

Cross-References:

Instrument No. 2004-035604

Instrument No. 2004-035605

Instrument No. 2005-034280

Instrument No. 2007-007114

Instrument No. 2016-000219

**SECOND 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 Second Amendment to the Declaration of Covenants, Conditions and Restrictions for Timber Valley ("Second Amendment") effective as of the 24th day of August, 2019.

WITNESSETH:

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, the Plat for Section 1 of Timber Valley was recorded in the Office of the Recorder of Johnson County, Indiana on December 15, 2004 as Instrument No. 2004-035605;

WHEREAS, the Plat for Section 2 of Timber Valley was recorded in the Office of the Recorder of Johnson County, Indiana on December 12, 2005 as Instrument No. 2005-034280;

WHEREAS, the Plat for Section 3 of Timber Valley was recorded in the Office of the Recorder of Johnson County, Indiana on March 21, 2007 as Instrument No. 2007-007114;

WHEREAS, the First Amendment to the Declaration of Covenants, Conditions and Restrictions for Timber Valley was recorded in the Office of the Recorder of Johnson County, Indiana on January 5, 2016, as Instrument No. 2016-000219 ("First Amendment"); and,

WHEREAS, Section 9.2 of the First Amendment states the 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;

WHEREAS, the Board of Directors of the Association has reviewed and affirmed that the following amendment to the Declaration have been approved 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 pursuant to Section 9.2 of the First Amendment; and

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

NOW THEREFORE, pursuant to the foregoing, the Declaration is hereby amended by adding the following section 7.33, as follows:

Section 7.33 Leasing of Lots.

(a) Leases. In order to insure that the residents within Timber Valley share the same proprietary interest in and respect for the Lots and the Common Areas, the following limitation is imposed on the leasing or rental of Lots and Dwelling Units.

(b) Occupancy of Dwelling Units. The occupation of any Dwelling Unit by any party other than the legal title owner of a Dwelling Unit is hereby prohibited, unless specifically permitted by the provisions contained herein. For purposes of this Article, a Dwelling Unit is exclusively occupied by one or more non-owner tenants, if the Lot Owner does not also correspondingly occupy the Dwelling Unit as his/her principal place of residence.

(c) Lease Restrictions.

(i) No Dwelling Unit may be leased or occupied by one or more non-owners for a period of five (5) years from the date the Lot Owner receives legal title to the Lot, unless the Dwelling Unit is also occupied by the Lot Owner as his/her principal residence.

(ii) All leases, including renewals of any Lease in place prior to the approval of this Amendment ("Lease"), shall be in writing, and no lease shall be entered into for a term of less than one (1) year without the prior written approval of the Board of Directors ("Board"). If the Owner occupies the Dwelling Unit, the Owner may lease a portion of the Dwelling Unit with written permission from the Board. Roommates are permitted, providing the Owner is an occupant of the Dwelling Unit at the same time as the roommate(s) are occupants. No boarding houses are permitted.

(iii) No Owner is permitted to lease or rent his/her Dwelling Unit, if the Owner is delinquent in paying any assessments or other charges due to the Association at the time the lease is entered. No Owner will be permitted to lease his/her Dwelling Unit if the Owner or his/her successor is in violation of the Declarations or the Lot is subject to a judicial lien, recorded lien, or judicial order for injunctive relief.

(iv) All leases shall be made expressly subject to and subordinate to, in all respects, the terms of the Declaration, By-Laws and any rules and regulations promulgated by the Board, as amended, to the same extent as if the tenant were an Owner and a member of the Association. All leases shall provide for direct action by the Association and/or any Owner against the tenant with or without joinder of the Owner of such Lot. In addition, the Lease shall provide that a violation of the covenants and restrictions of the Declaration, the

By-Laws, or the rules and regulations of the Association constitutes a breach of the lease, which may be directly enforced by the Association having the right to pursue all remedies provided under the Declarations, this Amendment and at law, including eviction of any tenants or non-owner occupants in violation.

(v) All Owners who do not reside in their Dwelling Unit shall provide the Board with a copy of the lease showing the name of the tenant(s) and any other residents living in the Dwelling Unit. The Owner shall supply copies of the Declaration, By-Laws and rules and regulations to the Tenant prior to the effective date of the lease. In addition, the Board shall have the power to promulgate such additional rules and regulations as, in its discretion, may be necessary or appropriate concerning leasing. Failure of Owner or their Tenants to abide by the laws of the United States of America, State of Indiana, or City of Greenwood shall constitute an event of default under the lease for which the Association may seek eviction of the Tenant and damages against the Owner for violation of the Declarations.

(vi) No more than ten percent (10%) or Twenty-six (26) homes in Timber Valley may be leased/rented at any point in time. In the event the Board determines this rental cap is met or exceeded, the Board shall maintain a waiting list for Owners who desire to rent their Dwelling Units, on a first-come-first serve basis. Owners whose leases expire and the existing tenant(s) vacate(s) the Dwelling Unit will go to the end of the waiting list (this does not include extensions of current leases by and between the Owner and the currently occupying Tenant). Specifically excluded from this ten percent (10%) cap are Owners who have occupied their Dwelling Units for five (5) years or more. In other words, Owners who have occupied their Dwelling Units for five (5) years or more may lease their Dwelling Units even if the ten percent (10%) cap has been exceeded.

(d) Hardship Exceptions. The Board may use its discretion to grant an exception, for not more than one (1) year at a time, to the limit provided in this Article, to an Owner if the Board determines that the Owner has a significant hardship. For purposes of this Section, examples of a significant hardship may include, but are not limited to:

- (i) death of an Owner or death of an Owner's spouse;
- (ii) dissolution of marriage of an Owner(s);
- (iii) extreme financial or personal hardship;
- (iv) extended illness of an Owner(s);
- (v) temporary, necessary relocation of the residence of an Owner to a point outside of a fifty (50) mile radius of the perimeter of Dwelling Unit due to a change of employment, military deployment or retirement;
- (vi) temporary, necessary relocation of the residence of an Owner due to mental or physical infirmity or disability of at least one (1) of the Owners; or
- (vii) any other legitimate reason as determined by the Board.

(e) Owner is Still Liable. No Lease shall provide, or be interpreted or construed to provide, for a release of the Owner from his/her responsibility to the Association and to the other Owners for compliance with the provisions of the Declaration, By-Laws and any rules and regulations promulgated by the Board, or from the Owner's liability to the Association for payments of assessments.

(f) Approval and Form of Lease. Any Owner desiring to enter into a Lease for his/her Dwelling Unit shall petition the Board in writing with their proposed lease, proposed tenant(s) or occupant(s), rent or compensation exchanged, other extenuating circumstances and submit the form of the proposed Lease to the Board for review for compliance with the requirements of this Amendment. If written approval has not been received by Owner within thirty (30) days after being submitted, then request shall be considered denied.

(g) Fees and Security Deposit. Any Owner desiring to enter into a Lease for his/her Dwelling Unit shall pay the Association a processing fee of Fifty and no/100 Dollars (\$50.00) for the costs of processing the leasing application and reviewing the proposed lease each time an application and lease is submitted for approval. All Owners who have received permission to lease their Dwelling Unit shall pay the Association an annual fee equal to twenty percent (20%) of the annual dues in effect at the time, if the Dwelling Unit is leased. Said annual fees shall be assessed and paid with the Owner's annual assessments. All Owners who have received permission to lease their Dwelling Unit shall collect from their tenant(s) a security deposit of Two Hundred Thirty and no/100 Dollars (\$230.00). Said security deposit shall be payable to the Association and to be held by the Association, without liability for interest, as security for the faithful compliance by the tenant(s) of all the terms, conditions and restrictions in the Declaration, By-Laws, any rules and regulations promulgated by the Board in effect at that time and as security to faithfully maintain the Lot and Dwelling Unit. The security deposit may be applied by the Association, in whole or part, for the damage or loss which may be sustained for tenant(s)' failure to comply with the Declaration, By-Laws, rules and regulations or failure to maintain the Lot for a period of twenty (20) days after receiving after notice thereof from the Association.

(h) Violations. If any Owner leases or rents his/her Dwelling Unit in violation of the provisions of this Article, the Association and/or any other Owner may bring a legal action to enjoin the improper conduct and seek any other relief available according to the Declarations or at law. In the event that legal action is taken to enforce this Amendment, the Association shall be entitled an award of its costs and attorney's fees incurred as provided for in the Declaration.

(i) Effective Date of Lease Conditions. These leasing restrictions shall not apply to any Dwelling Unit of an Owner ("exempt-owner") who, at the time of recording this amendment, is renting or leasing his/her Dwelling Unit for exclusive occupancy by one or more non-owner tenants, so long as such Dwelling Unit continues to be owned by the same exempt-Owner and leased to the same tenant. In order for this exception to apply, the exempt-Owner must deliver a copy of the executed lease, which is in effect at the time to the Board within thirty (30) days after the recording of this document and shall furnish a copy of any subsequent lease within thirty (30) days after its execution. Failure of such an exempt-Owner to timely deliver a copy of any current lease to the Board shall result in said exempt-Owner's Dwelling Unit being subject to these

restrictions. However, in this latter circumstance, these restrictions shall not apply to any lease executed prior to the effective date of these restrictions or to any renewals thereof provided in such lease so long as the occupants remain the same.

Exempt-Owners shall remain exempt from the rental cap provisions in section (c)(vi), so long as their Dwelling Units are continuously leased and occupied. For purposes of this section, "continuously leased and occupied" shall mean the Dwelling Units shall not be vacant for more than sixty (60) days between leases. All other provisions of this leasing restrictions shall apply to the exempt-Owners. If an exempt-Owner's Dwelling Unit is vacant for more than sixty (60) days between leases, that Dwelling Unit shall be subject to all leasing restrictions in this amendment, including the rental cap provisions set forth in section (c)(vi).

(j) Foreclosures. The provisions of this Amendment shall not apply to any institutional mortgage holder of any Lot or to Timber Valley Homeowners Association, Inc., who might come into possession of a Dwelling Unit by reason of any remedies provided by law or in equity or in a mortgage or lien or as a result of a foreclosure sale or other judicial sale or as a result of any proceeding, arrangement or deed in lieu of foreclosure, if such mortgage holder was in possession of the Dwelling Unit at the time this Amendment was approved. This exemption is non-transferable. After the approval and recording of this Amendment, these provisions shall apply to all mortgage holders of any Lot acquiring its Lot after the date of recording of this Amendment.

(k) Severability. If a court having proper jurisdiction holds a particular provision of this amendment unenforceable or invalid for any reason, that provision shall be modified only to the extent necessary in the opinion of such court to make it enforceable and valid and the remainder of this amendment shall be deemed valid and enforceable and shall be enforced to the greatest extent possible under the then existing law. In the event the court determines such modification is not possible, the provision shall be deemed severable and deleted, and all other provisions of this amendment shall remain unchanged and in full force and effect.

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IN WITNESS WHEREOF, we the undersigned officers of the Timber Valley Homeowners' Association, Inc., do hereby execute this Second Amendment to the Declaration of Covenants, Conditions and Restrictions for Timber Valley and certify that at least fifty-one percent (51%) of the total membership voted to approve this Second Amendment to the Declaration of Covenants, Conditions and Restrictions for Timber Valley, and certify the truth of the facts stated this 24th day of August, 2019.

TIMBER VALLEY HOMEOWNERS'
ASSOCIATION, INC.

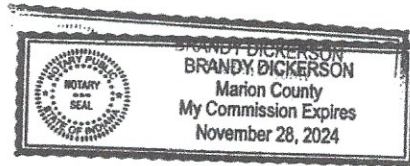
By: [Signature]
(Signature of President)
Ian Slatter
(Printed Name of President)

ATTEST:

Autumn L. Wagner
(Signature of Secretary)

Autumn L. Wagner
(Printed Name of Secretary)

STATE OF INDIANA)
COUNTY OF Johnson) SS:



Before me a Notary Public in and for said County and State personally appeared Ian Slatter (President) and Autumn Wagner (Secretary), President and Secretary respectively of Timber Valley Homeowners' Association, Inc. who acknowledged execution of the foregoing Second Amendment to the Declaration of Covenants, Conditions and Restrictions for Timber Valley and who, having been duly sworn, stated the representations contained herein are true.

Witness my hand and Notarial Seal this 24 day of August, 2019.

11/28/24
Commission Expiration Date

Marion
County of Residence

[Signature]
Notary Public
Brandy Dickerson
Printed Name

I, hereby 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. Robert D. Roache, II

This document prepared by:

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