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Jennifer Hayden
HAMILTON County Recorder IN
Recorded as Presented

Cross-References: 9408887; 9408888

Amendments to the Declaration of Covenants and Restrictions of Waterwood of Carmel Property Ownership

These Amendments to the Declaration of Covenants and Restrictions of Waterwood of Carmel Property Ownership were made as of the date set forth below.

WITNESSETH:

WHEREAS, Declarant, Centex Homes Company, established the Waterwood of Carmel community located in Hamilton County, Indiana and executed a certain "Declaration of Covenants and Restrictions of Waterwood of Carmel Property Ownership," which was recorded on February 24, 1994, as Instrument No. 9408888 in the Office of the Recorder of Hamilton County, Indiana (hereafter, the "Declaration");

WHEREAS, Plats filed with the Office of the Recorder of Hamilton County, Indiana established a total of one hundred thirteen (113) residential Lots comprising the Waterwood of Carmel subdivision in accordance with the Declaration;

WHEREAS, the Declarant caused to be incorporated under the laws of the State of Indiana a nonprofit corporation under the name Waterwood Homeowners Association, Inc. ("Association");

WHEREAS, the Owners of the Association desire to amend certain provisions in the Declaration:

WHEREAS, Section 22 of the Declaration provides that the Declaration may be amended or changed, in whole or in part, at any time upon the affirmative vote of not less than seventy-five percent (75%) in the aggregate of the votes of all Owners in the Association;

WHEREAS, on May 11, 2017, a meeting of the Association was held, at which time the Owners discussed and authorized these Amendments to the Declaration; and

WHEREAS, pursuant to said meeting, at least seventy-five percent (75%) of the Owners of Lots in Waterwood of Carmel, voting in person or by proxy, voted to approve these Amendments to the Declaration.

NOW, THEREFORE, the Declaration of Covenants and Restrictions of Waterwood of Carmel Property Ownership is hereby amended as follows:

1. **Section 20(o) of the Declaration regarding the leasing of properties shall be deleted in its entirety.**
2. **Section 22(a)(iv) of the Declaration shall be deleted in its entirety and replaced with the following:**

Adoption. Any proposed amendment to this Declaration must be approved by a vote of not less than sixty percent (60%) in the aggregate of the votes of all Owners. In the event any Lot or Dwelling Unit is subject to a first mortgage, the mortgagee shall be notified of the meeting and the proposed amendment in the same manner as an Owner, if the Mortgagee has given prior notice of its mortgage interest to the Board of Directors in accordance with the provisions hereof.

3. **There shall be a new Section 31 to the Declaration, which shall read as follows:**

31. Leasing and Rentals. The Corporation's Members recognize that an Owner-occupant is both psychologically and financially invested in a home to a greater extent than a renter, and thus Owner-occupants most generally have more incentive to maintain and improve their property to a greater extent than those who lease or rent. The practical reality is also recognized that neighborhoods where the percentage of rented/leased residential properties approaches the range of seven percent (7%) to ten percent (10%) are subject to decreasing appraised property values and increased difficulty in obtaining favorable mortgages. These factors, coupled with the increasing numbers of single family residential properties being purchased solely to rent or lease for investment purposes, have caused the following restrictions to be placed upon all Waterwood of Carmel properties not occupied by the titled Owner(s) of record and subject to any form of a rental or lease agreement with the occupants.

- (a) Limits on the Number of Rented Lots ("Rental Cap"). No more than eleven (11) of the one hundred thirteen (113) Lots may be leased or rented to non-owner occupants at any given time, except as may be otherwise provided in this Section 31. Lots described in Section 31(b) below shall count toward the eleven (11) Lot "Rental Cap". If at any time such number of Lots are leased or rented, an Owner who wants

to rent or lease his or her Lot which is not already rented shall be placed upon a waiting list by the Board of Directors. When an existing tenant moves out, the Owner of that Lot shall immediately notify the Board of Directors or Managing Agent of such fact and that Lot cannot be re-rented until all prior Owners on the waiting list, if any, have had a chance to rent their Lots. Prior to the execution of any lease, and in addition to the requirements set forth below, the Owner must notify the Board of Directors or the Managing Agent as to that Owner's intent to lease his or her Lot. After receiving such notice, the Board of Directors or the Managing Agent shall advise the Owner if the Lot may be leased or whether the maximum number of Lots within Waterwood of Carmel is currently being leased. If the maximum number of Lots is being leased, the Board of Directors or the Managing Agent shall also notify the Owner of that Owner's position on the waiting list.

- (b) Effective Date of "Rental Cap" on Existing Rentals. Within thirty (30) days after the date on which this Amendment is recorded in the Office of the Recorder of Hamilton County (the "Recording Date"), the Board of Directors shall provide written notice to all Owners setting forth the Recording Date. The provisions of Section 31(a) (the "Rental Cap") shall not apply to the Owner of any Lot in Waterwood of Carmel who, as of the Recording Date, is rented or leased by its Owner to a non-owner occupant, so long as the Owner-landlord mails or otherwise delivers to the Board or Managing Agent of the Association (at the address shown in the notice of the Recording Date), within sixty (60) days after the Recording Date, a copy of each executed lease of such Owner-landlord's Lot (or Lots) which is in effect as of the Recording Date. The Owners of such pre-Recording Date rented Lots shall not be subject to the provisions of Section 31(a), but shall be subject to the remaining provisions of this Section 31. However, when the legal owners of record of any of the pre-Recording Date rented Lots sell, transfer or convey such Lot(s) to another Owner after the date of recording of this Amendment, such Lot(s) shall immediately become subject to the Rental Cap set forth in Section 31(a). The failure of any such Owner-landlord of a leased or rented Lot to deliver a copy of such pre-Recording Date lease within said sixty (60) day period to the Board or Managing Agent shall result in said Owner-landlord's Lot being subject to the Rental Cap (from and after the date of expiration of such pre-Recording Date lease). However, in no event shall the Rental Cap apply to any lease executed prior to the Recording Date or to any renewals thereof provided for in any such leases, so long as the Lot continues to be occupied by one or more of the non-owner occupants in possession of the Lot as of the Recording Date. Any Lot that falls under the exception of this Section 31(b) shall, nevertheless, be counted as one of the eleven (11) maximum Lots that may be rented at any given time even though such maximum does not apply to restrict the Owner of such pre-Recording Date leased Lot.
- (c) Hardship Exceptions and Waiver. Notwithstanding Section 31(a) above, if an Owner wishes to rent or lease his or her Lot, but the maximum number of Lots is

currently being leased, the Owner may request the Board of Directors to waive the "Rental Cap" and approve a proposed lease if the Owner establishes to the Board's satisfaction that the "Rental Cap" will cause undue hardship. If a majority of the entire Board of Directors approves in writing of the Owner's request, the Board of Directors shall permit the Owner to rent or lease said Lot, subject to any further conditions or limitations imposed by the Board in the Board's discretion, but only if the Owner satisfies all other requirements of this Section 31. Such decision shall be at the sole discretion of the Board, which in no event shall be obligated to grant such a request.

(d) General Lease Conditions.

1. All leases, including renewals, shall be in writing, and no lease shall be entered into for a term of less than one (1) year without the prior written approval of the Board of Directors.
2. A copy of each executed lease by an Owner which identifies the tenant shall be provided to the Board of Directors or the Managing Agent by the Owner within thirty (30) days after execution.
3. No portion of any Lot other than the entire Lot shall be leased for any period.
4. No subleasing shall be permitted.
5. All leases shall be made expressly subject and subordinate in all respects to the terms of the Declaration, By-Laws, Articles of Incorporation, and any rules and regulations promulgated by the Board of Directors, as amended, to the same extent as if the tenant were an Owner and a member of the Association;
6. All leases shall provide for direct action by the Association and/or any Owner against the tenant with or without joinder of the Owner of such Lot. If such provision is not in the lease, it will be deemed to be in such lease.
7. The Owner shall supply copies of such legal documents to the tenants prior to the effective date of the lease.
8. The Owner cannot be delinquent in the payment of any assessments or other charges to the Association. If at any time an Owner becomes delinquent, the Board shall have the right to revoke said Owner's right to lease the Owner's Lot, even if during the term of a lease.

9. The Board of Directors shall have the power to promulgate such additional rules and regulations as, in its discretion, may be necessary or appropriate concerning leasing.
 10. All Owners who do not reside in the Lot shall provide the Board of Directors with the name and contact information of the tenant(s) and any other residents living in the home.
- (e) Owner is Still Liable. No lease shall provide, or be interpreted or construed to provide, for a release of the Owner from his or her responsibility to the Association and the other Owners for compliance with the provisions of the Declaration, the Articles of Incorporation, the By-Laws, and any rules and regulations promulgated by the Board of Directors, or from the Owner's liability to the Association for payments of assessments or any other charges.
- (f) Violations. Any lease or attempted lease of a Lot in violation of the provisions of this Section 31 shall be voidable at the election of the Association's Board of Directors or any other Owner, except that neither party to such lease may assert this provision of this Section 31 to avoid its obligations thereunder. In the event of a violation, the Board of Directors, on behalf of the Association, or any Owner, shall have the right to exercise any and all available remedies at law or equity.
- (g) Institutional Mortgagees. The provisions of this Section 31 shall not apply to any institutional mortgagee of any Lot which comes into possession of the Lot by reason of any remedies provided by law or in equity or in such mortgage or as a result of a foreclosure sale or other judicial sale or as a result of any proceeding, arrangement, or deed in lieu of foreclosure. However, when a Lot is sold or conveyed by such an institutional mortgagee to a subsequent purchaser, that subsequent purchaser shall be bound by the provisions of this Section 31.
- (h) Burden of Proof. Anything to the contrary herein notwithstanding, if at any time a Lot is not occupied by one of the Owners thereof, there shall be a presumption that the Lot is being leased and subject to the provisions of this Section 31, and the Owners shall have the burden of proving to the satisfaction of the Board of Directors that the occupancy is not in violation of the terms of this Section 31, including but not limited to the delivery to the Board of Directors of a written statement of the nature and circumstances of the occupancy and any written document or memorandum that is the legal basis for the occupancy. For purposes of this Section 31 and this Section 31(h), any occupancy pursuant to a rent to buy contract or similar arrangement (i.e. a land contract) or pursuant to any option to purchase by anyone other than an Owner shall be deemed to be a lease, rental or other similar arrangement. Furthermore, for purposes of this Section 31 and this Section 31(h),

any occupancy by the immediate family member(s) of an Owner (parents, children, spouse, sibling or domestic partner), shall not be considered a lease or rental.

- (i) Three-Year Waiting Period. In addition to all other provisions of this Section 31, for a period of at least three (3) years after an Owner's acquisition of a Lot, said Owner cannot lease such Lot. After such time, said Lot will be eligible to be leased if all other conditions of this Section 31 are satisfied and provided further that the Owner is not delinquent in the payment of any assessments or other charges to the Association. In its sole discretion, the Board of Directors may grant exceptions to the waiting period requirement upon an Owner's showing of undue hardship, as more specifically provided in Section 31(c) herein.

Full Force and Effect. All other provisions of the Declaration of Covenants and Restrictions of Waterwood of Carmel Property Ownership shall remain in full force and effect.

Certification. The undersigned officers hereby represent and certify that all requirements for and conditions precedent to these Amendments to the Declaration of Covenants and Restrictions of Waterwood of Carmel Property Ownership have been fulfilled and satisfied.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, we, the undersigned officers, do hereby execute these Amendments to the Declaration of Covenants and Restrictions of Waterwood of Carmel Property Ownership and certify that at least seventy-five percent (75%) of all Owners voted to approve these Amendments and certify the truth of the facts herein stated this 11th day of May, 2017.

WATERWOOD HOMEOWNERS ASSOCIATION, INC.

By:

Starr Worl
Starr Worl, President

Attest:

Erica Hendricks
Erica Hendricks, Secretary

STATE OF INDIANA)

COUNTY OF Hamilton)

Before me a Notary Public in and for said County and State, personally appeared Starr Worl and Erica Hendricks, President and Secretary, respectively, of Waterwood Homeowners Association, Inc., who acknowledged execution of the foregoing Amendments to the Declaration of Covenants and Restrictions of the Waterwood of Carmel Property Ownership, for and on behalf of said corporation, and who, having been duly sworn, states that the representations contained herein are true.

Witness my hand and Notarial Seal this 12th day of MAY, 2017.

My Commission Expires:

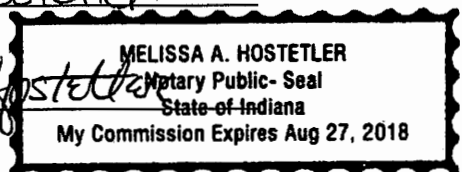
Aug. 27, 2018

Residence County:

Hamilton

Melissa A. Hostetler
Notary Public

Signature



"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."
Gregory A. Chandler, Esq.

This instrument prepared by, and should be returned to, Gregory A. Chandler, Esq.
Eads Murray & Pugh, P.C., Attorneys at Law, 9515 E. 59th St., Suite B, Indianapolis, IN 46216