

***AMENDED AND RESTATED DECLARATIONS, COVENANTS,  
AND HOMES ASSOCIATION DECLARATION FOR  
INDIAN CREEK PARK ESTATES***

Amending Declaration of Restrictions recorded at Volume 2001 at Pages 635-641; and

Amending Homes Association Declaration recorded at Volume 2001 at Pages 642-650  
effecting the following property to wit:

Legal Description:

Block 1, Lots 1 through 9; Block 2, Lots 1 through 4; Block 3, Lots 1 through 33;  
Block 4, Lots 1 through 24; Block 5, Lots 1 through 11; Block 6, Lots 1 through 14;  
Block 7, Lots 1 through 10, Indian Creek Park Estates, a subdivision of land in the  
City of Overland Park, Johnson County, Kansas.

*Return to:*

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**AMENDED AND RESTATED  
DECLARATION OF RESTRICTIONS, COVENANTS, AND HOMES  
ASSOCIATION DECLARATION FOR INDIAN CREEK PARK ESTATES**

WHEREAS, a plat of land known as Indian Creek Park Estates has been filed with the Register of Deeds of Johnson County, Kansas on the 9<sup>th</sup> day of April, 1984, as instrument number 1462601 at Plat Book 55, Page 39; and

WHEREAS, said plat creates a community to be commonly known as Indian Creek Park Estates, composed of lots and tracts described as follows:

Block 1, Lots 1 through 9; Block 2, Lots 1 through 4; Block 3, Lots 1 through 33; Block 4, Lots 1 through 24; Block 5, Lots 1 through 11; Block 6, Lots 1 through 14; Block 7, Lots 1 through 10, Indian Creek Park Estates, a subdivision of land in the City of Overland Park, Johnson County, Kansas.

WHEREAS, said plats dedicate to the public all of the streets and roads shown on said plat for use by the public; and

WHEREAS, the Developer, Aurora Homes, Inc., caused to be recorded that certain Declaration Of Restrictions ("Declaration") applicable to the property described above in the office of the Register of Deeds of Johnson County, Kansas on May 2, 1984 in Volume 2001 at Pages 635 through 641; and

WHEREAS, the Indian Creek Park Estates Homes Association caused to be recorded that certain Amendment To Indian Creek Park Estates Homes Association's Declaration And Restrictions applicable to the property described above in the office of the Register of Deeds of Johnson County, Kansas on September 12, 1997 in Book 5307 at Page 668 through 670; and

WHEREAS, the Developer, Aurora Homes, Inc., caused to be recorded that certain Homes Association Declaration applicable to the property described above in the office of the Register of Deeds of Johnson County, Kansas on May 2, 1984 at Volume 2001, Pages 642 through 650; and

WHEREAS, the Developer, Aurora Homes, Inc., caused to be recorded that certain First Addendum To Indian Creek Park Estates Homes Association Declaration applicable to the property described above in the Office of the Register of Deeds of Johnson County, Kansas on July 9, 1984 at Volume 2033, Page 469; and

WHEREAS, the undersigned, being the owners of more than seventy-five percent (75%) of the lots described above, wish to amend and restate the Declaration of Restrictions, the Homes Association Declaration, the First Addendum To Indian Creek Park Estates Homes Association Declaration, and the Amendment To Indian Creek Park Estates Homes Association's Declaration And Restrictions all referenced above.

NOW, THEREFORE, in consideration of the premises, the undersigned, for themselves and their heirs, representatives, successors, grantees and assigns, hereby agree that all of the lots, tracts and land shown in the referenced plats for Indian Creek Park Estates as described above shall be and they are hereby restricted as to their use in the manner herein set forth and the Declaration of Restrictions and Homes Association Declaration are hereby amended and restated as follows:

**ARTICLE I**  
**DEFINITIONS**

For the purposes of these Restrictions, the following words shall be defined as follows:

- (1) "Association" shall mean and refer to the Indian Creek Park Estates Homes Association, Inc., a Kansas not-for-profit corporation formed for the purpose of serving as the homes association so that owners of the Property may create and maintain a residential neighborhood possessing features of more than ordinary value to a residential community.
- (2) "Board" shall mean and refer to the elected Board of Directors for Indian Creek Park Estates Homes Association, Inc. elected pursuant to the Bylaws of the Association.
- (3) The "Property" or "Properties" shall refer to all such existing lots as are subject to this Declaration and any addition to the residential community known as Indian Creek Park Estates which Developer or its successor may in its discretion include.
- (4) "Common Properties" shall mean and refer to the private roads, berms, entrance monuments, and other open spaces in all phases of Indian Creek Park Estates to be held in the name of Developer or its successors and/or the Association and dedicated to the common use and enjoyment of all the lot owners and residents of the Properties.
- (5) "Lot" shall mean and refer to any separately divided parcel, except any common property, as may be shown by the Plat of Indian Creek Park Estates.
- (6) "Dwellings" shall mean and refer to any building situated upon a lot designed and intended for use and occupancy as a residence. Each dwelling within the Association consists of multiple dwelling units.
- (7) "Dwelling Units" shall mean and refer to any portion of a dwelling situated upon a lot designated and intended for use and occupancy as a residence.
- (8) "Lot Owner" shall mean and refer to the record owner whether one or more persons or entities that own the fee simple title to any lot within Indian Creek Park Estates, but shall not mean or refer to the mortgagee unless such mortgagee has acquired title pursuant to foreclosure or any proceeding instead of foreclosure.

- (9) "Member" shall mean and refer to all those lot owners who are members of the Association.
- (10) "Street" shall mean the roads and rights of way therefor as shown on the Plat of Indian Creek Park Estates, subject to easements for utilities and held by the Developer or the Association for the use of the Members and Lot owners, their families and guests, and of public officials while acting in such capacity.
- (11) "Front Property Line" shall mean the property line of any lot abutting the right of way line of any street.
- (12) "Detached Structure" shall mean an enclosed, covered structure not directly attached to the residence to which it is appurtenant, or any other structure as set forth in Article VI, Section 1.
- (13) "Developer" shall mean and refer to Aurora Homes, Inc., a Kansas corporation, its successors and/or assigns.

ARTICLE II  
USE OF LOTS

Section 1. Residential Use.

Only residential dwellings may be constructed upon any lot conveyed. No detached structures of any kind shall be constructed upon any lot. All boats, campers, trailers, trucks, recreational vehicles or any other vehicles must be garaged and may not be stored on the property or parked in the street for more than two days a month. There shall be no businesses which are incompatible with the residential character of the Indian Creek Park Estates subdivision such as child care businesses; car, boat or vehicle sales; car, boat or other types of vehicle repair services; or other similar activities upon any lot or dwelling constructed thereon unless approval is granted in writing by the Board. Isolated sales and services will be allowed such as garage sales and the like subject to Board approval. Before any home based business or sale shall commence, a proposal must be submitted to the Board and approved in writing by the Board. Any allowed home based business shall minimize customer traffic and employee parking.

Section 2. Setback Lines.

No dwelling or any part thereof, including garages and porches, shall be erected on any lot closer to the street line than the setback distances indicated on the Plat of Indian Creek Park Estates, except as provided in Section 4 hereof. The Board shall have the sole right under these Declarations and Restrictions to review and approve the placement of all dwellings on any lot.

Section 3. Approval of Plans and Roofing Materials.

Construction or demolition shall not commence on any dwelling, detached structure, fence, structure or other improvements unless and until plot plans, architectural, structure, building, and elevations specifications, as well as details of fencing and landscaping have been first approved in writing by the Board. The Board shall have sole discretion to approve or deny said plans. All dwellings and other improvements shall have 30 - 40 year composition simulated wood shingles or wood shake shingles of a weathered brown color providing they satisfy the building codes of Overland Park, Kansas. The Board shall have the right to elect an Architectural Review Committee in order to establish guidelines, rules and regulations to govern construction or demolition of dwellings, structures and improvements. The Architectural Review Committee may also be granted the power to approve or deny all plans submitted pursuant to this Article and any other powers the Board deems necessary and advisable to carry out the purposes of these Declarations.

Section 4. Variances and Encroachments.

Notwithstanding anything herein to the contrary, the Board shall have the right to permit reasonable modifications of the setback requirements, not to exceed ten feet, unless such variance would be prohibited by governmental regulations. Any such modification or variance permitted shall be evidenced in writing or as a plan approval and shall be executed by the Board.

Section 5. Temporary Dwellings.

No structure of a temporary nature and no trailer, mobile home, recreational vehicle, tent, garage, barn or other outbuilding shall at any time be used as a residence or constructed or placed on a lot.

Section 6. Trash, Nuisances and Yard Maintenance.

No trash, garbage, ashes, junk, junk cars, inoperable vehicles or other refuse or debris shall be thrown, dumped, or placed on any lot, on the streets, the common properties or entrance monuments, or be permitted to accumulate or remain on any lot. Weeds, plants and landscaping shall be properly maintained by the Lot Owner and dead or unsightly growth removed. All yards for each dwelling shall be kept reasonably mowed by the Association. If a Lot Owner requests that the Association not mow the lot, it shall be the responsibility of the Lot Owner to maintain and keep the lot reasonably mowed.

No noxious, offensive or illegal activity shall be carried on upon any lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

It is understood that the Association shall retain the right to keep and maintain such materials and equipment they deem to be reasonably necessary to maintain common properties, any adjacent property owned by the Association, or any other lot.

If the Board determines that a Lot Owner's property is not being maintained pursuant to these Amended and Restated Declarations, the Board shall make written demand to the Lot Owner specifying the repairs to be made or nuisances to be abated. Lot Owner shall have 20 days to initiate said repairs or abate said nuisances and provide proof of a completion date. If Lot Owner does not commence repairs or begin abatement of the complained of nuisances, the Lot Owners hereby grant the Board an easement to come upon the property, make the necessary repairs, and charge the Lot Owner for the cost of the repairs expended by the Board as an addition to the monthly assessment. If repair or abatement is commenced but not completed within a reasonable time of the completion date provided, the Lot Owners hereby grant the Board an easement to come upon the property, make the necessary repairs, and charge the Lot Owner for the cost of repairs expended by the Board as an addition to the monthly assessment.

#### Section 7. Livestock and Animals.

No livestock, animals or poultry of any kind shall be kept or allowed to stay on any lot, except dogs, cats, or other household pets, which must remain in their Lot Owner's yard and shall not be a menace to the neighborhood. Any dog pen, dog run, or structure built to house a pet shall first receive written approval from the Board before the erection of any such structure.

Subject to any more restrictive law or ordinance, no more than two dogs or cats, or combination thereof, in excess of three months of age shall be kept or maintained on any lot.

#### Section 8. Driveways.

The Association may remove snow from driveways on each lot in its discretion; however, this does not alleviate the right of the lot owner to maintain or conduct snow removal. The Association shall not be liable for accidents or damages related to snow removal or the lack of snow removal. All driveways shall be hard surfaced with concrete or pea gravel mix (with a substantial base) and/or such construction so as to be equal or better in appearance than the general road system serving the Lots. No asphalt materials shall be used for sidewalks, walks or driveways. All driveways shall be maintained so that the surface is hard and not cracked, sprawled, or the concrete or surface materials broken in loose pieces so as to be unsightly and/or hazardous. It shall be the sole discretion of the Board to review the condition of driveways and determine when they are in need of repair. The opinion of the Board is binding.

#### Section 9. Fences.

Chain link fences are prohibited. All fencing or fences must first be approved in writing by the Board prior to installation. Other than privacy fencing which may be installed around patios, decks and hot tubs, all fencing shall consist of six foot wood materials, which the lot owner shall always keep well maintained and not be permitted to lean, rot, or decay. No fences shall be located any more forward in a lot than the rear line of the dwelling on the lot.

Section 10. Sodding and Lawn Sprinklers.

All portions of yards shall be sodded up to the street curb and at all times of the lawn growing season, be irrigated by the lot owner. The cost of the water serving the sprinkler system shall be the sole cost and expense of the lot owner.

Section 11. Rental or Leasing. Each dwelling or dwelling unit upon each lot in this Subdivision may be rented or leased only one time for a period of one year subject to the prior approval of the Board which it may, in its sole discretion and without cause, withhold. The intent of this Section 11 is to prevent non-occupant owners from purchasing the lots in Indian Creek Park Estates Subdivision for investment purposes. It is the desire of the Association and Board to maintain an owner occupied residential community and to preserve the community atmosphere of the Subdivision. All lot owners desiring to lease or rent a dwelling or dwelling unit upon the lot must receive prior approval of the lease or contract renting the dwelling or dwelling unit and said lease or contract must contain a provision that the tenant shall abide by this Amended and Restated Declaration of Restrictions, Covenants, and Homes Association Declaration for Indian Creek Park Estates and if the Declaration of Restrictions are violated, suit may be initiated against both the tenant and the lot owner. During the rental or leasing of the dwelling or dwelling unit upon the lot, the lot owner shall remain responsible and liable for all violations of this Declaration. The Board shall have the authority to promulgate additional rules and regulations governing the leasing and rental of the lots, dwellings, and dwelling units, and the use and occupancy thereof by tenants as the Board, in its sole discretion, deems necessary or desirable.

ARTICLE III  
STREETS, COMMON PROPERTIES AND ACCESS EASEMENT

Section 1. Use.

Subject to the provisions of Section 4 of this Article, every member of the Association shall have a right and easement of enjoyment in and to the common properties, and any easements, if granted, shall be appurtenant to and shall pass with the title to every lot. In this connection all lot owners of Indian Creek Park Estates shall have full access and enjoyment to all common properties and trails within the entire subdivision known as Indian Creek Park Estates.

Section 2. Title to Streets.

All streets and roads in Indian Creek Park Estates have heretofore been dedicated by Developer to the public use, and enjoyment. The Association, at its sole cost and expense and not at the cost of Johnson County, Kansas or any other municipality having jurisdiction thereover, will maintain all subdivision monuments and the easements within which they are located as well as all street islands, subdivision monument signs or markers and all plantings or other improvements located within public right of way.

Section 3. Title to Common Property.

The Association may retain the legal title to the common properties. Any conveyance of title to the common properties shall only be in writing and be subject to all easements, restrictions and reservations of record.

Section 4. Extent of Members' Easements.

The right and easements of enjoyment created hereby as to the Common Properties shall be subject to the right of the Association to assign or convey sewage, water, drainage, and other utility easements over, through or under all or any part of the Common Properties.

Section 5. Association's Access Easement.

The Association shall have an easement for the purposes of, and does hereby reserve, the right to locate, erect, construct, maintain and use, or authorize the location, erection, construction, maintenance and use of entrance monument signs or markers, drains, pipelines, sanitary and storm sewers, gas and water lines, electric and telephone lines, television cables and other utilities, and to give or grant rights of way or easements therefore, over, under, upon and through all easements and rights of way shown on any recorded plat of the Property or any common area. All utility easements and rights of way shall inure to the benefit of all utility companies, including, without limitation, the Johnson County Unified Waste Water District, for purposes of installing, maintaining or moving any utility lines or services and shall inure to the benefit of all owners and the Homes Association as a cross-easement for utility line or service maintenance.

The Association does hereby reserve for itself and its successors and assigns an easement over and through all unimproved portions of each Lot located within the Property for the following purposes:

- (a) To perform the duties of the Homes Association in maintaining any common area; and
- (b) To have access to any lot for the ability to correct any drainage or landscaping problems that may arise.

ARTICLE IV  
MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 1. Membership

Every person or entity who is a record owner of a fee or undivided fee interest in any lot, shall be a member of the Association, provided that any such person or entity who holds such interest merely as a security for performance of an obligation shall not be a member.

Section 2. Voting Rights.

Lot owners shall be entitled to one vote in all proceedings in which action shall be taken by members of the Association. Each Lot Owner is entitled only to one vote regardless of the number of Lots or dwellings that the Owner has a fee interest in.

The vote of a Lot owner comprised of two or more persons, or other legal entities, or any other combination thereof, shall be cast in the manner provided for in the Articles of Incorporation of the Association, or as the several constituents may determine, but in no event shall all such constituents cast more than one vote.

During any period in which a Member is in default in the payment of any assessment levied by the Association under this Declaration, the voting rights of such member shall be suspended until such assessment has been paid in full. Subject to the foregoing, the Association shall be the sole judge of the qualifications of each Owner to vote and their rights to participate in its meetings and proceedings.

ARTICLE V  
ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments.

The Lot Owner of each Lot by acceptance of a deed therefor, whether or not it shall be expressed in any such deed or other conveyance, hereby agrees to pay to the Association such assessments or charges for special assessments as may be fixed, established, and constructed from time to time as hereinafter provided. The monthly, annual and special assessments, together with such interest thereon and costs of collection thereof, including reasonable attorneys fees for the collection thereof, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with such interest thereon and costs of collection thereof, including reasonable attorneys fees, as hereinafter provided, shall also be the personal obligation of the person who was the lot owner of such property at the time when the assessment became due.

Section 2. Purpose of Assessments.

The assessments levied by the Association shall be used for the purpose of promoting the health, safety, welfare and enjoyment of the residents in the Properties and particularly for the maintenance, care and preservation of the Common Properties and Streets, payment of taxes and insurance thereon, the providing of trash and garbage collection, the upkeep and maintenance of street islands, subdivision markers and signage and any other general maintenance and care for the general upkeep of the common area and the Association property as well as preservation of the neighborhood in general.

Section 3. Special Assessments for Capital Improvements or Additional Maintenance.

In addition to the annual assessments authorized by Section 4 hereof, the Association may levy a special assessment for the purpose of deferring in whole or in part, the reasonable costs of any necessary construction or reconstruction, unexpected repair or replacement of a described capital improvement upon Common Properties such as to maintain and operate the same in a first class condition, including the necessary fixtures and personal property related thereto, or for purposes of providing additional maintenance activities as authorized herein; provided that two-thirds of the votes of members voting in person or by proxy at any meeting duly called and properly held for this purpose, prior written notice of which shall be sent to all members pursuant to the Bylaws of the Association, consent to such assessment.

Section 4. Amount of Annual Assessments.

The Association may establish annual assessments as needed for current maintenance costs and needs of the Association. The annual assessments shall be established at any meeting of the Association duly called for this purpose with written notice to all members at least thirty days in advance, said notice setting forth the purpose of the meeting. Further, the assessments shall be established only by two-thirds of the votes of those members who are voting in person or by proxy at the meeting. The annual assessment is to be paid in monthly installments due on the 1<sup>st</sup> day of each month.

Section 5. Delinquent Assessments.

A. Each assessment shall be a charge against the Lot Owner and shall become automatically a lien in favor of the Association on the Lot against which it is levied as soon as the assessment becomes due. Should any Lot Owner fail to pay any assessment within 30 days of the due date thereof, then thereafter such assessment shall be delinquent and bear interest at the maximum rate allowable by Kansas law or 10%, whichever is greater, per annum from the due date until paid, which interest shall become part of the delinquent assessment and the lien on the Lot. Should any Lot Owner fail to pay any annual assessment within 30 days of the due date thereof, then the Board shall have the right to accelerate the total amount of the annual assessment for that year and declare the total amount for the entire year due and owing. Should it become necessary to engage the services of an attorney to collect any assessment hereunder, all costs of collecting such assessment, including court costs and reasonable attorneys' fees, shall, to the extent permitted by applicable law, be added to the amount of the assessment being collected and the lien on the Lot. Each assessment, together with interest thereon and collection costs, shall also be the personal obligation of the Lot Owner at the time when the assessment became due.

B. Payment of a delinquent assessment may be enforced by judicial process against the Lot Owner personally or against the Lot, including through lien foreclosure proceedings in any court having jurisdiction of suits for the enforcement of such liens. The Board may file certificates of nonpayment of assessments in the office of the Register of Deeds of Johnson County, Kansas, and/or the office of the Clerk of the District Court for Johnson County, Kansas, whenever any assessment is delinquent, in order to give public notice of the delinquency. For each certificate

so filed, the Board shall be entitled to collect from the Lot Owner an additional fee of \$100.00, which fee shall be added to the amount of the delinquent assessment and the lien on the Lot.

C. Such liens shall continue for a period of ten years from the date of delinquency and no longer, unless within such period suit shall have been instituted for collection of the assessment, in which case the lien shall continue until payment in full or termination of the suit and sale of the lot under the execution of judgment establishing the same.

D. The Board may cease to provide any or all of the services to be provided by or through the Association with respect to any Lot during any period that the lot is delinquent on the payment of an assessment due under this Declaration, and no such cessation of services shall result in a reduction of any amount due from the lot owner before, during or after such cessation. No lot owner may waive or otherwise avoid liability for any assessment by not using any Common Areas or declining any services provided through the Association.

E. If any assessment paid by a Lot Owner is returned to the Association marked "Insufficient Funds" or is not payable due to an insufficiency in the Lot Owner's account, then the Board shall hereby have the right to demand that all other assessments for that year be paid in certified funds only. The Board shall also have the right to charge the homeowner \$25.00 for each check returned due to insufficiency of funds.

## ARTICLE VI

### APPROVAL OF PLANS AND MATERIALS AND LOT OWNER MAINTENANCE

#### Section 1. Review by Board.

No building, fence, hedge, privacy enclosure wall, retaining wall, driveway, sign, swimming pool, tank, hot tub, greenhouse, shed, barn, garage, dog or animal pen or run, freestanding mailbox, lawn sprinkler system, window air conditioner unit, portable air conditioner unit, gazebo, swing set, trampolines, shield, roof, sports court, basketball goal, or structure of any kind (collectively called Structures) shall be commenced, erected or maintained on any lot, nor shall any addition to (including awnings) or change or alteration therein (including exterior color or design) be made, until the plans and specifications, in duplicate, showing the nature, kind, shape, height, materials, top of foundation elevation, lot grading and review of overall compliance with the subdivision's grading and drainage plan, color, location of the structure on the lot have been submitted to and approved in writing by the Board. Exterior walls of all building, structures and all appurtenances thereto shall be of brick, stone, stucco or wood. Vinyl siding and spray on siding is strictly prohibited. The Board may consider applications for approval of plans, specifications, etc., upon the basis of conformity with this Amended and Restated Declaration and shall be guided by the extent to which the proposed Structure, addition or alteration will insure conformity and harmony in exterior design and appearance of surrounding structures within close proximity and in keeping with the overall theme of the subdivision. The Board shall have sole discretion to approve or deny plans on any basis and the opinion of the Board is binding. No Structure shall be erected, placed, altered or permitted to remain on any lot nearer to any street than the minimum building setback line for the lot as shown on the Plat, or approved in writing by the Board and/or its nominee, designee or assignee.

Section 2. Lot Owner Maintenance.

Each lot owner shall maintain their dwelling or dwelling unit in a good, clean and above average condition, including, but not limited to not allowing paint to become peeling, cracking or blistering; concrete surfaces shall not become overly cracked, heaved or scattered; glass windowpanes must not have open cracks or holes; screens and frames must be kept in good condition; awnings must be kept in good repair; roofs, eaves, and cornices must be structurally sound, tight and not open to the elements or animals; defective gutters must be replaced; radio and tv antennas and conventional mini satellite dishes must be installed so as not to be detrimental to the aesthetically pleasing residential living environment; the exterior siding or surface of each dwelling shall not be warped or unsightly; and the overall appearance of the dwelling of any lot owner shall be maintained consistent with the appearances of other dwellings within Indian Creek Park Estates.

Section 3. Prohibited Improvements.

There shall not be erected or maintained upon any Lot or Dwelling constructed upon a lot without prior written consent of the Association, any clothesline apparatus, radio, television or other forms of aerals or antenna devices, basketball goals installed anywhere upon a garage, pole or dwelling, dog or other animal cages or runs; nor any compost pile or pit.

Section 4. Dwelling Unit Owner Agreement.

The exterior of each dwelling unit in each multiple dwelling shall be painted with a uniform color which shall be agreed upon by the dwelling unit owners constituting each dwelling. The owner or owners of each dwelling unit wishing to paint his or their unit shall make every effort in writing to contact the neighboring and adjoining dwelling unit owner or owners. If the dwelling unit owners do not agree or cannot agree to paint the exterior of the dwelling units a uniform color, the owner or owners shall notify the Board in writing of the disagreement as to the uniform paint color or style. The notice shall be in writing and shall be sent to the Board at the registered office of the corporation and a copy of the letter shall also be sent to the owner of the dwelling unit who does not agree to the exterior decoration.

Within 7 days after receiving notice, the Board, its secretary, or its designated attorney, unless notified to the contrary by the dwelling unit owner or owners of his or their willingness to cooperate, shall give written notice to those dwelling unit owners who have not agreed to the exterior decoration and said notice shall inform said dwelling unit owner that said dwelling unit owner must schedule a meeting with the Board and the dwelling unit owner or owners wishing to paint the exterior of the dwelling in order to resolve the conflict. If said dwelling unit owner does not contact the Board and the other dwelling unit owners and schedule a meeting in order to resolve the conflict, said failure to cooperate with the other dwelling unit owner or owners shall result in the non cooperative dwelling unit or units being painted by the Association, and the cost of said exterior painting shall be placed as a lien against the property of the defaulting dwelling unit owner.

ARTICLE VII  
GENERAL PROVISIONS

Section 1. Duration and Modification.

The covenants and restrictions of this Amended and Restated Declaration shall run with and bind the land and shall inure to the benefit of and be enforceable by the Association, the Board, or by the Lot owner of any land subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a term of twenty (20) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years unless an instrument has been recorded, agreeing to amend said covenants and restrictions in whole or in part.

The covenants and restrictions of this Amended and Restated Declaration may be amended at any time by affirmative vote of 67% of all members of the Association. The vote may be cast in person or by proxy and be recorded by the Secretary. The Amendments shall be recorded by the President of the Association, upon certification by the Secretary, that a vote was taken and the Amendment was approved by 67% of all members of the Association.

Section 2. Notices.

Any notice required to be sent to any Member or Lot owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postage prepaid, to the address of the lot owned by the member.

Section 3. Enforcement.

Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, to restrain violation, to prevent further violation, and/or to recover damages or all such remedies and against the land to enforce any lien created by these covenants, and failure by the Association, the Board, or any Lot owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. Should it become necessary for the Board or the Association to engage the services of an attorney to enforce any of the covenants or restrictions contained herein, all cost of enforcement, including court costs and reasonable attorney's fees, shall, to the extent permitted by applicable law, be paid by the person or persons against whom action was taken for violation of said covenants or restrictions, regardless of who the prevailing party is.

Section 4. Other Association Matters.

The lots described within this Amended and Restated Declaration shall be governed by the Articles of Incorporation of Indian Creek Park Estates Homes Association, Inc., and the Amended Indian Creek Park Estates Bylaws and Rules And Regulations. If the provisions of any of the above-referenced documents are inconsistent with this Amended and Restated Declaration, this Amended and Restated Declaration shall control. The Board has the power and right to promulgate, enact and enforce additional Rules and Regulations from time to time to govern the properties within Indian

  
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Creek Park Estates Subdivision which are deemed necessary by the Board to further the purposes of the Covenants and Restrictions contained herein.

Section 5. Association and the Board.

The management and control of all improvements within the Indian Creek Park Estates Homes Association shall be under the control of the Association. The Board shall be charged with the responsibility and is hereby given the right to carry out the rights, duties and obligations of the Association granted in this Amended And Restated Declaration Of Restrictions, Covenants, And Home Association's Declaration For Indian Creek Park Estates. Any approvals required by the Association herein must be granted by and through the Board or the Board's designee or assignee.

Section 6. Severability.

In the event any one of these covenants or restrictions are held invalid by a Judgment or court order, this shall in no way affect any other provision which shall remain in full force and effect.

Section 7. Committees and Sub-committees.

The Board shall have the right to appoint, elect, or designate committees and sub-committees and to specify the powers and duties of each committee or sub-committee as the Board deems necessary and desirable to carry out the intent and purpose of these Amended and Restated Declaration of Restrictions. Such committees can include, but are not limited to, an architectural review committee, lease review committee or assessment review committee. Any right of approval granted to the Board herein may be designated or assigned to any committee or sub-committee designated, elected, or appointed by the Board.

IN WITNESS WHEREOF, the Association has caused this Declaration to be duly executed the day and year first above written.

By: Bud Burris  
Bud Burris

STATE OF KANSAS        )  
  )  
COUNTY OF JOHNSON    )

This instrument was acknowledged before me this 26th day of October, 2004, by Bud Burris.

Mark V. Bodine  
Notary Public in and for said County and State

My commission expires:

**MARK V. BODINE**  
Notary Public - State of Kansas  
My Appt. Expires 1-19-09

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