

**Cross References:** 8822192  
8922092  
9015402

2023034567 AMEN \$25.00  
09/08/2023 08:31:17AM 8 PGS  
Trini Beaver  
Hamilton County Recorder IN  
Recorded as Presented



AMM

**FIRST AMENDMENT TO THE DECLARATION OF COVENANTS AND  
RESTRICTIONS  
BERKLEY GROVE- SECTION ONE  
BERKLEY GROVE- SECTION TWO  
BERKLEY GROVE- SECTION THREE**

This First Amendment to the Declaration of Covenants and Restrictions for Berkley Grove containing an amendment to the Declaration of Covenants and Restrictions for Berkley Grove 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 Berkley Grove subdivision located in Hamilton County, Indiana was originally established by a "Declaration of Covenants and Restrictions" for Berkley Grove-Section One (the "Section 1 Declaration") that was filed in the Office of the Recorder of Hamilton County, Indiana on October 17, 1988, as Instrument No. 8822192; and

The "Declaration of Covenants and Restrictions" for Berkley Grove- Section Two (the "Section 2 Declaration") was filed in the Office of the Recorder of Hamilton County, Indiana on October 4, 1989, as Instrument No. 8922092; and

The "Declaration of Covenants and Restrictions" for Berkley Grove-Section Three (the "Section 3 Declaration") was filed with the Office of the Recorder of Hamilton County, Indiana on June 26, 1990, as Instrument No. 9015402; and

Article 16 the Section 1 Declaration, Section 2 Declaration and Section 3 Declaration, all allow for amendments to the same by the consent of not less than seventy-five percent (75%) of the Lot owners of all lots in the Development; and

The Board of Directors of Berkley Grove Property Owners' Association, Inc. ("Association") recommended that the documents be amended as set forth below; and after notice of the proposed amendment and a consent received by the Owners, the Owners in Berkley Grove voted upon this amendment; and

The Owners of over 75% of the Membership vote in Berkley Grove, voted in favor of amending the Bylaws by a vote of 76.13% pursuant to the terms below; and

NOW, THEREFORE each Declaration which is applicable to all Owners and residents within Berkley Grove is hereby amended as follows:

**A new Article 17 shall be added to add leasing restrictions which shall read, in its entirety, as follows:**

**17. Leasing Restrictions.**

A. 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 Berkley Grove share the same proprietary interest in and respect of the Lots and the Common Areas. 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 17 shall be applicable. Except as allowed by this Article 17, residents of a Lot can only consist of the Owner(s) thereof or members of their immediate family. For purposes of this Article 17, "immediate family" is defined to be limited to an Owner(s)' parents, children, step-children, grandparents, grandchildren, step-grandchildren, husband, wife, or domestic partner.

B. "Rental" and "Lease" Defined. The "Rental Cap" as described in this Article 17 is intended to apply to all forms of non-Owner occupancies, except as specifically provided herein. For the purposes of this Article 17, "rented" or "leased," 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 Rental Cap provided in Section (C) below will not apply to any situation where a Lot is occupied by members of the Lot Owner's immediate family. This kind of "family" occupancy will not be considered to be a "rental" in the context of the Rental Cap, even though the Owner and occupants will still be subject to the remaining provisions and requirements of this Article 17.

Any Lot owned by a Trustee or by a Fiduciary shall not be deemed to be a rental if the resident is the Trustee, the Fiduciary of an Estate, or a beneficiary of the Trust or Estate. The Trustee or Fiduciary shall submit a certificate to the Association indicating who is authorized to reside in the Lot.

Any Lot owned by a corporate entity shall submit a certificate of designated representative to the Association. This certificate will indicate both who is authorized to vote on behalf of the corporation as well as who is authorized to reside in the Lot. The resident and the designated representative for voting purposes must be the same individual. If they are not the same, the Lot will be deemed a rental under the terms of this Article 17.

C. Limits on the Number of Leased Lots (“Rental Cap”). No more than 5% 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 17. 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 sixty (60) 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 or Managing Agent. If the Owner does not enter into a new lease agreement and provide a copy of such lease to the Board or Managing Agent within sixty (60) 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 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 Berkley Grove 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.

D. Effective Date of “Rental Cap” on Existing Rentals. Within thirty (30) days after the date on which this Article 17 is recorded in the Office of the Recorder of Hamilton County (the “Recording Date”), the Board of Directors or Managing Agent shall provide written notice to all Owners setting forth the Recording Date and the mailing address of the Association. Within sixty (60) days after the Recording Date, the Owner of any rented or leased property shall deliver a copy of each executed lease of such Owner’s Lot or Lots to the Board of Directors of the Association at the address shown in the notice of the Recording

Date. The Rental Cap shall become effective sixty (60) days after the Recording Date and apply to all leased or rented properties within Berkley Grove at that time.

E. 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 17. Such decision shall be at the sole discretion of the Board. Examples of an undue hardship include:

- (i) death, dissolution or liquidation of an Owner;
- (ii) divorce or marriage of an Owner;
- (iii) necessary relocation of the residence of an Owner to a point outside of a fifty (50) mile radius of the perimeter of Berkley Grove due to a change of employment or retirement of at least one (1) of such Owners;
- (iv) necessary relocation of the residence of an Owner due to mental or physical infirmity or disability of at least one (1) of such Owners;
- (v) other similar circumstances.

F. General Lease Conditions.

- (i) 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. Owners may not lease, rent, or otherwise operate their home and Lot on a hotel, transient or short-term rental basis. For the purpose of this Section (F), “short-term rental” is defined as 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 home and Lot or portion thereof to an occupant and collects consideration for the rental from the occupant (i.e., Airbnb or VRBO).
- (ii) 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 or the Managing Agent by the Owner within sixty (60) days after execution.
- (iii) No portion of any Lot other than the entire Lot shall be leased for any period.

- (iv) No subleasing shall be permitted.
- (v) 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.
- (vi) 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.
- (vii) 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.
- (viii) 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.
- (ix) Owners must provide the Board of Directors or Managing Agent 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 or Managing Agent with the Owner's contact information such as address and phone number.
- (x) 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.

G. 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.

H. Violations. Any lease or attempted lease of a Lot in violation of the provisions of this Article 17 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.

I. Institutional Mortgagees. The provisions of this Article 17 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 17.

J. 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 17 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 17, 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 17 and this Section (J), 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.

K. Three Year Waiting Period; Hardship Exceptions and Waiver. For a period of at least three (3) 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 17 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 (K), if an Owner wishes to lease a Lot prior to the end of the three-year waiting period, the Owner may apply to the Board of Directors for a hardship exception and waiver as described in Section (E) above.

Acceptance and Ratification. The acceptance of a deed of conveyance or the act of occupancy of any Lot in Berkley Grove shall constitute a ratification of this Article 17 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 within the Berkley Grove as though such provisions were recited and stipulated a length in each and every deed, conveyance, mortgage, or lease.

Certification. The undersigned officers of the Association hereby represent and certify that all requirements for and conditions precedent to this Amendment to the Declaration of Covenants and Restrictions for Section One, Section Two and Section Three, hereby amending the same have been fulfilled and satisfied.

Executed this 7<sup>th</sup> day of September, 2023.

Berkley Grove Property Owners' Association, Inc., by:

  
\_\_\_\_\_  
Harrison Custer, President

Attest:

  
\_\_\_\_\_  
Pamela Wise, Secretary

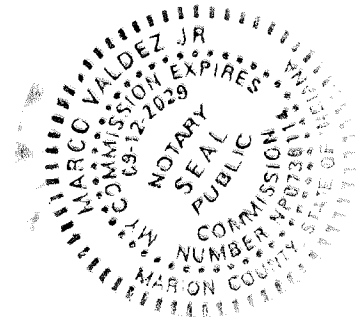
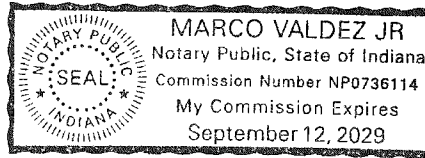
STATE OF INDIANA            )  
  ) SS:  
COUNTY OF Hamilton )

Before me, a notary public, in and for said County and State, personally appeared Harrison Custer and Pamela Wise, the President and Secretary, respectively, of Berkley Grove Property Owners' 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 7<sup>th</sup> day of September, 2023.

Marco Valdez Jr.  
Notary Public - Signature

Marco Valdez Jr.  
Printed

My Commission Expires: 09/12/2029                      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/ Kimberly M. Sutter.

This instrument prepared by and should be returned to: Kimberly M. Sutter., Eads, Murray, & Pugh, P.C., 9515 E. 59<sup>th</sup> St., Suite B, Indianapolis, IN 46216. (317) 536-2565.  
[Kim@IndianaHOALaw.com](mailto:Kim@IndianaHOALaw.com)