



**THIRD AMENDMENT TO THE
DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR MCCORD POINTE**

**Cross-Reference Inst. No. 201900184; 201903207; 20193208; 201904769; 202106110;
202212092; and 202301241**

**THIRD AMENDMENT TO THE DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS FOR MCCORD POINTE**

This Third Amendment to the Declaration of Covenants, Conditions and Restrictions for McCord Pointe was executed as of the date set forth below.

WITNESS THE FOLLOWING:

The McCord Pointe subdivision ("McCord Pointe") located in Hancock County, Indiana was established by a certain "Declaration of Covenants, Conditions and Restrictions for McCord Pointe" ("Declaration") which was filed January 7, 2019, as Instrument No. 201900184 with the Hancock County Recorder; and as supplemented by the First Supplemental Declaration to the Declaration of Covenants, Conditions and Restrictions for McCord Pointe recorded on April 15, 2019 as Instrument No. 201903207 in the Records; as further supplemented by the Second Supplemental Declaration to the Declaration of Covenants, Conditions and Restrictions for McCord Pointe recorded on April 15, 2019 as Instrument No. 201903208 in the Records (as amended by the First Amendment to Second Supplemental Declaration of Covenants, Conditions and Restrictions for McCord Pointe recorded on May 28, 2019 as Instrument No. 201904769 in the Records); as further supplemented by the Third Supplemental Declaration to the Declaration of Covenants, Conditions and Restrictions for McCord Pointe recorded on April 15, 2021 as Instrument No. 202106110 in the Records; and as amended by the First Amendment to Declaration of Covenants, Conditions and Restrictions for McCord Pointe recorded on September 8, 2022 as Instrument No. 202212092 in the Records; and as amended by the Second Amendment to the Declaration of Covenants, Conditions and Restrictions for McCord Pointe recorded on February 9, 2023 as Instrument No. 202301241 (collectively, the "Declaration");

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

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

All Lot Owners within McCord Pointe are members of the Association; and

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

Article IX, Section 9.2 of the Declaration provides that it may be amended at any time by approval of the Owners of at least 75% of the Lots; and

The Owners of more than 75% of the Lots have approved the following amendments, with the written approvals being a part of the Association's permanent records. The voting threshold amendment received approval of 75.24% (237/315) of the Lots. The Architectural

Committee amendment received approval of 80% (252/315) of the Lots. The leasing restrictions received approval of 80.63% (254/315) of the Lots.

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

1. **VOTING THRESHOLDS:** The second paragraph of Article IX, Section 9.2, is hereby amended to make the process for amendments easier to adopt the second paragraph shall be replaced with the following; with the remainder of Section 9.2 to remain as set forth in the Declaration:

This Declaration may be amended or changed, in whole or in part, at any time upon approval by the Owners obtained by affirmative vote, by written consent, by any procedure recognized under Indiana law, including written ballot (pursuant to the Indianan Nonprofit Corporations Act of 1991, as amended), or any combination thereof, representing at least sixty percent (60%) of the Members entitled to vote thereon. Any amendment to be effective must be recorded in the public records of the county in which this Declaration was recorded.

2. **ARCHITECTURAL COMMITTEE:** The second paragraph of Article VI, Section 6.2, is amended to require Board approval before the Architectural Committee can hire any professional services to advise them. The second paragraph shall be replaced with the following; with the remainder of Section 6.2 to remain as set forth in the Declaration:

The regular term of office for each member of the Committee shall be one year, coinciding with the fiscal year of the Association. Any Committee member appointed by the Board may be removed with or without cause by the Board at any time by written notice to such appointee, and a successor or successors appointed to fill such vacancy shall serve the remainder of the term of the former member. The Committee shall elect a Chairman and Vice Chairman, and the Chairman, or in their absence, the Vice Chairman, shall be presiding officer at its meetings. The Committee shall meet upon call of the Chairman, and all meetings shall be held at such places as may be designated by the Chairman. A majority of the members of the Committee shall constitute a quorum for the transaction of business, and the affirmative vote of a majority of those present in person or by proxy at a meeting of the Committee shall constitute the action of the Committee on any matter before it. The Committee is authorized to obtain quotes and/or bids to retain services of consulting architects, landscape architects, urban designers, engineers, inspectors, and/or attorneys in order to advise and assist the Committee in performing its functions set forth herein. However, any contract for such services shall require Board approval prior to hiring or entering into any agreement or contract. Such costs associated with the use of consultants shall be considered a Common Expense, unless the Committee determines that such costs are the responsibility of the applying Owner.

3. **LEASING RESTRICTIONS**: A new Article X, Section 10.01 shall be added to the Declaration, to implement leasing restrictions in the community, which shall read as follows:

Article X. Leasing Restrictions

10.01 **Rental Ban**. Effective as of the date on which these leasing restrictions are recorded with the Hancock County, Indiana Recorder's Office, there shall be no leasing of any Residence except as otherwise stated in this Article X (herein referred to as the "Rental Ban").

(a) **"Rental" and "Lease" Defined**. For the purposes of this Article X, "rented" or "leased" (or any derivative thereof, singular or plural), as used interchangeably herein, means leased or rented or occupied, whether or not for compensation of any kind, by anyone other than an Owner of the Residence together with members of his or her household. However, the "Rental Ban" will not apply to any situation where a Residence is occupied by members of the Owner's immediate family. For purposes of this Article X, "immediate family" means the Owner's parents, children, stepparents, stepchildren, or significant other/spouse. Such "family" occupancies will not be considered rentals in the context of the Rental Ban; provided, however, the Owner and occupants will still be subject to the remaining provisions and requirements of this Article X.

Any Residence 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 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 the right to occupy the Residence.

(b) **Existing Rentals**. The "Rental Ban" shall not apply to the Owner of any Residence 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 Association, within sixty (60) days after the Recording Date, a copy of each executed lease of such Residence which is in effect as of the Recording Date ("Grandfathered Owners"). Grandfathered Owners shall not be subject to the Rental Ban but shall be subject to the remaining provisions of this Article X. However, when the existing lease expires after the Recording Date, such Residence shall immediately become subject to the Rental Ban. The failure of any Owner to deliver a copy of such pre-Recording Date lease within said sixty (60) day period shall result in said Owner's Residence being subject to the Rental Ban (from and after the date of expiration of such pre-Recording Date lease).

(c) **General Lease Conditions**. All permitted leases (i.e. Grandfathered Owners), shall be in writing. No portion of any Residence other than the entire Residence shall be leased for any period. No subleasing is permitted. All leases must be made expressly

subject and subordinate in all respects to the terms of this Declaration, the By-Laws, and the Association's rules, to the same extent as if the tenant were an Owner; and shall provide for direct action by the Association against the tenant with or without joinder of the Owner. If such provision is not in the lease, it will be deemed to be in such lease. The Owner shall give copies of such legal documents to the tenants prior to the effective date of the lease.

(d) 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 provisions of the Declaration, the By-Laws, and rules and regulations.

(e) Violations. Any lease or attempted lease in violation of the provisions of this Article X is voidable at the election of the Board. In the event of a violation of this Article X, 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.

(f) Burden of Proof. If at any time a Residence is not occupied by one of the Owners thereof, there shall be a conclusive presumption that the Residence 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 that the occupancy is not in violation of this Article X, 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. For purposes of Article X, any occupancy pursuant to a rent to buy contract or similar arrangement or pursuant to any option to purchase by anyone other than the Owner shall be deemed to be a lease subject to the restrictions of this Article X. Any land contract or similar agreement must be recorded with the Hancock County Recorder's Office to be deemed valid. If such land contract is not recorded at the time of execution, it will be considered a lease for purposes of this Article X.

(g) Hardship Exceptions and Waiver. An Owner may request the Board to waive the Rental Ban if the Owner establishes to the Board's satisfaction that the Rental Ban will cause undue hardship. If the Board approves the Owner's request in writing, the Owner may rent or lease said Dwelling Unit, 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 Article X. Such decision shall be at the sole discretion of the Board and shall be subject to further conditions and limitations as the Board deems appropriate. The Board may, but is not required to, consider the following as an "undue hardship":

- i. Divorce or marriage of an Owner;
- ii. Death, dissolution or liquidation of an Owner;

- iii. Temporary relocation of the residence of an Owner to a point outside of a fifty (50) mile radius of the perimeter of the McCord Pointe community 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; or
- 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; or
- v. The Owner is a reservist in the United States Armed Forces who is called to temporary active duty, or is active-duty personnel in the United States Armed Forces who is temporarily deployed more than fifty (50) miles from the McCord Pointe community.

If an Owner desires to request an exception based upon hardship circumstances, the Owner must submit a written request describing the nature of the alleged hardship and need to rent. The Board may approve or deny such requests as it deems appropriate.

(h) Short-Term Rental. Owners may not lease, rent, or otherwise operate their Residence on a hotel, transient or short-term rental basis. 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 Residence or portion thereof to an occupant and collect consideration for the rental from the occupant (such as, but not limited to, Airbnb, Vrbo, and any similar company).

4. Except for the above, all other provisions of the Declaration shall remain unchanged.

5. 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 McCord Pointe.

6. The undersigned officers of the Association hereby represent and certify that all requirements for and conditions precedent to this Third Amendment to the Declaration have been fulfilled and satisfied.

Date: 26 Aug, 2024

McCord Pointe Homeowners' Association, Inc., by:

Robert Kruger
Robert Kruger, President

Attest:

Cindy Miller
Cindy Miller, Secretary

STATE OF INDIANA)
) SS:
COUNTY OF Hamilton)

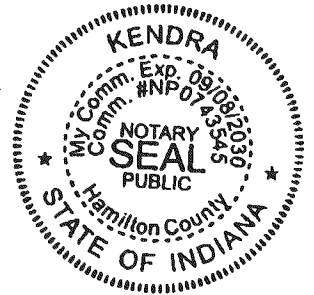
Before me, a notary public, in and for said County and State, personally appeared Robert Kruger and Cindy Miller, the President and Secretary, respectively, of McCord Pointe Homeowners' Association, Inc., an Indiana nonprofit corporation, who acknowledged execution of the within and foregoing for and 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 26th day of August, 2024.

Kendra Newcom
Notary Public - Signature

Kendra Newcom
Printed

My Commission Expires:
09/08/2030

Residence County: Hamilton



"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, Esq.

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