



KAMAN & CUSIMANO LLC

COMMUNITY ASSOCIATION ATTORNEYS

Jeffrey E. Kaman, Esq., Partner
jkaman@kamancus.com
513-878-1771

4695 Lake Forest Drive, Suite 300
Cincinnati, Ohio 45242
Fax: 513-898-1221

May 22, 2024

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

Re: SB61 – Ohio Condominium Act Amendments

Dear Ms. McCullough:

Enclosed, please find the *original*, fully executed and recorded Amendments to the Declaration of Condominium Ownership for Birkdale Village Condominium Association. The amendments were filed with the Montgomery County Recorder's Office on May 10, 2024, at Instrument No. 202400024084. The amendments 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, any owner who has provided the Association with an email address.

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 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,



JEFFREY E. KAMAN

JEK: cmc

Enclosure

cc: All Board members (via electronic mail only)

LABEL NBR: 1 Type: DEE
Kind: SPECIAL INSTRUMENT (DEED)
Recorded: 05/10/2024 at 12:26:56 PM
Fee Amt: \$66.00 Page 1 of 6
Montgomery County, OH
Stacey Benson-Taylor Recorder
File: 2024-00024084

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AMENDMENTS TO THE

DECLARATION CREATING AND ESTABLISHING A PLAN FOR CONDOMINIUM

OWNERSHIP FOR

BIRKDALE VILLAGE CONDOMINIUM

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

DR PLAT MAP RECORDED AT PLAT BOOK 190, PAGE 17 ET SEQ. OF THE MONTGOMERY COUNTY RECORDS.

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8101 N. High St.
Col, OH 43235

**AMENDMENTS TO THE
DECLARATION 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, attached to and made part of the Declaration (the "Bylaws"), were recorded at Montgomery County Records COND-03-083405.
- B. Ohio Revised Code Section 5311.05(E)(1)(c) authorizes the Board of Directors (the "Board"), without a vote of the Unit Owners, to amend the Declaration "to bring the Declaration into compliance with this Chapter."
- C. The Board approved the following matters to be modified (the "Amendments") to bring the Declaration into compliance with Ohio Revised Code Chapter 5311 ("Chapter 5311").
- D. Each of the changes set forth in these Amendments are based on or in accordance with Chapter 5311.
- E. Attached as Exhibit A is a certification of the Association's President and Secretary stating that the Amendments were approved by the Board in accordance with Ohio Revised Code Section 5311.05(E)(1)(c).
- F. The proceedings necessary to amend the Declaration and Bylaws as permitted by Chapter 5311 and the Declaration have in all respects been complied with.

AMENDMENTS

The Declaration Creating and Establishing a Plan for Condominium Ownership for Birkdale Village Condominium is amended by the Board of Directors as follows:

(1) **MODIFY DECLARATION ARTICLE XV, SECTION 3(c)(v)**. Said modification to the Declaration, as amended at Instrument No. 2021-00069948, is: (new language is underlined)

(v) The Association will deliver any written notice required above to the Unit Owner or any occupant of the Unit by personal delivery, by electronic mail, by certified mail, return receipt requested, or by regular mail.

(2) **MODIFY DECLARATION ARTICLE XV, SECTION 5(c).** Said modification to the Declaration, as amended at Instrument No. 2021-00069948, is: (new language is underlined)

(c) Operating and both types of special assessments, together with interest, late fees, and costs, including attorney fees, shall be a charge and continuing lien in favor of the Association upon the Unit against which each such assessment is made.

(3) **MODIFY the 2nd to LAST SENTENCE of DECLARATION ARTICLE XV, SECTION 5(d).** Said modification to the Declaration, as amended at Instrument No. 2021-00069948 is: (deleted language is crossed out; new language is underlined)

The certificate shall contain a description or other sufficient legal identification of the Unit against which the lien exists, the name or names of the record Owner or Owners thereof, and the amount of the unpaid portion of the assessments and charges, and shall be signed by the president or other ~~chief officer~~ designated representative of the Association.

(4) **INSERT ITEM (f) to the end of BYLAWS ARTICLE VII.** Said new addition to the Bylaws, as amended at Instrument No. 2021-00069948, is:

(f) Records that date back more than five years prior to the date of the request.

(5) **INSERT a NEW SENTENCE to the end of BYLAWS ARTICLE IV, SECTION 4.** Said new addition to the Bylaws, as amended at Instrument No. 2021-00069948, is:

The majority of the Board will not consist of Unit Owners or representatives from the same Unit unless authorized by a resolution adopted by the Board of Directors prior to the Board majority being comprised of Unit Owners or representatives from the same Unit.

(6) **INSERT 2 NEW ITEMS (vii) and (viii) to the end of DECLARATION ARTICLE XIX, SECTION 1(e).** Said new additions to the Declaration, as amended at Instrument No. 2021-00069948, are:

(vii) To delete as void, any provision within the Declaration or Bylaws, or in any applicable restriction or covenant, that prohibits, limits the conveyance, encumbrance, rental, occupancy, or use of property subject to Revised Code Chapter 5311 on the basis of race, color, national origin, sex, religion, or familial status; or

(viii) To permit notices to Unit Owners, as required by the Declaration or Bylaws, to be sent by electronic mail and, if returned undeliverable, by regular mail, provided the Association has received the prior, written authorization from the Unit Owner.

(7) **MODIFY BYLAWS ARTICLE IV, SECTION 13(m)(ii).** Said modification to the Bylaws, as amended at Instrument No. 2021-00069948, is: (deleted language is crossed out; new language is underlined)

(ii) Commence, defend, intervene in, settle, or compromise any civil, criminal, land use planning or administrative action or proceeding that is in the name of, or threatened against, the Association, the Board, or the Condominium Property, or that involves two or more Unit Owners, impacts zoning, or otherwise—and relates to matters affecting the Condominium Property;

(8) **MODIFY DECLARATION ARTICLE XV, SECTION 3(a)(i)(e).** Said modification to the Declaration is: (new language is underlined)

e. an amount deemed adequate by the Board to maintain a reserve for the cost of unexpected repairs and replacements of capital improvements and for the repair and replacement of major improvements in the normal course of operations without the necessity of special assessments, unless the Unit Owners, exercising not less than a majority of the voting power of the Association, waive the reserve requirement in writing annually, for which cash reserves over a period of time in excess of one year ought to be maintained; and

Any conflict between the above provisions and any other provisions of the Declaration and Bylaws will be interpreted in favor of the above amendments. The invalidity of any part of the above provision will not impair or affect in any manner the validity or enforceability of the remainder of the provision. Upon the recording of these amendments, 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.

EXHIBIT A

CERTIFICATION OF OFFICERS

STATE OF OHIO)
) SS
COUNTY OF Montgomery)

Robert M. Lopardo and Penelope A. Fatora, being the duly elected and acting President and Secretary of the Birkdale Village Condominium Association, certify that the Amendments to the Declaration Creating and Establishing a Plan for Condominium Ownership for Birkdale Village Condominium were approved by the Board in accordance with Ohio Revised Code Section 5311.05(E)(1).

Robert M. Lopardo
ROBERT M. LOPARDO, President

Penelope A. Fatora, Secretary
PENELOPE A. FATORA, Secretary

BEFORE ME, a Notary Public in and for the County, personally appeared the above-named Robert M. Lopardo and Penelope A. Fatora 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 10 day of April, 2024.

Craig A Kenley
NOTARY PUBLIC

