary Public

My commission expires: April 6, 2024



ROSE KENNEDY
Resident of Marion County, IN
Commission Expires: April 6, 2024

"I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security Number in this document, unless required by law." Gregory A. Chandler, Esq.

This instrument prepared by, and should be returned to, Gregory A. Chandler, EADS MURRAY & PUGH, P.C., 9515 E. 59th Street, Suite B, Indianapolis, IN 46216. (317) 536-2565

**AMENDED AND RESTATED BY-LAWS OF
VILLA GREEN ASSOCIATION, INC.**

**ARTICLE I
NAME AND LOCATION**

The name of the Corporation is **VILLA GREEN ASSOCIATION, INC.** (hereinafter referred to as the "Association").

**ARTICLE II
IDENTIFICATION AND APPLICABILITY**

Section 1. Identification and Adoption. The provisions of these By-Laws shall apply to the Properties and the administration and conduct of the affairs of the Association. These By-Laws shall also constitute the By-Laws of the Association.

Section 2. Individual Application. Each of the Owners within Villa Green shall automatically and mandatorily be Members in the Association and be entitled to all of the privileges and subject to all of the obligations thereof. Villa Green was developed subject to a certain "Declaration of Covenants, Conditions and Restrictions," which was recorded as **Instrument No. 006689 in Book 053, Page 34** in the Office of the Recorder of Johnson County, Indiana, as subsequently amended (hereafter, referred to as the "Original Declaration"). The Original Declaration was amended by a "Restated Declaration of Covenants, Conditions and Restrictions," which was recorded on July 13, 2004 in the Office of the Recorder of Johnson County, Indiana as **Instrument No. 2004-020684** (hereafter, referred to as the "Restated Declaration"); and

All Owners, by their acceptance of their respective deeds to their Lots, covenant and agree to be bound by the conditions, restrictions, and obligations contained in the Declaration, together with all further amendments or supplements thereto, the Articles of Incorporation, the rules and regulations of the Association and of the provisions hereof. All of the Owners, future Owners, tenants, future tenants, their guests and invitees, or any other person who might now or hereafter use or occupy a Lot or any part of the Common Areas shall be subject to the rules, restrictions, terms, and conditions set forth in the Declaration, the Articles of Incorporation, these By-Laws, the Indiana Homeowners Association Act at Indiana Code §32-25.5-1 et seq. (the "HOA Act"), and the Indiana Nonprofit Corporation Act of 1991 at Indiana Code §23-17-1 et seq. (the "Nonprofit Act"), all as the same may be amended from time to time, and to any rules and regulations adopted by the Board of Directors as herein provided. The Declaration and all amendments thereto are incorporated herein by reference. All of the covenants, rights, restrictions, and liabilities contained in the Declaration shall apply to and govern the interpretation of the Articles of Incorporation and these By-Laws. The definitions and terms, as defined and used in the Declaration, shall have the same meaning in the Articles of Incorporation and these By-Laws, and reference is specifically made to Article I of the Declaration containing definitions for terms, unless otherwise indicated herein.

ARTICLE III MEETING OF MEMBERS

Section 1. Annual Meetings. The annual meeting of the Members shall be held in the month of May of each year, at a time and place to be designated by the Officers of the Association.

Section 2. Special Meetings. Special meetings of the Members may be called at any time by the President or by the Board of Directors, or upon written request submitted to the Board and signed by ten percent (10%) of the Members of the Association.

Section 3. Notice of Meetings. Written notice of annual or special meetings of the Members shall be given by, or at the direction of the Secretary or person authorized to call the meeting, by mailing a copy of such notice, either via signage, electronic mail, publication in the newsletter, postcard or other U.S. mail at least thirty (30) days before such meeting and not more than sixty (60) days before such meeting to each Member entitled to vote thereat, addressed to the Member's address last appearing on the books of the Association, or supplied by such Member to the Association for the purpose of notice. Such notice shall specify the place, day and hour of the meeting, and in the case of a special meeting, the purpose of the meeting. An Owner may elect to receive notices from the Association by email. Any Owner choosing email shall be deemed to have waived the right to receive notices from the Association by U.S. Mail or publication in the newsletter. However, any such Owner shall have the right at any time, and upon written notice to the Association, to withdraw his or her election to receive notice by electronic mail, and shall thereafter be sent or delivered notices by the Association pursuant to the above paragraph.

Section 4. Quorum. The presence at the meeting in person or by proxy of at least ten percent (10%) of Members in Good Standing shall constitute a quorum for any action except as otherwise provided in the Articles of Incorporation, the Declaration, or these By-Laws. If, however, such quorum shall not be present or represented at any meeting, the Members entitled to vote thereat shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum as aforesaid shall be present or be represented. As is set forth in the HOA Act and Nonprofit Act, the failure to achieve a quorum at a meeting does not exempt any Member from, or create an affirmative defense for, any Member with respect to: (1) the Member's obligations under the Declaration, the Articles of Incorporation or these By-Laws, or (2) the Member's obligations to otherwise abide by the provisions of the Declaration, Articles of Incorporation and these By-Laws, including but not limited to the payment of assessments. In the event that a valid election cannot be held due to a failure to reach quorum, the Directors then in office shall continue to serve until such time as they (1) resign from office or (2) their replacements are duly elected and qualified.

Section 5. Proxies. At all meetings of Members, Members may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary, pursuant to Indiana law, and are only active for the stated purpose. To be valid, a proxy must contain:

- (a) The name and address of the Owner who is giving the proxy;
- (b) The name of the person being appointed as proxy;
- (c) The date on which the proxy is given;
- (d) The date of the meeting for which the proxy is given;
- (e) The signature of the Owner who is giving the proxy; and
- (f) An affirmation under the penalties of perjury that the individual signing the proxy has the authority to grant the proxy to the individual named in the proxy to exercise it on the Member's behalf.

A proxy is only valid for one hundred eighty (180) days from the date it is signed. A proxy may be revoked in writing by the Owner prior to it being exercised or by the Owner's personal attendance at the meeting where the proxy appointment was to be used. If an Owner is not in Good Standing, then he or she cannot vote, either in person or by proxy. In addition, any Owner who is not in Good Standing cannot serve as a proxy for another Owner.

Section 6. Voting. Each Member shall be entitled to cast one (1) vote for each Lot of which such Member is the Owner. In voting for Directors and Officers, each Owner (or his or her representative) shall be entitled to cast one (1) vote for each Director and Officer position being filled at that meeting, and the candidate(s) receiving the highest number of votes shall fill the available Directorship(s) and Officer positions; provided that no Owner shall be allowed to accumulate his or her votes. To the extent provided in the Nonprofit Act, and except as otherwise provided in the Declaration, the Articles of Incorporation or these By-Laws, plurality voting shall be permitted such that at a meeting, if a quorum exists, action on a matter is approved if the votes cast in favor of the action exceed the votes opposing the action.

Section 7. Multiple Owners. When more than one (1) person or entity constitutes the Owner of a particular Lot, all such persons or entities shall be Members of the Association, but all of such persons or entities shall have only one (1) vote for such Lot, which vote shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any such Lot.

Section 8. Voting by Corporation or Trust. Where a corporation or trust is an Owner or is otherwise entitled to vote, the trustees may cast the vote on behalf of the trust, and the agent or other representative of the corporation duly empowered by the Board of Directors of such corporation shall cast the vote to which the corporation is entitled. The secretary of such corporation or a trustee of such trust so entitled to vote shall deliver or cause to be delivered prior to the commencement of the meeting a certificate signed by such person to the Secretary of the Association stating who is authorized to vote on behalf of said corporation or trust.

Section 9. Suspension of Voting Rights. No Member who is not in Good Standing shall be eligible to vote, either in person or by proxy, or to be elected to, or to serve on, the Board of Directors.

ARTICLE IV
BOARD OF DIRECTORS SELECTION; TERM OF OFFICE

Section 1. Number. A Board of seven (7) Directors that includes the four (4) Officers of President, Vice-President, Secretary and Treasurer, shall be elected by the Members as a whole and shall manage the affairs of this Association. To be eligible to serve as a Director, a person must be an Owner in Good Standing who resides within the Villa Green community.

Section 2. Term of Office. The term for Officers and Board Members shall be one (1) year with no limit as to the number of terms he or she may serve. A regular term shall commence with the first Board meeting following the annual meeting at which he or she is elected.

Section 3. Removal. A Director or Directors elected by the Owners, or elected by the Directors to fill a vacancy, may be removed by the Owners with or without cause if the number of votes cast to remove would be sufficient to elect the Director(s) at a meeting to elect Directors. A Director or Directors may be so removed by the Owners only at a meeting called for the purpose of removing the Director(s). The meeting notice must state that the purpose of the meeting is for voting upon the removal of the Director(s). In such case, his, her or their successor(s) shall be elected at the same meeting from eligible Owners nominated at the meeting to serve for the remainder of the term(s) of the removed Director(s).

Section 4. Termination of Board Members. A Board Member may be terminated for cause by a majority vote of the Board Members for any one of the following:

- (a) Serving on the Board of Directors for self-serving purposes;
- (b) Criminal activity;
- (c) Delinquency of assessments;
- (d) No longer a property Owner and resident;
- (e) Missing three (3) consecutive Board meetings; or
- (f) Failure to fulfill the duties of office as defined in the By-Laws or enacted by Board resolution.

Section 5. Compensation. No Director shall receive compensation for any service rendered to the Association. However, any Director may be reimbursed for actual expenses incurred in the performance of duties.

Section 6. Action Taken Without a Meeting. The Directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all the Directors. Any action so approved shall have the same effect as though taken at a meeting of the Directors. Approval obtained through electronic mail must have the unanimous support of all Board Members, pursuant to Indiana state law.

Section 7. Board Spending. The President and Treasurer shall each have the right to approve and/or to incur expenses on behalf of the Association considered reasonable and customary for the purpose of maintenance and upkeep of the property in Villa Green for which the Association is responsible, up to the amount of \$500, provided such expenditures are documented in the financial records of the Association. All other spending decisions and expenditures must be reviewed and approved by the Board of Directors at a duly called and held Board meeting. Receipts for expenses should be presented to the Treasurer, or in the Treasurer's absence, to the President, either of whom can issue a check. The President shall submit his/her expense receipts to the Treasurer, and the Treasurer shall submit his/her expense receipts to the President, so that no Director is approving his/her own expenses and reimbursing his/herself.

ARTICLE V **NOMINATION AND ELECTION OF DIRECTORS**

Section 1. Nomination. The Board, or a search committee appointed by the Board, will prepare a slate of Officers and Directors, and place their names into nomination at the annual meeting. Additional nominations for election to the Board of Directors shall also be accepted from the floor at the annual meeting. In the event two people are not nominated to serve separately as Secretary and Treasurer, one person may serve in both capacities. Board nominees must be resident-Owners of their Dwelling. No more than one resident-Owner in a single Dwelling may serve on the Board at one time. Board nominees should be computer literate with access to a private, secure personal computer. If elected, Board members will be assigned an email address to conduct official Board business only.

Section 2. Election. Election to the Board of Directors and Officers shall be by a show of hands when an office is uncontested but by written ballot whenever more than one (1) person has been nominated for a specific office and when more than three (3) people have been nominated for non-Officer Director positions. Voting for the four (4) offices of President, Vice-President, Secretary and Treasurer shall be conducted separately and in turn, respectively, followed by voting for remaining Director positions. The persons receiving the largest number of votes shall be elected as Officers or Directors. Such Officers shall automatically become Directors comprising the seven-person Board. If there is a tie for any Director or Officer position, the nominees involved in the tie may agree to the end result without the need for a "run-off" vote. If the nominees cannot resolve the tie by agreement, then the presiding Chairperson will conduct a run-off ballot vote by the Owners. If there is still a tie, the presiding Chairperson will have sole discretion to resolve the tie by either drawing from a hat or flipping a coin.

Section 3. Vacancies. Any vacancy or vacancies occurring in the Board caused by a death, resignation, or otherwise other than a vacancy created by removal, shall be filled until the next annual meeting of the Members through a vote of a majority of the remaining Directors. At

the first annual meeting of the Members following any such vacancy, a Director shall be elected by the Owners to serve for the balance of the term of the Director in respect to whom there has been a vacancy.

ARTICLE VI **MEETINGS OF DIRECTORS**

Section 1. Regular Meetings. A regular meeting of the Board of Directors shall be held following each annual meeting, the time, date, and place to be determined by the President of the Association. The Board will meet on a monthly basis except for November through February, unless special meetings are needed. No written or verbal notice need be given to Directors for regularly scheduled Board meetings of which the Directors are already aware. For all other Board meetings, the Secretary shall give notice of such meetings of the Board to each Director personally, electronically or by United States mail at least five (5) days prior to the date of such meetings. Special meetings of the Board may be called by the President or any two (2) Members of the Board. The person or persons calling such meeting shall give written notice thereof to the Secretary, who shall either personally or by mail and at least three (3) days prior to the date of such special meeting, give notice to the Board Members. The notice of the meeting shall contain a statement of the purpose for which the meeting is called. Such meeting shall be held at such place as shall be designated in the notice. To the extent provided in the Nonprofit Act, a Director may conduct or participate in a regular or special meeting of the Board of Directors through the use of conference telephone or any means of communication by which all Directors participating may simultaneously hear each other during the meeting. A Director participating in a meeting by this means is considered to be present in person at the meeting.

Section 2. Quorum. A majority of the number of Directors (4 or more) shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the Directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

Section 3. Waiver of Notice. Before or after any meeting of the Board, any Director may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. The presence of any Director at a meeting shall, as to such Director, constitute a waiver of notice of the time, place, and purpose thereof. If all Directors are present at any meeting of the Board, no notice shall be required, and any business may be transacted at such meeting.

ARTICLE VII **POWERS AND DUTIES OF THE BOARD OF DIRECTORS**

Section 1. Powers. The Board of Directors shall have power to:

- (a) Adopt and publish rules and regulations governing the use of the Common Area and facilities, and the personal conduct of the Members and their guests thereon, and to establish penalties for the infraction thereof;

- (b) Exercise for the Association all powers, duties and authority vested in or delegated to this Association and not reserved to the Membership by other provisions of the By-Laws, the Articles of Incorporation, or the Declaration.
- (c) Employ a manager, an independent contractor, or such other employees as they deem necessary, and to prescribe their duties.

Section 2. Duties. It shall be the duty of the Board of Directors to:

- (a) Cause to be kept a complete and accurate record of all its acts and corporate affairs and to present a financial and activities statement thereof to the Members at the annual meeting of the Members;
- (b) Supervise all Officers, agents and employees of this Association, and to see that their duties are properly performed;
- (c) Fix the amount of the annual assessment of each Lot, notify Members, foreclose liens, or take other legal action for nonpayment, and issue upon demand by a person a certification of whether or not an assessment has been paid, all in accordance with the Declaration;
- (d) Purchase, keep current, and carry a master casualty insurance policy in accordance with the Declaration;
- (e) Purchase, keep current and carry on behalf of the Owners through the Association, a master liability policy in an amount required by the Declaration or revised from time to time by a decision of the Board of Directors, which policy shall cover the Association, the executive organ, if any, the managing agent, if any, all persons acting or who may come to act as agents or employees of any of the foregoing with respect to the Properties, all Owners and all other persons entitled to occupy any Dwelling or other portions of the Properties; as well as such other policies as may be required in the interest of the Owners and the Association, including, without limitation, worker's compensation insurance, and specialized policies covering lands or improvements on which the Association has or shares Ownership or other rights, Officers' and Directors' liability policies, including employee dishonesty, fraud, forgery, and ordinance policies;
- (f) Cause all Officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate; and
- (g) Cause the Common Area to be maintained and perform other maintenance obligations.

Section 3. Indemnification of Directors and Officers. To the extent not inconsistent with the laws of the State of Indiana, every person (and the heirs and personal representatives of such

person) who is or was a Director or Officer of the Association shall be indemnified by the Association to the same and fullest extent that Directors of nonprofit corporations are indemnified under the Nonprofit Act.

ARTICLE VIII OFFICERS AND THEIR DUTIES

Section 1. Enumeration of Offices. The offices of this Association shall be a President, Vice-President, Secretary and Treasurer, who shall at all times be Members of the Board of Directors, and such other Officers as the Board may from time to time by resolution create.

Section 2. Election of Officers. The election of Officers shall take place at the annual meeting in May of each year.

Section 3. Term. There is no term limit for any Officer, and each shall hold office until she/he resigns, is removed, voted out, or is otherwise disqualified to serve.

Section 4. Special Appointment. The Board may elect such other Officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

Section 5. Resignation. Any Officer may resign at any time, giving written notice to the Board, the President or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6. Removal. Any Officer may be removed, for cause, from office by a majority vote of the Board of Directors in accordance with Article IV, Section 4 of these By-Laws, or, with or without cause, by vote of the Members as set forth in Article IV, Section 3 herein.

Section 7. Vacancies. Any vacancy or vacancies occurring in any Office caused by a death, resignation, or otherwise other than a vacancy created by removal, shall be filled until the next annual meeting of the Members through a vote of a majority of the remaining Directors. At the first annual meeting of the Members following any such vacancy, an Officer shall be elected by the Owners to serve for the balance of the term of the Officer in respect to whom there has been a vacancy.

Section 8. Duties. Specific duties of the Officers and Directors are as follows:

PRESIDENT

The President shall preside at all meetings of the Board of Directors and serve as its official spokesperson within the community; shall see that orders and resolutions of the Board are carried out; shall sign all leases, mortgages, deeds, and other written instruments; shall co-sign all promissory notes; shall sign checks in the absence of the Treasurer, and shall appoint

committees and committee chairs as deemed necessary from among either the Board or the Membership.

VICE-PRESIDENT

The Vice-President shall act in the place of and stead of the President in the event of the President's absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required or assigned by the President and/or the Board.

SECRETARY

The Secretary shall record the motions and votes and keep the minutes of all meetings, including date, time, place and attendance; attach and/or summarize within said minutes all reports submitted by Board Members; correct previous meeting minutes when corrections are made at subsequent meetings; keep a record of all other proceedings of the Board and of the Association; keep the corporate seal of the Association and affix it on all papers requiring said seal; co-sign all promissory notes of the Association; serve notice to the Membership of meetings of the Board and of the Association through the newsletter and/or U.S. or electronic mail, together with locations, dates and times, and shall perform such other duties as requested by the President and/or the Board.

TREASURER

The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Directors; shall sign all checks of the Association; shall maintain the post office box of the Association; shall maintain all Member assessment/payment records and collect late fees; shall file the Indiana Business Entity Report in accordance with Indiana law; shall keep proper books of account and provide Board Members with updated written reports in advance of monthly meetings; shall prepare for Board Members in September/October a proposed annual budget for the upcoming year for review; shall cause an annual review and certification of the Association books to be made by a certified public accountant (CPA), including preparation and filing of necessary tax returns, at the completion of each fiscal year; shall provide a monthly report of expenditures for publication in the newsletter; and shall perform such other duties or produce such other financial reports as requested by the President or Board or required by law.

DIRECTOR

Directors shall perform duties as assigned by the President or by a majority vote of the Board.

ARTICLE IX BOOKS AND RECORDS

The books, records and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any Member. The Declaration, the Articles of

Incorporation and the By-Laws of the Association shall be available for inspection by any Member at the principal office of the Association, where copies may be purchased at a reasonable cost, and on-line at the Association's website, where copies may be accessed, downloaded and printed at-will by registered Members.

Board minutes, financial reports and accounting records shall be backed-up in secure, on-line facilities that provide Board access for use in planning and performing their fiduciary responsibilities.

ARTICLE X **ASSESSMENTS**

Assessments to Members will be made and collected in accordance with the Declaration and recorded and accounted for by the Treasurer.

ARTICLE XI **AMENDMENTS**

These By-Laws may be restated or amended, at a regular or special meeting of the Directors, by a vote of a majority of the actual number of Directors elected and qualified, provided that those provisions of these By-Laws which are governed by the Declaration may not be amended except as provided in such Declaration. In the case of any conflict between the Declaration and these By-Laws, the Declaration shall control.

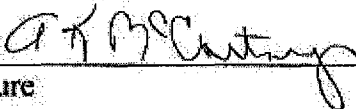
ARTICLE XII **MISCELLANEOUS**

The fiscal year and annual assessment period of the Association shall begin on the first day of January and end on the 31st day of December of every year.

Certification. The undersigned Officers of Villa Green Association, Inc. hereby represent and certify that these Amended and Restated By-Laws were approved by the Board of Directors at a duly called and held meeting of the Board, and that all requirements for and conditions precedent to the foregoing Amended and Restated By-Laws have been fulfilled and satisfied.

IN WITNESS WHEREOF, we, the undersigned, hereby execute this Amended and Restated By-Laws and certify the truth of the facts herein stated, this 9 day of March, 2020.

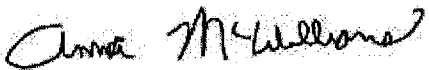
Villa Green Association, Inc., by:



Signature

Anna Katherine McCartney, President

ATTEST:



Signature

Anna McWilliams, Secretary

"I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security Number in this document, unless required by law." Gregory A. Chandler, Esq.

This instrument prepared by, and should be returned to, Gregory A. Chandler, Esq., EADS MURRAY & PUGH, P.C., Attorneys at Law, 9515 E. 59th St., Suite B, Indianapolis, IN 46216. Telephone (317) 536-2565

