

File# 2016-000219

Cross Reference: Instrument No. 2004-035604

**FIRST AMENDMENT TO THE DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS FOR TIMBER VALLEY**

The undersigned, Timber Valley Homeowners' Association, Inc., an Indiana non-profit corporation (the "Association"), makes this First Amendment to the Declaration of Covenants, Conditions and Restrictions for Timber Valley ("First Amendment") effective as of the 24th day of November, 2015.

WHEREAS, the Declaration of Covenants, Conditions and Restrictions for Timber Valley, dated October 25, 2004, was recorded on December 15, 2004, as **Instrument Number 2004-035604** in the Office of the Recorder of Johnson County (the "Declaration");

WHEREAS, Section 9.2 of the Declaration states that the Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of voting Members representing at least seventy-five percent (75%) of the Members entitled to vote thereon;

WHEREAS, the Board of Directors of the Association has reviewed and affirmed that the following amendments to the Declaration have been approved by the affirmative vote or written consent, or any combination thereof, of voting Members representing at least seventy-five percent (75%) of the Members entitled to vote thereon pursuant to Section 9.2 of the Declaration; and

WHEREAS, all capitalized terms not otherwise defined in this First Amendment shall have the meaning ascribed in the Declaration.

NOW THEREFORE, pursuant to the foregoing, Sections 3.2, 7.11, 7.18, 9.1 and 9.2 of the Declaration are hereby amended to read as follows:

Section 3.2 Owner's Easement of Enjoyment. Every Owner, his family, tenants, and guests shall have a non-exclusive right and easement of use and enjoyment in and to the Common Areas, such easement to be appurtenant to and to pass with title to each Lot, subject to the provisions of this Declaration and the

rules, regulations, fees, and charges from time to time established by the Board in accordance with the By-Laws and subject to the following provisions:

(a) The Right of the Association, upon the affirmative vote or written consent, or any combination thereof, of voting Members representing at least fifty-one percent (51%) of the Members entitled to vote thereon, to mortgage all or any portion of the Common Areas for the purpose of securing a loan of money to be used to manage; repair, maintain, improve, operate, or expand the Common Areas; provided, however that if ingress or egress to any residence constructed on a Lot is through such Common Area, then such encumbrance shall be subject to an easement in favor of such Lot for ingress and egress thereto.

(b) The easements reserved elsewhere in this Declaration or in any Plat of all or any part of the Real Estate, and the right of the Association to grant and accept easements as provided in this Article III. The location of any improvements, trees or landscaping within an easement area is done at the Owner's risk and is subject to possible removal by the Association or the grantee of such easement.

(c) The right of the Association to dedicate or transfer fee simple title to all or any portion of the Common Areas to any appropriate public agency or authority, public service district, public or private utility, or other person, provided that any such transfer of the fee simple title must be approved (i) during the Development Period, by the Developer; and (ii) after the Development Period, upon the affirmative vote or written consent, or any combination thereof, of voting Members representing at least fifty-one percent (51%) of the Members entitled to vote thereon; provided, however that if ingress or egress to any residence constructed on a Lot is through such Common Area, then such dedication or transfer shall be subject to an easement in favor of such Lot for ingress and egress thereto.

(d) The rights of the Association and Developer reserved elsewhere in this Declaration or as provided in any Plat of all or any part of the Real Estate.

(e) The rights of the holder of any mortgage which is prior in right or superior to the rights, interests, options, licenses, easements, and privileges herein reserved or established.

Section 7.11 Temporary Structures and Storage Sheds.

(a) Temporary Structures. No tent, shack, trailer, or other similar structure shall be placed upon a Lot or Common Area. Notwithstanding the above, party tents, overnight camping tents, or similar temporary structures may be erected upon a Lot for special events without prior written approval of the Committee as long as they are not in place on the Lot for longer than seventy-two (72) hours. Any party tent, overnight camping tent, or similar temporary structure that remains in place on a Lot for more than seventy-two (72) hours shall require the prior written approval of the Committee before it is erected. Any party tent, overnight camping tent, or other similar temporary structure to be placed on any portion of a Common Area for any period of time shall require the prior written approval of the Committee before it is erected.

(b) Storage Sheds. No structure shall be erected on any Lot in the subdivision other than one permanent single-family dwelling and one detached storage shed, mini-barn, or other similar detached structure (collectively referred to hereinafter as "storage shed") unless otherwise permitted by this Declaration. No storage shed shall be installed on any Lot without the prior review and written approval of the Committee. All plans for a proposed storage shed MUST BE APPROVED by the Committee BEFORE construction or installation can begin. All storage sheds are subject to the

provisions of this Declaration and may be subject to further provisions of the Committee pursuant to its powers under the Declaration. In addition to further provisions regarding storage sheds adopted by the Committee, all storage sheds shall: (1) be constructed so as not to encroach upon any easements or setback lines; (2) be constructed on a Committee approved level floor structure with a minimum of two appropriate anchors AND setback a minimum of ten feet (10') from the front side of the residence and setback a minimum of five feet (5') from any property line; (3) not alter drainage patterns of any Lot; (4) not exceed ten feet by sixteen feet (10' X 16') in base dimensions; (5) not exceed 10' in height at its highest point measured from the pad floor; (6) be located so as not to be viewed in full from the front of the Lot; (7) be constructed of materials and colors that match or are compatible with the main residence; and (8) must be designed to respect the visual rights of neighboring properties and cannot be offensive to the community. No metal siding or metal roofing is permitted. No plastic or vinyl framed storage sheds are permitted. Only one storage shed per residence is permitted.

Section 7.18 Owner Landscape Requirement. Owner is responsible for maintaining all vegetation on their Lot. Each Lot must have at least a one inch (1") caliper ornamental tree, a one and one-half inch (1 ½") caliper shade tree or an evergreen at least four feet (4') in height. Also, Each Lot must have at least six (6) shrubs of a minimum eighteen inch (18") spread, with a mixture of flowering and evergreen shrubs permitted. Notwithstanding the above, the Committee may grant an Owner a reasonable variation of the above minimum requirements upon written request from the Owner to the Committee and written approval from the Committee.

Section 9.1 Term. The covenants and restrictions of this Declaration shall run with and bind the Real Estate, and shall inure to the benefit of and shall be enforceable by the Association or the Owner of any property subject to this Declaration, their respective legal representatives, heirs, successors, and assigns,

for a term of sixty (60) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless an instrument in writing, signed by more than fifty-one percent (51%) of the then Owners has been recorded within the year preceding the beginning of each successive period of ten (10) years, agreeing to change said covenants and restrictions, in whole or in part, or to terminate the same, in which case this Declaration shall be modified or terminated as specified therein. The number of ten (10) year renewal periods shall be unlimited.

Section 9.2 Amendment. Prior to the conveyance of the first Lot to an Owner, the Developer may unilaterally amend this Declaration. After such conveyance, the Developer may unilaterally amend this Declaration at any time and from time to time if such amendment is (a) necessary to bring any provision hereof into compliance with any applicable governmental statutes, rules or regulations, or judicial determination, or to otherwise comply with any other governmental order or request; (b) necessary to enable any reputable title insurance company to issue title insurance coverage on the Lots and the Dwellings; (c) required by an institutional or governmental agency or lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, or the Department of Housing and Urban Development, to enable such lender or purchaser to acquire or purchase mortgage loans on the Lots and the Dwelling Units; (d) necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on the Lots; (e) to annex additional real estate to the Real Estate as provided herein; (f) to correct clerical or typographical errors in this Declaration or any exhibit hereto, or any supplement or amendment thereto; provided, however, any amendment permitted under subsections (a) through (f) of this Section 9.2 shall not adversely affect the title to any Lot unless the Owner shall consent thereto in writing. Additionally, during the Development Period, the Developer may unilaterally amend this Declaration for any purpose, provided the amendment has no material adverse effect upon any right of the Owner.

Thereafter and otherwise, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of voting Members

representing at least fifty-one percent (51%) of the Members entitled to vote thereon. Any amendment to be effective must be recorded in the public records of the County in which this Declaration was recorded.

If an Owner consents to any amendment to this Declaration or the By-Laws; it will be conclusively presumed that such Owner has the authority so to consent and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

No amendment may remove, revoke, or modify any right or privilege of Developer without the written consent of the Developer or the assignee of such right or privilege.

All other provisions of the Declaration shall remain unchanged. The foregoing amendments shall run with the land and shall be binding upon all parties having or acquiring any right, title or interest, legal or equitable, in and to the real property or any part or parts thereof subject to the Declaration, and shall inure to the benefit of all successors in title to any real estate in the Real Estate.

The undersigned officers of the Association hereby represent and certify that all requirements for and conditions precedents to amend the Declaration have been fulfilled and satisfied.

[Remainder of page intentionally left blank, signature page to follow.]

IN WITNESS WHEREOF, the undersigned have caused this First Amendment to be executed on behalf of the Association as of the date first written above.

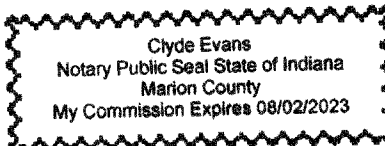
TIMBER VALLEY HOMEOWNERS'
ASSOCIATION, INC.

By: Kim Walters
Kim Walters, President

Attest:

By: Christopher Hill
Christopher Hill, Secretary

STATE OF INDIANA)
) SS:
COUNTY OF Johnson)



Before me, a Notary Public in and for said County and State, personally appeared Kim Walters and Christopher Hill, the President and Secretary, respectively, of Timber Valley Homeowners' Association, Inc., who acknowledged execution of the foregoing First Amendment to the Declaration of Covenants, Conditions and Restrictions for Timber Valley on behalf of said corporation, and who, having been duly sworn, stated that the representations therein contained are true.

WITNESS my hand and Notarial Seal this 24th day of November, 2015.

My Commission Expires: August 2, 2023 Clyde D. Evans
Notary Public - Signature

Residing in Marion County, Indiana

This instrument prepared by Ian T. Keeler, Attorney-at-Law, CLAPP FERRUCCI, 9795 Crosspoint Boulevard, Suite 175, Indianapolis, IN 46256.

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. Ian T. Keeler