



# KAMAN & CUSIMANO<sup>LLC</sup>

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March 31, 2022

Birkdale Village Condominium  
c/o Carlene McCullough, Community Association Manager  
Towne Properties-Dayton  
6540 Centerville Business Parkway  
Centerville, Ohio 45459

Re: Occupancy Restriction, Cost of Enforcement,  
Improvements, Electronic Notice, Voting, and  
Meeting, and Indemnification Amendments

Dear Ms. McCullough:

Enclosed, please find the *original*, fully executed and recorded Amendments to the Declaration of Condominium Ownership for Birkdale Village Condominium. The Amendments were filed with the Montgomery County Recorder's Office on March 11, 2022, at Instrument No. 2022-00017524 and became binding and effective on the date they were filed. Please keep the original Amendments in the Association's *permanent* file.

The Board must notify every unit owner that the Amendments have passed and been filed for record with the County. The Board's notice should, at a minimum, indicate the date the Amendments were recorded and the County's Instrument number. The Board may send the notice by regular U.S. mail, hand delivery, or, for those owners who have opted into electronic communications, by email.

Along with the notice to the owners, the Board can include a copy of the recorded Amendments, especially when being sent by email, so that owners are more likely to pass the Amendments on to future buyers. Alternatively, the Board may indicate how owners can obtain a copy of the recorded Amendments, such as by requesting a copy from the Association, or by obtaining a copy directly from the Montgomery County Recorder's Office.

Now that the Electronic Notice, Voting, and Meeting Amendment has been recorded with the County, there are a number of steps the Board will need to implement as authorized by the amendment language and when preparing for a future annual meeting or other election meeting:

- 1) Identify the owners who will receive Association notices/communications electronically and owners will receive notices via regular mail. Only owners that opt in will receive meeting notices electronically.
- 2) Schedule a Board meeting to make decisions on the following:
  - a. Determine if the meeting will be conducted in person or virtually or both. If it will be held virtually, the reason or purpose for not scheduling an in person meeting must be noted in the Board meeting minutes.
  - b. Decide if voting will be conducted in person or by proxy, electronically/by mail, or a combination of the methods.
  - c. Appoint a nominating committee or decide the Board will serve as a nominating committee and establish a deadline for when nominations must be made.
  - d. Determine the date of the meeting and the date/time when all ballots must be received.
- 3) Inform owners the date when nominations are open and the date when nominations need to be submitted by (must be received prior sending the meeting notice).
- 4) Send owners the meeting notice at least 15 days before the meeting. If the meeting will be virtual, the hyperlinks, login or any other pertinent information necessary for the owner to attend virtually will need to be included in the meeting notice.
- 5) If there are more nominated candidates than there are vacancies, and if any owners are voting by mail-in ballot, enclose the ballot in the same mailing as the meeting notice and owners must submit the ballots back to the Association using the two-envelope system to ensure secrecy of the vote.
- 6) If voting is conducted only by mail or electronically, then the Board may set the date for the ballots to be sent in prior to the meeting date. If any voting is conducted in person or by proxy at the meeting, the date on which the ballots must be received must be no earlier than the calling of ballots at the meeting.
- 7) Hold the meeting. Announce the election results at the meeting.
- 8) Send a notice of the election results to the owners within a reasonable time after the meeting.

Now that the Amendments have been recorded and delivered to the Association, our work on this matter is complete and I have closed our file accordingly. It has been my pleasure to work together with the Association on this matter.

Should you or any of the Board members wish to further discuss this matter, please do not hesitate to telephone me.

Sincerely yours,



KATELYN R. KAMAN

KRK:mml

Enclosure

cc: All Board members (via electronic mail only)

NO TRANSFER  
11:53:28 3/11/2022  
Reg DT03 Receipt Cashier SR  
Montgomery County Auditor  
Karl L. Keith

LABEL NBR: 1 Type: DEE  
Kind: SPECIAL INSTRUMENT (DEED)  
Recorded: 03/11/2022 at 12:31:35 PM  
Fee Amt: \$178.00 Page 1 of 20  
Montgomery County, OH  
Brandon C. McClain Recorder  
File: **2022-00017524**

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AMENDMENTS TO THE  
DECLARATION AND BYLAWS CREATING AND ESTABLISHING  
A PLAN FOR CONDOMINIUM OWNERSHIP  
FOR  
BIRKDALE VILLAGE CONDOMINIUM

PLEASE CROSS MARGINAL REFERENCE WITH THE DECLARATION AND BYLAWS CREATING AND ESTABLISHING A PLAN FOR CONDOMINIUM OWNERSHIP FOR BIRKDALE VILLAGE CONDOMINIUM RECORDED AT COND-03-083405 OF THE MONTGOMERY COUNTY RECORDS.

PLAT MAP RECORDED AT PLAT BOOK 190, PAGE 17 THRU 17E OF THE MONTGOMERY COUNTY RECORDS.

DL

**AMENDMENTS TO THE  
DECLARATION AND BYLAWS CREATING AND ESTABLISHING  
A PLAN FOR CONDOMINIUM OWNERSHIP FOR  
BIRKDALE VILLAGE CONDOMINIUM**

**RECITALS**

- A.** The Declaration Creating and Establishing a Plan for Condominium Ownership for Birkdale Village Condominium (the “Declaration”) and the Bylaws of Birkdale Village Condominium Association (the “Bylaws”), attached to and made part of the Declaration, were recorded at Montgomery County Records, COND-03-083405.
- B.** The Birkdale Village Condominium Association (the “Association”) is a corporation consisting of all Unit Owners in Birkdale Village Condominium and as such is the representative of all Unit Owners.
- C.** Declaration Article XIX, Section 1 authorizes amendments to the Declaration and Bylaws.
- D.** Unit Owners representing at least 75 percent of the Association’s current voting power have executed instruments in writing setting forth specifically the matter to be modified (the “Amendments”).
- E.** As of February 2, 2022, Unit Owners representing 86.54 percent of the Association’s voting power have signed and delivered to the Association written consents, along with powers of attorney, in favor of Amendment A and authorizing the Association’s officers to execute Amendment A on their behalf.
- F.** As of February 2, 2022, Unit Owners representing 84.62 percent of the Association’s voting power have signed and delivered to the Association written consents, along with powers of attorney, in favor of Amendments B and E and authorizing the Association’s officers to execute Amendments B and E on their behalf.
- G.** As of February 2, 2022, Unit Owners representing 78.85 percent of the Association’s voting power have signed and delivered to the Association written consents, along with powers of attorney, in favor of Amendment C and authorizing the Association’s officers to execute Amendment C on their behalf.
- H.** As of February 2, 2022, Unit Owners representing 76.92 percent of the Association’s voting power have signed and delivered to the Association written consents, along with powers of attorney, in favor of Amendment D and authorizing the Association’s officers to execute Amendment D on their behalf.

I. Attached as Exhibit A is a certification of the Association's President and Vice President stating that the Amendments were duly adopted in accordance with the Declaration provisions in all material respects.

J. The Association has complied with the proceedings necessary to amend the Declaration and Bylaws, as required by Chapter 5311 of the Ohio Revised Code and the Declaration and Bylaws, in all material respects.

### **AMENDMENTS**

The Declaration Creating and Establishing a Plan for Condominium Ownership for Birkdale Village Condominium and the Bylaws of Birkdale Village Condominium Association are amended by the following:

#### **AMENDMENT A**

**INSERT a new DECLARATION ARTICLE III, SECTION 2(r) entitled, "Occupancy Restriction." Said new addition, to be added to the Declaration, as recorded at Montgomery County Records, COND-03-083405, is as follows:**

(r) **Occupancy Restriction. A Person who is classified as a sex offender/child-victim offender and for whom the County sheriff or other government entity must provide community notice of the sex offender's residential address, is prohibited from residing in or occupying a Unit, and from remaining in or on the Condominium Property for any length of time. The classification of a sex offender/child-victim offender and the determination of whether notice is required is made by a court of law in accordance with the Ohio Sex Offenders Act, or similar statute from another jurisdiction as either may be amended or renamed from time to time. The Association is not liable to any Unit Owner, Occupant, or visitor of any Unit Owner, or of the Association, as a result of the Association's alleged failure, whether negligent, intentional, or otherwise, to enforce any provision of this Occupancy Restriction.**

Any conflict between this provision and any other provisions of the Declaration and Bylaws will be interpreted in favor of this restriction on the occupancy of Units. The invalidity of any part of the above provision does not impair or affect in any manner the validity or enforceability of the remainder of the provision. Upon the recording of this amendment, only Unit Owners of record at the time of the filing have standing to contest the validity of this amendment, whether on procedural, substantive, or any other grounds. Any challenge to the validity of this amendment must be brought in the court of common pleas within one year of the recording of this amendment.

### AMENDMENT B

INSERT a new PARAGRAPH to the end of DECLARATION ARTICLE XX, SECTION 2. Said new addition, to be added to the Declaration, as recorded at Montgomery County Records, COND-03-083405, is as follows:

The Board may levy reasonable enforcement assessments against any Unit Owner who, whether by their own conduct, action or inaction or the conduct, action or inaction of any occupant or guest of their Unit, violates any provision of the Declaration, Bylaws, or rules. The Board may also assess reasonable charges for any damage and for repair of the damage to the Common Elements or any other part of the Condominium Property that the Association is responsible to maintain that is caused by the conduct, action, or inaction of the Unit Owner, Occupant, or guest of a Unit Owner. The Unit Owner must pay to the Association, in addition to any other sums due, any enforcement assessments levied, any charges for damage, and all fees, costs, and expenses the Association incurs, including reasonable attorneys' fees and court costs, in connection with the enforcement of any provision of the Declaration, Bylaws, or rules. The enforcement assessments, charges for damage, fees, costs, and expenses will be levied as a special individual Unit assessment against the Unit and is the personal obligation of the Unit Owner. The Association, in addition to all other remedies available, has the right to place a lien on the estate or interest in the Unit of the Unit Owner as further explained and set forth in Declaration Article XV, Section 5.

Any conflict between these provisions and any other provisions of the Declaration and Bylaws will be interpreted in favor of this amendment regarding the cost of collection and cost of enforcement. The invalidity of any part of the above provision does not impair or affect in any manner the validity or enforceability of the remainder of the provision. Upon the recording of this amendment, only Unit Owners of record at the time of the filing have standing to contest the validity of this amendment, whether on procedural, substantive, or any other grounds. Any challenge to the validity of this amendment must be brought in the court of common pleas within one year of the recording of this amendment.

### AMENDMENT C

MODIFY the LAST SENTENCE of DECLARATION ARTICLE III, SECTION 2(o). Said modification, to be made to the Declaration, as recorded at Montgomery County Records, COND-03-083405, is as follows (deleted language is crossed-out; new language is underlined):

Notwithstanding any repair or maintenance provision contained herein to the contrary, ~~the Board may require~~, as a condition to approval, ~~that the~~ responsibility for repairing and maintaining the addition or improvement shall will be the responsibility of the requesting Unit Owner and all future Owners of that Unit.

INSERT a new DECLARATION ARTICLE III, SECTION 2(s) entitled, “Unit Owner Improvements.” Said new addition, to be added the Declaration, as recorded at Montgomery County Records, COND-03-083405, is as follows:

(s) Unit Owner Improvements. Unit Owners may not install, construct, or make any exterior alterations, additions, expansions, or improvements outside the exterior of the Unit, including those items that Unit Owners may install as outlined in Declaration Article III, Section 2(o), unless made in accordance with the requirements set forth in this Section 2(s). The individual Unit Owner is responsible for insuring, maintaining, repairing, and replacing any exterior construction, addition, expansion, alteration, or other improvement made to, or installed on, the Limited Common Elements or the Common Elements (including but not limited to any patio, deck, or areas adjacent to each Unit) by the Unit Owner or any prior Unit Owner of the Owner’s Unit (the improvements in this Section are referred to as an “Improvement”) and the Improvements are subject to the following restrictions:

(1) The Board may adopt specifications and guidelines for the modification, construction, or installation of any Improvement as it determines reasonably necessary to protect the Association.

(2) The Unit Owner must submit to the Board an architectural drawing or plan which must be strictly followed in modifying, constructing or installing the Improvement. Once approved by the Board, no deviation from the approved modification, construction or installation plan is permitted without the Board’s additional written consent.

(3) The Unit Owner agrees to indemnify, hold harmless, and defend the Association, its Board, managing agent, and other Unit Owners, against all liabilities, claims, or damages for property damage or bodily injury as well as against all claims, actions, and liabilities that may arise out of or relate to the modification, construction, installation, use, maintenance, repair, or replacement of the Improvement.



(4) In the event of any uncertainty or good faith dispute as to whether any part of the work proposed by the Unit Owner is an Improvement that the Unit Owner is responsible for, the decision of the Board will be final, provided that the decision must be consistently followed in the future.

(5) An easement to use, maintain, repair, and replace any Improvement existing as of the date of this Amendment is granted over the portion of the Condominium Property on which the Improvement is located as well as the portion of the Condominium Property reasonably necessary to access the Improvement. Upon receipt of the Board's written approval to construct or install an Improvement after the date of this Amendment, an easement is created and granted to the Unit Owner to use, maintain, repair, and replace, in accordance with this Section 2(s), the Improvement over the portion of the Condominium Property on which the Improvement is located as well as the portion of the Condominium Property reasonably necessary to access the Improvement.

(6) The Unit Owner is responsible for any damage to the Common Elements and Limited Common Elements arising from the maintenance, repair, replacement, modification, construction or installation of an Improvement. If the Board informs the Unit Owner, in writing, that any part of the Improvement is in need of maintenance, repair, or replacement, as determined by the Board, and the Unit Owner fails to cause said maintenance, repair, or replacement to be accomplished within a reasonable period of time (30 days after Board notice will be considered reasonable) the Board may cause the maintenance, repair, and replacement to be performed and charge the Unit Owner the cost thereof as a "special individual unit assessment" in accordance with Declaration Article XV, Section (3)(c).

(7) If any part of the Improvement needs, in whole or in part, to be temporarily removed to enable the Association to complete maintenance, repair, or replacement of the Condominium Property for which it is responsible, the Unit Owner will temporarily remove the required portion of the Improvement as the Association requires, at the Unit Owner's expense, within 30 days of the date of the Association's written notice, except in the case of an emergency when either the Association or the Unit owner will immediately remove the Improvement, at Unit Owner's expense, as circumstances dictate. The temporary removal will continue until

the Association notifies the Unit owner that the maintenance, repair, or replacement work is complete. Upon the receipt of the notice of completion of work, the Unit Owner may re-install the Improvement in its original location provided the re-installation fully complies with all terms and conditions of any warranty or guaranty held by the Association on or concerning the common elements or any component thereof and that it fully complies with this Declaration Article III, Section 2(s), as amended, and any specifications and guidelines adopted in accordance therewith.

(8) The Association's liability, if any, for damage caused to the Improvement, in whole or in part, including, but not limited to, possible damage caused by its removal to effectuate the maintenance, repair, or replacement of the Limited Common Elements or Common Elements, is limited to damage caused by the willful misconduct or reckless acts of the Association. In no event will the Association's liability for any damage exceed the actual cash value of the Improvement as it existed immediately prior to any such damage being incurred.

(9) Any Improvement modified, constructed, or installed prior to the recording of this Amendment with the Montgomery County Recorder's Office is "grandfathered" and permitted to remain on the Condominium Property provided that it complies with the provisions of this Section 2(s).

Any conflict between the above provisions and any other provisions of the Declaration and Bylaws will be interpreted in favor of the above terms, conditions, restrictions, and requirements for additions, expansions, alterations, or improvements made to or installed on the limited common elements and common elements, including the grant of easement for the Improvement(s). The invalidity of any part of the above provision does not impair or affect in any manner the validity or enforceability of the remainder of the provision. Upon the recording of this amendment, only Unit Owners of record at the time of the filing have standing to contest the validity of these amendments, whether on procedural, substantive, or any other grounds, provided further that any challenge must be brought in the court of common pleas within one year of the recording of this amendment.

#### AMENDMENT D

INSERT a new DECLARATION ARTICLE XX, SECTION 6 entitled, "Notices and Other Actions and Communications." Said new addition, to be added to the Declaration, as recorded at Montgomery County Records, COND-03-083405, is as follows:

**Section 6. Notices and Other Actions and Communications.** For all notices to be sent to the Association, the Board, or the Unit Owners, the following provisions apply:

(a) **Service of Notices on the Association and Board.** All notices required or permitted by the Declaration or Bylaws, to the Association or the Board, must be made in writing and sent either:

(1) by regular U.S. mail, first-class postage prepaid, or

(2) delivered in accordance with Section (c) below, to the Board President, to any two other Directors, to the Association at the address of the Condominium Property, to the Association's manager or management company, if any, the Association's statutory agent registered with the Ohio Secretary of State, or to any other address as the Board may designate by written notice to all Unit Owners.

(b) **Service of Notices on Unit Owners.** All notices required or permitted by the Declaration or Bylaws to any Unit Owner will be in writing and is deemed effectively given if it has been sent by one of the following methods:

(1) personally delivered to the Unit Owner;

(2) placed under or attached to the front or main entry door of the Unit Owner's Unit,

(3) sent by regular U.S. mail, first-class postage prepaid, to the Unit Owner's Unit address or to another address the Unit Owner designates in writing to the Board, or

(4) delivered in accordance with Section (c) below.

If there is more than one Person owning a single Unit, a notice given to any one of those several Persons is deemed to have been given personally to all of the Persons owning an interest in the Unit.

(c) **New Communication Technologies.**

(1) Due to the ongoing development of new technologies and corresponding changes in business practices, to the extent permitted or approved by the Board, as well as by Ohio and federal law, now or in the future, in addition to the methods described in Sections (a) and (b) above, the following may be accomplished using electronic mail or other transmission technology available at that time that is a generally accepted business practice:

(i) any notice required in the Declaration or Bylaws to be sent or received;

(ii) any signature, vote, consent, or approval required to be obtained; and

(iii) any payment required to be made by the Declaration or Bylaws.

(2) The use of electronic mail or other transmission technology is subject to the following:

(i) The Association may use electronic mail or other transmission technology to send any required notice only to Unit Owners, individually or collectively, who have given the Association written consent to the use of electronic mail or other transmission technology. Any Unit Owner who has not given the Association written consent to use of electronic mail or other transmission technology will receive notices, including any notice of delinquency of any payment due, by either of the methods identified in Section (b)(1)-(3), above.

(ii) For voting on matters, the Association may provide for voting by electronic mail or other electronic voting technology. However, voting for the election of Directors can be conducted by electronic mail or other electronic voting technology only to the extent, if any, as explicitly permitted and provided for in the Bylaws.

(iii) An electronic mail or transmission technology to a Unit Owner is not considered delivered and effective if the Association's

transmission to the Unit Owner fails two consecutive times, e.g. the Association receives an “undeliverable” or similar message, or the inability to deliver the transmission to the Unit Owner becomes known to the person responsible for sending the transmission. If the electronic mail or transmission is not delivered or effective, the Association will deliver the notice or other communication to the Unit Owner by either of the methods identified in Section (b)(1)-(3), above.

**DELETE BYLAWS ARTICLE III, SECTION 4** entitled, “Notice of Meetings,” in its entirety. Said deletion to be taken from the Bylaws, attached to and made part of the Declaration, as recorded at Montgomery County Records, COND-03-083405.

**INSERT a new BYLAWS ARTICLE III, SECTION 4** entitled, “Notice of Meetings.” Said new addition, to be added to the Bylaws, attached to and made part of the Declaration, as recorded at Montgomery County Records, COND-03-083405, is as follows:

**Section 4. Notice of Meetings.** Written notice of each meeting of the Unit Owners will be given by, or at the direction of, the secretary or Person authorized to call the meeting, delivered in accordance with Declaration Article XX, Section 6, as amended, at least fifteen days before the meeting, to each Member entitled to vote at the meeting. The notice will specify the place, day and hour of the meeting, and in the case of a special meeting, the specific purposes of the meeting, and in the case of special meetings called by the Unit Owners, the specific motion or motions (other than procedural) to be voted upon.

If the meeting is held via Authorized Communications Equipment, the meeting notice must include any pertinent information that is necessary to allow the Unit Owner to participate at the meeting via the Authorized Communications Equipment. “Authorized Communications Equipment,” as used in these Bylaws, means any communications equipment that is selected by the Board, in its sole discretion, that provides an electronic communication transmission, including but not limited to, by telephone, video conference, or any electronic means, from which it can be determined that the transmission was authorized by, and accurately reflects the intention and participation of the Unit Owner.

**DELETE BYLAWS ARTICLE III, SECTION 5** entitled, “Conduct of Meetings,” in its entirety. Said deletion to be taken from the Bylaws, attached to and made part of the Declaration, as recorded at Montgomery County Records, COND-03-083405.

INSERT a new BYLAWS ARTICLE III, SECTION 5 entitled, "Conduct of Meetings." Said new addition, to be added to the Bylaws, attached to and made part of the Declaration, as recorded at Montgomery County Records, COND-03-083405, is as follows:

Section 5. Conduct of Meetings. Prior to the meeting notice being sent to the Unit Owners in accordance with Bylaws Article III, Section 4, as amended, the Board will determine whether the meeting will be conducted physically so that the Unit Owners may attend in person, or by the use of Authorized Communications Equipment. If it is determined that the meeting will be held via Authorized Communications Equipment, the Board will decide if the Unit Owners have the option to attend in person or via Authorized Communications Equipment or both.

If Authorized Communications Equipment is used, the Persons utilizing the Authorized Communications Equipment must have the ability to communicate with the other participants to indicate their motion, vote, or statement, provided that the president, chair, or other Person designated by the Board moderating the meeting, may silence or mute the Authorized Communications Equipment utilized to attend the meeting, unless the Unit Owner is voting or has been recognized by the meeting chair or moderator to participate in the meeting. The meeting chair or moderator has the authority to decide and determine all procedural motions or other procedural matters to be decided at the meeting, including points of order and adjournment. The Board's purpose or reason for not conducting an in person meeting and instead having a meeting via Authorized Communications Equipment must be documented in the Board's meeting minutes.

MODIFY BYLAWS ARTICLE III, SECTION 6 entitled, "Quorum; Adjournment." Said modification, to be made to the Bylaws, attached to and made part of the Declaration, as recorded at Montgomery County Records, COND-03-083405, is as follows (deleted language is crossed-out; new language is underlined):

Section 6. Quorum; Adjournment. The Unit Owners present, either in person or by proxy, at any duly called and noticed meeting of Unit Owners providing for in person attendance or that attend by using the method of Authorized Communications Equipment, as defined in approved by the Board for meetings that are held via Authorized Communications Equipment, shall constitutes a quorum for such meeting. Ballots submitted via mail or by Electronic Voting Technology, as defined in Bylaws Article III, Section 9, also will count that Unit towards the quorum. The Board of Directors may adopt procedures and guidelines to permit the Association to verify that the Person attending, either in

person or by Authorized Communications Equipment, is eligible to vote and to maintain a record of any vote. Unit Owners entitled to exercise a majority of the voting power of Unit Owners represented at a meeting may, at any time, adjourn such meeting. If any meeting is so adjourned, notice of such adjournment need not be given if the time and place to which such meeting is adjourned are fixed and announced at such meeting.

DELETE BYLAWS ARTICLE III, SECTION 9 entitled, "Proxies," in its entirety. Said deletion to be taken from the Bylaws, attached to and made part of the Declaration, as recorded at Montgomery County Records, COND-03-083405.

INSERT a new BYLAWS ARTICLE III, SECTION 9 entitled, "Voting Methods." Said new addition, to be added to the Bylaws, attached to and made part of the Declaration, as recorded at Montgomery County Records, COND-03-083405, is as follows:

Section 9. Voting Methods. Depending on the conduct of the meeting, as determined by the Board in accordance with Bylaws Article III, Section 5, as amended, voting will be conducted via one of the following methods:

(a) Voting in Person, by Proxy, by Mail, and by Electronic Voting Technology. For meetings that are held in person and provide for physical attendance, Unit Owners may vote in person or by proxy. The Person appointed as proxy need not be a member of the Association. Each proxy will be executed in writing by the Unit Owner entitled to vote and must be returned to the Association by regular mail, hand delivery, electronic mail, or other method of delivery provided for or permitted by the Board. Every proxy will automatically cease upon conveyance of the Unit by the Unit Owner.

(b) Voting by Mail and Electronic Voting Technology. For meetings that are held via Authorized Communications Equipment, voting will be conducted by mail, through the use of Electronic Voting Technology that is approved by the Board, or both. "Electronic Voting Technology" as used in these Bylaws, means an electronic voting system that accurately and securely records the voting Unit Owner's intent to cast a ballot on a matter in the way identified by the Unit Owner, and provides for the counting of electronic votes submitted, including by means of internet, application, web, virtual, or other electronic technology. All matters to be voted on at a meeting utilizing Authorized Communications Equipment must be sent to the Unit Owners no

later than the date the meeting notice is sent to the Unit Owners in accordance with Bylaws Article III, Section 4, as amended. Voting via mail or by use of Electronic Voting Technology is considered to be voting at the meeting, as if the Unit Owner were physically present.

(c) Voting in Person, by Proxy, by Mail, and by Electronic Voting Technology. For meetings that are held in person and provide for physical attendance, the Board may decide that voting will be conducted either in person or by proxy, as provided for in this Bylaws Article III, Section 9(a) above, by mail or Electronic Voting Technology as provided for in this Bylaws Article III, Section 9(b) above, or any combination of all voting methods permitted in this Section 9.

Any ballots, regardless of method, received subsequent to the date and time the Board sets for ballots to be turned in will be held invalid. Any costs associated with voting, including mailing costs, printing, Authorized Communications Equipment and Electronic Voting Technology costs and subscriptions, are common expenses. The Board may adopt any additional regulations, procedures, or rules as may be necessary to effectuate the intent and purpose of this voting provision to provide for the use of the desired voting method.

MODIFY BYLAWS ARTICLE III, SECTION 10 entitled, "Action In Writing Without Meeting." Said modification, to be made to the Bylaws, attached to and made part of the Declaration, as recorded at Montgomery County Records, COND-03-083405, is as follows (deleted language is crossed-out; new language is underlined):

Section 10. Action In Writing Without Meeting. Any action that could be taken by Unit Owners at a meeting, (except the election of Board members, ~~which must happen at a meeting as provided by these Bylaws~~), may be taken without a meeting in accordance with the voting methods in Bylaws Article III, Section 9, as amended ~~with the affirmative vote or approval, in a writing or writings, of Unit Owners having not less than seventy five percent (75%) of the voting power of Unit Owners, or such greater proportion of the voting power as may be required by the Condominium Organizational Documents, or by law.~~ The voting records will be maintained with the books of the Association.

DELETE BYLAWS ARTICLE IV, SECTION 5 entitled, "Nomination," in its entirety. Said deletion to be taken from the Bylaws, attached to and made part of the Declaration, as recorded at Montgomery County Records, COND-03-083405.



INSERT a new BYLAWS ARTICLE IV, SECTION 5 entitled, "Nominations." Said new addition, to be added to the Bylaws, attached to and made part of the Declaration, as recorded at Montgomery County Records, COND-03-083405, is as follows:

Section 5. Nominations. Nominations for the election of Directors to be elected by the Unit Owners will be made by a nominating committee appointed by the Board or, if a committee is not appointed, by the Board itself; there will be no nominations from the floor. The nominating committee, or Board, will make as many nominations for election to the Board as it, in its discretion, determines, but no fewer than the number of vacancies that are to be filled and will verify that the nominees satisfy all qualification requirements of Bylaws Article IV, Section 4, as amended. Any Unit Owner may submit their name to the nominating committee, or Board, as a candidate, and the nominating committee, or Board, must nominate that Unit Owner if that Unit Owner satisfies all the qualifications to be a Director. If there are fewer nominees than vacancies, the nominating committee, or Board, must nominate additional Unit Owner(s) to be elected prior to the ballots being sent to the Unit Owners so that there are, at all times, a sufficient number of nominees to fill all Board vacancies that are up for election.

Prior to sending the meeting notice, the nominating committee, or Board, will establish deadlines for when a request for nominations is sent to all Unit Owners and when receipt of nominations must be obtained. Nominations must be made and received within a reasonable time period prior to the notice of any meeting where Directors are to be elected is sent in accordance with Bylaws Article III, Sections 4, as amended, so that the voting information containing all the candidates' names and an informational sheet, within size limitations determined by the Board, containing their biographical information and affirming their candidacy, can be transmitted to the Unit Owners no later than the sending of the meeting notice. The Board may adopt any additional regulations, procedures, or rules necessary to establish processes and deadlines in accordance with this nominations provision.

DELETE BYLAWS ARTICLE IV, SECTION 6 entitled, "Election," in its entirety. Said deletion to be taken from the Bylaws, attached to and made part of the Declaration, as recorded at Montgomery County Records, COND-03-083405.

INSERT a new BYLAWS ARTICLE IV, SECTION 6 entitled, "Election of Directors." Said new addition, to be added to the Bylaws, attached to and made part of the Declaration, as recorded at Montgomery County Records, COND-03-083405, is as follows:

Section 6. Election of Directors. Unless there are no more nominees than vacancies, election to the Board by the Unit Owners is by secret ballot, submitted either in person, by proxy, by mail, or by Electronic Voting Technology, as determined by the Board pursuant to Bylaws Article III, Section 9, as amended. The Association is not required to send ballots to the Unit Owners via any method if there are an equal number of nominations as there are candidates, in which case the nominated candidates will automatically be elected to the Board of Directors at the election meeting.

Regardless of the voting method, the Board must adopt rules and safeguards to determine a method by which the secrecy of the ballots are maintained for those Unit Owners while also maintaining the integrity of the voting process to ensure each Unit Owner has only exercised their allotted vote once so that any other individuals can only identify that a Unit has voted, and not how a Unit has voted. The ballots, whether electronic or written, will list the number of open seats for Directors up for election and list the names of all of the nominated candidates.

If voting by mail, ballots must be submitted within dual envelopes. One of the two envelopes must contain the ballot itself, the "Ballot Envelope." The Ballot Envelope need not be signed. The second envelope must contain the Ballot Envelope and the ballot, the "Signature Envelope." The Signature Envelope must be signed by the Unit Owner(s) voting and will be used as a record of receipt of the Unit Owner's ballot as well as to determine quorum. If the Signature Envelope is not signed by the Unit Owner(s), the ballot in the Ballot Envelope will not be counted.

For the election of Directors, the Unit Owners, or their proxies, may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration and these Bylaws. The persons receiving the largest number of votes will be elected. Unless the nominated candidates whom have received the largest number of votes agree otherwise, ties, including if there are an equal number of nominees as there are positions with different terms, will be determined by lot or flip of a coin by the chair or moderator of the meeting. Cumulative voting is not permitted.

The nominating committee, or if a nominating committee is not appointed, the Board itself (excluding any incumbent Directors who are running for re-election), is responsible for (i) confirming all nominated candidates meet the qualifications to serve as a Director, (ii) receiving and verifying any ballots that are cast in person or by mail, (iii) receiving and verifying any ballots cast using Electronic Voting Technology, (iv) counting

each ballot submitted through any voting method, and (v) verifying the results of the election by providing the ballots and results to the chair or moderator of the meeting.

The chair or moderator will announce the election results at the meeting to be reflected in the meeting minutes and the Board will ensure the election results are provided to all Unit Owners within a reasonable time after the meeting.

Any conflict between these provisions and any other provisions of the Declaration and Bylaws will be interpreted in favor of this amendment allowing the Association to use electronic communications to the extent permitted by Ohio and Federal law, establishing a method to use mail-in and electronic ballots for voting purposes, and permitting meetings to be conducted utilizing Authorized Communications Equipment. The invalidity of any part of the above provision does not impair or affect in any manner the validity or enforceability of the remainder of the provision. Upon the recording of this amendment, only Unit Owners of record at the time of the filing have standing to contest the validity of this amendment, whether on procedural, substantive, or any other grounds. Any challenge to the validity of this amendment must be brought in the court of common pleas within one year of the recording of this amendment.

#### AMENDMENT E

INSERT a new BYLAWS ARTICLE XI, "INDEMNIFICATION." Said new addition, to be added to the Bylaws, attached to and made part of the Declaration, as recorded at Montgomery County Records, COND-03-083405, is as follows:

#### ARTICLE XI

#### INDEMNIFICATION

Section 1. Indemnification of Directors, Officers, and Committee Members. The Association must indemnify and defend (as provided below): (1) any current or former Association Director, (2) any current or former Association officer, (3) any current or former Association committee member, or (4) any of said Director's, officer's, or committee member's respective heirs, executors, and administrators; against reasonable expenses, including attorneys' fees, judgments, decrees, fines, penalties, or amounts paid in settlement, actually and necessarily incurred by them in connection with the defense of any pending or threatened action, suit, or proceeding, criminal or civil, derivative or third party, to which they are or may be made a party by reason of being or having been a Director, officer, or committee member provided it is determined, in the manner set forth below, that (i) the Director, officer, or

committee member was not and is not adjudicated to have been grossly negligent or guilty of misconduct in the performance of their duty(ies) to the Association; (ii) the Director, officer, or committee member acted in good faith in what they reasonably believed to be in, or not opposed to, the Association's best interest; (iii) in any criminal action, suit, or proceeding, the Director, officer, or committee member had no reasonable cause to believe that their conduct was unlawful and is not convicted of theft or other theft-related crime including but not limited to larceny, forgery, false pretenses, fraud, embezzlement, conversion, or any conspiracy related to any theft-related crime; and (iv) in case of settlement, the amount paid in the settlement was reasonable.

The above determination required will be made by written opinion of independent legal counsel whom the Board will choose. Notwithstanding the opinion of independent legal counsel, to the extent that a Director, officer, or committee member is successful in defense of any action, suit, or proceeding, or in the defense of any claim, issue, or matter, as the Board so verifies, they must, in that event, be indemnified and reimbursed for any costs and expenses, including legal fees, incurred in the defense. Any defense the Association provides will be by legal counsel the Association's insurance carrier selects or, if not selected by the Association's insurance carrier, a majority of the Directors excluding the accused or threatened Director(s). If a majority of the Directors cannot agree on legal counsel or if all the Directors are accused or threatened in any action, the Board will appoint a special committee of three Unit Owners to select legal counsel to defend the Directors.

Section 2. Advance of Expenses. The Association may advance funds to cover expenses, including attorneys' fees, with respect to any pending or threatened action, suit, or proceeding prior to the final disposition upon receipt of a request to repay the amounts.

Section 3. Indemnification Not Exclusive; Insurance. The indemnification provided for in this Article is not exclusive but is in addition to any other rights to which any person may be entitled under the Articles of Incorporation, the Declaration, these Bylaws, or rules and regulations of the Association, any agreement, any insurance provided by the Association, the provisions of Ohio Revised Code Section 1702.12(E) and its successor statutes, or otherwise. The Association must purchase and maintain insurance on behalf of any person who is or was a Director, officer, or committee member against any liability asserted against them or incurred by them in the capacity or arising out of their status as a Director, officer, or committee member.

**Section 4. Directors, Officers, and Committee Members Liability.** The Association's Directors, officers, and committee members are not personally liable to the Unit Owners for any mistake of judgment, negligence, or otherwise, except for their own willful misconduct or bad faith. The Association's and Unit Owners' indemnification includes, but is not limited to, all contractual liabilities to third parties arising out of contracts made on the Association's behalf, except with respect to any contracts made in bad faith or contrary to the provisions of the Declaration or these Bylaws. Every contract or agreement approved by the Board and made by any Director, officer, or committee member is made only in the Director's, officer's, or committee member's capacity as a representative of the Association and has no personal liability under the contract or agreement (except as a Unit Owner).

**Section 5. Cost of Indemnification.** Any sum paid or advanced by the Association under this Article constitutes a common expense. The Board has the power and the responsibility to raise, by special assessment or otherwise, any sums required to discharge the Association's obligations under this Article; provided, however, that the liability of any Unit Owners arising out of the contract made by any Director, officer or committee member, or out of the aforesaid indemnity in favor of the Director, officer, or committee member is limited to the proportion of the total liability as said Unit Owner's pro rata share bears to the total percentage interest of all the Unit Owners as Association members.

Any conflict between this provision and any other provisions of the Declaration and Bylaws are to be interpreted in favor of this amendment for the indemnification of the Association's Directors, officers, and committee members. The invalidity of any part of the above provision does not impair or affect in any manner the validity or enforceability of the remainder of the provision. Upon the recording of this amendment, only Unit Owners of record at the time of the filing have standing to contest the validity of this amendment, whether on procedural, substantive, or any other grounds. Any challenge to the validity of this amendment must be brought in the court of common pleas within one year of the recording of this amendment.

The Birkdale Village Condominium Association has caused the execution of this instrument this 18 day of February, 2022.

**BIRKDALE VILLAGE CONDOMINIUM ASSOCIATION**

By: Robert M. Lopardo  
**ROBERT M. LOPARDO, President**

By: Stephen F. Foley  
**STEPHEN F. FOLEY, Vice President**

STATE OF OHIO )  
 )  
COUNTY OF Montgomery ) SS

BEFORE ME, a Notary Public, in and for said County, personally appeared the above-named Birkdale Village Condominium Association, by its President and its Vice President, who acknowledged that they did sign the foregoing instrument and that the same is the free act and deed of said corporation and the free act and deed of each of them personally and as such officers.

I have set my hand and official seal this 18 day of February, 2022.

Craig A Kenley  
NOTARY PUBLIC

*me*

This instrument prepared by:  
KAMAN & CUSIMANO, LLC  
Attorneys at Law  
11311 Cornell Park Drive, Suite 220  
Cincinnati, Ohio 45242  
(513) 878-1771  
ohiocondolaw.com



EXHIBIT A

CERTIFICATION OF PRESIDENT AND VICE PRESIDENT

STATE OF OHIO )  
 )  
COUNTY OF Montgomery ) SS

Robert M. Lopardo and Stephen F. Foley, being the duly elected and acting President and Vice President of the Birkdale Village Condominium Association, certify that the Amendments to the Declaration and Bylaws Creating and Establishing a Plan for Condominium Ownership for Birkdale Village Condominium were duly adopted in accordance with the provisions set forth in the Declaration for amendments in all material respects.

By: Robert M. Lopardo  
ROBERT M. LOPARDO, President

By: Stephen F. Foley  
STEPHEN F. FOLEY, Vice President

BEFORE ME, a Notary Public in and for said County, personally appeared the above-named Robert M. Lopardo and Stephen F. Foley who acknowledged that they did sign the foregoing instrument and that the same is their free act and deed.

I have set my hand and official seal this 18 day of February, 2022.

Craig A Kenley  
NOTARY

