

Cross Reference: **Instrument No. 9125568**
 Instrument No. 9356018
 Instrument No. 200300104496
 Instrument No. 2025005367

2025034356 RESOLUTION 25.00
08/15/2025 01:13 PM 5 PGS
TRINI BEAVER
HAMILTON COUNTY RECORDER, IN
RECORDED AS PRESENTED

RESOLUTION CLARIFYING MAINTENANCE OF
WATERFALL AND SURROUNDING LANDSCAPING
IN THE ENCLAVE OF CARMEL SUBDIVISION

This Notice of Resolution Clarifying Maintenance of Waterfall and Landscaping in The Enclave of Carmel Subdivision (“Resolution”) was made as of the 3rd day of July, 2025.

WITNESSETH

The Hamilton County, Indiana subdivision commonly known as The Enclave of Carmel (“Subdivision”) was originally created and formed pursuant to certain Plats filed with the Office of the Recorder of Hamilton County, Indiana.

In conjunction with the Plats, the Subdivision was formed pursuant to a certain “Declaration of Covenants, Conditions and Restrictions for The Enclave of Carmel Subdivision,” recorded in the Office of the Recorder of Hamilton County, Indiana, on September 26, 1991, as **Instrument No. 9125568** (“Declaration”), as from time to time amended.

There is a waterfall structure with surrounding landscaped trees and shrubbery located at the rear of Lot 31 in the Subdivision commonly described as 12634 Enclave Ct., Carmel, IN 46032 (“Lot 31”).

As of the date of execution of this Resolution, Lot 31 is owned by Robert W. Hughes and Patricia L. Hughes (“Lot 31 Owners”).

The waterfall structure and surrounding trees and landscaping were installed in or around 1991, were maintained by the Subdivision’s developer as an Association amenity and common expense during the period of developer control from 1991-2002, and have continuously been maintained by the Association as a common expense through the present day, resulting in approximately thirty-four (34) years of continuous maintenance by the Association.

It is clear from the Declaration that the waterfall structure itself is deemed a part of the Subdivision's "Lake" and is thus a common amenity to be maintained by the Association as a common expense.

While the Declaration does not precisely address ongoing maintenance of the landscaping and shrubbery immediately surrounding the waterfall structure, such landscaping, trees, and shrubbery have been continuously maintained as an Association expense for approximately thirty-four (34) years.

Further, when title to Lot 31 was acquired by the Lot 31 Owners from the Subdivision's developer in 1993, the developer represented to the Lot 31 Owners that both the waterfall structure and the surrounding landscaping and shrubbery were maintained by the Association as a common amenity.

Section 2.17 of the Declaration provides, in pertinent part, that the Association's "Maintenance and Operational Costs" shall include "landscaped areas upon the Lots ... and any other facility or improvement which the Association has determined is otherwise for the common good"

The landscaping, trees, and shrubbery immediately surrounding the waterfall structure are distinguishable from other landscaping, trees, and shrubbery on the Lots and located within the Drainage, Landscaping, and Maintenance Easements in the Subdivision in that such landscaping, trees, and shrubbery surrounding the waterfall structure are confined to a small, mulched area around the waterfall structure and are essentially interconnected with the waterfall.

To ensure clarity, the Association's Board of Directors deems it necessary to record this Resolution so that the Lot 31 Owners, successors in title to Lot 31, the Subdivision's Owners, and all successor Owners are on notice that the waterfall structure and the landscaping, trees, and shrubbery in the mulched area immediately surrounding the waterfall structure shall be maintained by the Association as a common expense.

The maintenance responsibilities with respect to the waterfall structure and surrounding landscaping described herein do not include other trees, landscaping, and shrubbery throughout the Subdivision.

The Lot 31 Owners, by their signatures on this Resolution, indicate their agreement to the terms of this Resolution, and further agree that the Association shall have continuous access to Lot 31 for the limited purpose of maintaining, repairing, improving, and replacing the waterfall structure and the landscaping, trees, and shrubbery immediately surrounding the waterfall structure. The rights and obligations hereby created shall not be just to the present Lot 31 Owners but shall run with the land and be binding upon all successors and assignees to the fee simple title to Lot 31, as well as to the Lot 31 Owners' heirs, beneficiaries, and designees.

The Association will maintain the waterfall structure and surrounding landscaping as a common amenity paid through the common expenses. Nothing herein shall obligate the Association to do any specific maintenance, repairs, improvements, or replacements with respect to the waterfall structure or surrounding landscaping, nor shall anything herein obligate the Association to maintain, repair, improve, or replace any other portion of the Subdivision or Lot 31, except to the extent required by the Declaration.

NOW, THEREFORE, at a duly called and held meeting of the Board of Directors, the Board voted to approve this Resolution clarifying maintenance responsibilities as to the waterfall and surrounding landscaping located at the rear of Lot 31, 12634 Enclave Ct. Carmel, IN 46032. This Resolution shall have no impact on any other covenants, conditions, and restrictions applicable to the Enclave of Carmel subdivision. All other such covenants, conditions, and restrictions shall remain in full force and effect. As evidenced by their signatures below, the Lot 31 Owners hereby consent to the terms of this Resolution.

[SIGNATURE PAGES TO FOLLOW]

Enclave of Carmel Homeowners Association, Inc.

By: Donald W Hecht

Printed Name: Donald W Hecht

Title: President

ATTEST:

By: David Woll

Printed Name: David Woll

Title: Secretary

STATE OF INDIANA)
) SS:
COUNTY OF Hamilton)

Before me, a Notary Public in and for said county and state, personally appeared Donald W Hecht, President of Enclave of Carmel Homeowners Association, Inc., an Indiana nonprofit corporation, and David Woll, Secretary of Enclave of Carmel Homeowners Association, Inc., an Indiana nonprofit corporation who, having been duly sworn, acknowledged the execution of the foregoing Resolution on behalf of said entity, this 3 day of July, 2025.

CHELSEA JONES
Notary Public - State of Indiana
SEAL

Commission No. NP0761980
My Commission Expires 03/04/2033

Chelsea Jones
Notary Public

My Commission Expires:

3/4/2033

My County of Residence:

Madison

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. /s/ Gregory A. Chandler

This instrument prepared by and to be returned to: Gregory A Chandler, Eads Murray & Pugh, P.C., 9515 E. 59th St., Suite B, Indianapolis, Indiana 46216. Telephone: (317) 536-2565.