

FILED

Oct 24 2024 BDD
PEGGY HOLINGA-KATONA
LAKE COUNTY AUDITOR

ELLEDALE FARM

SUBMISSION AND TWENTY-FIFTH AMENDMENT TO DECLARATION

James Taylor, as Successor Trustee to Daniel M. Rohaley under Trust Agreement dated July 30, 1996 and known as Trust No. 202615-96 ("Declarant"), and Betty LLC, by way of Joinder, execute this Submission and Twenty-Fifth Amendment (this "Amendment") to Declaration.

RECITALS

A. David J. Wilcox, Trustee under Trust Agreement dated July 30, 1996 and known as Trust No. 202615-96, established Ellendale Farm and recorded the First Restated Declaration of Covenants, Conditions, Easements, and Restrictions on June 22, 1998 as Document No. 98046488 in the Office of the Lake County Recorder ("Declaration").

B. Pursuant to Section 13.2 of the Declaration, the Declaration may be amended unilaterally at any time by Declarant.

C. Declarant added Additional Land to the Declaration by a document titled Submission to Declaration dated December 28, 1998 and recorded in the Office of the Lake County Recorder on January 11, 1999 as Document No. 99001734.

D. Declarant amended the Declaration by a document titled Amendment to Declaration dated March 31, 1999 and recorded in the Office of the Lake County Recorder on April 4, 1999 as Document No. 99029406.

E. Declarant added Additional Land to the Declaration by a document titled Submission and Second Amendment to Declaration dated January 6, 2000 and recorded in the Office of the Lake County Recorder on January 10, 2000 as Document No. 2000-001637, which Second Amendment, among other things, detailed various amendments to the Architectural Standards of Section 11.9(a) for Phases One through Four.

F. Declarant added Additional Land to the Declaration by a document titled Third Amendment to Declaration for Phase Five dated December 20, 2000 and recorded in the Office of the Lake County Recorder on December 26, 2000 as Document No. 2000-094102, which Third Amendment, among other things, detailed various amendments to the Architectural Standards of Section 11.9 for Phase Five.

G. Declarant added Additional Land to the Declaration by document titled Submission and Fourth Amendment to Declaration which added Phase Six and is dated September 10, 2002 and recorded in the Office of the Lake County Recorder on December 23, 2002 as Document No. 2002-118698, which Fourth Amendment, among other things, detailed various amendments to the Architectural Standards of Section 11.9 for Phase Six.

**FIDELITY NATIONAL TITLE RECORDED THIS DOCUMENT AS AN ACCOMMODATION,
FIDELITY NATIONAL TITLE DID NOT EXAMINE THE DOCUMENT OR THE TITLE OF THE REAL
ESTATE AFFECTED
MS2024-046**

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H. Declarant added Additional Land to the Declaration by document titled First Supplemental Declaration of Covenants, Conditions, Easements, and Restrictions which added Phase Seven and is dated December 6, 2001 and recorded in the Office of the Lake County Recorder on December 10, 2001 as Document No. 2001-188750.

I. Declarant added Additional Land to the Declaration by document titled Submission and Fifth Amendment to Declaration which added Phase Eight and is dated December 19, 2003 and recorded in the Office of the Lake County Recorder on January 13, 2004 as Document No. 2004-003017, which Fifth Amendment, among other things, detailed various amendments to the Architectural Standards of Section 11.9 for Phase Eight.

J. Declarant added Additional Land to the Declaration by document titled Submission and Sixth Amendment to Declaration which added Phase Nine and is dated October 25, 2005 and recorded in the Office of the Lake County Recorder on October 29, 2004 as Document No. 2004-092548, which Sixth Amendment, among other things, detailed various amendments to the Architectural Standards of Section 11.9 for Phase Nine.

K. Declarant added Additional Land to the Declaration by document titled Submission and Seventh Amendment to Declaration which added Phase Ten and is dated November 29, 2006 and recorded in the Office of the Lake County Recorder on November 30, 2006 as Document No. 2006-104943, which Seventh Amendment, among other things, detailed various amendments to the Architectural Standards of Section 11.9 for Phase Ten.

L. Declarant added Additional Land to the Declaration by document titled Submission and Eighth Amendment to Declaration dated December 18, 2006 and recorded in the Office of the Lake County Recorder on January 10, 2007 as Document No. 2007-002442, which Eighth Amendment, among other things, submitted additional land to the Townhome Development and to the Association.

M. Declarant added Additional Land to the Declaration by document titled Submission and Ninth Amendment to Declaration dated November 5, 2007 and recorded in the Office of the Lake County Recorder on November 14, 2007 as Document No. 2007-089896, which Ninth Amendment, among other things, submitted additional land to the Development and added provisions for Phase Twelve a/k/a EF Highlands Phase One.

N. Declarant added Additional Land to the Declaration by document titled Submission and Tenth Amendment to Declaration which added provisions for Phase Eleven and is dated July 30, 2008 and recorded in the Office of the Lake County Recorder on August 14, 2008 as Document No. 2008-057812, which Tenth Amendment, among other things, detailed various amendments to the Architectural Standards of Section 11.9 for Phase Eleven and amended certain standards related to sidewalk construction.

O. Declarant added Additional Land to the Declaration by document titled Submission and Eleventh Amendment to Declaration dated July 25, 2013 and recorded in the Office of the Lake County Recorder on July 30, 2013 as Document No. 2013 055503 , which Eleventh Amendment, among other things, added additional land to the Development, amended certain Architectural Standards, and established certain building setbacks.

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P. Declarant added Additional Land to the Declaration by document titled Submission and Twelfth Amendment to Declaration dated October 30, 2013 and recorded in the Office of the Lake County Recorder on October 30, 2013 as Document No. 2013-080567, which Twelfth Amendment, among other things, added additional land to the Development, amended certain Architectural Standards, and established certain building setbacks.

Q. Declarant added Additional Land to the Declaration by document titled Submission and Thirteenth Amendment to Declaration dated August 20, 2015 and recorded in the Office of the Lake County Recorder on August 20, 2015 as Document No. 2015-056827, which Thirteenth Amendment, among other things, added additional land to the Development, amended certain Architectural Standards, and established certain building setbacks.

R. Declarant added Additional Land to the Declaration by document titled Submission and Fourteenth Amendment to Declaration dated September 8, 2015 and recorded in the Office of the Lake County Recorder on September 11, 2015 as Document No. 2015-062462, which Fourteenth Amendment, among other things, added additional land to the Development, amended certain Architectural Standards, and established certain building setbacks.

S. Declarant added Additional Land to the Declaration by document titled Submission and Fifteenth Amendment to Declaration dated July 20, 2016 and recorded in the Office of the Lake County Recorder on August 3, 2016 as Document No. 2016-049817, which Fifteenth Amendment, among other things, added additional land to the Development, amended certain Architectural Standards, and established certain building setbacks.

T. Declarant added Additional Land to the Declaration by document titled Submission and Sixteenth Amendment to Declaration dated September 28, 2016 and recorded in the Office of the Lake County Recorder on September 30, 2016 as Document No. 2016-066358 and re-recorded in the Office of the Lake County Recorder on August 24, 2022 as Document No. 2022-535022, which Sixteenth Amendment, among other things, added additional land to the Development, amended certain Architectural Standards, and established certain building setbacks.

U. Declarant added Additional Land to the Declaration by document titled Submission and Seventeenth Amendment to Declaration dated November 9, 2016 and recorded in the Office of the Lake County Recorder on December 2, 2016 as Document No. 2016-082104, which Seventeenth Amendment, among other things, added additional land to the Development, amended certain Architectural Standards, and established certain building setbacks.

V. Declarant added Additional Land to the Declaration by document titled Submission and Eighteenth Amendment to Declaration dated August 29, 2017 and recorded in the Office of the Lake County Recorder on September 18, 2017 as Document No. 2017-063186, which Eighteenth Amendment, among other things, added additional land to the Development, amended certain Architectural Standards, and established certain building setbacks.

W. Declarant added Additional Land to the Declaration by document titled Submission and Nineteenth Amendment to Declaration dated November 10, 2017 and recorded in the Office of the Lake County Recorder on November 30, 2017 as Document No. 2017-

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081363, which Nineteenth Amendment, among other things, added additional land to the Development, amended certain Architectural Standards, and established certain building setbacks.

X. Declarant added Additional Land to the Declaration by document titled Submission and Twentieth Amendment to Declaration dated October 1, 2018 and recorded in the Office of the Lake County Recorder on October 4, 2018 as Document No. 2018068658, which Twentieth Amendment, among other things, added additional land to the Development, amended certain Architectural Standards, and established certain building setbacks.

Y. Declarant added Additional Land to the Declaration by document titled Submission and Twenty-First Amendment to Declaration dated November 8, 2018 and recorded in the Office of the Lake County Recorder on November 18, 2018 as Document No. 2018078196, which Twenty-First Amendment, among other things, added additional land to the Village Development and amended certain Architectural Standards.

Z. Declarant added Additional Land to the Declaration by document titled Submission and Twenty-Second Amendment to Declaration dated June 12, 2019 as Document No. 2019039375, which Twenty-Second Amendment, among other things, added additional land to the Village Development.

AA. Declarant added Additional Land to the Declaration by document titled Submission and Twenty-Third Amendment to Declaration dated September 13, 2023 as Document No. 2023-027065, which Twenty-Third Amendment, among other things, added additional land to the Development.

BB. Declarant added Additional Land to the Declaration by document titled Submission and Twenty-Fourth Amendment to Declaration dated December 28, 2023 as Document No. 2024-000530, which Twenty-Fourth Amendment, among other things, added additional land to the Development.

DD. Declarant wishes to supplement and amend the Declaration to clarify Declarant's authority to enforce the Declaration and impose sanctions for violations of such provisions; authorize Declarant and the Association to enter into contracts for property management services; and clarify Declarant's authority to oversee the architectural review process and procedures that shall be followed under such processes.

EE. Any capitalized term in this Amendment, unless otherwise defined in this Amendment, shall have the same meaning for the purposes of this Amendment as it has for the purposes of the Declaration.

NOW THEREFORE, Declarant amends the Declaration as follows:

1. The Recitals set forth above are incorporated into this Section as though they were set forth in this Amendment itself.
2. The following provisions shall be added to the **General Provisions**:

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7. The Declarant retains the power and authority to act on behalf of, or in lieu of, the Board with respect to any power or right vested in the Board or the Association until the Completion of Construction.

8. Ellendale Farm Homeowner's Association is not governed by Indiana Code § 32-25.5-1-1 *et seq.* (the "**Association Statute**"), which contains provisions relating to the governance and powers of homeowner's associations. The Association shall not be subject to the Association Statute until and unless no fewer than Seventy-Five Percent (75%) of all Eligible Votes are cast at an annual meeting or special meeting of the Members on an action requiring the Association to be made subject to the provisions and requirements of the Association Statute.

3. The following provision shall be added to **Article IX**:

Section 9.7 Property Management Services. On behalf of the Association, the Declarant may enter into contracts for property management services. Following the Completion of Construction, as defined herein, the Board shall have the authority to enter into contracts for property management services on behalf of the Association. The Association shall perform all obligations set forth in such contracts and act in good faith in permitting any manager, vendor, agent, or representative to perform its contractual duties and render services thereunder for the remaining term of any such contract.

4. The following provision shall be added to **Article XI**:

Section 11.13 Submission of Plans; Hearing. Until the Completion of Construction, the Declarant shall have the right and authority, but not the obligation, to perform all actions for which the Board is authorized or empowered under this Article XI. In the event the Board or, if applicable, the Declarant, denies or has not acted upon any proposal or plan for Construction within Thirty (30) calendar days following its receipt by the Board or Declarant, the Person submitting such plans may make a written request for a hearing before the Board. If such a written request for a hearing is received by the Board, the Board shall, within Thirty (30) calendar days thereafter, conduct a hearing at which the affected Owner shall be afforded a reasonable opportunity be heard. Notwithstanding any such hearing or any request for a hearing, neither the Board nor the Declarant shall be required to approve any plan or proposal not otherwise required to be approved pursuant to this Declaration.

5. The following shall be added to **Section 14.3**:

In addition to all other obligations to protect and indemnify, the Association will indemnify the Declarant against any and all expenses reasonably incurred by or imposed upon the Declarant in connection with the Declarant's actions and efforts in managing the Association; enforcing any provision of this Declaration; retaining, hiring, or consulting with any advisors, consultants, and managers; and all other actions relating to the Development and the Association, regardless of whether such actions are expressly permitted by this Declaration, the Articles of Incorporation or By-Laws of the Association, or any other document or instrument relating to the Development or the Association. The Association's obligation to indemnify the Declarant shall continue and remain in effect even after the Declarant no longer owns any Lot within the Development and Declarant has relinquished all rights, title, interest, power, and authority with respect to the Development and the Association.

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6. **Section 14.5** of the Declaration is superseded and replaced in its entirety with the following:

Section 14.5 Construction and Sale. Notwithstanding any provision contained in the Declaration to the contrary, so long as construction of new dwellings upon previously unimproved Lots continues or until dwellings have been constructed upon every Lot, whichever is later (the "**Completion of Construction**"), it will be expressly permissible for Declarant to (a) maintain and carry on upon portions of the Common Area such facilities and activities as, in the sole opinion of Declarant, may be reasonably required, convenient, or incidental to the construction of such dwellings, including, but not limited to, business offices, signs, model units, and sales offices, and Declarant will have an easement for access to such facilities; and (b) act on behalf of, or in lieu of, the Board with respect to any matter as expressly provided in this Declaration. The right to maintain and carry on such facilities and activities will include specifically the right to use residences owned by Declarant and the Common Area facilities, if any, which may be owned by the Association, as models and sales offices. This Section may not be amended without the express written consent of Declarant; provided, however, the rights contained in this Section 14.5 will terminate upon the earlier of (a) Twenty (20) years from the date this Twenty-Fifth Amendment is recorded or (b) upon Declarant's recording a written statement that Completion of Construction has occurred.

7. **Section 15.1** of the Declaration is superseded and replaced in its entirety with the following:

Section 15.1 In General. The Declarant shall have the right, but not the obligation, to enforce any provision of the Declaration on behalf of the Association. The Declarant shall have the power and authority to impose sanctions for any violations of such provisions. Regardless of the type and nature of such sanctions, such sanctions are not, and shall not be, construed to be punitive in nature; rather, all sanctions shall be construed and applied to serve only to deter violative behavior and reasonably compensate the Association for damages, regardless of whether such damages are direct, indirect, or reasonably measurable. With the Declarant's consent or at the Declarant's request, the Board shall appoint and authorize the Declarant as the Association's authorized agent to enforce the provisions and procedures set forth in this Section.

(a) **Notice.** The Board, or its authorized agent, shall serve the alleged violator (a "**Notice Recipient**") with a written notice (a "**Violation Notice**") describing the following:

- (i) The nature of the alleged violation;
- (ii) Any provision of the Declaration pertaining to such violation;
- (iii) The proposed sanction or remedy (the "**Violation Remedy**") to be imposed;
- (iv) A period of not less than 15 days from the date appearing on such notice (the "**Notice Period**") within which the Notice Recipient may make a written request for a hearing to the Board (a "**Violation Hearing**"); and

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(v) A statement that the Violation Remedy will be imposed unless the Notice Recipient timely requests, in writing, a hearing with respect to the Violation Notice.

(b) **Violation Remedy.** Any Violation Remedy shall be deemed to be a reasonable measure of damages incurred by the Association, regardless of whether such Violation Remedy requires cessation of certain activity, specific performance, payment of damages, special assessments, or any other type of injunctive or monetary remedy. All Violation Remedies shall be construed to be compensable and not punitive in nature. The Board may, but is not required to, include in any Violation Remedy the actual or estimated amounts of costs and fees incurred, or expected to be incurred, in connection with its effort to enforce the Declaration, and such costs and fees may include attorneys' fees, management fees, postage, and all other costs and expenses.

(c) **Hearing.** If the Notice Recipient timely delivers a written request for a Violation Hearing in response to a Violation Notice, the Violation Hearing shall be held before the Board. The Notice Recipient shall be afforded a reasonable opportunity to be heard; however, the Board may impose any rules and procedures under which such Violation Hearing shall be conducted, including those pertaining to time limitations and delivery of information and evidence. The minutes of such Violation Hearing shall contain a statement of the results of the Violation Hearing and resulting decision and remedy, if any, imposed. The Board's decision shall be (i) reached by a simple majority of those members of the Board present constituting a quorum in accordance with the By-Laws and (ii) a final, binding, and non-appealable decision to which the Notice Recipient shall be bound, absent willful, wanton, and reckless misconduct by the Board.

(d) **Failure to Request Hearing.** If a timely written request for a Violation Hearing is not made, the Violation Remedy shall become a final, binding remedy and shall be imposed as described in the Violation Notice. The Board shall have the power, but not any obligation, to suspend or vacate any Violation Remedy if the violation is properly cured within the Notice Period. Any such suspension or vacation shall not constitute a waiver of the Association's or Declarant's right to enforce any provision of the Declaration or applicable rules or procedures relating thereto.

(e) **Recovery of Costs, Damages, and Attorneys' Fees.** In addition to any remedies, including, but not limited to, special assessments and sanctions relating to recovery of costs and damages, imposed as a result of a Violation Remedy or a Violation Hearing, the Declarant and the Association, or either of them independently, may take any action, at law or in equity, or both, to enforce all such remedies and prevent the recurrence or continuation of any violation of the Declaration (an "Enforcement Action"). In any such Enforcement Action, to the maximum extent permitted by law, the Owner, Person, Member, or Notice Recipient responsible for such violation or failure to perform or deliver any remedy so imposed shall pay all costs, including reasonable attorneys' fees, in connection with such Enforcement Action, and the Declarant and the Association, or either of them, shall be entitled to a judgment for additional damages in the amount of all such costs and fees.

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(f) **Assessment Lien.** Notwithstanding any provision of this Declaration to the contrary, and in addition to all rights and remedies afforded to the Association and Declarant in this Article XV, all remedies imposed as a result of a Violation Notice or Violation Hearing, including, but not limited to, a Violation Remedy and all injunctive relief, damages, and other remedies awarded as a result of any judgment or order rendered in connection with the enforcement of this Declaration or any Enforcement Action, if not paid, performed, or delivered within 30 calendar days from the due date or the date on which such remedy was imposed, whichever is later, will constitute a lien on such Owner's Lot in favor of the Association. Said lien will have the same priority as a lien for assessment set forth in Section 10.5 of this Declaration and will be subject to foreclosure and such other provisions of Section 10.6 of this Declaration not inconsistent with this Section 15.1. In addition to, and not in limitation of, the foregoing, if the Association, the Declarant, or any director, officer, or Member thereof, or any Owner of any Lot, incurs attorneys' fees or costs in enforcing its rights under this Declaration as a result of any breach hereof, regardless of whether the matter results in the filing of a suit in any court, the breaching Person shall pay all reasonable attorneys' fees and costs incurred by the Association or such director, officer, or Member thereof, or such Owner.

8. Subject to the amendments, modifications, and additions resulting from this Amendment, the Declaration is, and shall continue, in full force and effect on the terms and provisions contained therein.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

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JOINDER AND CONSENT


The undersigned, being the owner of the above described property in this Submission and Twenty-Fifth Amendment to Declaration, hereby joins in this Declaration for purposes of acknowledging and agreeing that such amendments which are made to the Declaration are made with consent of the undersigned.

IN WITNESS WHEREOF, the undersigned have joined and consented to this document on this 10 day of October, 2024.

Owner:

BETTY, LLC

By:


Thomas J. Fleming, RS Authorized
Representative

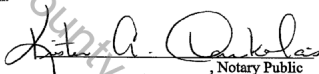
STATE OF INDIANA)

) SS:

COUNTY OF LAKE)

On this 10th day of October, 2024, before me, the undersigned, a Notary Public in and for said County and State, personally appeared Thomas J. Fleming, as the Authorized Representative of Betty, LLC, and acknowledged the execution of the foregoing amendment as his voluntary act for the purposes stated therein.

WITNESS my hand and official seal.

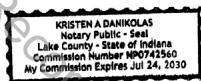

_____, Notary Public

My Commission Expires: 7/24/2030

My County of Residence: Lake

My Commission Number: NP0742560

This instrument prepared by:
Jon A. Schmaltz
Burke Costanza & Carberry LLP
156 Washington Street
Valparaiso, Indiana 46383-5670



I affirm, under the penalties of perjury, that I have taken reasonable care to redact each social security number in this document, unless required by law.

Jon A. Schmaltz