

Receipt:# 861857

CICPC \$46.00

Return to:
SIMPLIFILE
5072 NORTH 300 W

PROVO UT 84604

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Recorded on: 9/13/2022 9:35 AM

By: CAC, Deputy

Office of the County Recorder
Dakota County, Minnesota
Amy A. Koethe, County Recorder

FIRST AMENDMENT TO AMENDED AND RESTATED DECLARATION

Common Interest Community No. 651

TIMBERSHORE HOME OWNERS' ASSOCIATION

This First Amendment to the Amended and Restated Declaration of **Timbershore Home Owners' Association** (the "**Association**") is made effective on the date of recording hereof by the Association ("Association"), with the consent of the required percentage of votes of the Units as described in the **Secretary's Affidavit** attached as Exhibit B; and

WHEREAS, there is filed of record in the office of the Dakota County Recorder the Amended and Restated Declaration of Timbershore, CIC No. 651, ("**Declaration**") dated April 4, 2019 and filed as Document No. 3299808 on April 9, 2019 against the real property ("**Property**") described in Exhibit A, attaches hereto; and

WHEREAS, the Association and the Owners desire to amend said Declaration in accordance with the terms of this First Amendment.

NOW, THEREFORE, the Association, with the written consent of not less than 75% of the entire membership, hereby declares that the Property and any additions thereto shall be subject to and the Members governed by the Declaration, as amended as follows:

7.5 Restrictions on the Use of the Unit:

a. **NON-OWNER OCCUPANCY RESTRICTIONS**. It is deemed to be in the long term best interest of the Association and the Owners that all Units be purchased and used for Owner-occupancy. Therefore, except as set forth below, the Association is placing a cap on the number of Residential Units which may be Non-Owner Occupied to 30 such Units of the 172 total Units and to limit the eligibility to have a Unit be Non-Owner Occupied only to Unit Owners who have continuously resided in the Unit for twelve (12) consecutive months. At the time of adoption, there are equal or fewer than 30 Non-Owner occupied Residential Units, which shall be allowed to continue to be Non-Owner Occupied as set forth herein.

(i) **Definitions**. The following provisions shall apply to the occupancy and leasing of the Units:

(1) **30 Unit Cap**: The number of total Units which may be Non-Owner Occupied at any one time, and at which point no additional Units may become Non-Owner occupied, absent a written waiver being granted by the Board. These Units do NOT include Units which are occupied by tenants of an Institutional Lender in possession following foreclosure or

occupied by tenants of an Association owned Unit, both of which occupancies are excepted from the 30 Unit Cap in Section (iii) below.

- (2) Effective Date: The date this Amendment is recorded in the Dakota County Recorder's Office.
- (3) Grandfathered Unit: A Unit which is Non-Owner Occupied at the Effective Date, and whose Owner has provided to the Association written evidence of the Non-Owner Occupancy, such as a written lease, if the occupancy be by a tenant or, if not a tenancy, such other written evidence proving the Non-Owner Occupancy was in existence on or before Effective Date, including driver's licenses, tax returns, utility statements, etc., in the name of the Non-Owner Occupant. Said information must be required by the Association within 30 days of the Effective Date (or such other period provided by the Board) for the Unit to be considered a Grandfathered Unit.
- (4) Lease, leasing, and leased: The terms lease, leasing (or other variations of the term "lease"), as used in this Amendment and the Declaration, are given their ordinary meaning and are deemed to also mean "rent," "renting," and "rented" (or other variations of the term "rent"). Money need not change hands for occupancy to be considered a lease or Non-Owner occupancy.
- (5) Non-Owner Occupant. An occupant who does not have any ownership interest in a Unit. If a Unit is owned other than by a natural person (such as a corporation, partnership, limited liability company, or trust), that Unit is deemed to be Non-Owner occupied unless the person occupying that Unit owns at least 100% interest of that entity owning the Unit, and, who also is a director, officer, partner, member, or the holder of an equivalent position of that entity/Owner, or, in the case of a trust owning a Unit, the person is a trustee, grantor, or beneficiary of the trust.
- (6) Non-Owner Occupied Unit: A Unit that is NOT occupied by at least one Owner of that Unit.
- (7) Owner-Occupied Unit. A Unit which is being occupied by an Owner of the Unit as the Owner's principal, primary residence, evidenced by the Owner claiming the same as the Owner's homestead, the Owner receiving mail at said address, the Owner's current driver's license showing said address as the Owner's residence, and prior and current

year's tax returns showing the Unit as the Owner's primary principal address. If a Unit is owned by other than a natural person (such as a corporation, partnership, limited liability company, or trust), that Unit is deemed to be Owner occupied if the person(s) occupying that Unit owns at least a with 100% interest of that entity/Owner, and, is director, officer, partner, member, or the holder of an equivalent position, of that entity/Owner, or, in the case of a Trust owning a Unit, the person is a Trustee or sole Beneficiary of the Trust.

- (ii) 12 Month Eligibility Requirement. In addition to the 30 Unit Cap, to be eligible to have one's Unit be Non-Owner Occupied, both initially and thereafter, the following conditions shall apply:
- (1) Before being eligible to have one's Unit be Non-Owner Occupied, an Owner must continuously occupy the Owner's Unit as the Owner's only principal residence for a period of not less than twelve (12) consecutive months (hereafter "12 Month Eligibility Requirement").
 - (2) A Unit owned by a corporation, Limited Liability Company, or partnership, or association, will be considered to meet the 12 Month Eligibility Requirement if a person or persons owning 100% of the corporation, LLC, or partnership at the start of the occupancy continuously occupy/occupies the Unit as his/her/their only residence for the requisite period of time. Any change in the ownership of the corporate entity shall result in a new 12 Month Eligibility Requirement period starting. Unless the 12 Month Eligibility Requirement has been met, the Unit will not be eligible to be Non-Owner Occupied.
 - (3) If the entity which owns the Unit is a Trust, the 12 Month Eligibility Requirement may be met by having the Trust's Trustee or its only Beneficiary continuously reside in the Unit for that period. Substitutions and/or changes in the occupancy by other Trustees or Beneficiaries shall result in a new 12 Month Eligibility Requirement period starting. Unless the 12 Month Eligibility Requirement has been met, the Unit will not be eligible to be Non-Owner Occupied.
- (iii) Prohibition of Units being Non-Owner Occupied Units after the 30 Unit Cap is met. If the 30 Unit Cap has been met, no additional Units may be Non-Owner Occupied unless the same is a Grandfathered Unit, or either an exception applies in accordance with Subsection (iv) below, or, the Board has granted a written temporary waiver of this provision in accordance with subsection (v) below. If the 30 Unit Cap has been met or an exception does

not apply nor a written waiver has been granted, then the Unit either must remain Owner-Occupied or be vacant.

(iv) Exceptions to 30 Unit Cap. The following occupancies shall not be considered Non-Owner Occupied Units and shall not be counted toward the 30 Unit Cap:

(1) Co-Tenancy with Owner. A Unit in which the Owner is occupying the Unit as the Owner's primary/principal residence (meaning not absent longer than three (3) consecutive weeks from the Unit without a written waiver from the Board) and which Unit Owner is occupying the Unit with another individual who occupies the entire Unit (as opposed to leasing just a room, floor, etc.) as said individual's principal residence;

(2) Lender in Possession. Tenancies which an Institutional Lender in possession of a Unit following a foreclosure proceeding by said Institutional Lender must allow to continue will not be considered to be in violation of this Section, only for as long as the existing tenant must be allowed to continue such tenancy under Section 504B.285. This exception shall not apply to holders of the Sheriff's Certificate of Sale who were not the original Institutional Lender, e.g., investors purchasing Units at mortgage foreclosure sales and/or third party creditors redeeming from such sales; and

(3) Association Owned Unit. The Association in possession of any Unit following foreclosure or following redemption as a junior lien creditor from a mortgage foreclosure or simply purchasing a Unit.

(v) Grandfathered Units. Except as set forth in Subsection (vi) below, a Grandfathered Unit shall cease to be such, and thereafter be subject to the 30 Unit Cap unless an exception applies or a waiver is granted, upon the earlier of any of the following events occurring:

(1) Such time as such Owner either sells any interest in such Owner's Unit through the use of a Contract for Deed (recorded or unrecorded) or otherwise conveys any interest in the title to the Unit or loses title involuntarily (e.g., mortgage foreclosure or cancellation of a contract for deed) to a third party. In the event the Grandfathered Owner is a corporate entity, any change in the ownership of the corporate entity shall result in the loss of the status of being a Grandfathered Owner, except as set forth in Section (vi)(3) and (4), below;

- (2) Such Owner dies, including passage of title to a joint tenant who was not an Owner of a Unit on or before the Effective Date, except as set forth below; or
 - (3) Such Owner re-occupies the Unit as the Owner's personal dwelling.
- (vi) Transfers During Non-Owner Occupancy. Grandfathered Units may continue as such until the earlier of one of the events enumerated in Subsection (v) above occurs at which point it again will be subject to the 30 Unit Cap. However, none of the following types of transfers after the Effective Date will affect the status of either a Grandfathered Unit as remaining as such:
- (1) A transfer by an individual Owner as of the Effective Date or as of the date permission is given to be a Non-Owner Occupied Unit into joint tenancy with said Owner, or from a joint tenancy into just said Owner's name, as part of the Owner's estate plan;
 - (2) A transfer by an individual Owner as of the Effective Date or as of the date permission is given to be a Non-Owner Occupied Unit to a Trust, created as part of an Owner's estate plan, in which said Owner either is the Trustee of the Trust or is the sole Beneficiary thereof during the Owner's life;
 - (3) A transfer by an individual Owner as of the Effective Date or as of the date permission is given to be a Non-Owner Occupied Unit to a corporate entity, like a corporation, partnership, or limited liability company, provided said Owner retains 100% ownership of such entity, either individually, or shares ownership thereof with said individual Owner's child(ren) or spouse. Provided, however, if any other party holds an interest in the entity, this provision shall not apply; and
 - (4) A transfer by a corporate Owner as of the Effective Date or as of the date permission is given to be a Non-Owner Occupied Unit to another corporate entity provided the ownership structure of the new entity is identical to the structure of said corporate Owner as of the Effective Date or as of the date permission is given to be a Non-Owner Occupied Unit.

The intent of these exceptions is to allow Grandfathered Unit Owners to effectuate estate planning, without having the act itself qualify as an event

enumerated under Subsection (v), above. However, when any of the events enumerated in Section (v), above otherwise does occur, the Unit no longer will be a Grandfathered Unit. For example, an individual Owner as of the Effective Date thereafter conveys the Unit to a Trust for that Owner's benefit as Beneficiary or transfers the title into a joint tenancy with another person. That initial conveyance would not affect its status as a Grandfathered Unit. However, when that Owner dies, such Owner's death would result in the Unit no longer being considered to be a Grandfathered Unit or as a Unit with permission to be Non-Owner Occupied. Even if the 30 Unit Cap is not yet met, the new Owner of the Unit (contingent beneficiary or joint tenant) would need to satisfy the 12 Month Eligibility Requirement. And, if the 30 Unit Cap has been met and there is a waiting list for Owners wanting to have their Units be Non-Owner Occupied, the new Owner would need to apply to be on said waiting list.

(vii) Board's Discretion to Grant Waiver. The Board of Directors may, in its sole discretion and upon criteria it establishes, whether generally or on a case by case basis, grant a temporary waiver of the 30 Unit Cap to the Owner of a Unit and/or the 12 Month Eligibility Requirement and grant permission to said Owner to have the Owner's Unit be Non-Owner Occupied Unit for a period it deems appropriate, but not more than 12 months, subject to the ability to extend said period in the Board's sole discretion. By way of example only, permission to waive the provisions of this Section may be granted upon said Unit Owner being: transferred more than 150 miles away by the Owner's employer, accepted for an out-of-state educational program, the Owner being placed in a medical or long-term care facility (upon written proof of the required stay), the Owner is or becomes a member of the United States military services and is transferred out of the Minneapolis/St. Paul area by reason of active military service. In granting such waiver, the Board may impose additional conditions upon the Non-Owner Occupancy, including but not limited to requiring advance payment of monthly assessments, and/or evidence of the reasons supporting the request for the waiver, or evidence that the Unit is listed for sale, etc.

(viii) Mandatory Obligations for all Grandfathered Units and Non-Owner Occupied Units. The following conditions apply to all Non-Owner Occupied Units:

- (1) Owner shall provide to the Association Owner's contact information, including Owner's address, telephone number(s) and email address(es), and any changes thereto, and of the name(s) of his, her, or its tenant(s) or Non-Owner Occupants, and contact information such as telephone numbers and/or email addresses;

- (2) The Non-Owner Occupancy or lease arrangement permitted by this Section shall be in writing and shall provide that the terms of the occupancy/tenancy are subject in all respects to the provisions of this Declaration, the Bylaws and Articles of Incorporation of the Association and to any Rules and Regulations established by the Board of Directors (hereafter "Governing Documents"). Even if the terms of said occupancy have not been reduced to writing, the occupancy is subject to the terms of this Section;
- (3) Any Non-Owner Occupancy or lease arrangement permitted by this Section shall contain the agreement of the occupant/lessee to be bound by the terms of such Governing Documents and shall provide that any failure by the occupant/lessee to comply with the terms of such documents or rules shall be a default under the occupancy or lease or Non-Owner Occupancy agreement, entitling the Owner to evict the Non-Owner Occupant/tenants, and in certain instances, allow the Association to evict the Non-Owner Occupants/tenants;
- (4) A Non-Owner Occupied Unit shall not be leased other than for a period of at least twelve (12) months;
- (5) No lease shall be for hotel or transient purposes;
- (6) A Non-Owner Occupied Unit shall not be subleased;
- (7) Every Non-Owner Occupancy arrangement or lease shall be in writing;
- (8) If the Non-Owner Occupied Unit is to be leased, the Association shall receive from the Owner of the Non-Owner Occupied Unit the following prior to occupancy for every new tenancy or tenant:
 - (a) A copy of the fully-signed lease (and all amendments, modifications, renewals, or extensions thereof);
 - (b) A copy of each then current license, permit, or similar document (if any be required) issued by the City of Eagan, if any (the "City") to the Owner of the Non-Owner Occupied Unit and which the City requires that Owner to have as a condition of the leasing;
 - (c) A copy of a then current rental registration form that has been completed and submitted by the Owner to the City, if required;

- (9) Use of an unrecorded contract for deed will be considered to be a lease by non-Grandfathered Units and a violation of the 30 Unit Cap. For Grandfathered Units, use of an unrecorded or recorded Contract for Deed will be treated as a conveyance of the Unit, resulting in the Unit no longer qualifying as a Grandfathered Unit. Use of a recorded Contract for Deed with a purchase price greater than \$50,000 of the Unit's appraised value, or with terms similar to a lease, will be subject to further investigation by the Association and may be treated as a lease if there is reason to believe the same is a lease; and
- (10) If requested by the Association, the Owner and Non-Owner Occupant shall sign an Assignment of Rents, so that if the Owner's account becomes delinquent, the Association may provide a copy of said Assignment to the Owner's Non-Owner Occupant so as to have any rent due paid to the Association.
- (ix) Violations/Fines. In addition to all other remedies available to the Association under the Governing Documents, the following remedies are available to the Association with regard to Non-Owner Occupied Units, whether a lease exists, including Grandfathered Units, and including Units where the Owner is attempting to have the same be Non-Owner Occupied in violation of the 30 Unit Cap:
- (1) Violations by Owners and Authorized Non-Owner Occupants. In addition to the powers defined in subsections (3) and (4), below, fines for violations of the provisions of the governing documents and statutes by Non-Owner Occupants shall be treated in the same manner as fines for Owner Occupants. In the event an Owner requests an opportunity to be heard relating to such fine, the Owner must appear at the hearing, either with or without the Non-Owner Occupants. Failure of the Owner to appear at said hearing will result in cancellation thereof.
- (2) The Owner shall be responsible for all attorney's fees and costs incurred by the Association as a result of such violation by an Owner of the Unit and incurred by the Association to pursue the Association's authority and remedies under this Section, and any other provision of this Declaration. Such attorney's fees and costs shall be the personal obligation of that Owner to the Association and shall be a lien in favor of the Association and against the Unit being leased by that Owner.
- (3) The Association will have the power to evict Non-Owner Occupants of Units not qualifying as a Grandfathered Unit, Units not qualifying as

an exception to the 30 Unit Cap, Units not having been granted a written waiver of the 30 Unit Cap, or Units found no longer to be eligible to be a Non-Owner Occupied Unit. Each Owner hereby authorizes and appoints the Board of Directors of the Association as the attorneys-in-fact for that Owner for the commencement and prosecution of such eviction proceedings in the name of the Association and/or on behalf of each such Owner for unauthorized occupancies. The Association may, but is NOT REQUIRED to provide an opportunity to be heard for an Owner who is allowing his/her/their Unit to be Non-Owner Occupied in violation of this Section before commencing an eviction action.

- (4) In addition to assessing fines as described above, in the event Non-Owner Occupants are found to have violated the terms and/or conditions of the Governing Documents and Rules and Regulations more than four (4) times in any twelve (12) month period, the Association may commence eviction proceedings against the Non-Owner Occupant(s) after providing the Unit Owner with notice of its intention to evict said Non-Owner Occupants, and providing said Unit Owner with the ability to request an opportunity to be heard in a timely manner. In the event an Owner requests an opportunity to be heard relating to such eviction, the Owner must appear at the hearing, either with or without the Non-Owner Occupants. Failure of the Owner to appear at said hearing will result in cancellation thereof. Each Owner hereby authorizes and appoints the Board of Directors of the Association as the attorneys-in-fact for that Owner for the commencement and prosecution of such eviction proceedings in the name of the Association and/or on behalf of each such Owner.

- (x) Rules and Regulations. Notwithstanding anything to the contrary herein, the Board of Directors of the Association shall have the right to allow waivers of the provisions of this Section in its absolute discretion in appropriate circumstances. The Board of Directors shall make Rules and Regulations from time to time implementing the provisions of this Section, including but not limited to assessing fines for any violation of this Section or any violation of such Rules and Regulations regarding the Non-Owner Occupancy or leasing of Units that may be adopted by the Board of Directors.

- (xi) Prohibition on Hotel or Transient Occupancy and/or Airbnb or VRBO. No Unit, whether Owner Occupied or Non-Owner Occupied shall be leased or occupied for transient or hotel purposes or used for Airbnb, VRBO or Craig's List sharing/exchanges. Any occupancy which includes services customarily

COMMON INTEREST COMMUNITY NO. 651

TIIMBERSHORE HOME OWNERS ASSOCIATION

EXHIBIT A TO AMENDED AND RESTATED DECLARATION

LEGAL DESCRIPTION OF PROPERTY SUBJECT TO DECLARATION

Lots 1 through 4, Block 1;
Lots 1 through 4, Block 2;
Lots 1 through 4, Block 3;
Lots 1 through 4, Block 4;
Lots 1 through 4, Block 5;
Lots 1 through 4, Block 6;
Lots 1 through 4, Block 7;
Lots 1 through 4, Block 8;
Lots 1 through 4, Block 9; and
Lots 1 through 4, Block 10,

Timbershore

Lots 1 through 4, Block 1;
Lots 1 through 4, Block 2;
Lots 1 through 4, Block 3; and
Lots 1 through 4, Block 4,

Timbershore Second Addition

Lots 1 through 4, Block 1;
Lots 1 through 4, Block 2;
Lots 1 through 4, Block 3;
Lots 1 through 4, Block 4;
Lots 1 through 4, Block 5;
Lots 1 through 4, Block 6;
Lots 1 through 4, Block 7;
Lots 1 through 4, Block 8;
Lots 1 through 4, Block 9;
Lots 1 through 4, Block 10;
Lots 1 through 4, Block 11;
Lots 1 through 4, Block 12; and

Lots 1 through 4, Block 13,

Timbershore Third Addition

Lots 1 through 4, Block 1;

Lots 1 through 4, Block 2;

Lots 1 through 4, Block 3;

Lots 1 through 4, Block 4;

Lots 1 through 4, Block 5;

Lots 1 through 4, Block 6;

Lots 1 through 4, Block 7;

Lots 1 through 4, Block 8;

Lots 1 through 4, Block 9;

Lots 1 through 4, Block 10;

Lots 1 through 4, Block 11;

Lots 1 through 4, Block 12;

Lots 1 through 4, Block 13,

Lots 1 through 4, Block 14;

Lots 1 through 4, Block 15; and

Lots 1 through 4; Block 16,

Timbershore Fourth Addition

All in Dakota County, State of Minnesota

COMMON ELEMENTS ARE AS FOLLOWS

Outlot A, Timbershore;

Outlot A, Timbershore Second Addition; and

Outlots A and B, Timbershore Third Addition

all in Dakota County, State of Minnesota

