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160-16400-0513 (Parent Tract),

160-16400-0030 (Parent Tract),

960-16408-0018, 960-16408-0029, 960-16408-0030,

960-16408-0040, 960-16408-0062, 960-16408-0073,

960-16408-0106, 960-16408-0128, 960-16408-0139,

960-16408-0140, 960-16408-0150, 960-16408-0161,

960-16408-0194, 960-16408-0216, 960-16408-0227,

960-16408-0238, 960-16408-0249, 960-16408-0250,

960-16408-0293, 960-16408-0304, 960-16408-0315,

960-16408-0326, 960-16408-0348, 960-16408-0403,

960-16408-0414, and 960-16408-0436

**FIFTH AMENDMENT TO**

**DECLARATION OF CONDOMINIUM AND OF EASEMENTS, RESTRICTIONS, AND  
COVENANTS FOR SOUTHAVEN PLANNED DEVELOPMENT, THIRD  
AMENDMENT, PHASE ONE**

THIS FIFTH AMENDMENT TO DECLARATION OF CONDOMINIUM AND OF  
EASEMENTS, RESTRICTIONS, AND COVENANTS FOR SOUTHAVEN PLANNED  
DEVELOPMENT, THIRD AMENDMENT, PHASE ONE ("Second Amendment"), made on the  
10<sup>th</sup> day of September, 2024.

**RECITALS**

WHEREAS, Southaven Planned Development Homeowners Association, Inc. (the "Association") previously entered into a Declaration of Condominium and of Easements, Restrictions, and Covenants for Southaven Planned Development, Third Amendment, Phase One dated October 25, 2002, and recorded in the Office of the Recorder of Tippecanoe County, Indiana on October 30, 2002 as Document No. 02034558 ("Declaration"), restricting the property as may be made subject to the Declaration.

WHEREAS, the Association entered a Proposed Amended to this Declaration, dated December 22, 2016 ("First Amendment").

WHEREAS, this Fifth Amendment has been approved and adopted by the members of the Southaven Planned Development Homeowners Association, Inc. in accordance with Section 22.3 of the Declaration and all subparts thereof, for the purpose of amending the Declaration as herein set forth.

WHEREAS, all acts and things have been done and performed which are necessary to amend the Declaration that, when executed and recorded in the Records of Tippecanoe County, Indiana, are enforceable with their respective terms to make this First Amendment a valid and binding agreement.

NOW, THEREFORE, this Fifth Amendment is created by amending the Declaration as follows:

1. The foregoing recitals are true, accurate, and complete statements of fact and are hereby incorporated into and made a part of this Second Amendment as set forth verbatim.
2. Capitalized terms used herein and not otherwise defined herein shall have the meanings given to them in the Declaration or First Amendment.
3. The Southaven Planned Development shall continue to be subject to the Declaration as amended by this Fifth Amendment and any subsequent amendments thereto.
4. Section 21.16 through Section 21.20 is hereby deleted in its entirety, and shall be replaced with the following:

21.16 Non-Owner Occupants – Leasing of Lots.

- a) Application: Approval. The Board of Directors, in their sole and absolute discretion, may permit an Owner to lease their Dwelling Unit, only with an application submitted to and approved in writing by the Board of Directors. No Owner may lease or permit their Dwelling Unit be used as a rental without prior written approval as required herein. All applications shall be in a form determined by the Board of Directors, and shall include a copy of the proposed lease form intended to be used (which form need not include the identity of the lessee or the rental amount) for review for compliance with the requirements of this Section 21.16. Approval of such application shall be by a majority vote of the Board.
- b) Limit of Rentals. At no time shall the Board of Directors approve greater than six (6) Dwelling Units to be used as rentals at any one time, except in the case where Owners having already received approval prior to this Fifth Amendment.
- c) Termination. All written approvals by the Board of Directors shall only be an approval as to the rental use by the particular Owners included within such approval. No approval may run with the land or follow to subsequent Owners of the land. Upon sale, termination, or disuse of the Dwelling Unit as a rental property, such approval shall be deemed terminated.
- d) Exigent Circumstance. Notwithstanding the foregoing, the Board of Directors may, in their sole and absolute discretion, approve an application under exigent circumstances such as a family emergency, health issues, job change, etc. Such approvals shall not be bound by the numerosity restriction in Section 21.17. Any approvals under this subsection shall be limited in duration, and at no time shall be permitted to extend beyond twelve (12) months.
- e) Leases. All leases shall be in writing, and subject to the following restrictions;



- i. Term. No lease shall be entered for a term less than twelve (12) months or greater than thirty-six (36) months without prior written approval of the Association.
- ii. Compliance with Governing Documents. All leases shall contain provisions adequate to require the lessee to comply with all provisions of the Declaration and Bylaws of the Association, and any other rules promulgated by the Association to the same extent as if lessee were an Owner and member of the Association; and shall provide for direct action by the Association against the lessee with or without joinder of the Owner, at the Association's option.
- iii. Joint and Several Liability. All leases shall make lessee personally liable, jointly and severally with the Owner, for any assessments levied by the Association during the term of the lease to the same extent as if the lessee were the Owner and a member of the Association, and shall expressly subordinate the lessee's interest to the lien of the assessments provided for in this Declaration.
- iv. Release of Liability. No lease shall provide, or be interpreted or construed to provide, for a release of the Owner from his responsibility to the Association for compliance with the provisions of this Declaration, the By-Laws and any rules and regulations of the Association, or from the Owner's personal liability to the Association for assessments. This requirement shall not be construed to prohibit indemnity provisions as between the Owner and lessee.

5. Except to the extent specifically modified, amended, or supplemented by this Second Amendment, the Declaration shall remain in full force and effect.

6. In the event of any conflict between the terms of the Declaration and the terms of this Fifth Amendment, the terms of the Fifth Amendment shall control.

IN WITNESS WHEREOF, the Southaven Planned Development Homeowners Association, Inc., has caused this Second Amendment to be executed as of the day first written above.

SOUTHAVEN PLANNED DEVELOPMENT HOMEOWNERS ASSOCIATION, INC.

By: Gaylyn Jo Rayburn  
Print: GAYLYN RAYBURN  
Title: President

STATE OF INDIANA )

)SS:

COUNTY OF Tippecanoe )

Before me, the undersigned, a Notary Public in and for said County and State, this 10<sup>th</sup> day of September, 2024, personally appeared Southaven Planned Development Homeowners Association, Inc., an Indiana Corporation, by Gaylyn Rayburn its President and acknowledged the execution of the foregoing instrument.

In witness whereof, I have hereunto subscribed my name and affixed my official seal.



My Commission Expires:  
March 12, 2025

[Signature]  
(written)  
Cheryl Strong  
(printed) NOTARY PUBLIC  
Resident of Tippecanoe County

This instrument prepared by: Bradley A. Neely of the firm of REILING TEDER & SCHRIER, LLC, 250 Main St., Suite 601, P.O. Box 280, Lafayette, Indiana 47902-0208. Telephone: (765) 423-5333. E-Mail Address: ban@rtslawfirm.com

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. Bradley A. Neely