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Hamilton County Recorder IN
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**AMENDMENTS TO AMENDED AND RESTATED
DECLARATION OF COVENANTS AND RESTRICTIONS
OF TAMARACK**

These Amendments to the Amended and Restated Declaration of Covenants and Restrictions of Tamarack were made as of the date set forth below by Tamarack Homeowners Association, Inc.

WITNESSETH

WHEREAS, the Hamilton County, Indiana subdivision commonly known as Tamarack ("Subdivision") was originally created and formed pursuant to certain Plats filed with the Office of the Recorder of Hamilton County, Indiana; and

WHEREAS, in conjunction with the Plats, the Subdivision was formed pursuant to a certain "Declaration of Covenants and Restrictions of Tamarack," recorded in the Office of the Recorder of Hamilton County, Indiana, on July 2, 2019, as **Instrument No. 2019028603** ("Original Declaration"); and

WHEREAS, the Original Declaration was amended and restated by an "Amended and Restated Declaration of Covenants and Restrictions of Tamarack," recorded in the Office of the Recorder of Hamilton County, Indiana, on October 16, 2019, as **Instrument No. 2019051241** ("Amended Declaration"); and

WHEREAS, the developer of the Subdivision caused to be incorporated under the laws of the State of Indiana a not-for-profit corporation under the name Tamarack Homeowners Association, Inc. ("Association") for the purpose of managing the affairs, enforcing the restrictions, and maintaining the Common Areas of the Subdivision; and

WHEREAS, the Amended Declaration can be amended, at any time, upon approval of the Owners representing not less than seventy-five percent (75%) of the Lots in the Subdivision; and

WHEREAS, after notice of the proposed amendments was duly given to the members of the Association, the Owners representing at least seventy-five percent (75%) of the Lots in the Subdivision approved the following amendments to the Amended Declaration.

NOW, THEREFORE, the Amended and Restated Declaration of Covenants and Restrictions of Tamarack is hereby amended as follows:

AMENDMENT 1

Section 21(p) of the Amended Declaration, as previously amended, shall be DELETED in its entirety:

AMENDMENT 2

A new Section 33 is added to the Declaration, which shall read, in its entirety, as follows:

33. Leasing. The leasing of Lots in Tamarack is subject to the following provisions:

(a) "Rental" and "Lease" Defined. For the purposes of this Section 33, "rented" or "leased," as used interchangeably herein (or any derivative thereof, singular or plural), shall mean leased or rented or occupied, whether or not for compensation of any kind, by anyone other than an Owner of the Lot together with members of his or her household. However, the Rental Cap and Waiting Period will not apply to any situation where a Lot is occupied by members of the Owner's immediate family. For purposes of this Section 33, "immediate family" shall only include the Owner's parents, children, stepparents, stepchildren, or spouse/significant other. This kind of "family" occupancy will not be considered a "rental" in the context of the Rental Cap and Waiting Period; provided, however, the Owner and occupants will still be subject to the remaining requirements of this Section 33.

Any Lot owned by a Trust, Fiduciary, or corporate entity, such as, but not limited to, a corporation or limited liability company (LLC) shall not be deemed to be a rental, provided that the resident is the Trustee, the Fiduciary of an Estate, a beneficiary of the Trust or Estate, or an owner/shareholder of the corporate entity or LLC, and further provided that no rent, payment, service, or other consideration is paid or provided to the Owner or any other party or entity in exchange for or in connection with that occupancy.

(b) Rental Cap. No more than five percent (5%) of the Lots may be leased at any given time, except as may be otherwise provided in this Section 33 (herein referred to as the "Rental Cap"). If at any time such number of Lots are leased, an Owner who wants to lease his or her Lot which is not already rented shall be placed on a waiting list. When an existing tenant moves out, the Owner of that Lot shall immediately notify the Association of such fact. Additionally, when an existing tenant moves out, the Owner must re-rent the Lot within sixty (60) days of the tenant vacating the Lot. If the Owner does not re-rent the Lot within sixty (60) days of the tenant moving out, the Owner will go to the back of the waiting list 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, the Owner must notify the Association as to that Owner's intent to lease his or her Lot.

(c) Effective Date. The "Rental Cap" and "Waiting Period" shall not apply to the Owner of any Lot which is being leased as of the date on which these leasing restrictions are recorded (the "Recording Date"), so long as the Owner delivers to the Managing Agent, within sixty (60) days after the Recording Date, a copy of each executed lease of such Owner's Lot(s) which is in effect as of the Recording Date ("Grandfathered Owners"). The Grandfathered Owners shall not be subject to the Rental Cap or Waiting Period but shall be subject to the remaining provisions of Section 33. However, when the Grandfathered Owners convey title to such Lot(s) to another Owner after the Recording Date, such Lot(s) shall immediately become subject to the Rental Cap and Waiting Period. The failure of any Owner of a rented Lot to deliver a copy of his or her lease within said sixty (60) day period shall result in said Owner's Lot being subject to the Rental Cap and Waiting Period (from and after the date of expiration of such pre-Recording Date lease). Any Lot falling under this exception shall, nevertheless, be counted as one of the five percent (5%) of Lots that may be rented.

(d) Hardship Exceptions and Waiver. An Owner may request the Board to waive the "Rental Cap" if the Owner establishes to the Board's satisfaction that it will cause undue hardship. If the Board approves in writing of the Owner's request, the Owner may rent said Lot, subject to further conditions or limitations imposed by the Board in its discretion, but only if the Owner satisfies all other requirements of Section 33. Such decision is at the sole discretion of the Board. Examples of "undue hardship" include, but are not limited to:

- i. Temporary relocation of the residence of an Owner to a point outside of a fifty (50) mile radius of Tamarack made necessary due to a change of employment;
- ii. Necessary relocation of the residence of an Owner due to mental or physical infirmity or disability of at least one (1) of such Owners; or

iii. Military service of an Owner.

(e) Lease Conditions.

- i. All leases, including renewals, must be in writing, and no lease may be entered into for a term of less than one (1) year. Owners cannot lease, rent or operate their Lot on a hotel, transient or short-term rental basis, which is defined as a term of less than one (1) year. This short-term rental prohibition includes, without limitation, the use of a short-term rental platform through which unaffiliated parties offer to rent a home or portion thereof to an occupant and collect consideration for the rental from the occupant (such as, but not limited to, Aribnb, Vrbo, and similar companies).
- ii. A copy of each executed lease by an Owner which identifies the tenant (but which may have the rental amount deleted) shall be provided to the Association by the Owner within fifteen (15) days after execution. Additionally, the Owner must provide the Association with the names and contact information of all tenants.
- iii. No portion of any Lot other than the entire Lot shall be leased or rented for any period. No subleasing is permitted.
- iv. All leases must be made expressly subject and subordinate in all respects to the terms of the Declaration, By-Laws, and rules and regulations, to the same extent as if the tenant were an Owner. The Owner shall supply copies of such legal documents to the tenants prior to the effective date of the lease.
- v. All leases shall provide for direct action by the Association 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 the lease.
- vi. 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 may revoke said Owner's right to lease the Owner's Lot, even if during the term of a lease.

(f) 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 for compliance with the requirements of the Declaration, the By-Laws, and rules and regulations.

(g) Violations. Any lease or attempted lease in violation of the provisions of this Section 33 is voidable at the election of the Board. In the event of a violation of this Section 33, the Association may exercise all available remedies at law or equity, including, without limitation, bringing an action for injunctive relief to remove the tenant(s). The Association shall have the right to recover all costs associated with enforcement from the offending Owner, including, but not limited to, attorneys' fees and court costs.

(h) Burden of Proof. 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 the Owners shall have the burden of proving to the satisfaction of the Board that the occupancy is not in violation of this Section 33, including, but not limited to, providing 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. Any occupancy pursuant to a rent to buy contract or similar arrangement or pursuant to any option to purchase by anyone other than an Owner is deemed to be a lease subject to the restrictions of this Section 33. Any land contract or similar agreement must be recorded with the Hamilton County Recorder to be deemed valid. If such land contract, or a validly executed memorandum thereof, is not recorded at the time of execution, it will be considered a lease for purposes of this Section 33.

(i) Three-Year Waiting Period (the "Waiting Period"). In addition to all other provisions of this Section 33, for a period of at least three (3) consecutive years after an Owner's acquisition of title to a Lot, said Owner must own the Lot before he or she can lease such Lot. After such time, the Lot may be leased if all other conditions of this Section 33 are satisfied and the Rental Cap has not already been reached. The Board may, at its discretion, grant exceptions to the Waiting Period upon a showing of undue hardship, as set forth in Section 33(d) herein.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, we, the undersigned, do hereby certify that all requirements for and conditions precedent to these Amendments have been fulfilled and satisfied, hereby execute said Amendments, and hereby certify the truth of the facts herein stated, this 4th day of December, 2023.

TAMARACK HOMEOWNERS ASSOCIATION, INC.

Bryan D. Bransteter
Signature of President

Bryan D. Bransteter
Printed

Brett S. Foster
Signature of Secretary

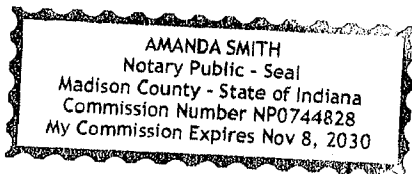
Brett S. Foster
Printed

STATE OF INDIANA)

COUNTY OF Hamilton

Before me a Notary Public in and for said County and State, personally appeared Bryan D. Bransteter and Brett S. Foster, the President and Secretary, respectively, of the Tamarack Homeowners Association, Inc., who acknowledged execution of the foregoing for and on behalf of said corporation and its members and who, having been duly sworn, stated that the representations contained herein are true.

Witness my hand and Notarial Seal this 4th day of December 2023.



Amanda Smith
Notary Public, Signature
Amanda Smith
Printed

My Commission Expires:

Nov. 8, 2030

Residence County: 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." Gregory A. Chandler, Esq.

This instrument prepared by, and should be returned to, Gregory A. Chandler, EADS MURRAY & PUGH, P.C., Attorneys at Law, 9515 E. 59th Street, Suite B, Indianapolis, IN 46216.