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Montgomery County, OH
Brandon C. McClain County Recorder
File# 2019-00029546

15

AMENDMENTS TO THE
DECLARATION OF CONDOMINIUM OWNERSHIP
FOR
INDIAN CREEK GARDEN CONDOMINIUMS

PLEASE CROSS MARGINAL REFERENCE WITH THE DECLARATION OF
CONDOMINIUM OWNERSHIP FOR INDIAN CREEK GARDEN CONDOMINIUMS
RECORDED AT MICROFICHE NO. 76-669A01 OF THE MONTGOMERY COUNTY
RECORDS.

PLAT MAP RECORDED AT PLAT BOOK 101, PAGE 45 ET SEQ. OF THE
MONTGOMERY COUNTY RECORDS.

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**AMENDMENTS TO THE
DECLARATION OF CONDOMINIUM OWNERSHIP FOR
INDIAN CREEK GARDEN CONDOMINIUMS**

RECITALS

A. The Declaration of Condominium Ownership for Indian Creek Garden Condominiums (the "Declaration") and the Bylaws of Indian Creek Condominium Association, Exhibit H the Declaration (the "Bylaws"), were recorded at Montgomery County Records, Microfiche 76-669A01.

B. The Indian Creek Garden Condominium Association (the "Association") is a corporation consisting of all Unit Owners in Indian Creek Garden Condominium and as such is the representative of all Unit Owners.

C. Declaration Article 16, Section (a) authorizes amendments to the Declaration and Bylaws Article VIII, Section 6 authorizes amendments to the Bylaws.

D. A meeting, including any change, adjournment, or continuation of such, of the Association's Unit Owners was held on or about October 24, 2017, and, at that meeting and any adjournment, Unit Owners representing the voting power of the Association executed, in person or by proxy, an instrument in writing setting forth specifically the matters to be modified (the "Amendments").

E. Unit Owners representing 88 percent of the Association's voting power have affirmatively consented to or voted in favor of Amendment B and signed limited powers of attorney authorizing the Association's officers to execute Amendment B on the Unit Owners' behalf, as documented in the Association's records.

F. Unit Owners representing 82 percent of the Association's voting power have affirmatively consented to or voted in favor of Amendment D and signed limited powers of attorney authorizing the Association's officers to execute Amendment D on the Unit Owners' behalf, as documented in the Association's records.

G. Unit Owners representing 90 percent of the Association's voting power have affirmatively consented to or voted in favor of Amendments E and G and signed limited powers of attorney authorizing the Association's officers to execute Amendments E and G on the Unit Owners' behalf, as documented in the Association's records.

H. Unit Owners representing 75 percent of the Association's voting power have affirmatively consented to or voted in favor of Amendments F, I, and K and signed

limited powers of attorney authorizing the Association's officers to execute Amendments F, I, and K on the Unit Owners' behalf, as documented in the Association's records.

I. Unit Owners representing 92 percent of the Association's voting power have affirmatively consented to or voted in favor of Amendment H and signed limited powers of attorney authorizing the Association's officers to execute Amendment H on the Unit Owners' behalf, as documented in the Association's records.

J. Unit Owners representing 81 percent of the Association's voting power have affirmatively consented to or voted in favor of Amendment J and signed limited powers of attorney authorizing the Association's officers to execute Amendment J on the Unit Owners' behalf, as documented in the Association's records.

K. Attached as Exhibit A is an affidavit of the Association's President stating that copies of the Amendment will be mailed by certified mail to all mortgagees having a bona fide lien of record against any Unit.

L. Attached as Exhibit B is a certification from the Association's Secretary as to the consenting mortgagees, on the records of the Association, to the Amendments.

M. The Association has complied with the proceedings necessary to amend the Declaration and Bylaws, as required by Chapter 5311 of the Ohio Revised Code and the Declaration and Bylaws, in all material respects.

AMENDMENTS

The Declaration of Condominium Ownership for Indian Creek Garden Condominiums is amended by the following:

AMENDMENT A

Intentionally Left Blank - Amendment Proposal Did Not Pass

AMENDMENT B

DELETE BYLAWS ARTICLE I, SECTION 7 entitled, "Annual Meetings," in its entirety. Said deletion to be taken from Page 2 of the Bylaws, Exhibit H of the Declaration, as recorded at Montgomery County Records, Microfiche 76-669A01.

INSERT a new BYLAWS ARTICLE I, SECTION 7 entitled, "Annual Meeting." Said new addition, to be added to Page 2 of the Bylaws, Exhibit H of the Declaration, as recorded at Montgomery County Records, Microfiche 76-669A01, is as follows:

Section 1 Annual Meeting. The Association's annual meeting will be held at such time, at such place, and on such date during the first quarter of each calendar year as the Board determines and is stated in the meeting notice, for the election of Directors, the consideration of reports to be laid before the meeting, and the transaction of such other business as is set forth in the meeting notice.

Any conflict between the above provision and any other provisions of the Declaration and Bylaws will be interpreted in favor of this amendment changing the date for holding the annual meeting. The invalidity of any part of the above provision does not impair or affect in any manner the validity or enforceability of the remainder of the provision. Upon the recording of this amendment, only Unit Owners of record at the time of such filing have standing to contest the validity of this amendment, whether on procedural, substantive, or any other grounds, provided further that any such challenge must be brought in the court of common pleas within one year of the recording of this amendment.

AMENDMENT C

[Intentionally Left Blank - Amendment Proposal Did Not Pass]

AMENDMENT D

INSERT a new DECLARATION ARTICLE 19, SECTION (i) entitled, "Cost of Collection." Said new addition, to be added to Page 15 of the Declaration, as recorded at Montgomery County Records, Microfiche 76-669A01, is as follows:

(i) Cost of Collection. A Unit Owner who fails to pay any assessment(s) within 10 days after same have become due and payable, is liable for any late charges as established by the Board and for any and all costs and expenses the Association incurs, including reasonable attorneys' fees, recording costs, title reports, and court costs, in connection with the collection of said assessment(s) and any other charges or monies the Unit Owner owes the Association. A Unit Owner is further liable for all costs and expenses the Association incurs in any action in which the Association is named as a party by any mortgagee or other creditor of said Unit Owner.

INSERT a new DECLARATION ARTICLE 25, PARAGRAPH (3). Said new addition, to be added to Page 23 of the Declaration, as recorded at Montgomery County Records, Microfiche 76-669A01, is as follows:

(3) The Board may levy reasonable enforcement assessments against any Unit Owner (either by their conduct or by the conduct of any Occupant or guest of their Unit) who violates any provision of the Declaration, Bylaws, or rules. The Board may also levy reasonable charges for damage to the Common Elements or any other part of the Condominium Property that the Association is responsible to maintain. Said Unit Owner must pay to the Association, in addition to any other sums due, any enforcement assessments, any charges for damage, and all fees, costs, and expenses the Association incurs, including reasonable attorneys' fees and court costs, in connection with the enforcement of any provision of the Declaration, Bylaws, or rules, or for repair of damage. Said enforcement assessments, charges for damage, fees, costs, and expenses will be charged as a special assessment against said Unit, and is the personal obligation of said Unit Owner. The Association, in addition to all other remedies available, has the right to place a lien on the estate or interest in the Unit of said Unit Owner as further explained and set forth in Declaration Article 19(d).

Any conflict between these provisions and any other provisions of the Declaration and Bylaws will be interpreted in favor of this amendment regarding the cost of collection and cost of enforcement. The invalidity of any part of the above provision does not impair or affect in any manner the validity or enforceability of the remainder of the provision. Upon the recording of this amendment, only Unit Owners of record at the time of such filing have standing to contest the validity of this amendment, whether on procedural, substantive, or any other grounds, provided further that any such challenge must be brought in the court of common pleas within one year of the recording of this amendment.

AMENDMENT E

INSERT a new DECLARATION ARTICLE 24, SECTION (n) entitled, "Occupancy Restriction." Said new addition, to be added to Page 22 of the Declaration, as recorded at Montgomery County Records, Microfiche 76-669A01, is as follows:

(n) Occupancy Restriction. A person who is classified as a Tier II or Tier III sex offender/child-victim offender, or any future equivalent classification under the law, and for whom the County Sheriff or other government entity must provide community notice of the sex offender's

residential address is prohibited from residing in or occupying a Unit and from remaining in or on the Condominium Property for any length of time. The classification of a sex offender/child-victim offender and the determination of whether notice is required is made by a court of law in accordance with the Ohio Sex Offenders Act, or similar statute from another jurisdiction as either may be amended or renamed from time to time. The Association is not liable to any Unit Owner, Occupant, or visitor of any Unit Owner, or of the Association, as a result of the Association's alleged failure, whether negligent, intentional, or otherwise, to enforce any provision of this Occupancy Restriction.

Any conflict between this provision and any other provisions of the Declaration and Bylaws will be interpreted in favor of this restriction on the occupancy of Units. The invalidity of any part of the above provision does not impair or affect in any manner the validity or enforceability of the remainder of the provision. Upon the recording of this amendment, only Unit Owners of record at the time of such filing have standing to contest the validity of this amendment, whether on procedural, substantive, or any other grounds, provided further that any such challenge must be brought in the court of common pleas within one year of the recording of this amendment.

AMENDMENT F

INSERT a new DECLARATION ARTICLE 20, SECTION (a)(7). Said new addition, to be added to Page 17 of the Declaration, as recorded at Montgomery County Records, Microfiche 76-669A01, is as follows:

(7) The Association's Property Insurance will include a reasonable deductible as determined by the Board. The Unit Owner is responsible for any repairs or expenses up to the amount of any applicable deductible for loss or damage to their Unit and Limited Common Elements and the Association is responsible for all costs and other expenses pertaining to the Common Elements. If a single loss affects multiple portions of the Condominium Property, for example, one or more Units and the Common Elements, the repair costs and expenses not paid for by the insurance proceeds are to be proportionately allocated in relation to the amount each party's claim bears to the total amount of the claim, with the party incurring the larger share of the loss responsible for the larger share of the deductible. The Association may assess the amount of any deductible expense attributable to any Unit(s) to the Unit Owner(s) of such Unit(s) in accordance with the Article 19.

Any conflict between the above provision and any other provisions of the Declaration and Bylaws will be interpreted in favor of this provision modifying the deductible requirements for the Association's insurance coverage. The invalidity of any part of the above provision does not impair or affect in any manner the validity or enforceability of the remainder of the provision. Upon the recording of this amendment, only Unit Owners of record at the time of such filing have standing to contest the validity of this amendment, whether on procedural, substantive, or any other grounds, provided further that any such challenge must be brought in the court of common pleas within one year of the recording of this amendment.

AMENDMENT G

INSERT a new DECLARATION ARTICLE 28, SECTION (n) entitled, "Notices." Said new addition, to be added to Page 26 of the Declaration, as recorded at Montgomery County Records, Microfiche 76-669A01, is as follows:

(n) Notices. All notices required or permitted under the Declaration or Bylaws, to the Association or the Board, must be made in writing and sent by regular U.S. mail, first-class postage prepaid, to the Board of Directors or the Association at the address of the Condominium Property or to such other address as the Board of Directors may designate by a notice in writing to all Unit Owners. All notices required or permitted under the Declaration or Bylaws to any Unit Owner must be hand-delivered, sent by electronic mail, or sent by regular U.S. mail, first-class postage prepaid, to such Unit Owner's Unit address or to such other address designated by the Unit Owner in writing to the Board. Any notice required or permitted to be given to any occupant of a Unit other than a Unit Owner will effectively be given if hand-delivered or sent by regular U.S. mail, first-class postage prepaid, to the Unit address.

Due to the ongoing development of new technologies and corresponding changes in business practices, to the extent permitted by Ohio and federal law, as well as by the Board, now or in the future: (1) any notice required in the Declaration or Bylaws to be sent or received; (2) any signature, vote, consent, or approval required to be obtained; or (3) any payment required to be made, under the Declaration or Bylaws, may be accomplished or required using the most advanced technology available at that time provided such use is a generally accepted business practice. This includes, without limitation, the use of electronic mail or other electronic transmission in lieu of any Association required

written notice to Unit Owners, individually or collectively, to or from any Unit Owner who has given the Association written consent to such use of electronic mail or other electronic transmission, and for the Association to properly and effectively receive any Unit Owner's signature, vote, consent, or approval the Association needs or requires, subject to the following:

(i) The Association may provide for voting by electronic transmission. However, if the Association cannot guarantee the anonymity of a Unit Owner's vote, the Association must provide the Unit Owner with the option of casting an anonymous printed ballot, which includes, when necessary, the Unit Owner's percentage of ownership interest.

(ii) An electronic mail or other electronic transmission to a Unit Owner is not considered delivered and effective if the Association's transmission to the Unit Owner fails two consecutive times, e.g. the Association receives an "undeliverable" or similar message, or the inability to deliver the transmission to the Unit Owner becomes known to the person responsible for sending the transmission. If the electronic mail or other electronic transmission is not delivered or effective, the Association will deliver such notice or other communication to the Unit Owner in writing by regular U.S. mail to the Unit Owner's Unit or last known address, by hand delivery to the Unit Owner, or by leaving the notice under or attached to the front door of the Unit Owner's Unit.

(iii) Any Unit Owner who has not given the Association written consent to such use of electronic mail or other electronic transmission will receive notices, including any notice of delinquency of any payment due, either by personal delivery to the Unit Owner, by leaving the notice under or attached to the front door of the Unit Owner's Unit, or regular mail to the Unit Owner's Unit or last known address.

Any conflict between this provision and any other provisions of the Declaration and Bylaws will be interpreted in favor of this amendment permitting notices by regular U.S. mail and permitting the Association to use electronic communications to the extent permitted by Ohio and Federal law. The invalidity of any part of the above provision does not impair or affect in any manner the validity or enforceability of the remainder of the provision. Upon the recording of this amendment, only Unit

Owners of record at the time of such filing have standing to contest the validity of this amendment, whether on procedural, substantive, or any other grounds, provided further that any such challenge must be brought in the court of common pleas within one year of the recording of this amendment.

AMENDMENT H

MODIFY DECLARATION ARTICLE 2, SECTION (a) entitled, "Association." Said modification, to be made on Page 1 of the Declaration, as recorded at Montgomery County Records, Microfiche 76-669A01, is as follows (deleted language is crossed-out; new language is underlined):

(a) Association. Indian Creek Garden Condominium Association, which is a non-profit corporation whose members are the Owners of Units in this Condominium and the corporation is organized to administer the Condominium Property, and being the Unit Owners Association for the Condominium as provided by statute. The Board of Directors have the power to amend the Articles of Incorporation with the Secretary of State to reflect such corporate name change.

MODIFY the 1st SENTENCE in DECLARATION ARTICLE 12 entitled, "UNIT OWNERS ASSOCIATION." Said modification, to be made on Page 6 of the Declaration, as recorded at Montgomery County Records, Microfiche 76-669A01, is as follows (deleted language is crossed-out; new language is underlined):

Indian Creek Garden Condominium Association is a non-profit corporation organized to administer the condominium property.

MODIFY the TITLE OF THE BYLAWS OF INDIAN CREEK CONDOMINIUM ASSOCIATION. Said modification, to be made on the cover page and Page 1 of the Bylaws, Exhibit H of the Declaration, as recorded at Montgomery County Records, Microfiche 76-669A01, is as follows (deleted language is crossed-out; new language is underlined):

BYLAWS

OF

INDIAN CREEK GARDEN CONDOMINIUM ASSOCIATION

MODIFY BYLAWS ARTICLE I, SECTION 1 entitled, "Name and Nature of the Association." Said modification, to be made on Page 1 of the Bylaws, Exhibit H of

the Declaration, as recorded at Montgomery County Records, Microfiche 76-669A01, is as follows (deleted language is crossed-out; new language is underlined):

Section 1. Name and Nature of Association. The Association ~~shall~~ will be known as Indian Creek Garden Condominium Association, being a non-profit corporation whose members are owners of Units of Indian Creek Garden Condominiums.

Any conflict between the above provision and any other provisions of the Declaration and Bylaws will be interpreted in favor of this amendment changing the corporate name of the Association from Indian Creek Condominium Association to Indian Creek Garden Condominium Association. The invalidity of any part of the above provision does not impair or affect in any manner the validity or enforceability of the remainder of the provision. Upon the recording of this amendment, only Owners of record at the time of such filing have standing to contest the validity of this amendment, whether on procedural, substantive, or any other grounds, provided further that any such challenge must be brought in the court of common pleas within one year of the recording of this amendment.

AMENDMENT I

INSERT a new BYLAWS ARTICLE II, SECTION 12, PARAGRAPH (h). Said new addition, to be added to Page 4 of the Bylaws, Exhibit H of the Declaration, as recorded at Montgomery County Records, Microfiche 76-669A01, is as follows:

(h) borrow money, assign, without limitation, the Association's right to future income, including the right to receive common assessments, insurance proceeds, and other income or compensation, as collateral for any monies borrowed, assign the Association's lien rights, and issue, sell, or pledge notes, bonds, or other evidences of indebtedness of the Association and execute related documents, provided that any such borrowing will be limited to the purpose of acquiring funds to be used for the insurance, maintenance, repair, and replacement of the Property and also must be approved by a majority of the Association's voting power that is present, in person or by proxy, at an Association meeting.

Any conflict between this provision and any other provision in the Declaration and Bylaws will be interpreted in favor of this provision giving the Board, on behalf of the Association, the authority to borrow funds and assign future income as collateral. The invalidity of any part of the above provision will not impair or affect in any manner the validity or enforceability of the remainder of the provision. Upon

the recording of this amendment, only Unit Owners of record at the time of such filing have standing to contest the validity of this amendment, whether on procedural, substantive, or any other grounds, provided further that any such challenge must be brought in the court of common pleas within one year of the recording of this amendment.

AMENDMENT J

INSERT a new DECLARATION ARTICLE 24, SECTION (o) entitled, "Electric Vehicle Charging Stations." Said new addition, to be added to Page 22 of the Declaration, as recorded at Montgomery County Records, Microfiche 76-669A01, is as follows:

(o) Electric Vehicle Charging Stations. A Unit Owner, with the Board's prior written permission, may install an electric vehicle charging stations or other device, including the related wires, meter, conduit, breaker, or installation needed to provide power or energy to motor vehicles on the Condominium Property (together all referred to as the "Vehicle Charging Station"). The Unit Owner and any subsequent Unit Owner of the Unit that the Vehicle Charging Station serves is responsible for the maintenance, repair, replacement, and insurance of the Vehicle Charging Station, as well as any service costs or charges, including but not limited to electricity charges, the Vehicle Charging Station incurs. The Board may make rules and regulations regarding Vehicle Charging Stations, including but not limited to placement, size, specifications, location, metering, maintenance, and reconstruction after an insurable loss.

Any conflict between this provision and any other provisions of the Declaration and Bylaws will be interpreted in favor of this amendment on electric vehicle charging stations. The invalidity of any part of the above provision does not impair or affect in any manner the validity or enforceability of the remainder of the provision. Upon the recording of this amendment, only Unit Owners of record at the time of such filing have standing to contest the validity of this amendment, whether on procedural, substantive, or any other grounds, provided further that any such challenge must be brought in the court of common pleas within one year of the recording of this amendment.

AMENDMENT K

INSERT a new 2nd SENTENCE to DECLARATION ARTICLE 17, SECTION (a). Said new addition, to be added to Page 10 of the Declaration, as recorded at Montgomery County Records, Microfiche 76-669A01, is as follows:

The Association is also responsible for the maintenance, repair, and replacement of the exterior chimney box serving the Units.

MODIFY DECLARATION ARTICLE 17, SECTION (b)(1). Said modification, to be made on Page 10 of the Declaration, as recorded at Montgomery County Records, Microfiche 76-669A01, is as follows (deleted language is crossed-out; new language is underlined):

(1) To perform or have performed such work as is necessary to maintain, repair, and replace at ~~his~~ their expense all portions of ~~his~~ their Unit, including the chimney flue and cap regardless of whether said flu and cap is located outside the Unit boundaries, and all internal installations of such Unit such as appliances and plumbing and electrical fixtures and installations located within the Unit bounds and not constituting a part of the Common Elements:

Any conflict between this provision and any other provisions of the Declaration and Bylaws will be interpreted in favor of this amendment making the Association responsible for maintaining, repairing, and replacing the chimney box and the Unit Owner responsible for maintaining, repairing, and replacing the chimney flue and cap. The invalidity of any part of the above provision does not impair or affect in any manner the validity or enforceability of the remainder of the provision. Upon the recording of this amendment, only Unit Owners of record at the time of such filing have standing to contest the validity of this amendment, whether on procedural, substantive, or any other grounds, provided further that any such challenge must be brought in the court of common pleas within one year of the recording of this amendment.

The Indian Creek Garden Condominium Association has caused the execution of this instrument this 21 day of May, 2019.

INDIAN CREEK GARDEN CONDOMINIUM ASSOCIATION

By: Sarah Eaton
SARAH EATON, its President

By: Carolyn Carr
CAROLYN CARR, its Secretary

STATE OF OHIO)
COUNTY OF Montgomery) SS

BEFORE ME, a Notary Public, in and for said County, personally appeared the above-named Indian Creek Garden Condominium Association, by its President and its Secretary, who acknowledged that they did sign the foregoing instrument and that the same is the free act and deed of said corporation and the free act and deed of each of them personally and as such officers.

I have set my hand and official seal this 21 day of May, 2019.

Craig A. Kenley
NOTARY PUBLIC

This instrument prepared by:
KAMAN & CUSIMANO, LLC, *ME*
Attorneys at Law
11311 Cornell Park Drive, Suite 220
Cincinnati, Ohio 45242
(513) 878-1771
ohiocondolaw.com

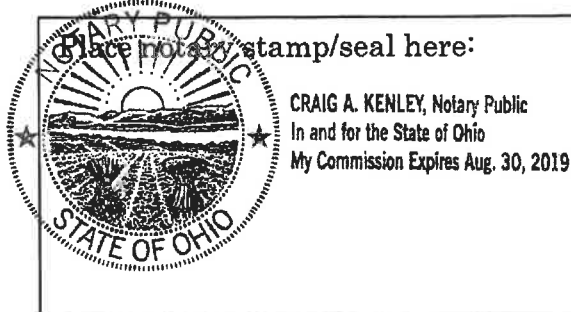


EXHIBIT A

AFFIDAVIT

STATE OF OHIO)
)
COUNTY OF Montgomery) SS

SARAH K. EATON, being first duly sworn, states as follows:

1. She is the duly elected and acting President of the Indian Creek Garden Condominium Association; and
2. once the Amendments are recorded with the Montgomery County Recorder's Office, she will cause copies of the Amendments to the Declaration to be mailed by certified mail to all mortgagees having bona fide liens of record against any Unit Ownerships of whose mortgage interests notice had been given to the Association.

Sarah K Eaton
SARAH K. EATON, President

BEFORE ME, a Notary Public, in and for said County, personally appeared the above-named SARAH K. EATON who acknowledges that she did sign the foregoing instrument and that the same is her free act and deed.

I have set my hand and official seal this 21 day of May, 2019.

C. A. Kenley
NOTARY PUBLIC

