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01/10/2024 11:52:52AM 8 PGS  
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Hamilton County Recorder IN  
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**Cross References: Inst. No. 9347501; Inst. No. 9412402**

**SECOND AMENDMENT TO THE DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS OF  
WILLOW CREEK**

This Second Amendment to the Declaration of Covenants, Conditions and Restrictions of Willow Creek was executed as of the date set forth below.

W I T N E S S E T H that the following facts are true:

The subdivision of Willow Creek located in Hamilton County, Indiana was established by a "Declaration of Covenants, Conditions and Restrictions" (the "Declaration") that was filed in the Office of the Recorder of Hamilton County, Indiana on October 1, 1993, as Instrument No. 9347501; and

Plats filed with the Office of the Recorder of Hamilton County, Indiana established the Lots and Common Areas comprising said subdivision; and

Article VIII Section iv of the Declaration allows for the amendment of the Declaration upon the Vote of at least two-thirds (2/3) of the Owners; and

The Board of Directors of the Willow Creek Homeowners Association, Inc. ("Association") recommended that the Declaration be further amended as set forth below; and

No less than two-thirds (2/3) of all Owners have approved the below amendments via a duly called for vote using mail in ballots following Indiana Code; 23-17-10-8



NOW, THEREFORE the Declaration which is applicable to all Owners and residents within Willow Creek is hereby amended as follows:

1. The Declaration is hereby amended by adding a New Article X that will read as follows:

**ARTICLE X**  
**Leasing Restrictions**

Section 10.1. General Purposes of Leasing Restrictions. The Association'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 maintain their property better than renters generally. The Association's members wish to ensure that the residents within Willow Creek share the same proprietary interest in and respect of the Lots and the common areas and other property maintained by the Association. They also want to encourage residents to not only maintain property values but also to improve them and recognize that owner occupants have more incentive to do so compared to non-Owner occupants. Thus, the provisions of this Article X shall be applicable.

Section 10.2. Limits on the Number of Leased Lots ("Rental Cap"). No more than sixteen (16) of the Lots may be leased or rented to non-Owner occupants at any given time, except as may be otherwise provided in this Article X. The "Grandfathered Lots" defined and described in Section 10.3 below shall count towards the sixteen (16) 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 shall have thirty (30) days from the date on which the existing tenant moves out to enter into a new lease agreement with another tenant, and to provide a copy of such lease to the Board of Directors. If the Owner does not enter into a new lease agreement and provide a copy of such lease to the Board within thirty (30) days, then the 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 as to that Owner's intent to lease his or her Lot. After receiving such notice, the Board of Directors shall advise the Owner if the Lot may be leased or whether the maximum number of Lots within Willow Creek is currently being leased. If the maximum number of Lots is being leased, the Board of Directors shall also notify the Owner of that Owner's position on the waiting list.



Section 10.3. Effective Date of "Rental Cap" on Existing Rentals. Within thirty (30) days after the date on which this Article X 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 and the mailing address of the Association. The provisions of Section 10.2 (the "Rental Cap") shall not apply to the Owner of any Lot in Willow Creek which, 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 of Directors 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. Such Lots shall be referred to as "Grandfathered Lots." Such lease copies may have the rental amount deleted as well as any personal identifying information such as social security numbers. The Owners of such Grandfathered Lots shall not be subject to the provisions of Section 10.3, but shall be subject to the remaining provisions of this Article X. However, when the legal Owners of record of any of the Grandfathered Lots sell, transfer, or convey such Lot(s) to another Owner after the date of recording of this Article X, such Lot(s) shall immediately become subject to the Rental Cap.

If any such Owner-landlord of a leased or rented Lot fails to deliver a copy of such pre-Recording Date lease within said sixty-day period to the Board of Directors, that will 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 10.4 shall, nevertheless, be counted as one of the sixteen (16) 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.

Section 10.4. Hardship Exceptions and Waiver. Notwithstanding anything else herein, 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 the Owner's request in writing, 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 Article X. Such decision shall be at the sole discretion of the Board. Examples of an undue hardship include:

- (a) death, dissolution or liquidation of an Owner;
- (b) divorce or marriage of an Owner;



- (c) necessary relocation of the residence of an Owner to a point outside of a fifty (50) mile radius of the perimeter of Willow Creek due to a change of employment or retirement of at least one (1) of such Owners;
- (d) necessary relocation of the residence of an Owner due to mental or physical infirmity or disability of at least one (1) of such Owners;
- (e) other similar circumstances.

Section 10.5. General Lease Conditions.

- (a) All leases, including renewals, shall be in writing, and no lease shall be entered into for an initial term of less than one (1) year without the prior written approval of the Board of Directors. However, in no event will an Owner be permitted to rent his or her Lot on a short-term rental basis for thirty (30) days or less. Thus, an Owner cannot use a company like Airbnb, VRBO, etc. to rent his or her home on a short-term basis.
- (b) A copy of each executed lease by an Owner which identifies the tenant (but which may have the rental amount deleted as well as personal identifying information) shall be provided to the Board of Directors by the Owner within thirty (30) days after execution.
- (c) No portion of any Lot other than the entire Lot shall be leased for any period.
- (d) No subleasing shall be permitted.
- (e) All leases shall be made expressly subject and subordinate in all respects to the terms of this Declaration, the By-Laws, and the rules and regulations adopted by the Board of Directors, as amended, to the same extent as if the tenant were an Owner and a member of the Association.
- (f) 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.
- (g) The Owner shall supply copies of this Declaration, the By-Laws, and the rules and regulations adopted by the Board of Directors, as amended, to the tenants prior to the effective date of the lease.
- (h) 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.
- (i) Owners must provide the Board of Directors with the name of the tenant(s) and any other residents living in the Lot, together with the phone number of the tenant(s). Also, the Owner must provide the Board of Directors with the Owner's contact information such as address and phone number.



- (j) To be eligible to lease his or her Lot, the Owner cannot be in violation of any provisions of this Declaration, the By-Laws, or the rules and regulations adopted by the Board, all as amended. If at any time an Owner violates any such provisions through the actions or omissions of the Owner's tenant, 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.

Section 10.6. 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 this Declaration, the By-Laws, and the rules and regulations adopted by the Board of Directors, or from the Owner's liability to the Association for payments of assessments or any other charges.

Section 10.7. Violations. Any lease or attempted lease of a Lot in violation of the provisions of this Article X 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 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, including the right to recover from the violating Owner all attorneys fees, costs and expenses.

Section 10.8. Institutional Mortgagees. The provisions of this Article X 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 or Owner shall be bound by the provisions of this Article X.

Section 10.9. 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 Article X 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 Article X, 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 Article X and Section 10.10, any occupancy (including occupancy pursuant to a rent-to-buy contract or similar arrangement 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, unless the Owner delivers to the Board of Directors a written purchase contract, conditional sales contract or



similar contract whereby the occupant is unconditionally and presently legally obligated to purchase the Lot. If the Owner is selling his or her Lot via land contract, contract for deed, or similar agreement, the contract or memorandum thereof must be recorded with the County Recorder to be deemed valid. Failure to record the contract or memorandum thereof will automatically deem the document to be a lease for purposes of this Declaration.

Section 10.10. Two Year Waiting Period; Hardship Exceptions and Waiver. For a period of at least two (2) years after an Owner's acquisition of a Lot, said Owner cannot lease or rent such Lot. After such time, said Lot will be eligible to be leased if the Rental Cap has not been reached and all other conditions of this Article X are satisfied, and provided further that the Owner is not delinquent in the payment of any assessments or other charges to the Association. Notwithstanding this Section 10.10, if an Owner wishes to lease a Lot prior to the end of the two-year waiting period, the Owner may apply to the Board of Directors for a hardship exception and waiver as described in Section 10.4 above.

Section 10.11. Certain Lots Not Counted as Rentals. The provisions of this Article X will not apply to any situation where a Lot is occupied by one or more family members of the Lot Owner. Thus, this kind of occupancy will not be considered a "rental." Likewise, any Lot owned by a Trust or an Estate will not be considered a "rental" if the resident is (i) the Trustee, (ii) the Fiduciary of an Estate, or (iii) a beneficiary of the Trust or Estate.

2. The Declaration is also hereby amended by Deleting Article VIII and replacing it with a new Article VIII that will read as follows:

## **ARTICLE VIII**

### **Amendment to This Declaration**

This Declaration and the covenants, conditions and restrictions set forth in this Declaration, as from time to time amended in the manner hereafter set forth, shall run with the land and shall be binding upon the persons owning any portion of the Willow Creek property and all parties closing under them. This Declaration may be amended or changed, in whole or in part, at any time upon approval by the Owners of a majority of the Lots who are in good standing. For purposes of this provision, "good standing" shall mean Owners who are no more than thirty (30) days delinquent on the payment of any Annual Assessments or Special Assessments as determined by the Board at the time of the aforesaid approval. All Owners in good standing must be given the opportunity to vote on the proposed amendment(s). Such approval for an amendment to this Declaration may be obtained:



- (a) at a meeting of the members of the Association duly called and held in accordance with the provisions of the Association's By-Laws; or
- (b) by written consents or approvals received from the Owners; or
- (c) pursuant to any other procedure recognized under Indiana law, including those recognized under the Indiana Nonprofit Corporations Act and the Indiana Homeowners Association Act, both as amended, including, but not limited to, written mail-in ballots; or
- (d) any other procedures recognized by the Association's By-Laws; or
- (e) any combination of the above.

The President and Treasurer of the Association shall execute the amendment, certifying that the Owners of a majority of the Lots who are in good standing approved such amendment. Thereafter, the amendment shall be filed with the Hamilton County Recorder.

3. Acceptance and Ratification. The acceptance of a deed of conveyance or the act of occupancy of any one Lot shall constitute a ratification of this Amendment, together with the Declaration, and all such provisions shall be covenants running with the land and shall bind any person having at any time any interest or estate in a Lot as though such provisions were recited and stipulated at length in each and every deed, conveyance, mortgage or lease.

4. Certification. The undersigned persons hereby represent and certify that all requirements for and conditions precedent to this Second Amendment of the Declaration have been fulfilled and satisfied.

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Executed this 10<sup>th</sup> day of January, 2024.

Willow Creek of Westfield Homeowners  
Association, Inc., by:

John O'Malia, President

Attest:

Emily Alexander, Secretary

STATE OF INDIANA       )  
                                      ) SS:  
COUNTY OF Marion )

Before me a notary public, in and for said County and State, personally appeared John O'Malia and Emily Alexander, the President and Secretary, respectively, of Willow Creek Westfield Homeowners Association, Inc., an Indiana nonprofit corporation, who acknowledged execution of the within and foregoing for and on behalf of said corporation and its members and who, being duly sworn, stated that the representations made herein are true. Witness my hand and notarial seal this 10<sup>th</sup> day of January, 2024.



Jesus R Llamas, Notary Public  
Marion County, State of Indiana  
Commission No: NP0749492  
My Commission Expires 06/11/2031

  
Notary Public - Signature

Printed

My Commission Expires:

06/11/2031

Residence County:

Marion

"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." P. Thomas Murray Jr.

This instrument prepared by, and should be returned to:

P. Thomas Murray of Eads, Murray, & Pugh, P.C., 9515 E. 59<sup>th</sup> St. Ste. B Indianapolis, IN 46216