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02/28/2023 07:02 AM

**FAITH KIMBROUGH
MARION COUNTY IN RECORDER**

FEE: \$ 35.00

PAGES: 7

By: ER

This amendment does not need the approval of the Marion County Assessor, the Marion County Auditor or the Dept. of Metropolitan Development

**Cross-Reference Inst. No.
1987-43409 & 2007-0029792**

**FIRST AMENDMENT TO THE AMENDED AND RESTATED
DECLARATION OF COVENANTS AND RESTRICTIONS
FOR CHESAPEAKE**

This First Amendment to the Amended and Restated Declaration of Covenants and Restrictions for Chesapeake was executed as of the date set forth below.

WITNESS THE FOLLOWING:

The Chesapeake subdivision located in Marion County, Indiana was established by a certain "Declaration of Covenants and Restrictions for Chesapeake" which was recorded on or about April 22, 1987, as Instrument No. **1987-43409** in the Office of the Recorder of Marion County, Indiana, said Declaration being subsequently amended by the "Amended and Restated Declaration of Covenants and Restrictions for Chesapeake" which was recorded on February 26, 2007, as Instrument No. **2007-0029792** in the Office of the Recorder of Marion County, Indiana ("Declaration"); and

Plats filed with the County Recorder established the Lots and Common Areas situated within Chesapeake; and

The original developer of Chesapeake caused to be incorporated under the laws of the State of Indiana a nonprofit corporation under the name Chesapeake Homeowners' Association, Inc. ("Association") to manage the affairs of Chesapeake; and

All Lot Owners within Chesapeake are members of the Association; and

The Board of Directors of the Association recommended that the Owners approve the following amendment; and

Section 8.3 of the Declaration provides that it may be amended at any time by approval of the Owners of at least two-thirds (2/3) of the Lots; and

No mortgagees requested notice of any proposed amendments to the Declaration; and

The Owners of more than two-thirds (2/3) of the Lots have approved the following amendment, with the written approvals being a part of the Association's permanent records.

NOW, THEREFORE, the Declaration is hereby amended as described below:

1. A new Article XI is hereby added to the end of the Declaration to read as follows:

ARTICLE XI **LEASING RESTRICTIONS**

Section 11.1. General Purposes of Leasing Restrictions. The Association's members wish to ensure that the residents within Chesapeake share the same proprietary interest in and respect of the homes, the Lots, the Common Areas, and other portions of the community that the Association maintains. They also want to encourage residents to not only maintain property values, but also to improve them. Thus, the provisions of this Article XI shall be applicable.

Section 11.2. "Rent" and "Lease" Defined. For the purposes of this Article XI, "rented" or "leased" (or any variation thereof, singular or plural), as used interchangeably herein, 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 or temporary guest. However, the "**Waiting Period**" set forth herein will not apply to any situation where members of the Owner's family occupy a home (persons related by blood, marriage, adoption, foster care, or guardianship).

Section 11.3. Estate Planning, and Business Entity Ownership. Any home owned by a Trustee or by a Fiduciary shall not be deemed to be a rental provided that the resident is the Trustee, the Fiduciary of an Estate, or a beneficiary of the Trust or Estate. Any home owned by a business or corporate entity (including, but not limited to, a corporation, LLC, partnership, etc.) shall submit a certificate of designated representative to the Association. This certificate will indicate both who is authorized to vote on behalf of the business entity as well as who is authorized to reside in the home. The resident and the designated representative for voting purposes must be the same individual. If they are not the same, the home will be deemed a rental under the terms of this Article XI.

Section 11.4. Three Year Waiting Period; Hardship Exceptions and Waiver. For any Lot acquired after the filing of this Article XI with the County Recorder, for a period of at least three (3) years after an Owner's acquisition of a Lot and home, said Owner cannot lease such home (the "**Waiting Period**"). After such time, said home will be eligible to be leased if all other conditions of this Article XI are satisfied and provided further that the Owner is not delinquent in the payment of any assessments or other charges to the Association. The Owner may request the Board of Directors to waive the Waiting Period and approve a proposed lease if the Owner establishes to the Board's satisfaction that the Waiting Period will cause

undue hardship. If a majority of the entire Board of Directors approves in writing of the Owner's hardship request, the Board of Directors shall permit the Owner to rent or lease said home, subject to any further conditions or limitations imposed by the Board in the Board's discretion, so long as the Owner satisfies all other requirements of this Article XI. Such decision shall be at the sole discretion of the Board. The Board will decide the duration of a given hardship exception and will not generally be longer than one (1) year unless there are extenuating circumstances as determined by the Board. An "**Undue Hardship**" is specifically defined as:

- A. temporary relocation of the residence of an Owner to a point outside of a fifty (50) mile radius of the perimeter of Chesapeake made necessary due to a change of employment of at least one (1) of such Owners, which must be documented by written confirmation from the Owner's employer;
- B. necessary relocation of the residence of an Owner due to mental or physical infirmity or disability of at least one (1) of such Owners;
- C. death, dissolution or liquidation of an Owner;
- D. a call into active duty of a branch of the U.S. armed forces.

If an Owner desires to request an exception based upon hardship circumstances other than those specifically defined above, the Owner must submit a written request describing, with reasonable particularity, the nature of the alleged hardship and the alleged need to rent. The Board may approve or deny such requests as it deems appropriate, and such decisions shall be final and binding.

Section 11.5. 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.
- B. A copy of each executed lease by an Owner which identifies the tenant shall be provided to the Board of Directors by the Owner within thirty (30) days after execution. However, the rental amount may be deleted as well as any personal identifying information such as social security numbers.
- C. No portion of any home other than the entire home 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 the Declaration, By-Laws, Articles of Incorporation, and any rules and regulations promulgated by the Board of Directors (collectively referred to as the

“**Governing Documents**”), all as the same may be amended, to the same extent as if the tenant were an Owner and a member of the Association;

- F. The Owner shall supply copies of the Governing Documents to the tenants prior to the effective date of the lease.
- G. 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 home. If such provision is not in the lease, it will be deemed to be in such 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 home, even if during the term of a lease.
- I. All Owners who do not reside in the home shall provide the Board of Directors with the name of the tenant(s) and any other residents living in the home together with contact information including telephone numbers and email addresses.
- J. All occupancy must comply with local ordinances as amended from time to time.
- K. In no event shall an Owner be permitted to lease, rent, or otherwise operate his or her home or Lot on a short-term rental basis for any term of less than one (1) year. This short-term rental prohibition includes, but is not limited to, the use of a short-term rental platform through which unaffiliated parties offer to rent a short-term rental to an occupant and collects consideration for the rental from the occupant such as Airbnb or VRBO.

Section 11.6. 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 the Governing Documents, or from the Owner’s liability to the Association for payments of assessments or any other charges.

Section 11.7. Violations. Any lease or attempted lease of a home or Lot in violation of the provisions of this Article XI 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 Article XI 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.

Section 11.8. Burden of Proof. Anything to the contrary herein notwithstanding, if at any time a home is not occupied by one of the Owners thereof, there shall be a presumption that the home is being leased and subject to the provisions of this Article XI 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 XI, 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 XI and this Section 11.8, 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, installment land sale contract, conditional sales contract or similar contract whereby the occupant is unconditionally and presently legally obligated to purchase the home and Lot. If the Owner is selling his or her Lot via land contract, contract for deed, or similar agreement, the contract must be recorded with the County Recorder to be deemed valid. Failure to record the contract will automatically deem the document to be a lease for purposes of this Article XI.

Section 11.9. Institutional Mortgagees. The provisions set forth in this Article XI shall not apply to any institutional mortgagee of any Lot which comes into possession of the Lot. 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 Article XI.

Section 11.10. Acceptance and Ratification. The acceptance of a deed of conveyance or the act of occupancy of any Lot or home in Chesapeake shall constitute a ratification of this Article XI together with all other provisions of the Governing Documents, all as the same may be amended, 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 or a home within Chesapeake as though such provisions were recited and stipulated a length in each and every deed, conveyance, mortgage, or lease.

2. Except for the above, all other provisions of the Declaration shall remain unchanged.
3. The foregoing amendment shall run with the land and shall be binding upon all Owners and upon the parties having or acquiring any right, title or interest, legal or equitable, in and to the real property or any part or parts thereof subject to such restrictions, and shall inure to the benefit of all successors in title to any real estate in Chesapeake.
4. The undersigned officers of the Association hereby represent and certify that all requirements for and conditions precedent to this First Amendment to the Declaration have been fulfilled and satisfied, and that the foregoing amendments have been approved in writing by the Owners of more than two-thirds (2/3) of the Lots. Further, William Robert Jones in his capacity as Secretary of the Association affirms that the Minutes attached hereto are a true and accurate copy of Minutes from the February 14, 2023 Board of Directors meeting.

Date: February 24, 2023

Chesapeake Homeowners' Association, Inc., by:

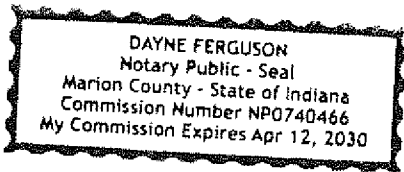
Margery Federman June, president
Margery Federman June, President

Attest:

William Robert Jones, Secretary
William Robert Jones, Secretary

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

Before me, a notary public, in and for said County and State, personally appeared Margery Federman June and William Robert Jones, the President and Secretary, respectively, of Chesapeake 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 certifications and representations made therein are true. Witness my hand and notarial seal this 24th day of February, 2023.



Dayne Ferguson
Notary Public - Signature

Dayne Ferguson
Printed

My Commission Expires: 4/12/2030

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." /s/ P. Thomas Murray, Jr., Esq.

This instrument prepared by P. Thomas Murray, Jr., EADS MURRAY & PUGH, P.C., Attorneys at Law, 9515 E. 59th Street, Suite B, Indianapolis, IN 46216. (317) 536-2565.

Parge June
President

David Snow
Treasurer

Tom Schmidter
Grounds

Karen Davison
Ponds

Bill Jones
Secretary

**CHESAPEAKE HOMEOWNERS' ASSOCIATION
BOARD MEETING**

February 14, 2023

The meeting began at the home of Bill Jones at 4:00 P.M. Everyone was present.

The minutes for January were approved.

[Paragraph redacted because it is irrelevant to the leasing restriction amendment.]

We have successfully obtained the required number of approvals from residents to revise our covenants to attempt to restrict corporate rentals and any other rentals of less than a year. The 124 positive votes have been copied and sent to the attorney. We are working with our attorney to have them filed with the county clerk. We discussed the need to keep careful track of rental properties and to keep the lease agreements up to date and on file. We are quite pleased this issue can be laid to rest.

[Four Paragraphs redacted because they are irrelevant to the leasing restriction amendment.]

Next month's meeting will be March 14 at 4:00 P.M.