

CAPE WINDSOR COMMUNITY ASSOCIATION, INC.
38782 LINCOLN DRIVE
SELBYVILLE, DELAWARE 19975
capewindsor.org

August 7, 2023

RE: Notice of Amendment Change to HOA Bylaw – Article IV Rights of Enjoyment

We hope this letter finds you well. We are writing to inform you of proposed changes to the Cape Windsor Community Bylaws. As an active member of our community, we believe it is essential for you to be informed about this amendment change, as it may affect various aspects of our community.

The proposed addition of Section 3 of Article IV, which have been carefully reviewed and vetted by Cape Windsor’s Board and legal counsel, address current short-term rentals vs. *#11 of our Covenants – No Commercial Business of any kind.*

A copy of the full text of the proposed amendment change to Article IV is attached for your review. We highly encourage you to read the change carefully before voting.

Also, attached is a ballot to cast your formal vote to approve or reject the proposed amendment. Fifty-one percent (127) of the community is required before the votes are considered valid to count.

Please read this packet carefully to cast your personal desire for the future of our community. If you have any questions, please call 302-604-3107 and leave a message or send your question to capewindsorhelp@gmail.com your question will be responded to within 24 hours.

Return only your ballot in the self-addressed envelope, all votes must be postmarked no later than September 30, 2023, to be considered valid.

Included in this packet is:

- A. Amendment to Article IV – “Property Rights: of Enjoyment” & Ballot**
- B. Regulations for Leasing of Residential Properties in Cape Windsor**
- C. Residential Lease Addendum – Agreement between Owner and Lessee**
- D. Current Covenants and current Article III and Article IV**

Thank you,
The Cape Windsor Board

Tom Rockstroh, President

Kurt Muller, Vice President

Tim Herlihy, Secretary/Treasurer

Mike Baier

Jason Edwards

Richard Gray

LuAnn Halonski

Gregory Lusby

Mike Shaw

A

Amendment to Article IV –

“Property Rights: of Enjoyment”

3 pages

Ballot – Return in self-address envelope

1 page

TAX MAP NO. XXXXXXXX

Prepared by and Return to:

Richard E. Berl, Jr., Esquire

Hudson Jones Jaywork & Fisher, LLC

34382 Carpenter's Way, Suite 3

Lewes, Delaware 19958

**AMENDMENT TO ARTICLE IV OF THE AMENDED AND RESTATED
BY-LAWS OF CAPE WINDSOR COMMUNITY ASSOCIATION, INC.**

THIS AMENDMENT to the Amended and Restated By-Laws of Cape Windsor Community Association, Inc. is made this _____ day of _____, 2023, by the Cape Windsor Community Association, Inc., a corporation of the State of Delaware.

WHEREAS, the Cape Windsor residential community located in Baltimore Hundred, Sussex County, Delaware, and all lot owners therein are bound by the Deed Restriction Covenants and Conditions recorded of record in the Office of the Recorder of Deeds in and for Sussex County, Delaware, on May 13, 1966, in Deed Book 604, at page 88, and the Amended & Restated By-Laws for Cape Windsor, recorded of record in the Office of the Recorder of Deeds in and for Sussex County, Delaware, on September 15, 2011, in Deed Book 3971, page 311, *et seq.*; and

WHEREAS, the lots and common areas comprising the Cape Windsor residential community are more particularly described in the subdivision plats recorded in Plot Book 604, Page 88 ("Deed Restrictions Covenants and Conditions"); Plot Book 604, Page 68 ("Common Elements"); Plot Book 6, Page 44 ("Lot") and ("Properties"); and

WHEREAS, all Owners in the Cape Windsor residential community are Members of the Cape Windsor Community Association, Inc. (the "Association"), a Delaware non-stock corporation; and

WHEREAS, pursuant to Article X of the By-Laws, the members of the Association have determined that it is necessary and desirable to add a new Section to

Article IV of the By-laws (“Property Rights: Rights of Enjoyment”) in order to regulate the leasing of residential properties in Cape Windsor;

NOW THEREFORE pursuant to the provisions of the By-Laws governing amendments, **Article IV of the By-Laws is amended to add the following:**

“Section 3. Leasing is defined as a situation in which the owner of a residential property makes such property available for use by another for consideration, whether in currency or in kind. Leasing for any period less than 120 days (hereinafter referred to as a “short-term” rental) is considered *commercial activity*, and is prohibited by Paragraph 11 of the Restrictive Covenants and Conditions that bind Cape Windsor. As such, all short-term rentals are prohibited, regardless of whether arranged by the property owner, or leased through third party services, such as VRBO, Airbnb, real estate agencies, and the like. All leases of residential property other than short-term rentals, shall be subject to regulations for the leasing of property which shall be established by the Board from time to time.”

IN WITNESS WHEREOF, the Cape Windsor Community Association, Inc., a not-for-profit corporation of the State of Delaware, has caused this **AMENDMENT TO ARTICLE IV OF THE AMENDED AND RESTATED BY-LAWS OF CAPE WINDSOR COMMUNITY ASSOCIATION, INC.** to be signed and sealed by its President and attested by its Secretary on this ___ day of _____, 2023, and hereby certifies that attached hereto as Exhibit "A" are copies of written consents from at least fifty-one percent (51%) of the Members of the Association.

CAPE WINDSOR COMMUNITY ASSOCIATION, INC.

By: _____ (SEAL)
PRESIDENT

Attest: _____ (SEAL)
SECRETARY

STATE OF :
 : SS.
COUNTY OF :

BE IT REMEMBERED that on this _____ day of _____, 2023, personally came before me, the Subscriber, a Notary Public for the State and County aforesaid, _____, President of CAPE WINDSOR COMMUNITY ASSOCIATION, INC. a not-for-profit corporation of the State of Delaware, party to this Indenture, known to me personally to be such, and acknowledged this Indenture to be his/her act and Deed, and the act and Deed of said corporation; that the signature of the President is in his/her own proper handwriting; and that the act of signing, sealing, acknowledging, and delivering the said Indenture was first duly authorized by the Board and membership of the said corporation.

GIVEN under my hand and seal of Office, the day and year aforesaid.

Notary Public

My Commission Expires: _____

AMENDMENT

Cape Windsor Community Association, Inc.
 Action by Written Ballot to Amend Article IV of the
 Amended & Restated Bylaws in order to define #11 of the
 Declaration of Covenants, Conditions and Restrictions for
 Cape Windsor

The undersigned, Member of the Cape Windsor
 Community Association, Inc., hereby acts by written
 ballot with respect to the matter described below:

Amendment of Amended Bylaws, Article IV and defining #11 of the Declaration of Covenants, Conditions and Restrictions for Cape Windsor Community Association.	YES	NO
Cast your vote by indicating your choice with an "X".		
A "YES" vote means approval of the amendment.		
A "NO" vote means a rejection of the amendment.		

To be eligible to vote, the Member must be a record title Owner of a Lot as of June 1, 2023. This ballot must be returned to the Association no later than September 30, 2023. Your mailed ballot must be received by September 30 to be considered valid. You can also deliver your sealed vote to the mailbox on the porch at 38775 Wilson Ave by September 30.

The affirmative vote by written ballot of fifty-one percent (51%) 127 Lot Owners' is required to adopt and approve the Amendment to Article IV of the Amendment & Restated Bylaws and the addition of the defined #11 of the Declaration of Covenants, Conditions and Restrictions for Cape Winsor.

The Cape Windsor Bylaws and Declaration provide that Members of the Association shall be all lot owners who shall be entitled to (1) vote for each lot. When more than one person holds an interest in any lot, a) such persons shall be members. The vote of such lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any lot.

Members Name (s): _____ (Print)

Member CW Address: _____

Member Lot No: _____



B

Regulations for Leasing of Residential Properties in Cape Windsor

3 pages

REGULATIONS FOR LEASING OF RESIDENTIAL PROPERTIES IN CAPE WINDSOR

1. **Grandfathering.** Any residential lot, the Deed for which was recorded prior to August 1, 2023, will be considered “grandfathered”, and shall be relieved of the prohibitions against short-term leasing established in Article IV, Section 3; provided, however, that such grandfathering is limited as follows.

A. Any short-term rental must terminate no later than August 1, 2026.

B. The right of any such property owner to lease for short-term rentals shall terminate immediately upon the sale, devise, or other transfer of title.

C. All grandfathered owners must comply with the remaining Regulations adopted by the Board.

2. **Vehicles.** Vehicles of any Lessee, its family members, guests, and other permitted occupants, must be parked in the Owner's driveway or other designated parking area (including designated overflow parking). Any vehicle not in compliance will be subject to towing at owner expense.

5. **Common Areas.** Lessees will have full access to the Cape Windsor Common Areas, as defined in the By-Laws. Any and all persons using any Roads, Common Areas, easements, or water ways do so at their own risk and without any liability whatsoever on the part of the Association, or its respective successors or assigns, as the case may be.

6. **Quiet Hours.** The Owner shall ensure that the Lessee, including Lessee's occupants and guests, do not create unreasonable noise, engage in disorderly conduct, or violate the Governing Documents (defined as the Cape Windsor Declaration, Bylaws and any other rules and regulations of Cape Windsor). Quiet hours shall be in effect from 10:00 P.M. to 8:00 A.M. Construction hours are limited to Monday through Saturday, 8:00 AM to 7:00 PM only.

7. **Governing Documents.** The Owner shall provide copies of all Governing Documents to the Lessee, and the Lessee's use of the property shall be subject to the provisions thereof. Owner shall maintain copies of the Documents in the dwelling. Lessee shall be required to execute a lease addendum (a copy of which is attached to these Regulations, and which may be amended by the Board from time to time), acknowledging receipt of the Governing Documents and expressly consenting to the Governing Documents, and which shall be provided to the Association within ten (10) days of Owner and Lessee's execution of the Lease. Any failure of the Lessee to fully comply with the provisions of the Governing Documents shall be considered a material default under the lease agreement and shall be grounds for termination of the lease and eviction from the residential rental. Further, the Owner shall remain jointly responsible for any failure of the Lessee to fully comply with the provisions of the Governing Documents.

8. **Residential rental notification requirements.** No Owner shall lease any residential property without providing the Board with the following information:

- A. The name, address, e-mail, and telephone number of the Lessee of the residential property.
- B. If the owner is not responsible for the lease, the name, address, e-mail, and telephone number for any agent responsible for the lease.
- C. The physical address and lot number of the residential property.
- D. The written acknowledgement of the Owner and Lessee that all Lessees have reviewed and understand all regulations pertaining to the residential property, including but not limited to the Cape Windsor Declaration and Bylaws and other such rules and regulations as the Board may from time to time adopt.

9. **Change in Ownership.** Within thirty (30) days of any change in the ownership of a leased property, the Board must be provided with updated contact information as set forth above.

10. **Subletting.** No subleasing of any rental property is permitted.

11. **Violation Procedure.** Upon the occurrence of any violation of the Governing Documents, the Association shall provide written notice of such violation to the Owner and the Lessee(s) by email and regular mail, at the addresses provided. All violations must be cured within ten (10) days from the mailing of the notice. Alternatively, a written request for a hearing before the Board, or any committee of the Board selected for such purpose, may be requested, and a hearing will be held at the convenience of the Board.

If the Owner or Lessee(s) fail to cure such violation or fail to request a hearing in writing within such ten (10) day period, the Board shall levy a fine against the violating Owner and/or Lessee(s) in the amount of One Hundred Dollars (\$100.00).

If the Owner or Lessee(s) fail to cure such violations within ten (10) days after the levy of the initial fine, a subsequent fine in the amount of Three Hundred Dollars (\$300.00) shall be levied against the violating Owner and/or Lessee(s). Any fines levied shall be collectible in the same manner as an assessment under the Declaration and By-Laws. If any Owner or Lessee(s) fail to cure such violation within ten (10) days after the levy of the second fine, the Board may (i) suspend any privileges of Owners and/or Lessee(s), including without limitation access to the Common Areas (but not including the right of an Owner to vote on any matter submitted to a vote of the Owners), and/or suspend services provided to the Owner and/or Lessee(s) by the Association (other than those necessary for the habitability of the Owner's Lot or residential rental) for the non-payment of any fine levied, and/or (ii) bring an action in its own name or in the

name of the Owner, or both, to terminate the lease and have the Lessee(s) evicted and/or to recover damages (including but not limited to the full amount of rent paid or due to the Owner from the Lessee(s)).

Should any Owner or Lessee(s) be notified three (3) or more times in any twelve (12) month period of the same violation, the fine for each subsequent violation shall be Five Hundred Dollars (\$500.00).

In addition, the Board may enforce any other rights against the Lessee(s) for any violation which the Owner, as Landlord, could lawfully have exercised under the lease or which the Association could lawfully have exercised directly against the Owner, or both.

12. **Indemnification.** Lessee and Owner, jointly and severally, shall indemnify and hold harmless the Association from and against any damages, direct or indirect, incurred as a result of the non-compliance by any of the aforesaid persons with the provisions of any of the Governing Documents or any other covenant or obligation under any lease agreement.

13. **Conflict.** Where the provisions of these Regulations are inconsistent with a provision of the Delaware Residential Landlord-Tenant Code, the provision of the Delaware Residential Landlord-Tenant Code shall be controlling. In the event of any conflict or inconsistency between these Regulations and the provisions of the Lease entered into by Owner and Lessee, the provisions of these Regulations shall control.

14. **Amendment.** These Regulations may be amended or modified from time to time by the Board, upon notice to the Members.

C

Residential Lease Addendum –

Agreement between Owner and Lessee

2 pages

Cape Windsor Homeowners Governing, Inc. Residential Lease Addendum

This Residential Lease Addendum shall operate as an Amendment to a certain Residential Lease Agreement between Owner and Lessee dated _____ (the "lease") for property located at the following address:

RECITALS:

- A. Article IV of the Cape Windsor By-Laws now limits and regulates leases within the Community.
- B. Owner and Lessee have entered into a lease for the leased premises identified above.
- C. Owner and Lessee are executing this Addendum in order to comply with the requirements of Article IV of the By-Laws, as well as Regulations adopted by the Board.

AGREEMENTS:

NOW THEREFORE, in consideration of the mutual covenants, promises and agreements contained in the Lease and herein, Owner and Lessee hereby acknowledge and agree as follows:

1. **Governing Instruments and Rules.** Lessee's right to use and occupy the Leased Premises shall be subject and subordinate in all respects to the provisions of the Declaration and Bylaws of the Association ("Governing Instruments") and to such other regulations ("Regulations") as the Board of Directors of the Association may from time to time adopt. Lessee acknowledges receiving a copy of the Governing Instruments from Owner and agrees to abide by them.
2. **Violations.** Any violation of the provisions of the Governing Instruments by Lessee, or Lessee's family, guests, agents, employees, invitees, or pets shall constitute a material breach of the Lease.
3. **Indemnification.** Lessee and Owner, jointly and severally, shall indemnify and hold harmless the Association from and against any damages direct or indirect, incurred as a result of the non-compliance by any of the aforesaid persons with the provisions of the Governing Instruments, or any other covenant of the Lease.
4. **Successors and Assigns.** The provisions of this Addendum shall apply to any and all of Owner's and Lessee's successors or assigns. Owner and Lessee shall indemnify and hold harmless the Association from and against any losses or costs incurred by the Association in enforcing the provisions hereof with respect to any of their respective successors, assigns or sublessees.
5. **Conflict.** In the event of any conflict or inconsistency between the provisions of this Lease Addendum and the provisions of the Lease entered into by Owner and Lessee, the provisions of this Addendum shall control.

IN WITNESS WHEREOF, the parties hereto have caused this Addendum to be duly executed on the date first written above.

Lessee Signature: _____ Date: _____

Owner Signature: _____ Date: _____

Completed Residential Lease Addendum must be sent to Cape Windsor Board of Directors at least 10 days prior to commencement of the lease. Please mail to CWHO, 38782 Lincoln Dr., Selbyville, DE 19975.

OWNER CONTACT INFORMATION

Name: _____

Mailing Address: _____

Cape Windsor Address and Lot No: _____

No. of Bedrooms: _____ Maximum Occupancy: _____

Phone Number: (____) _____ Email Address: _____

LOCAL EMERGENCY CONTACT

Name: _____

Phone Number: (____) _____ Email Address: _____

PROPERTY MANAGER/AGENT INFORMATION

Company Name: _____ Agent's Name: _____ Phone Number: (____)
_____) _____ Email Address: _____

LESSEE CONTACT INFORMATION

Name: _____

Phone Number: (____) _____ Email Address: _____

D

Cape Windsor Covenants

(Covenants override Bylaws)

Bylaws:

Article IV with section 3

2 pages

CAPE WINDSOR COMMUNITY ASSOCIATION, LLC
38782 LINCOLN DRIVE
SELBYVILLE, DELAWARE 19975
capewindsorhelp@gmail.com

DEED RESTRICTION COVENANTS AND CONDITIONS

BEING a part of lands conveyed to thus grantor by deed of Edgewater Acres, Inc., a corporation of the State of Delaware, dated May 13, 1966, by deed of record in Deed Book 604 at page 88; and deed of Bessie A. Bennett, widow, July 7, 1967 by deed of record indeed Book at page 1069.

“The said lands are conveyed subject to the following restrictive covenants and conditions which shall run with the land:

1. Restrictions set out in the aforesaid deed of Edgewater Acres, Inc. which was dated May 13, 1966 and which is of record in Deed Book 604 at page 88.
2. That no improvement or mobile home or structure of any kind shall be placed within five (5) feet of the side yard line or ten (10) feet of the street, nor within fifteen (15) feet of the bulkhead, nor shall any dock, or structure be extended more than fifteen (15) beyond the bulkhead.
3. That the Purchaser may not place any mobile home on a lot until the site plan has been approved by the grantor, its successors or assigns, and no mobile home which is less than 50' X 12' shall be placed on any lot; that mobile homes when placed on purchaser's lot must have the underside completely enclosed; that individual gas bottles and oil tanks will be buried when possible.
4. That all mobile homes to be placed on a lot must be in reasonably good physical condition and must be previously approved by the grantor, its successors or assigns, and such approval shall not be unreasonably withheld.
5. That no additions or any building of any kind, either temporary or permanent, or bulkhead or piers, or boat docks or the like, or any change in grade may be constructed on, moved onto or accomplished, as the case may be, without the prior written approval of the grantor, its successors or assigns.
6. That the purchaser will keep and use his property in a careful manner so as not to unreasonably interfere with his neighbors and to keep his lot and home in a reasonably good condition.
7. That trash and garbage cans shall be placed only in enclosures which shield them from view from the street and adjoining properties, which structure shall have been approved by the grantor, its successors or assigns.
8. That no television antennas shall be erected without prior written approval of the grantor, its successors or assigns. EASEMENT IS RESERVED FOR TELEPHONE, ELECTRIC AND CATV LINES.
9. That only umbrella type wash lines shall be used and no wash shall be hung in public view on Sundays and holidays nor afternoon on Saturdays.
10. That travel trailers, boat trailers, and like vehicles shall be parked only in designated dead storage areas.
11. That no commercial activity of any type shall be conducted on the residential lots plotted in plot of Cape Windsor.
12. Each property owner agrees to pay his pro-rata share upon assessment by a non-profit corporation which shall operate the utilities and maintain the streets, pool, park, and other common areas of the development. Each property owner shall have (1) vote per lot, and each property owner grants unto the said non-profit corporation perpetual easement to enter upon its property to maintain sewer and water lines and to make such repairs to the utilities as the manager of the non-profit corporation deems to be necessary.
13. That these restrictions shall be enforceable by appropriate suit in the Court of Chancery of the State of Delaware by the grantor, its successors or assignees, or any property owner in said development.”

The buyer of _____, Selbyville, DE 19975 have received and understand the Covenants of CWCA.

Buyer: _____ Date: _____ Buyer: _____ Date: _____

ARTICLE IV

Property Rights: Rights of Enjoyment

Section I. Each member shall be entitled to the use and enjoyment of **the common properties and facilities as provided in the declaration. Any member may delegate his rights of enjoyment of the common properties and facilities to the members of the family, his tenants, or contract purchasers, who** reside on the property. The member shall notify the secretary in writing of the name of any delegate. The rights and privileges of the delegate are subject to **suspension to the same extent as those of the member.**

Section 2. Individuals leasing a lot from owners shall have the right in common with the said lot owner to use the facilities of the association. This action does not relieve the lot owner of the payment of all assessments or any other owner responsibility.

Article IV of the By-Laws is amended to add the following:

“Section 3. Leasing is defined as a situation in which the owner of a residential property makes such property available for use by another for consideration, whether in currency or in kind. Leasing for any period less than 120 days (hereinafter referred to as a “short-term” rental) is considered *commercial activity*, and is prohibited by Paragraph 11 of the Restrictive Covenants and Conditions that bind Cape Windsor. As such, all short-term rentals are prohibited, regardless of whether arranged by the property owner, or leased through third party services, such as VRBO, Airbnb, real estate agencies, and the like. All leases of residential property other than short-term rentals, shall be subject to regulations for the leasing of property which shall be established by the Board from time to time.”