

DECLARATION OF COVENANTS AND RESTRICTIONS  
FOR THE VILLAGES OF SAND CREEK

THIS DECLARATION, made this 15<sup>TH</sup> day of December, 1993, by The S-W CORPORATION, an Indiana corporation, (hereinafter referred to as the "Developer"), WITNESSETH:

WHEREAS, the Developer is the owner of all of the lands contained in the area shown on Exhibit "A" attached hereto and made a part hereof, which lands will be developed as a residential subdivision known as The Villages of Sand Creek (hereinafter referred to as the "Subdivision"), and subdivided portions of the various sections thereof which will be recorded in the Office of the Recorder of Porter County, Indiana; and

WHEREAS, the Developer is about to sell and convey the lots and parcels situated within the platted areas of the Subdivision, and before doing so, desires to subject and impose upon all real estate beneficial restrictions, covenants, conditions and charges (hereinafter referred to as the "Restrictions") under a general plan or scheme of improvement for the benefit of the subdivided lots and lands in the Subdivision and the future owners thereof;

NOW, THEREFORE, the Developer hereby declares that all of the platted lots and lands located within the Subdivision as they become 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 are declared and agreed to be in furtherance of a plan for the improvement of the platted lands and sale of said lots in the Subdivision, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Subdivision as a whole and of each of said lots situated therein. All of the Restrictions shall run with the land and shall be binding upon the Developer and upon the parties having or acquiring any right, title or interest, legal or equitable,

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in and to the real property or any part or parts thereof subject to such Restrictions, and shall inure to the benefit of the Developer and every one of the Developer's successors in title to any real estate in the subdivision. The Developer specifically reserves unto itself the right and privileges, prior to the recording of the plat by the Developer of a particular lot or tract within the Subdivision as described on Exhibit "A", to exclude any real estate so shown from the Subdivision, or to include additional real estate.

## ARTICLE I

### DEFINITIONS

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

- A. "Assessment" shall mean that portion of the cost of the operation of the Common Areas which is paid by each Owner as determined by the Board of Directors.
- B. "Association" shall mean the Villages of Sand Creek Owners Association, Inc., an Indiana nonprofit corporation, the membership and powers of which are more fully described in Article IX of this Declaration.
- C. "Board of Directors" or "Board" shall mean the group of individuals elected by the Association members or appointed by the Developer authorized and directed to manage and operate the Association. Until such time as all of the Lots in the Subdivision are sold, the Board of Directors shall be appointed by the Developer.
- D. "Building" shall mean any structure, including, but not limited to, each house, dwelling unit, out building, or any other above-ground temporary or permanent improvement.

E. "Carriage Home" shall mean an attached or detached single-family dwelling located on Numbered Lots 1-9 and 10-31.

F. "Committee" shall mean The Villages of Sand Creek Architectural Control Committee composed of three members appointed by the Board of Directors who shall be subject to removal by the Board of Directors at any time with or without cause. Any vacancies from time to time existing shall be filled by appointment of the Board of Directors.

G. "Common Areas" shall mean and refer to all real property and improvements thereon owned or leased by the Association or over which the Association has an easement for maintenance thereon for the common and mutual use and enjoyment of the Owners including, but not limited to the Lettered Lots, storm water, sanitary, wetland, landscape, storm sewer overflow, walking path easements, detention ponds, and playground area. (All as designated on the recorded plat.)

H. "Developer" shall mean S-W Corporation, an Indiana corporation.

I. "Double Lettered Lots" shall mean any parcel of real estate shown on the recorded final plat to which two letters have been assigned.

J. "Dwelling Unit" shall mean any single-family dwelling, whether attached to or detached from any other single-family dwelling, intended to be used and occupied as a single household.

K. "House" shall mean a detached single-family dwelling.

L. "Lettered Lot" shall mean any parcel of real estate shown on the recorded final plat to which a single letter has been assigned, including the lots to which a number has been added, indicating the phase within which the lots are located.

M. "Lot" shall mean any Numbered Lot, Lettered Lot or Double Lettered Lot.

N. "Numbered Lot" shall mean any parcel of real estate shown on the recorded final plat to which a number has been assigned.

O. "Owner" shall mean a person, partnership, trust or corporation who has or is acquiring the legal or equitable title in and to a Lot, including a fractional interest.

P. "Restrictions" shall mean the restrictions, covenants, conditions and charges set forth in this Declaration.

Q. "Subdivision" shall mean the real property described on Exhibit "A" and developed as a residential subdivision known as "The Villages of Sand Creek".

## ARTICLE II

### CHARACTER OF THE SUBDIVISION

A. In General: Every Numbered Lot and Double Lettered Lot in the Subdivision, inclusive, unless it is otherwise designed by the Developer in the plat, is a residential Lot and shall be used exclusively for residential purposes; provided, however, that the Developer may retain a sales office and/or model Dwelling Units in the Subdivision until the Developer has sold all of the Lots in the Subdivision. The Owner of any Double Lettered Lot may maintain an office and/or model apartment on said Lot in connection with the ownership and operation of the Dwelling Units located thereon. No Numbered Lot shall be resubdivided so that more than one single-family dwelling may be built on any Numbered Lot except that a duplex containing two (2) Dwelling Units may be located on Lots 1 through 9, inclusive. Every Double Lettered Lot shall be used for multi-family buildings which shall include two (2) or more Dwelling Units. No structure shall be erected, placed or permitted to remain upon any of said Numbered Lots or Double Lettered Lots except residential dwellings and such outbuildings as are

usually accessory to such use. Each Lettered Lot shall be used as Common Areas for the enhancement of the quality of life for all persons residing in the Subdivision.

B. Residential Use of Accessory Outbuilding Prohibited:

No accessory outbuildings shall be erected on any of the Lots prior to the erection thereon of a Dwelling Unit, and in no event shall any such accessory outbuilding or any temporary structure which may be constructed upon a Lot under these Restrictions ever be used as a residence or Dwelling Unit or place for human occupancy.

C. Occupancy or Residential Use of Partially Completed Dwelling Unit Prohibited: No Dwelling Unit constructed on any of the Lots shall be occupied or used for residential purposes or human habitation until it shall have been substantially completed. The determination of whether the Dwelling Unit shall have been substantially completed shall be made by the Committee and such decision shall be binding on all parties.

D. Carriage Homes and Duplex Carriage Homes: It is the intent of the Developer that the portion of the Subdivision depicted as Lots 1-9 and 10-31 shall be developed as Carriage Homes and/or attached duplex carriage homes which shall be subjected to special restrictions concerning size, placement, and maintenance of the Dwelling Units as set forth in Article III in addition to being subject to the Restrictions set forth in this Declaration for the entire Subdivision, including but not limited to the payment of any and all assessments.

### ARTICLE III

#### RESTRICTIONS CONCERNING SIZE, PLACEMENT AND MAINTENANCE OF DWELLING UNITS AND OTHER STRUCTURES ON NUMBERED LOTS

A. Minimum Living Space Areas: The minimum square footage of living space for a Dwelling Unit constructed on Numbered Lots in the Subdivision, exclusive of porches, terraces, garages, carports, accessory buildings or basements, or portions thereof, or similar facilities not designated for regular and continuous habitation, shall have no less than the minimum floor area of 960 square feet ground floor area in a one, one and one-half or two story dwelling and a total of at least 1,200 square feet in a one and one-half or two story dwelling on Numbered Lots 1-31, and a minimum of 1,200 square feet ground floor area in a one, one and one-half or two story dwelling and a total of at least 1,600 square feet in a one and one-half or two story dwelling on Numbered Lots 101 to 320, and a minimum of 1,600 square feet in a one story, and a minimum of 2,000 square feet in a two story dwelling on Numbered Lots 401 to 426.

B. Residential Setback Requirements:

1. No Dwelling Unit or above-grade structure designed to be used in connection with such Dwelling Unit shall be constructed or placed on any Numbered Lot in the Subdivision except as provided below:

a. Front Setbacks. All Dwelling Units and above-grade structures designed to be used in connection therewith shall be constructed or placed on Lots in the Subdivision so as to comply with the front yard setback lines as established in the final plats of the various portions of the Subdivision.

b. Side Yards. The side yard setback lines shall not be less than eight (8) feet from either side line of the Lot.

c. Rear Yards. The rear yard setback line shall be at least twenty-five (25) feet from the rear Lot line.

2. No Dwelling Unit shall be constructed or placed on any Lettered Lot in the Subdivision.

C. Fences, Mailboxes and Trees - Postlights and Coachlights - Tree Control Plan: In order to preserve the natural quality and aesthetic appearance of the existing geographic areas within the Subdivision, any fence must be approved by the Committee as to size, location, height and composition before it may be installed. A Numbered Lot must have at least one (1) tree(s) growing upon it in the front yard with a trunk diameter of three (3) inches or greater when measured four (4) feet above the ground within six (6) months of the completion of construction of the Dwelling Unit and if this requires plantings by the Owner, the Committee must approve the size and location of such trees. No tree within the Subdivision with a trunk diameter of four (4) inches or more when measured four (4) feet above the ground may be removed without the prior written consent of the Committee. All mailboxes shall be provided by the Developer and clustered in one or more sites as determined by the Association. All Numbered Lot Postlights will coordinate within the Subdivision and be provided with a dusk to dawn eye. In addition, all Dwelling Units will have the same coachlights.

D. Exterior Construction: The finished exterior of every building constructed or placed on any Lot in the Subdivision shall be a wood product siding, soffit and fascia, stone, brick or other material approved by the Committee. No Dwelling Unit shall have solar panels, antenna or other similar apparatus which projects beyond the roof line. All driveways must be paved with concrete within 120 days after the issuance of an occupancy

permit by the appropriate governmental unit. Exterior colors must always coordinate within Numbered Lots 1-9 and 10-31 inclusive. Written approval from the Association must be obtained before changing the original color.

E. Diligence in Construction: Every building whose construction or placement on any Numbered Lot in the Subdivision is begun shall be completed within six (6) months after the beginning of such construction or placement. No improvement which has partially or totally been destroyed by fire, casualty, or otherwise, shall be allowed to remain in such state for more than three (3) months after the time of such destruction or damage.

F. Time in Which to Build Structures: The Owners of the Numbered Lots within the Subdivision must commence construction of Dwelling Units on their Lots within one (1) year after their purchase of the Lot unless waived by the Committee. If a House is not completed upon a Lot within the prescribed time or its completion date waived by the Committee, the Developer shall have the option to repurchase such Lot for a price, in cash, equal to the Owner's cost bases in the Lot, without paying the cost of improvements up to the time of re-purchase. This option shall expire if not exercised prior to the time of commencement of the Dwelling Unit.

G. Prohibition of Used Structures: All structures constructed or placed on any Lot in the Subdivision shall be constructed with substantially all new materials, and no used structures shall be relocated or placed on any such Lot.

H. Maintenance of Numbered Lots: The Owner of each Numbered Lot or Double Lettered Lot shall at all times maintain the Lot and all improvements from becoming unsightly; and, specifically, each Owner shall:

1. Mow the Lot at such time as may be reasonably required in order to prevent the unsightly growth of vegetation and noxious weeds.

2. Remove all debris or rubbish.
3. Cut down and remove dead trees and stumps.
4. Keep the exterior of all improvements in such state of repair or maintenance as to avoid their becoming unsightly.
5. Apply such fertilizer and/or weed killer as may be required to maintain an attractive lawn.
6. Prevent the existence of any other condition that reasonably tends to detract from or diminish the aesthetic appearance of the Subdivision.

I. Association's Right to Perform Certain Maintenance: In the event that the Owner of any Numbered Lot or Double Lettered Lot in the Subdivision shall fail to maintain his Lot and any improvements situated thereon in accordance with the provisions of these Restrictions, the Association shall have the right, by and through its agents or employees or contractors, to enter upon said Lot and repair, mow, clean or perform such other acts as may be reasonably necessary to make such Lot and improvements situated thereon, if any, conform to the requirements of these Restrictions. The cost therefor to the Association shall be added to and become a part of the annual charge to which said Lot is subject, and may be collected in any manner in which such annual charge may be collected. Neither the Association nor any of its agents, employees, or contractors shall be liable for any damage which may result from any work performed hereunder.

J. Association's Rights to Provide Services: The Association shall act for and on behalf of each Owner to contract with any outside agency for the purposes of maintenance and repair of private sidewalks, and other improvements within the Subdivision, maintenance of common areas,

maintenance of playground area, placement and maintenance of mailboxes, maintenance of all ponds depicted on the final plats of the Subdivision and all drainage structures, maintenance of the walkway in common areas, and for the purpose of general property management. The cost of such services shall, at the option of the Association, be assessed to the Owners as part of the annual assessments as provided in this Declaration, or be billed directly to the Owner.

#### ARTICLE IV

##### PROVISIONS RESPECTING DISPOSAL OF SANITARY WASTE

A. Outside Toilets: No outside toilets shall be permitted on any Lot in the Subdivision (except during a period of construction, and then only with the consent of the Committee).

B. Construction of Sewage Lines: All sanitary sewage lines on the Lots shall be designed and constructed in accordance with the provisions and requirements of the Town of Chesterton, Indiana. No storm water (subsurface or surface) shall be discharged into sanitary sewers. Copies of all permits, plans, and designs relating to the construction of a sanitary sewer service line shall be submitted in duplicate to the Committee at the time of the submission of all other plans or documents required for the obtaining from said Committee of a permit to build.

#### ARTICLE V

##### GENERAL PROHIBITIONS

A. In General: No noxious or offensive activities shall be permitted on any Lot in the Subdivision, nor shall anything be done on any of said Lots that shall become or be an unreasonable annoyance or nuisance to any Owner of another Lot in the Subdivision.

B. Signs: No signs or advertisements shall be displayed or placed on any Lot or structures in the Subdivision without the prior written approval of the Committee, except for a "for sale" sign advertising a Lot for sale.

C. Pets: No birds, animals, or insects, shall be kept or maintained on any Lot, except generally recognized household pets. All pets shall be housed within the Dwelling Unit. When outside the Dwelling Unit, all pets shall be leashed, carried or attended by a responsible person who shall collect and dispose of the feces of all pets. Under no circumstance shall any pet be kept or maintained on any Lot for business, commercial, breeding or showing purposes. The Board of Directors may, from time to time, publish and impose regulations setting forth the type and number of pets kept on any Lot, limits on areas within the Subdivision where pets are allowed, and other reasonable regulations designed to preserve each Owner's rest and peaceful enjoyment of his Lot and the common areas. Any pet causing or creating a nuisance shall be permanently removed from the Subdivision upon three (3) days' written notice from the Board of Directors to the Owner of the Lot containing such pet. Said decision shall be final.

D. Vehicle Parking: No trucks, campers, recreational vehicles, motor homes, vans, trailers, boats or similar vehicles, including unlicensed vehicles, shall be parked longer than 48 hours within any seven-day period on any street or lot in the Subdivision, unless stored within an enclosed building.

E. Garbage and Other Refuse: No Owner of a Lot shall burn or permit the burning out-of-doors of garbage or other refuse, nor shall any such refuse be stored on any Lot except as may be permitted in subparagraph F below.

F. Fuel Storage Tanks and Trash Receptacles: Every Tank for the storage of fuel that is installed on a Lot outside any building shall be buried below the surface of the ground. Every outdoor receptacle for ashes, trash, rubbish or garbage shall be installed underground or shall be so placed and kept as not to be visible from any street within the Development at any time, except at the times when refuse collections are being made.

G. Model Homes: No Owner of any Numbered Lot shall build or permit the building upon said Lot of any Dwelling Unit that is to be used as a model home or exhibit house without permission to do so from the Association.

H. Temporary Structures: No temporary house, trailer, tent, garage or other outbuilding shall be placed or erected on any Lot.

I. Ditches and Swales: It shall be the duty of every Owner of every Lot on which any part of an open storm drainage swale is situated to keep such portion thereof as may be situated upon his Lot continuously unobstructed and in good repair, and to provide for such maintenance upon said Lot as may be reasonably necessary to accomplish the purposes of this subsection.

J. Utility Services: No utility services shall be installed under finished streets except by jacking, drilling or boring without the consent of the Board.

K. Wells and Septic Tanks: No water wells shall be drilled on any of the Lots nor shall any septic tanks be installed on any of the Lots in the Subdivision without the approval of the Board.

L. Towers and Above-Ground Pools: No exterior radio or T.V. antennas, towers or dishes shall be permitted in the Subdivision. Above-ground swimming pools may be permitted at the sole discretion of the Board, provided there is adequate decking, fencing and screened plantings.

M. Walking Path: The walking path designated on the final plat of the Subdivision shall be used only for walking or jogging. No bicycles, tricycles, or motorized vehicles shall be permitted on or around the walking trail, except for maintenance purposes.

N. Use of Yards: No permanent clotheslines, outside storage or other similar uses of yards which may prove detrimental to the value of the adjoining Lots shall be permitted except as approved by the Board.

O. Playground Area: The Playground Area designated on the recorded plat of the Subdivision is for the exclusive use of residents and guests. Children under the age of 6 must be accompanied by a responsible person. All persons using the Playground Area do so at their own risk.

## ARTICLE VI

### THE VILLAGES OF SAND CREEK SUBDIVISION ARCHITECTURAL CONTROL COMMITTEE

#### A. Power of Committee:

1. Generally, no dwelling, building, structure or improvement of any type or kind shall be constructed or placed on any Numbered Lot in the Subdivision without the prior approval of the Committee. Such approval shall be obtained only after written application has been made to the Committee by the Owner of the Lot requesting authorization from the Committee. Such written application shall be in the manner and form prescribed from time to time by the Committee, and shall be accompanied by two (2) complete sets of plans and specifications for any such proposed construction or improvement. Such plans shall include plot plans showing the location of all improvements existing upon the Lot and the location of the improvement proposed to be constructed or placed upon the Lot, each properly and clearly

designated. In addition, such plans and specifications shall show the proposed landscaping, together with any other material or information which the Committee may require. All plans and drawings required to be submitted to the Committee shall be drawn to a scale of 1" = 10', or to such other scale as the Committee may require. There shall also be submitted, where applicable, the permits or reports required under Article III of these Restrictions.

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

a. The plans, specifications, drawings or other material submitted are themselves inadequate or incomplete, or show the proposed improvement to be in violation of these Restrictions;

b. The design, color scheme or construction materials of a proposed improvement is not in harmony with the general surroundings of the Lot or with adjacent buildings or structures;

c. The proposed improvement, or any part thereof, would in the opinion of the Committee be contrary to the interests, welfare or rights of all or any part of the other Owners.

3. Power to Grant Variances: The Committee may allow reasonable variances or adjustment of these Restrictions where literal application would result in unnecessary hardship or practical difficulty, but any such variance or adjustment shall be granted which is materially detrimental or injurious to other Lots in the Subdivision.

B. Duties of Committee: The Committee shall approve or disapprove proposed improvements within 30 days after all required information shall have been submitted to it. Should the Committee fail to act within the

specified time, the requirements of this Article shall have been automatically waived and the Owner's plans shall be deemed to have complied with all requirements hereof. One copy of all submitted material shall be retained by the Committee for its permanent files. All notifications to applicants shall be in writing, and, in the event that such notification is one of disapproval, it shall specify the reason or reasons.

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

D. Inspection: The Committee may inspect work being performed with its permission to assure compliance with the plans approved by it, and these Restrictions and applicable regulations.

## ARTICLE VII

### RULES GOVERNING BUILDING ON SEVERAL CONTIGUOUS NUMBERED LOTS HAVING ONE OWNER

Whenever two (2) or more contiguous Numbered Lots in the Subdivision shall be owned by the same person, and such Owner shall desire to use two (2) or more of said lots as a site for a single Dwelling Unit, he shall apply in writing to the Committee for permission so to use said Lots. If permission for such a use shall be granted, the Lots constituting the site for such single Dwelling Unit shall be treated as a single Lot for the purpose of applying these restrictions to said Lots, so long as the Lots remain improved with one House.

## ARTICLE VIII

### OWNERSHIP, USE AND ENJOYMENT OF COMMON AREAS AND RECREATIONAL FACILITIES

A. Common Areas: The Common Areas shall be owned by the Association for the use and benefit of all Owners within the Subdivision. The Association shall be solely responsible for the operation, maintenance and management of the Common Areas. , The Common Areas shall include but not be limited to the Lettered Lots, detention ponds, courtyard, and recreational facilities, walking paths and playground area, detention pond easements, wetlands easements, storm sewer easements, storm drainage easements, storm sewer overflow easements, landscape easements, and utility easements. All such easements are delineated on the final plat by dotted lines. The Association may from time to time adopt such rules and regulations for the use and enjoyment of the Common Areas as it deems appropriate.

B. Lettered Lots: Each Lettered Lot depicted on the recorded plats of the Subdivision shall remain private, and neither the Developer's execution or recording of the plats nor the doing of any other act by the Developer is, or is intended to be, or shall be construed as, a dedication to the public of the Common Areas, or recreational facilities located upon it. A license, upon such terms and conditions as the Association, and the successors, assigns or licensees of it shall from time to time grant, for the use and enjoyment of the Lettered Lots and related Common Areas and recreational facilities, located upon them shall be conveyed from time to time in fee simple title, free of financial encumbrances to the Association. Such conveyance shall be subject to easements and restrictions of record, and such other conditions as the Developer may at the time of such conveyance

deem appropriate. Such conveyance shall be deemed to have been accepted by the Association and those persons who shall from time to time be members thereof upon the recording of a deed or deeds conveying such Common Areas and recreational facilities for the Association

## ARTICLE IX

### THE VILLAGES OF SAND CREEK OWNERS ASSOCIATION, INC.

#### A. In General

1. Organization: There has been or will be created, under the laws of the State of Indiana, a nonprofit corporation to be known as "The Villages of Sand Creek Owners Association, Inc." The Association shall provide for the operation and maintenance of the Common Areas located within the Subdivision.

2. Membership: Every Owner of a Numbered Lot, or Double Lettered Lot, or fractional interest in said Lots, shall be a member of the Association.

If the holder of a security interest becomes an Owner of a Lot as a result of said security interest, such holder shall then be subject to all the requirements and limitations imposed in these Restrictions on other Owners of Lots and on members of the Association, including those provisions with respect to the payment of an annual charge:

The Articles of Incorporation of the Association shall provide that each Dwelling Unit within the Subdivision shall be entitled to one (1) vote in matters to be voted upon by the membership of the Association. The vote for any membership which is held by more than one person may be exercised by any one of them unless any objection or protest by

any other holder of such membership is made prior to the completion of the vote for such membership shall not be counted.

Owners of Lots who are engaged in the business of constructing houses may apply to the Board for a determination that they own a Lot or Lots not for their own use but for resale. If the Board determines that such is the purpose for which the Lot or Lots are held, the Owner shall not become a member of the Association and should not be required to pay the annual charge. The determination shall terminate upon the first to occur of (a) revocation by the Board, (b) sale of the Lot, or (c) occupancy of a residence upon the Lot.

3. Board of Directors: The management of the affairs of the Association shall be vested in a Board of Directors which may exercise all such powers of the Association and do all such lawful acts and things as are not by statute or by this Declaration directed or required to be exercised or done by the members.

The Board of Directors shall consist of five (5) members who shall be at least twenty-one (21) years of age. The Board shall be divided into three (3) terms of office so that at the time of the initial election of the Board, one shall be elected for one (1) year, two shall be elected for two (2) years, two shall be elected for a period of three (3) years and thereafter each member shall be elected for three (3) year terms. Until such time as the Developer has transferred ownership of all of the Lots in the Subdivision, the Board of Directors shall be appointed by the Developer. Any vacancy in the Board shall be filled by a vote of the majority of the remaining Directors and the Directors so elected shall serve until the next annual meeting of the Association at which time the membership shall elect a Director to fill the unexpired vacancy. So long

as the Developer owns Lots in the Subdivision, no vacancy shall be filled without the approval and consent of the Developer. At such time as the Directors are elected by the membership, there shall be at least one (1) Director elected from among the members owning Numbered Lots 1 to 31, one (1) elected from Numbered Lots 101 to 217, one (1) elected from Numbered Lots 301 to 426, and one (1) elected from Parcel AA.

The Board of Directors shall adopt resolutions for the regulation and management of the property, manage the affairs of the Association, prepare an annual budget, establish the annual assessments, enter into contracts for and on behalf of the Association, grant easements, employ such agents and staff as are necessary to implement the resolutions of the Association and enforce the governing documents.

B. Purpose of the Association:

1. The general purpose of the association is to provide an entity for the operation, maintenance, repair and replacement of those areas within the Subdivision designated as Common Areas, such as, but not limited to, Lettered Lots on the final plats thereof, and for all other purposes which the Association has the right to perform under this Declaration.

2. An additional purpose of the Association is to enforce these Restrictions and to provide a means for the promulgation and enforcement of regulations necessary to govern the use and enjoyment of the Common Areas and recreational facilities within the Subdivision as may be acquired by the Association.

3. An additional purpose of the Association is to allow the respective Owners to collectively comply with the rules and regulations

relating to the management of Wetland areas under the jurisdiction of the Department of Army, Corps of Engineers.

C. Power of Association to Levy and Collect Charges and Impose Liens:

1. The Association shall have all of the powers set forth in its Articles of Incorporation, together with all other powers that belong to it by law, including the power to levy an annual charge or assessment against the Numbered Lots, Double Lettered Lots or fractional interests in said Lots, in exchange for the benefits conferred upon the Owners of the Lots. The Board of Directors of the Association, acting in accordance with the Bylaws of the Association, shall determine, after consideration of the financial requirements of the Association, the annual charge that will be made. No charge shall ever be levied by the Association against the Developer.

2. Every such charge shall be a lien against the respective Lot of each Owner as of the 1st day of April of the year for which the charge is made, but the Board may provide that the charge may be paid in quarterly or monthly installments. The Board of Directors of the Association shall fix the amount of the annual charge by the 1st day of March of each year, and written notice of the charge so fixed shall be sent to each member prior to the 1st day of April.

3. Any charge levied or assessed against any Numbered Lot, Double Lettered Lot or fractional interest in said Lots, together with interest and other charges or costs as hereinafter provided, shall become and remain a lien upon that Lot or fractional interest therein until paid in full, and shall also be a personal obligation of the Owner or Owners of that Lot as of April 1. Should any Owner fail to make any payment when due, the Owner shall be assessed a delinquent charge calculated by multiplying

the amount due and owing but unpaid times a figure equal to 4% above the prime lending rate (commercial) at the First National Bank of Chicago, and/or its successor in interest, as published from time to time, which delinquent charge shall be compounded annually. If, in the opinion of the Board of Directors of the Association, 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 or otherwise, to collect the amount owing in any court of competent jurisdiction. In the event of a foreclosure, such action shall be pursued according to the procedures established for the enforcement of a mechanic's lien. The Owner of the Lot or Lots subject to the charge, shall, in addition to the amount of the charge at the time legal action is instituted, be obliged to pay any expense or costs, including attorney fees, incurred by the Association in collecting the same. Every person who shall become an Owner of a Numbered Lot, Double Lettered Lot or fractional interest in said Lots, is hereby notified that by the act of acquiring, making such purchase or acquiring such title, such person shall be conclusively held to have covenanted to pay the Association all charges that the Association has made, or shall make, pursuant to this Article IX of the Restrictions.

4. The Association shall, upon demand, at any time, furnish a certificate in writing signed by an officer of the Association that the assessments on a specified Lot have been paid or that certain assessments against said Lot remain unpaid, as the case may be. A reasonable charge may be made by the Board of Directors of the Association for the issuance of these certificates. Such certificates shall

be conclusive evidence of payment of any assessment therein stated to have been paid.

D. Purpose of the Assessments: The charges or assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the members of the Association, and, in particular, for the improvement and maintenance of the properties owned or operated by the Association.

E. Suspension of Privileges of Membership: Notwithstanding any other provision contained herein, the Board of Directors of the Association shall have the right to suspend the voting rights, if any, and the right to use the facilities of the Association by any Owner (i) for any period during which any of the Association charges owed by the Owner remain unpaid; (ii) during the period of any continuing violation of the restrictive covenants for the Subdivision, after the existence of the violation shall have been declared by the Board of Directors of the Association; and (iii) during the period of any violation of the Articles of Incorporation, Bylaws or regulations of the Association

F. Special Assessments: The Association may levy a special assessment to meet emergencies or to pay extraordinary expenses incurred or to be incurred for a special purpose, including, without limitation, to maintain, alter, add to or improve any Lettered Lot.

1. If, the total amount of the most recent special assessments plus all previous special assessments levied during the calendar year exceed the current regular annual assessment, the most recent special assessment shall not be levied without the approval of fifty-one percent (51%) of the owners of Lots entitled to vote.

2. The Association shall serve written notice of the special assessment on all Owners, giving the specific purpose and reason therefor in detail.

3. All funds collected by special assessments shall be segregated from other funds and used only for the specific purpose stated in the Notice of Assessment.

## ARTICLE X

### EASEMENTS

An easement is hereby granted to the Town of Chesterton, Indiana, GTE North, Northern Indiana Public Service Company, and other public utilities, severally and their respective successors and assigns to install, lay, erect, construct, renew, operate, repair, replace and maintain sewers, water mains, gas mains, conduits, cables, poles, wires either overhead or underground with all necessary braces, guys, anchors and other appliances in, upon, along and over the strip(s) of land designated by dotted line(s) on the plat and marked "utility easement" for public utilities for the purpose of service to the public in general with sewer, water, gas, electric and telephone service, including the right to use the streets where necessary and to overhang lots with aerial service to serve adjacent lots, together with the right to enter upon the easement for public utilities at all times for any purpose aforesaid, and to trim and keep trimmed any trees, shrubs or saplings that interfere with such service. No permanent building shall be placed on said easement, but same may be used for any purposes that do not interfere with the use of said easement for such public utilities.

An easement is hereby granted to the Town of Chesterton to renew, operate, repair, replace and maintain sewers, drainage structures and other appurtenances in, upon, along and over the strip(s) of land designated by dotted

line(s) on the plat and marked "drainage easement" for the purpose of drainage service to the public in general.

An easement is hereby reserved for and granted to The Villages of Sand Creek Property Owners' Association, Inc. ("POA") to fill, grade, shape and contour the ground, plant, trim and otherwise maintain trees, shrubs, plants and other vegetation and, in general, construct and maintain landscaping elements and features in, upon, along and over the strip(s) of land designated by dotted line(s) on the plat and marked "landscaped easement" for the benefit of the lots on which those strip(s) of land exist.

## ARTICLE XI

### REMEDIES

A. In General: The Association or any party to whose benefit these Restrictions inure, including the Developer and/or Owners, may proceed at law or in equity to prevent the occurrence or continuation of any violation of these Restrictions, but neither the Developer nor the Association shall be liable for damages of any kind to any person for failing to abide by, enforce or carry out any of these Restrictions.

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

## ARTICLE XII

### EFFECT OF BECOMING AN OWNER

The Owners of any Lot subject to these Restrictions, by acceptance of a deed conveying title thereto, or the execution of a contract for the purchase

thereof, whether from the Developer or a subsequent Owner of such Lot, shall accept such deed and execute such contract subject to each and every Restriction and agreement herein contained. By acceptance of such deed or execution of such contract, the Owner acknowledges the rights and powers of the Developer and of the Association with respect to these Restrictions, and also, for themselves, their heirs, personal representatives, successors and assigns. Such Owners covenant, agree and consent to and with the Developer, the Association and to and with the Owners and subsequent Owners of each of the Numbered Lots, Double Lettered Lots and fractional interest in said Lots affected by these Restrictions to keep, observe, comply with and perform such Restrictions and agreements.

#### ARTICLE XIII

##### TITLES

The titles preceding the various articles, paragraphs and subparagraphs of the Restrictions are for convenience or reference only, and none of them shall be used as an aid to the construction of any provision of the Restrictions. Wherever and whenever applicable, the singular form of any word shall be taken to mean or apply to the plural, and the masculine form shall be taken to mean or apply to the feminine or to the neuter.

#### ARTICLE XIV

##### DURATION

The foregoing Covenants and Restrictions are to run with the land and shall be binding on all parties and all persons claiming under them until January 1, 2013, at which time said Covenants and Restrictions shall be automatically extended for a successive period of ten (10) years, unless changed in whole or in part by vote of those persons who are then the Owners of a majority of the Numbered Lots, Double Lettered Lots or fractional interests in said Lots.

ARTICLE XV

APPROVALS

Approvals, determinations, permissions, or consents required herein shall be deemed given if they are given in writing signed, with respect to the Developer or the Association by the President or a Vice-President thereof, and with respect to the Committee by three (3) members thereof.

ARTICLE XVI

SEVERABILITY

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

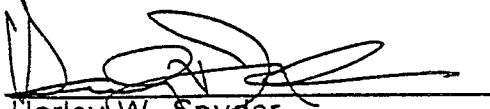
ARTICLE XVII

RECORDING

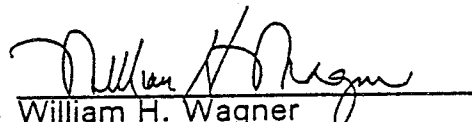
This Declaration of Covenants and Restrictions for The Villages of Sand Creek is recorded simultaneously with the filing of the Final Plat of The Villages of Sandcreek in the office of the Recorder of Porter County, Indiana, in Plat File No. 21-A-5 as Instrument No. 93-35331.

IN WITNESS WHEREOF, this Declaration of Covenants and Restrictions for  
The Villages of Sandcreek is signed and sealed on the date first written above.

The S-W Corporation,  
an Indiana Corporation

  
Harley W. Snyder  
President


Attest:

  
William H. Wagner  
Assistant Secretary

STATE OF INDIANA     )  
                                  ) SS:  
COUNTY OF PORTER    )

Before me the undersigned, a Notary Public for Porter County, State of  
Indiana; personally appeared Harley W. Snyder and William H. Wagner, President  
and Assistant Secretary, respectively, of The S-W Corporation, who acknowledged  
the execution of the above Restrictions as their free and authorized deed on behalf  
of said corporation.

Signed and sealed this 15<sup>th</sup> day of December, 1993.

  
Notary Public  
Kimberly S. Samuelson

My Commission Expires: May 20, 1996 County of Residence: Porter



This instrument Prepared By: William H. Wagner, HOEPPNER, WAGNER &  
EVANS, P.O. Box 2357, 103 E. Lincolnway, Valparaiso, IN 46384

EXHIBIT "A"  
DECLARATION OF COVENANTS AND RESTRICTIONS  
FOR THE VILLAGES OF SAND CREEK

A parcel of land lying partially in the Northwest Quarter of Section 5 and the Northeast Quarter of Section 6, Township 36 North, Range 5 West and partially in the Southeast Quarter of Section 31 and the Southwest Quarter of Section 32, Township 37 North, Range 5 West of the Second Principal Meridian, Porter County, Indiana, bounded and described as follows: Commencing at a "T" Rail found at the Southwest corner of the East One-Half of the Southeast Quarter of Section 31, Township 37 North, Range 5 West; thence N 00°38'49" W along the West line of the West One-Half of the East One-Half of the Southeast Quarter of Section 31, Township 37 North, Range 5 West a distance of 964.18 feet to a "T" rail found on the Southerly right-of-way line of the Conrail Railroad; thence S 79°18'44" E along said Southerly right-of-way line of Conrail Railroad a distance of 2692.18 feet to a "T" Rail found; thence S 00°20'33" E a distance of 449.20 feet to a "T" rail found, said "T" Rail being on the South line of the Southwest Quarter of Section 32, Township 37 North, Range 5 West, said line also being the North line of the Northwest Quarter of Section 5, Township 36 North, Range 5 West; thence S 89°39'36" W along the North line of the Northwest Quarter of Section 5, Township 36 North, Range 5 West a distance of 581.31 feet to a "T" Rail found; thence S 00°38'08" E a distance of 863.55 feet to a 1"  $\phi$  iron pipe found on the centerline of a public road known as "Porter Avenue"; thence along the centerline of said public road, along a curve to the right, said curve having a radius of 497.41 feet and being subtended by a long chord bearing N 84°08'50" W and having a length of 262.91 feet, an arc distance of 266.11 feet to a Point of Tangency, said point of tangency being marked by a railroad spike; thence N 68°47'31" W along the centerline of said public road a distance of 492.30 feet to a railroad spike set at a Point of Tangency of curve; thence along a curve to the left, said curve having a radius of 1996.79 feet and being subtended by a long chord bearing N 72°50'08" W and having a length of 281.61 feet, an arc distance of 281.84 feet to a

railroad spike set at the Point of Tangency of said curve; thence N 76°52'45" W along the centerline of said public road a distance of 1049.70 feet to a 1"  $\phi$  iron pipe set; thence N 00°38'49" W along the East line of a parcel of land conveyed to the Town of Chesterton, Indiana, said East line being 50.0 feet measured at right angles to and parallel with the West line of the West One-Half of the East One-Half of the Southwest Quarter of Section 31, Township 37 North, Range 5 West a distance of 325.30 feet to a 1"  $\phi$  iron pipe set on the North line of the Northeast Quarter of Section 6, Township 36 North, Range 5 West, said line also being the South line of the Southeast Quarter of Section 31, Township 37 North, Range 5 West; thence S 89°39'36" W along the North line of the Northeast Quarter of Section 6, Township 36 North, Range 5 West a distance of 50.00 feet to the Point of Beginning of this description. Containing 70.01 acres, more-or-less, and subject to all Legal Highways and Easements. (This description is per William T. Davies' survey recorded in Porter County Recorder's Office on 4-16-1992 as Document Number 92-08928 in Miscellaneous Record 133, page 269.)