

FILED

Dec 20 2023 BDD
PEGGY HOLINGA-KATONA
LAKE COUNTY AUDITOR

FIFTH AMENDMENT

to the

**DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS AND EASEMENTS**

for

BRIAR COVE PAIRED COTTAGE ASSOCIATION

COMES NOW The Briar Cove Paired Cottage Association, Inc. ("Association") by its Board of Directors, on this 15 day of December, 2023, and states as follows:

WITNESSETH THAT:

WHEREAS, on June 23, 2003, Briar Cove Development, LLC ("Declarant"), recorded a Declaration of Covenants, Conditions, Restrictions and Easements for Briar Cove Paired Cottage Association, which document was recorded as **Document No. 2003-064808**, in the Office of Recorder of Lake County, Indiana; and

WHEREAS, on September 27, 2005, Declarant recorded a First Amendment to Declaration of Covenants, Conditions and Restrictions for Briar Cove Paired Cottage Association, in the Office of Lake County Recorder as **Document No. 2005-084875**; and

WHEREAS, on November 21, 2005, Declarant recorded a Second Amendment to Declaration of Covenants, Conditions and Restrictions for Briar Cove Paired Cottage Association, in the Office of Lake County Recorder as **Document No. 2005-102423**; and

WHEREAS, on July 28, 2016, Association recorded a Third Amendment to Declaration of Covenants and Restrictions for Briar Cove Paired Cottage Association, in the Office of Lake County Recorder as **Document No. 2016-048013**; and

WHEREAS, on January 26, 2017, Association recorded a Fourth Amendment to Declaration of Covenants and Restrictions for Briar Cove Paired Cottage Association, in the Office of Lake County Recorder as **Document No. 2017-006154**; and

WHEREAS, Article XIII of the Declaration provides in relevant parts that a resolution to amend the Declaration may be adopted by the affirmative vote of not less than three-fourths (3/4) of the Members (not three-fourths (3/4) of a quorum) at any regular meeting of the Members called and held in accordance with the By-laws; provided, however, that any such amendment must also be approved and ratified by not less than three-fourths (3/4) of the Board of Directors (not three-fourths (3/4) of a quorum); and

WHEREAS, this Fifth Amendment to the Declaration of Covenants, Conditions, Restrictions and Easements for Briar Cove Paired Cottage Association was approved by greater than three-fourths (3/4) of the Members at a meeting of the Members called and held in accordance with the By-laws and was approved and ratified by greater than three-fourths (3/4) of the Board of Directors at said meeting.

THEREFORE, in accordance with Article XIII of the Declaration, the Members and Board of Directors of The Briar Cove Paired Cottage Association, Inc. now amend Article XI, Section 8 of the Declaration, titled "Leasing Restrictions", by deleting the section in its entirety and replacing it with:

Residential Unit: As set forth in Article I, Section 15, "Residential Unit" shall mean one of the parcels and the zero lot line home located or to be located hereon, which is a part of the Property intended for independent ownership for use and occupancy as a single family residence. The boundaries of Residential Units shall be the lot lines for the parcels of the Property conveyed by Declarant to the Owners. For the purposes of this Declaration, a Residential Unit shall come into existence when substantially complete or upon the issuance of a certificate of occupancy by the appropriate agency of the Town of Schererville, Indiana, the Town of Dyer, Indiana or other local government entity.

Owner-Occupancy Restriction: The Residential Unit shall be used only for single-family residential purposes; provided, however, that such restriction shall not apply to any Residential Unit or part thereof or any other part of the Property at any time owned by the Association which constitutes a part of the Common Areas and upon which no Residential Unit is located.

Except as provided in this covenant, and to maintain the congenial and residential character of the Association, and for the protection and maintenance of property values by encouraging the maintenance, improvement, and updating of the Residential Units within the Association, each Residential Unit in the Association must be "Owner-Occupied", which means the Owner of the Residential Unit (i.e., the name on the deed) for a period of three (3) years.

The term "Owner-Occupied" does not include the representatives, employees, agents, or guests of a corporation, partnership, or other entity. In addition, Owner(s), or their agent or representative, cannot rent, lease, sell on contract, lease to own, or enter into any other form of agreement that would allow a non-Owner to use a Residential Unit in the Association as their primary residence without the Owner also being present in the home.

This restriction is not intended to prevent residents whose primary residence is in the Association, but who are not the title Owner of the Residential Unit as the result of estate planning, such as placing the Residential Unit in a trust or a relative's name, reserving a life estate, or Medicaid planning, from living in the Association. In this situation, the

residents and Owner will be considered in compliance with this covenant so long as the residents living in the Residential Unit are related to the Owner, do not pay rent or another form of compensation to the Owner in return for living in the Residential Unit, and the residents and Owner also follow all remaining restrictions in this provision.

Rental Cap: Whenever ten (10) or more of the Residential Units at the Association are being leased, no other Residential Units may be leased except as set forth below.

Rental of the Entirety: Any Owner renting or leasing a Residential Unit must rent or lease the whole home on the Residential Unit (no room or partial home rentals or leases) to a single family.

Lease Terms: All leases must be for a period of one (1) year without automatic renewal. Short-term or vacation rentals, and group, room, or partial home or property leases or rentals are strictly prohibited at any time.

Leasing Requirements: Any Owner must provide a copy of the Declaration to the tenant and inform the tenant that failure to comply with the covenants and restrictions in the Declaration is a default under the rental or lease agreement and must provide the Association with a copy of the rental or lease agreement (amounts redacted) within ten (10) days of execution of the rental or lease agreement.

Leasing Application: Any Owner who desires to lease a Residential Unit must apply to the Board of Directors prior to entering into a lease agreement and the Owner's name will be added to a waiting list to be maintained by the Board of Directors or managing agent. At such time as less than ten (10) Residential Units at the Association are being leased, the Owner on the waiting list for the longest period shall have the first opportunity to lease a Residential Unit. That Owner will be given thirty (30) days to indicate whether the Owner intends to lease the Residential Unit. That Owner will then have an additional thirty (30) days to present a signed lease to the Board of Directors, otherwise the right to lease shall pass to the next Owner on the waiting list.

The Board of Directors shall promptly review the proposed lease agreement to verify that it complies with the standards as set forth herein. Further, all leases shall provide that any failure of the lessee to comply with the terms of this Declaration shall be a default under the lease. The Owner making any such lease shall not be relieved thereby from any of his/her obligations under the Declaration.

Hardship Provision: To meet special situations and to avoid undue hardship or practical difficulties, the Board of Directors may, but is not required to, grant permission to an Owner to lease a Residential Unit to a specified lessee for a lease term period on such reasonable terms as the Board of Directors may establish. Such permission may be granted by the Board of Directors only upon written application by the Owner to the Board of Directors giving the reasons the Owner wishes to be considered for a hardship.

The Board of Directors shall respond to each application in writing within thirty (30) days of the submission thereof. All requests for extension of the original lease must also be submitted to the Board of Directors in the same manner as set forth for the original application. The Board of Directors has sole and complete discretion to approve or disapprove any Owner's application for a lease or extension of a lease based on hardship exemption. The Board of Director's decision shall be final and binding. Any lease approved

by the Board of Directors shall be subject to the Declaration, By-Laws and Rules and Regulations governing the Association.

Enforcement: Any Residential Unit that is leased in violation of this Amendment and/or any Owner and/or tenant found to be in violation of the Declaration and/or Rules and Regulations adopted by the Board of Directors may be subject to any and all penalties set forth herein. The Board of Directors shall also have all rights and remedies, including but not limited to the right to maintain an action for possession against the Owner and/or their tenant, an action for injunctive and other equitable relief, or an action at law for damages. An Owner found to be in violation of the Declaration shall be responsible for the payment of all costs and attorneys' fees at the time they are incurred by the Association.

Association Controlled Residential Units: The Board of Directors of the Association shall have the right to lease any Association owned Residential Unit, or any Residential Unit which the Association has possession of pursuant to any court order and said Residential Unit shall not be subject to this Amendment.

Application: If a current Owner in the Association is renting or leasing a Residential Unit or selling a Residential Unit pursuant to a valid rental contract as of the Effective Date of this Amendment, then that Owner may continue to rent, lease, or sell the Residential Unit so long as the Owner continues to own the Residential Unit. However, once the current Owner transfers title of the Residential Unit to another Owner, ceases renting or leasing the Residential Unit, or sells the Residential Unit on contract, then the Residential Unit must be Owner-Occupied as provided in this Section 8.

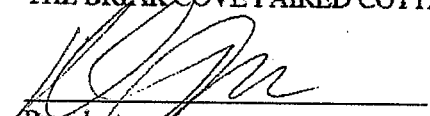
Effective Date: This owner-occupancy restriction takes effect on the date this covenant amendment is recorded with the Lake County Recorder's Office. This provision does not apply to an institutional mortgagee of any Residential Unit in the Association which comes into possession of the Residential Unit due to foreclosure, judicial sale, or deed-in-lieu of foreclosure. Any Owner, or his tenant, lessee, or non-owner occupant, found to be in violation of any portion of this covenant by a court of competent jurisdiction will be permanently banned from renting or leasing his Residential Unit.

[End of Amendment]

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The undersigned hereby certifies that this Fifth Amendment to the Declaration of Covenants, Conditions, Restrictions and Easements for Briar Cove Paired Cottage Association was duly approved and passed by at least three-fourths (3/4) of the Owners and approved by three-fourths (3/4) of the Board of Directors in accordance with Article XIII of the Declaration.

THE BRIAR COVE PAIRED COTTAGE ASSOCIATION, INC.

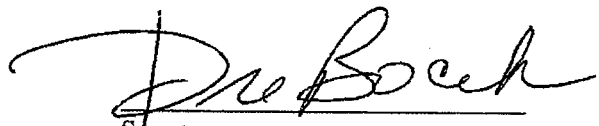


President

12-15-23
Date

ALLEN JONGSMA
Printed Name of Director

ATTEST:



Secretary

12-15-23
Date

DRYANNE BOCEK
Printed Name of Director

STATE OF INDIANA)
)SS:
COUNTY OF Lake)

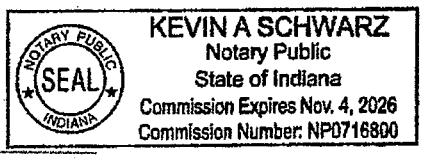
Before me, the undersigned, a Notary Public in and for said County and State, personally appeared Alta Jongsma, in his/her capacity of Board President of The Briar Cove Paired Cottage Association, Inc., who having been duly sworn, under the penalties of perjury, acknowledge the execution of the foregoing Fifth Amendment to the Declaration of Covenants, Conditions, Restrictions and Easements for Briar Cove Paired Cottage Association and who, having been duly sworn, stated that any representations therein contained are true and correct.

Witness my hand and Notarial Seal this 15 day of December, 2023.

My Commission Expires:
11-4-2026

County of Residence:
Hamilton

Kevin A Schwarz
Signature
Kevin A Schwarz
Printed



I hereby 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. – Jonathan J. Crowell

This document was prepared by and should be returned to:
Jonathan J. Crowell, Kovitz Shifrin Nesbit, 6125 S. East Street, Suite A, Indianapolis, Indiana 46227
