

AMENDMENT TO THE AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF
SOUTH AVALON ESTATES

This Amendment (the "Amendment") to the Amended and Restated Declaration of Covenants, Conditions, and Restrictions of South Avalon Estates is made this 27th day of July, 2009 by Trinity Homes, LLC (the "Declarant");

WITNESSETH:

WHEREAS, Trinity Homes, LLC is the Declarant in the Amended and Restated Declaration of Covenants, Conditions and Restrictions of South Avalon Estates recorded with the Recorder of Hamilton County, Indiana, on the 1st day of February, 2006, as Instrument No. 200600005105 (the "Declaration"); and

WHEREAS, unless otherwise expressly defined in this Amendment, all capitalized words and terms in this Amendment shall have the meaning ascribed to them in the Declaration; and,

WHEREAS, the Declarant is desirous of amending the Declaration as set forth below.

NOW, THEREFORE, the Declaration is hereby amended as follows:

I. Definitions. Article 1 of the Declaration is hereby amended to add the following, additional definitions.

A. "Actual Annual Amenity Assessment" shall mean, for any particular calendar year, the Actual Annual Operating Costs (defined below) for such calendar year multiplied by the Operating Share (defined below) for such calendar year. By way of example, the Actual Annual Amenity Assessment for the calendar year 2008 was \$10,197.92.

B. "Actual Annual Operating Costs" shall mean the Annual Operating Costs (defined below) which are actually expended and/or reserved during any calendar year. By way of example, the Actual Annual Operating Costs for the calendar year 2008 were \$64,833.00.

C. "Amenity Area" shall mean Block A located in Avalon of Fishers Section Four A, as per the plat thereof recorded with the Recorder of Hamilton County, Indiana as Instrument No. 2008055177 ("Block A") and any and all improvements which may be located within Block A including, without limitation, swimming pools, a wading pool, a bath house, basketball courts and tennis courts.

D. "Annual Amenity Assessment" shall mean the Budgeted Annual Amenity Assessment (defined below) for any particular calendar year, (i) plus the extent to which the Budgeted Annual Amenity Assessment for the prior calendar year exceeded the Actual Annual Amenity Assessment for such prior calendar year or

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(ii) minus the extent to which the Budgeted Annual Amenity Assessment for the prior calendar year exceeded the Actual Annual Amenity Assessment for such prior calendar year.

E. "Annual Operating Costs" shall mean the annual costs of operating, repairing, and maintaining the Amenity Area as determined on an annual basis by the board of directors of the North Avalon Association, in its sole discretion, and may include, without limitation, a reserve sufficient to meet the cost of significant capital repairs and replacements of improvements within the Amenity Area.

F. "Budgeted Annual Amenity Assessment" shall mean the Budgeted Annual Operating Costs (defined below) for any particular calendar year multiplied by the Operating Share for such calendar year. By way of example, the Budgeted Annual Amenity Assessment for the calendar year 2009 is \$11,929.62.

G. "Budgeted Annual Operating Costs" shall mean the Annual Operating Costs which the board of directors of the North Avalon Association determines, on or before the 1st day of April of each calendar year, will be expended and/or reserved for such calendar year. By way of example, the Budgeted Annual Operating Costs for the calendar year 2009 are \$65,910.00.

H. "North Avalon" shall mean the residential subdivision made the subject of North Avalon Declaration which, per the terms of the North Avalon Declaration, may be expanded through the annexation of additional real estate per the terms of the North Avalon Declaration.

I. The "North Avalon Association" shall mean the homeowners association which is a non-profit corporation and which is described and identified in the North Avalon Declaration.

J. The "North Avalon Declaration" shall mean the Master Declaration of Covenants, Conditions, and Restrictions of Avalon recorded with the Recorder of Hamilton County, Indiana, as Instrument No. 200400007258, along with any amendments thereto including, without limitation, the amendment to the Master Declaration of Covenants, Conditions and Restrictions of Avalon recorded with the Recorder of Hamilton County, Indiana, as Instrument No. 2009004401 and the Amended and Restated Amendment to Master Declaration of Covenants, Conditions and Restrictions of Avalon recorded with the Recorder of Hamilton County, Indiana, as Instrument No. 2009077832.

K. "North Avalon Residences" shall mean, collectively, all residences built or to be built in North Avalon and, for purposes of calculating the Operating Share for any particular year, the number of North Avalon Residences shall be equal to the greater of (i) the total number of residences actually built and existing in North Avalon on January 1 of such calendar year or (ii) 1000 residences.

L. "Operating Share" shall mean the percentage determined by a fraction, the numerator of which shall be the number of South Avalon Residences (defined

below) and the denominator of which shall be the number of Avalon Residences. By way of example, for the calendar year 2009 the Operating Share is 221/1221, or 18.1%.

M. "South Avalon" shall mean the residential subdivision (i) which was established by the South Avalon Declaration (defined below) but (ii) which shall be limited to and shall not extend beyond the residential subdivision which has been and may continue to be developed upon and within the boundaries of the sixty eight (68) acres of real estate, more or less, described in what is attached as Exhibit A to the South Avalon Declaration and, as such, the term "South Avalon", shall not refer to or include any development or residences now or hereafter located upon real estate which has been or might later be added, annexed or made subject to the South Avalon Declaration, per the terms of the South Avalon Declaration, from and after February 1, 2006.

N. "South Avalon Residences" shall mean, collectively, all residences built or to be built in South Avalon and, for purposes of calculating the Operating Share for any particular year, the number of South Avalon Residences shall be equal to the greater of (i) the total number of residences actually built and existing in South Avalon on January 1 of such calendar year or (ii) 221 residences.

II. Assessments. Section 5.1 of the Declaration is hereby amended as follows:

Creation of the Lien and Personal Obligations of Assessments. Declarant, for each Lot now or hereafter owned by it within the Property, hereby covenants and each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association:

- (a) Regular Yearly Assessments (for maintenance, repairs and ordinary operating expenses, including Common Expenses and for the costs of professional management);
- (b) Special Assessments for capital improvements and operating deficits and for special maintenance or repairs as provided in this Declaration;
- (c) One-Time Assessments for purposes specified herein and
- (d) The Annual Amenity Assessment.

Such assessments shall be established, shall commence upon such dates and shall be collected as hereinafter provided. All such assessments, together with prejudgment interest at eight percent (8%) per annum, costs and reasonable attorney's fees, 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 interest, costs and reasonable attorney's fees shall also be the personal obligation of the person who was the owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to such Owner's

successors in title unless expressly assumed by them.

III. Amenity Area. Article 5 of the Declaration is hereby amended to add the following Section 5.11.

Section 5.11. Each Owner within South Avalon shall have a certain easement and right of use and enjoyment to use the Amenity Area, which are subject to and conditioned upon timely payment, on the terms and conditions set forth below in this Section 5.11, of the Annual Amenity Assessment by the Association to the North Avalon Association:

- a. The Association has already paid to the North Avalon Association the Budgeted Annual Amenity Assessment for the calendar year 2009 in the sum of \$11,929.62.
- b. On or before the 30th day of April 2010 and on the 30th day of April of each calendar year thereafter, the Association shall pay the Annual Amenity Assessment to the North Avalon Association.
- c. In turn, each Owner in South Avalon, by acceptance of a deed conveying title to a Lot (whether from the Declarant, a Builder or a subsequent owner, by execution of a contract for the purchase thereof whether from the Declaration a builder or a subsequent owner), or by the act of occupancy or ownership of any Lot, shall be deemed to have acknowledged, accepted and agreed to pay its uniform portion of the Annual Amenity Assessment to the Association, commencing on the 1st day of January, 2009. The amount of the Annual Amenity Assessment owed to the Association by each Owner within South Avalon shall be in an amount equal to the total Annual Amenity Assessment divided by the number of South Avalon Residences and payment of the Annual Amenity Assessment by the Owners to the Association shall be monthly, annually, or quarterly as determined by the Board of Directors, in its sole discretion. Each Owner's uniform portion of the Annual Amenity Assessment shall be a lien upon such Owner's Lot and shall be subject to the terms and provisions for collection specified in Section 5.9 of the Declaration.
- d. The use of the Amenity Area shall be per the terms of uniform rules and regulations promulgated by the board of directors of the North Avalon Association, in its discretion, which rules may be uniformly applied and may, from time to time, be amended by such Board of Directors of the North Avalon Association in its sole discretion.

Section 3. Amended Declaration. Except as set forth in this Amendment, all provisions of the Declaration shall be unaffected and unchanged and the Declaration, as amended by this Second Amendment, shall remain in full force and effect.

TRINITY HOMES, LLC

By: Beazer Homes Investments, LLC, its Managing Member

By: Beazer Homes Corp., its Managing Member

By: Tara Cook

Name: Steve Cook

Its: Land Development Manager

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

Before me the undersigned, a Notary Public in and for said County and State, personally appeared Steve Cook, the Land Development Manager of Beazer Homes Corp., the Managing Member of Beazer Homes Investments, LLC, the Managing Member of Trinity Homes, LLC, an Indiana limited liability company, and acknowledged execution of this Amended and Restated Declaration of Covenants, Conditions and Restrictions of South Avalon Estates.

Witness my hand and Notarial Seal this 21st day of July, 2009.

My Commission Expires:

12-28-2013

Tara S. Bowlin
Notary Public Residing in Hamilton County,
Indiana

Tara S. Bowlin
(Printed Signature)

This instrument prepared by and return to: Tara H. Lord, 11 S. Meridian, Indianapolis, IN 46204.

Pursuant to IC 36-1-11-15(b)(2), 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 - Tara H. Lord.

