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 01/24/2006 10:21:04
 RECORDER
 PATRICIA J GRICK
 ALLEN COUNTY, IN
 Receipt No. 2003
 DCFD 3.00
 IDSP 2.00
 MISC 20.00
 MISC 9.00
 Total 34.00

STATE OF INDIANA)
) SS:
 COUNTY OF ALLEN)

IN THE ALLEN CIRCUIT COURT
 CAUSE NO. 02C01-0511-PL-118

Wayne

IN RE: THE CONDITIONS RECORDED)
 WITH THE PLATS OF SECTIONS A, B,)
 C, C EXTENDED, D, E, F and F)
 AMENDED OF SOUTHWOOD PARK)
 ADDITION AND WESTOVER PLACE)
 ADDITION)

FINDINGS AND ORDER ON PETITION
 TO AMEND AND REPLACE THE
 CONDITIONS OF SOUTH WOOD PARK
 AND WESTOVER PLACE

On January 19, 2006, the Petitioner, the Board of Directors of South Wood Park Community Association, Inc. appeared by representatives (Board members) Ben Hall, Stephen McCord, Tess Steffen, and Cheryl Cooney, and by counsel of record herein, John R. Kowalczyk and Southwood Park Section F resident, Lenard Schmidt also appeared. Hearing and trial to the bench was then conducted on the Petition to Amend and Replace the Conditions of Westover Place Addition and Sections A, B, C, C Extended, D, E, F and F Amended of South Wood Park Addition filed herein on November 7, 2005. Evidence was then presented, including all of the ballots submitted to the Association by the owners of the platted Lots within said Subdivisions, upon which ballots appear such owners' votes to approve or disapprove of the proposed amendments/replacements in six (6) numbered paragraphs; and the several other such ballots filed directly with the Court; and testimony in favor of and opposed to the Petition. All matters were

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AUDITOR'S OFFICE
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 to final acceptance for transfer.

JAN 23 2006

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Elizabeth G. Brown
 AUDITOR OF ALLEN COUNTY

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then taken under advisement.

The Court, being duly advised in the premises, now finds, concludes, orders and decrees:

1.) The Court has jurisdiction over this matter, as all of the said eight (8) Subdivisions include real estate located within Allen County, Indiana, and as the amendment process for each such Subdivision requires filing such a Petition in this Court.

2.) There are 694 owners of such platted Lots and all but 31 of them have submitted ballots (over 95% of them have voted).

3.) The amendment process for each such Subdivision further requires 75% approval by such owners. According to the ballots submitted as noted above, the following approvals have been received from such owners:

<u>Addition:</u>	<u>Sec. A</u>	<u>Sec. B</u>	<u>Sec. C</u>	<u>C-Ext</u>	<u>Sec. D</u>	<u>Sec. E</u>	<u>Sec. F</u>	<u>Westover Place</u>
Total owners:	69	233	56	24	7	148	145	12
Approvals needed:	52	175	42	18	6	111	109	9
Approvals received:								
Para. 1	62	214	56	21	7	139	132	12
Para. 2	57	203	56	21	7	131	123	10
Para. 3	57	197	53	22	7	133	115	10
Para. 4	59	210	56	22	6	134	124	12
Para. 5	62	217	56	23	7	139	133	12
Para. 6	<u>59</u>	<u>209</u>	<u>55</u>	<u>21</u>	<u>7</u>	<u>138</u>	<u>126</u>	<u>11</u>
Percent Approved	<u>82.6</u>	<u>84.5</u>	<u>94.6</u>	<u>87.5</u>	<u>85.7</u>	<u>88.5</u>	<u>79.3</u>	<u>83.3</u>

4.) The proposed amendments/replacements have been approved by more than the required 75% of the owners in each of the Subdivisions. This Court required a copy of said Petition, and a Summons, and a Notice of this Court's hearing on said Petition, be served on all owners whose ballots disapproved any of the proposed amendments/replacements and on all owners who did not vote at all.

5.) The returns of service in the Court's file in this matter affirmatively show all of such disapproving/non-voting owners have been so served.

6.) All the written Answers, objections and responses submitted by a few of the owners have been reviewed and considered by this Court.

7.) Said Petition is granted as prayed.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED, by the Court, that the original Conditions recorded with the Plats of Westover Place Addition and Sections A, B, C, C Extended, D, E, F and F Amended of South Wood Park Addition be, and the same are now hereby amended and/or replaced so as to read as follows:

RESTRICTIONS AND COVENANTS
OF
SOUTHWOOD PARK ADDITION, SECTION A
SOUTHWOOD PARK ADDITION, SECTION B
SOUTHWOOD PARK ADDITION, SECTION C
SOUTHWOOD PARK ADDITION, SECTION C EXTENDED
SOUTHWOOD PARK ADDITION, SECTION D
SOUTHWOOD PARK ADDITION, SECTION E
SOUTHWOOD PARK ADDITION, SECTION F
SOUTHWOOD PARK ADDITION, SECTION F AMENDED
and WESTOVER PLACE

The following restrictions and covenants apply to all of the following subdivisions in Fort Wayne, Allen County, Indiana (as recorded in the Recorder's Office of said County):

Southwood Park Addition, Section A (Lots 1-66, inclusive) originally laid out and platted as "Section A, South Wood Park Addition" at pages 56 & 57 of Plat Record 8 B on October 4, 1917;

Southwood Park Addition, Section B (Lots 1-245, inclusive) originally laid out and platted as "Section B, South Wood Park Addition" at pages 66 & 67 of Plat Record 8 B on December 17, 1917;

Southwood Park Addition, Section C (Lots 20-24, 26-53, 59-65, 87-118, 120-155, inclusive) originally laid out and platted as "Section C, South Wood Park Addition" at pages 72 & 73 of Plat Record 8 B on April 12, 1918;

Southwood Park Addition, Section C Extended (Lots 156-187, inclusive) originally laid out and platted as "South Wood Park Addition, Section C, Extended" at page 104 of Plat Record 13 B on June 19, 1929;

Southwood Park Addition, Section D (Lots 1-12, inclusive) originally laid out and platted as "Section D, South Wood Park Addition" at pages 58 & 59 of Plat Record 9 B on August 6, 1921;

Southwood Park Addition, Section E (Lots 1 - 157, inclusive) originally laid out and platted as "Section E, South Wood Park Addition" at pages 18 & 19 of Plat Record 12 A on January 25, 1926;

Southwood Park Addition, Section F (Lots 1-154, inclusive) originally laid out and platted as "Section F, South Wood Park Addition" at pages 16 & 17 of Plat Record 12 A on January 25, 1926 and as "Amended Plat of Section F, South Wood Park Addition" at page 87 of Plat Record 12 B on June 28, 1927; and

Westover Place Addition (Lots 1-12, inclusive) originally laid out and platted with the same name at page 83 of Plat Record 12 B on May 18, 1927;

(These restrictions and covenants shall not in any way affect the landscaping requirements contained in the "Restrictive Covenants" regarding Lots 87-94 of Southwood Park Addition, Section C recorded at Doc. No. 88-44380 on October 27, 1988.)

1. The business of the subdivisions shall be conducted and governed by an Indiana not-for-profit corporation known as the "Southwood Park Community Association" hereinafter referred to as the "Association". The Association shall be non-sectarian and non-political, and shall operate for the mutual health, safety and social welfare of the residents of Westover Place Addition and Sections A, B, C, C Extended, D, E, F and F Amended of Southwood Park Addition, and of the residents of any other subdivisions who agree to subject themselves to the Association. It is intended that the Association shall have all the authority of the original platters of said subdivisions, including but not limited to approval of lot uses, of lot grading and construction of improvements thereon, of the use and maintenance of easements, and for collection of annual maintenance charges.

The Association shall be managed by a Board of Directors, hereafter referred to as the "Board", comprised of at least 15 owners of lots within the member subdivisions. The Board shall establish a Constitution, By-Laws and reasonable rules and regulations for the election of Board members and the conduct of Board and Association affairs. The Board members shall not be personally liable for Association activities except in cases of bad faith, gross negligence or wanton misconduct.

The owner(s) of each particular dwelling house within the subdivisions are members of the Association, and shall be entitled to one(1) vote for each open Director position and for each other issue requiring membership approval. Multiple owners may designate any one (1) of them in writing to exercise their collective vote on any election or other issue.

2. All lots within the subdivisions shall be used exclusively for single family dwelling houses. No new or existing dwelling house shall be constructed or altered to permit or accommodate multi-family occupancy. All buildings to be used for educational, religious, recreational or philanthropic uses may be constructed or maintained only in locations and according to plans and designs approved by the Association. Any building constructed within the subdivisions, exclusive of open porches or verandas shall be built back of the building lines established on the said original recorded plats of the subdivisions. Only one dwelling house may be constructed on any inside lot; and on corner lots a second dwelling house shall be permitted only if it has been constructed by the time these restrictions and covenants are approved and recorded, and then only on the amount of such lot on which it is then located. All lot grades shall be determined by the Association. No out buildings except private garages for the use of the residents of that lot shall be constructed on any lot, unless the Association otherwise consents. No trees in good condition shall be cut down, destroyed or mutilated, except as necessary for the construction of approved buildings, unless the Association otherwise consents.

Any new dwelling house constructed within the subdivisions must have a value equal to at least 90% of the average value of existing dwelling houses within one block and in the particular subdivision, unless the Association otherwise consents.

No fences shall be constructed on any lot nearer to the front line than the building lines established on the said original recorded plats of the subdivisions. All other issues regarding fences, permitted signage, minimum side yards, minimum rear yards, and all other construction issues will be guided by the then existing zoning ordinances of the City of Fort Wayne.

All utility and other easements established in the said original recorded plats of the subdivisions are hereby continued, together with all proper amendments thereto subsequent to such plattings. The following utility easements described in the original conditions recorded with such plats are also hereby continued:

Section A: rear 5 feet of lots on West side of Indiana Avenue, and rear 3 feet of all other lots.

Section B: rear 3 feet and 2 feet along one side of all lots.

Section C: rear 3 feet and 2 feet along one side of all lots, except those lots later replatted into Westover Place Addition.

C Extended: East 6 feet of Lot 156, West 4 feet of Lot 157, Southeast 3 feet of Lot 171, Northwest 3 feet of Lot 173, East 6 feet of Lots 184, 185, 186 and 187, and rear 14 feet of all lots abutting upon Foster Park.

Section E: rear 5 feet and 3 feet along each side of all lots.

Section F: rear 5 feet and 3 feet along each side of all lots.

Westover Place: North 6 feet and East and West 3 feet of all lots except Lot 1.

For all of the matters contained in this numbered section of these restrictions and covenants, any current non-conforming use that has been in existence for more than two years or has been authorized by the proper zoning authorities is exempted until such non-conforming use ceases.

3. No dwelling house or other building in the subdivisions shall be used as a rental property, except those that are rented at the time these restrictions and covenants are approved and recorded. Any such current rentals which later revert to being owner-occupied and not rented, shall thereafter no longer be so excepted.

Exceptions to this no-rental restriction are hereby granted to the following: to a spouse, ex-spouse, child, parent, or sibling of an individual titleholder; where a personal trust is titleholder, to a family member/trust beneficiary who is to be a full-time resident; where a family corporation or other family company is titleholder, to a family member holding ownership/voting power who is to be a full-time resident; where a not-for-profit entity is titleholder, to an employee who is to be a full-time resident; to other similarly-situated individuals with the consent of the Association.

Land contracts are considered rental agreements for the purposes of this restriction unless there has been a cash down payment of at least 10% of the purchase price of the property and a memorandum of the transaction in recordable form has been provided to the Association.

Landlords and contract sellers shall keep the Association informed in writing of their current addresses and telephone numbers.


4. Each dwelling house in the subdivisions is subject to maintenance charges of \$35.00 per calendar year, which is a lien on the particular lot or lots until such maintenance charges, together with interest on delinquencies at 6% per annum, and together with reasonable attorney fees and other costs of collection, are paid in full. Undeveloped lots are also subject to reasonable maintenance charges, as determined by the Board from time to time. Maintenance charges are delinquent if not paid by January 31. The lien for such maintenance charges shall be superior to all liens except real estate taxes and other governmental assessments, and except bona fide mortgages. Owners shall notify the Association in writing if their mailing address is other than the particular dwelling house.

These mandatory maintenance charges are collected for the following purposes: private security patrolling; general beautification and maintenance projects in common and/or public areas; maintenance of the neighborhood entrance pillars; conduct of Association meetings and Board meetings; newsletters, mailings and other such costs and services involved in the activities of the Association; a reasonable reserve for emergencies; and other purposes for the health, safety and general welfare of the Association and its residents.

At the discretion of the Board, these maintenance charges may be increased by no more than 10% of the previous year's amount, except when the Association experiences non-ordinary expenses or losses.

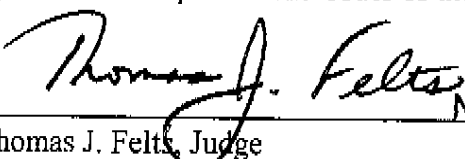
5. The Association and the Board will not practice discrimination based on race, religion, national origin, ethnic background, sex, age, sexual orientation, disability, or any other "protected class" added from time to time by either statutory or case law.
6. Whether or not they are actually listed in a deed or contract of sale, these restrictions and covenants shall run with the land and be effective for a period of 25 years after their approval and recording, after which period they shall automatically be extended and similarly effective for continuous, successive 25-year periods. These restrictions and covenants may be amended by petition to the Circuit Court of Allen County signed by the then owners of at least 75% of the property owners in each of the subdivisions.

SO ORDERED this 23rd day of January, 2006.

 NKL

Craig J. Bobay, Magistrate
Allen Circuit Court

The findings and recommendations of the Magistrate are adopted as the Order of the Court this same date.

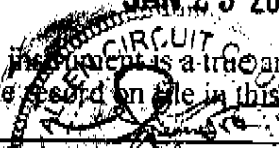
 NKL
Thomas J. Felts, Judge
Allen Circuit Court

cc: John Kowalczyk, Courthouse Box 53
Lenard Schmidt, 4712 Fairfield Avenue, Fort Wayne, IN 46807

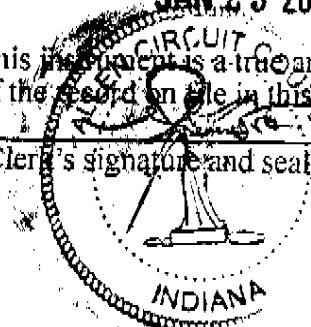
Therese M. Brown
Clerk of Allen Circuit Court and ex-officio
Clerk of Allen Superior Court
Allen County, Indiana Pages: 1

Attest: **JAN 23 2006**

This instrument is a true and complete copy
of the record on file in this office.



(Clerk's signature and seat) **A.S.** (initials)



Prescribed by the
State Board of Accounts
(2005)

County Form 170

Declaration

This form is to be signed by the preparer of a document and recorded with each document in accordance with IC 36-2-7.5-5(a).

I, the undersigned preparer of the attached document, in accordance with IC 36-2-7.5, do hereby affirm under the penalties of perjury:

1. I have reviewed the attached document for the purpose of identifying and, to the extent permitted by law, redacting all Social Security numbers;
2. I have redacted, to the extent permitted by law, each Social Security number in the attached document.

I, the undersigned, affirm under the penalties of perjury, that the foregoing declarations are true.



Signature of Declarant

JOHN R. KOWALCZYK

Printed Name of Declarant

IND ATTY # 5323-02