

Karen Johnson Davidson County
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THIS INSTRUMENT PREPARED BY:
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Ortale Kelley Law Firm
CMT Building
330 Commerce Street, Suite 110
Nashville, Tennessee 37201
(Prepared from information provided
by and at the direction of the Harborview
at Cheswicke Homeowners' Association)

**FIFTH AMENDMENT TO THE
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
HARBORVIEW AT CHESWICKE**

THIS FIFTH AMENDMENT to the Declaration of Covenants, Conditions and Restrictions for Harborview at Cheswicke ("Amendment") is made and entered into by the Lot Owners within the Harborview at Cheswicke Homeowners' Association ("Harborview" or "Association") in accordance with Article X, Section 3 of the Declaration of Covenants, Conditions and Restrictions for Harborview at Cheswicke ("Declaration") of record in Book 7471, Page 26, et seq., Register's Office for Davidson County, Tennessee; the Declaration having been amended by First Amendment to Declaration of Covenants, Conditions and Restrictions for Harborview at Cheswicke ("First Amendment"), of record in Book 7646, Page 142, et seq., said Register's Office; the Declaration having further been amended by Second Amendment to Declaration of Covenants, Conditions and Restrictions for Harborview at Cheswicke ("Second Amendment"), of record in Book 7646, Page 147, et seq., said Register's Office; the Declaration having further been amended by Third Amendment to Declaration of Covenants, Conditions and Restrictions for Harborview at Cheswicke ("Third Amendment"), of record in Book 7646, Page 149, et seq., said Register's Office; the Declaration having further been amended by Fourth Amendment to Declaration of Covenants, Conditions and Restrictions for Harborview at Cheswicke ("Fourth Amendment"), of record in Book 7732, Page 749, et seq., said Register's Office.

WITNESSETH:

WHEREAS, all capitalized terms not otherwise defined herein shall have the meanings set forth in the Declaration; and,

WHEREAS, pursuant to Article X, Section 3 of the Declaration, the Declaration may be amended after the first thirty (30) year period by an instrument signed by not less than seventy-five percent (75%) of the Lot Owners; and,

WHEREAS, the Declaration was recorded at the Register's Office for Davidson County, Tennessee on February 17, 1988; and,

WHEREAS, as evidenced by their signatures below, the President and Secretary of the Association certify that as required by Article X, Section 3 of the Declaration, seventy-five percent (75%) of the Lot Owners have signed this Amendment and as such, this Amendment shall be adopted.

NOW, THEREFORE, by these presents, Article IX, Section 23 of the Declaration is hereby amended by adding the following **new Sub-part (m)** after the existing Sub-part (l) on page 31 thereof as follows:

(m) Leasing.

(1) Definitions.

- i. **"Leasing"**. For purposes of this Declaration is defined as any short-term transient or vacation-type occupancy or the regular, exclusive monthly, quarterly or annual occupancy of a Home by any person or persons other than the Lot Owner, or any lease-purchase or similar agreement, regardless of whether the Lot Owner receives any consideration or benefit, including, but not limited to a fee, service, gratuity, or emolument.
- ii. **"Tenant"**. Means a person entitled under a rental agreement to occupy a Home to the exclusion of others.
- iii. **"Home or Homes"**. Shall mean an independently owned structure located upon a separate Lot that has been constructed for use as a Single-Family residential dwelling.
- iv. **"Transient"**. Means any right to use, occupy or possess, or the use, occupancy or possession of a Home for a period of thirty (30) calendar days or less.
- v. **"Short-term rental Unit" or "STR"** means a Home that is rented wholly or partially for a fee for a period of less than thirty (30) continuous days.
- vi. **"Single-Family"**. An individual, or two or more persons related by blood, marriage or law, or, unless otherwise required by federal or state law, a group of not more than three unrelated persons living together in a Home.
- vii. **"Biological Unit Owner Heir" or "Biological Heir"** Means the biological or legally adopted children or grandchildren of a Lot Owner; the parent(s), of a Lot Owner; the sisters, brothers, nieces or nephews of a Lot Owner; the step-parent and step-sister or step-brother of a Lot Owner.

(2) Lease Restriction and Exceptions

- (a) **Occupancy Requirement.** All new Lot Owners of a Home who become a Lot Owner subsequent to the date of this Amendment, shall own and occupy such Home as the

Lot Owner's primary place of residence for the immediate twenty-four (24) consecutive months after the date of purchase or other acquisition of title, as a prerequisite to being eligible to lease such Home unless such Lot Owner submits and receives a written hardship exception in accordance with part (c) below.

- (b) With the exception of Leasing which may be approved by the Board from time to time due to hardship as defined in part (c) below, and Excluded Parties defined in Paragraph 4 below, under no circumstances shall the Board approve any lease which will cause the total number of leased Homes to exceed twenty-five (25) of the combined total of Homes at Harborview. Failure of the Board to strictly comply with this or any other provision within this Amendment, shall not act as a waiver of its right to do so at any time in the future.
- (c) Hardship Exceptions. In addition to the twenty-five (25) Home restriction in sub-part (b) above, and subject to all of the restrictions recited within this sub-part (m), the Board in its discretion, shall be empowered to allow reasonable leasing of Homes to avoid undue hardship for reasons to include, but not limited to:

- (i) If a Lot Owner must relocate his or her place of residence and cannot, within ninety (90) days from the date that the Home was placed on the real estate market, sell the Home for at least the current appraised market value, after having made reasonable efforts to do so.
- (ii) If a Lot Owner dies and the Home is being occupied by his heirs or devisees or is being administered by his or her estate and/or surviving heirs at law;
- (iii) If the Lot Owner takes a leave of absence or is temporarily relocated a distance of fifty (50) miles or greater from the Home and intends to return to reside in the Home.
- (iv) Lot Owners who are members of the United States armed forces and are deployed for more than sixty (60) calendar days from their Home and who produce a copy of such orders to the Board as evidence of such deployment.
- (v) Homes which are inherited by any Biological Heir may be leased whether or not such Homes are occupied by a Biological Heir. Such Biological Heir shall however, be subject to the lease restrictions recited in Paragraphs (3), (5), (6) and (7) below.
- (vi) In all such hardship situations the Owner shall reapply at the end of the natural lease term for renewal of the hardship exception created herein.

Those Lot Owners who are required to demonstrate, and who have so demonstrated, that the inability to lease their Home would result in undue hardship and who have obtained the requisite written approval from the Board, may lease their Home for such duration as the Board reasonably determines is necessary to prevent undue hardship. Under no circumstances however, shall any hardship exception or renewal thereof shall be granted for more than one (1) year at a time, and the Lot Owner shall reapply for the renewal of a hardship exception no less

than sixty (60) calendar days prior to the natural expiration of the lease. If the Lot Owner makes such application for renewal of hardship exception to the Board, and does not receive a written approval of renewal hardship exception from the Board prior to the natural expiration of the lease, the hardship exception shall be presumed to be approved. The Board shall not unreasonably withhold approval.

(3) **Lease Requirements**. Such Leasing as is permitted herein, shall be subject to reasonable rules promulgated by the Board as may be adopted from time to time, and the following requirements:

- (a) All leases shall be in writing and a copy of the fully executed lease or lease summary naming all tenants and occupants, the cellular number and email address of all tenants and occupant above the age of eighteen (18) years of age, shall be filed with the Association Secretary or community manager prior to occupancy. The names and contact information provided to the Association Secretary or community manager shall only be used in the event of an emergency or to provide other notices as may reasonably need to be provided.
- (b) Lease terms shall be for no less than one (1) year.
- (c) There shall be no assignment of any lease unless such assignment is in writing and made only to those excluded transfers of ownership identified Paragraph (4)(b)(ii) below and a copy of such written assignment is provided to the Board or community manager.
- (d) There shall be no subleasing of leases except with the prior written approval of the Owner and a copy of such written sublease provided to the community manager.
- (e) No transient tenants shall be accommodated in any Home.
- (f) With the exception of those Homes which, as of the date of this Amendment, are currently being leased as STRs, no Home shall be advertised and/or used as an STR, vacation or seasonal rental, or bed and breakfast through any service such as Vacation Rental by Owner (“VRBO®”), Airbnb®, hometogo.com, or any similar short-term leasing marketing service. **The exception created in this part (f) for existing STRs shall automatically expire upon the transfer of title to such Home to any person or entity other than the person or entity listed as the Owner as of the date of recording of this Amendment.**
- (g) No Home shall be leased except in its entirety unless such Home is also occupied by the Lot Owner as a primary residence.
- (h) Tenants and occupants named in all leases shall be subject to the Declaration, By-Laws and Rules and Regulations for Harborview, all existing amendments thereto and future amendments as they may be adopted from time to time.
- (i) The Association shall be considered a third-party beneficiary of all leases and sub-leases and shall have the power to enforce all lease terms and conditions in the event the Lot Owner fails or refuses to do so.
- (j) The Board in its discretion, shall be permitted but not required to adopt a reasonable leasing fee to be charged to Lot Owners wishing to lease their Home for the purpose offsetting any damage to Common Area which is attributed to a Tenant or occupant

of a Home. If such leasing fee is so adopted, it shall be paid by the Lot Owner on or before the date of occupancy of all Tenants and occupants.

(4) Excluded Parties

- (a) **Mortgage/Deed of Trust**: With the exception of Paragraph (3) Lease Requirements section above, and Paragraphs (5), (6) and (7) below, the prohibition upon Leasing imposed by this Amendment shall not apply to any Leasing transaction entered into by the holder of any first mortgage and/or Deed of Trust on a Home who becomes the Lot Owner of the Home through foreclosure or any other means pursuant to the satisfaction of the indebtedness secured by such mortgage and/or Deed of Trust.
- (b) **Existing Lot Owners**: Subject to parts (a), (b), (c), (g), (h) and (i) of Paragraph (3) above, and Paragraphs (5), (6) and (7) below, existing Lot Owners as of the date of this Amendment may lease their Home and are effectively “grandfathered” regardless of whether allowing such existing Lot Owner leases will exceed the twenty-five (25) Home cap in Paragraph 2(b) above. The exclusion herein shall only be applicable to Lot Owners, Tenants and occupants who, as of the date of this Amendment, currently are in compliance with the existing Declaration, By-Laws, amendments thereto and Association rules and regulations and other policies for the Association.
- i. Once a Lot Owner who has enjoyed this grandfathered status, transfers ownership to any third party, his or her Home shall then be subject to all of the provisions recited within this Amendment.
 - ii. A transfer of ownership for the purposes of this part, shall expressly exclude the following transfers of ownership: transfers of title between spouses; transfers of ownership to a Trust, the beneficiary and/or trustor of which, is the Lot Owner; transfers of ownership by Lot Owners to a legal entity for tax or estate planning purposes; transfers of title by testate or intestate succession. All such transfers however, shall be subject to parts (a), (b), (c), (g), (h) and (i) of Paragraph (3) Lease Requirements above, and Paragraphs (5), (6) and (7) below.
 - iii. All existing Lot Owners who currently lease their Homes shall provide a copy of their written lease or lease summary as permitted by Paragraph 3(a) above, to the Association within thirty (30) calendar days of this Amendment. Lot Owners who currently do not lease their Home, but who may lease at a future date, shall provide a copy of the fully executed written lease agreement which shall name all tenants and occupants, to the Association management company within thirty (30) calendar days prior to tenant’s occupancy.
- (c) **Family Members**: Homes which are occupied by the children or grandchildren of a Lot Owner; Homes which are occupied by the parent or parents of a Lot Owner; and Homes occupied by aunts, uncles, sisters, brothers, nieces or nephews of the Lot

Owner, shall not be considered as Homes which are leased. Such Homes shall however, be subject to the lease restrictions recited in Paragraph (3) above and Paragraphs (5) (6) and (7) below.

- (d) **Association**: With the exception of Paragraph (3) Lease Requirements above and Paragraphs (5), (6) and (7) below, the provisions of this Amendment shall not apply to any leasing transaction entered into by the Association who becomes the Lot Owner of a Home through foreclosure of its lien in accordance with Article V, Section 9 of the Declaration, or any other means pursuant to the satisfaction of a Notice of Lien or judgment in the Association's favor.

(5) Tenants and Occupants Liable

Tenants, occupants and invitees of any Lot Owner shall be subject to and shall comply with, the Declaration, By-Laws and all amendments thereto, and all Association rules and regulations and other policies duly adopted by the Board for the Association.

(6) Rental Fine Policy

The Board shall adopt reasonable rules and regulations for the enforcement of any Leasing restriction created herein. Such rules and regulations shall include procedures for issuing notices and reasonable fines against Lot Owners in violation. All costs, including reasonable attorney's fees incurred in the enforcement of this part, shall be the responsibility of the Lot Owner. Any and all such costs and reasonable attorney's fees, together with fines created by such rules and regulations, shall be a continuing lien against the Home and shall further be the personal obligation of the Lot Owner.

Fines created by rules and regulations composed for the enforcement of this Sub-part (m), together with the costs and reasonable attorneys' fees for the enforcement thereof, shall be a charge on the land and shall be a continuing lien upon the Home against which each such fine is levied; and such fines, together with costs and reasonable attorneys' fees for the enforcement thereof, shall be the personal obligation of the person who was the Lot Owner of such Home at the time the fine(s) were levied.

(7) Tenant/Occupant Violations.

(a). Written notice shall be mailed to tenants, occupants and the Lot Owner at the last address provided by the Lot Owner to the Association, of any and all violations of the Declaration, By-Laws, Association rules and regulations and amendments thereto by such Tenant or occupant. Such written notice shall give the Lot Owner ten (10) business days to provide the Association with written evidence of the measures such Lot Owner has taken to ensure such violations by their tenant or occupant does not continue. Any violation by such

tenant or occupant of the same or similar nature within sixty (60) calendar days of the original violation, shall be considered a continuation of the previous violation. The rules and regulations adopted by the Board for the enforcement of this Sub-part (m) shall be implemented against any Lot Owner who fails to provide such written notice to the Association as required in this part or whose tenant's or occupant's actions are considered a continuation of a previous violation.

(b). Lease Termination. After the Board-adopted rules and regulations for the enforcement of this part has been implemented as a measure and prerequisite to compel the Tenant's or occupant's compliance through the Lot Owner, should such violations continue, the Association shall be entitled to file suit against such Tenant or occupant and Lot Owner for unlawful detainer, and the Association shall further be entitled to file Writs to seek possession of the Lot Owner's Home, and evict such Tenant or occupant. All costs for such action, including reasonable attorneys' fees, shall be a continuing lien and charge against such Lot Owner's Home, and be the personal obligation of such Lot Owner.

(c). Lease Termination due to Violence or Threats to Health, Safety or Welfare. Should any Tenant or occupant willfully or intentionally commit a violent act, or behave in a manner which constitutes or threatens to be a real and present danger to the health, safety or welfare or the life or property of other owners, tenants or occupants at Harborview; or creates a hazardous or unsanitary condition in their Home or within Harborview that affects the health, safety or welfare or the life or property of other owners, Tenants or occupants; or permits such acts by any person present at Harborview at the invitation of such Tenant or occupant, the Association shall, on behalf of the Lot Owner, be entitled to exercise all of the remedies and shall comply with all of the requirements of Tenn. Code Ann. § 66-28-517 as the same may be amended from time to time, and the Association shall further be entitled to file suit against such tenant and/or occupant for unlawful detainer seeking eviction and shall be entitled to file Writs seeking possession of the House on behalf of the Lot Owner.

All costs incurred by this part, together with reasonable attorneys' fees for the enforcement thereof, shall be a charge on the land and shall be a continuing lien upon the Lot and Home against which such costs and reasonable attorney's fees were incurred; and such costs, together with reasonable attorneys' fees, shall be the personal obligation of the person who was the Lot Owner of such Home at the time the fine(s) were levied.

NOW, THEREFORE, by these presents, Article IX of the Declaration is hereby amended by adding the following **new Sub-part (n)** after the newly added Sub-part (m) above, as follows:

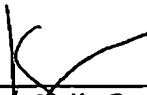
(n) Lien Upon Foreclosure Proceeds. Upon the foreclosure of a first mortgage or deed of trust, the foreclosure and the sale shall be subject to the Association's lien created in Article V, Section 1 of the Declaration, and the Association shall be entitled to proceeds from the

foreclosure sale to satisfy the lien for common expenses and assessments which would have become due in the absence of acceleration during the six (6) months immediately preceding institution of such foreclosure, but not exceeding one percent (1%) of the maximum principal indebtedness of the lien secured by the first mortgage or deed of trust.

Only the changes and amendments made by this Fifth Amendment to the Declaration of Covenants, Conditions and Restrictions for Harborview at Cheswicke shall be changed. All other terms, conditions, restrictions and provisions of the Declaration and previous amendments thereto, shall survive and continue to remain in full force and effect.

IN WITNESS WHEREOF, the undersigned have executed this instrument as of this the 25 of May, 2021.

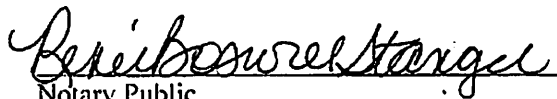
**HARBORVIEW AT CHESWICKE
HOMEOWNERS' ASSOCIATION**

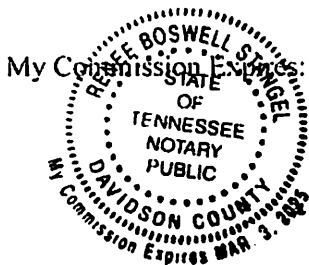

By: Kelly Baden
Its: President

STATE OF TENNESSEE)
COUNTY OF DAVIDSON)

Before me, a Notary Public in and for the State and County aforesaid, personally appeared **Kelly Baden** with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon his oath, acknowledged herself to be the President of Harborview at Cheswicke Homeowners Association, and that she as such President, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the Association by herself as such President.

Witness my hand and official seal at Nashville, Davidson County, Tennessee, this 25 day of May, 2021.

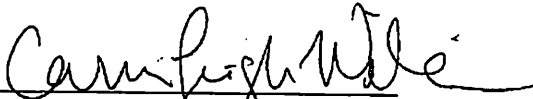

Notary Public



**AFFIDAVIT OF SIGNATURES FOR AMENDMENT
BY
SECRETARY OF HARBORVIEW AT CHESWICKE HOMEOWNERS' ASSOCIATION**

The undersigned, Carrie Leigh Willis, Secretary of Harborview at Cheswicke Homeowners' Association, certifies and affirms that in accordance with Article X, Section 3 of the Declaration of Covenants, Conditions and Restrictions for Harborview at Cheswicke, the signatures of not less seventy-five percent (75%) of the Lot Owners are attached to this Amendment and as such, this Amendment shall be adopted.

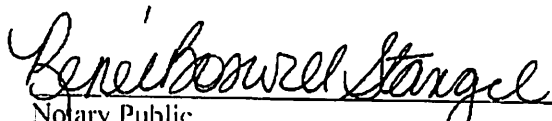
HARBORVIEW AT CHESWICKE
HOMEOWNERS' ASSOCIATION


By: Carrie Leigh Willis
Its: Secretary

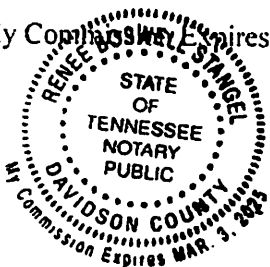
STATE OF TENNESSEE)
COUNTY OF DAVIDSON)

Before me, a Notary Public in and for the State and County aforesaid, personally appeared **Carrie Leigh Willis** with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon her oath, acknowledged herself to be the Harborview at Cheswicke Homeowners' Association, and that she as such Secretary, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the Association by herself as such Secretary.

Witness my hand and official seal at Nashville, Davidson County, Tennessee, this 25th day of May, 2021.


Notary Public

My Commission Expires:



IN WITNESS WHEREOF, the undersigned, representing one (1) of the required seventy-five percent (75%) of the votes of the Lot Owners in Harborview of Cheswicke Homeowners' Association, have executed this instrument as of this the ____ of _____, 2020.

Owner (Signed)

Owner (Printed)

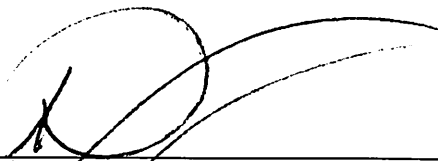
Address

75% of the homeowners signed these pages.

For a complete copy of this filing, please contact the Recorder of Deeds office for Davidson County.

Tennessee Certification of Electronic Document

I, Scott D. Weiss, do hereby make oath that I am a licensed attorney and/or the custodian of the original version of the electronic document tendered for registration herewith and that this electronic document is a true and exact copy of the original document executed and authenticated according to law on August 3, 2021.



Affiant Signature

8/3/21

Date

State of TENNESSEE

County of DAVIDSON

Sworn to and subscribed before me this 3rd day of August, 2021.



Notary's Signature

MY COMMISSION EXPIRES: 05/05/2025

NOTARY'S SEAL

