

FIRST AMENDMENT TO PRIMARY DEDICATION, DECLARATION, PROTECTIVE RESTRICTIONS, COVENANTS, LIMITATIONS, EASEMENTS AND APPROVALS APPENDED TO AND AS A PART OF THE DEDICATION AND PLAT OF TUSCANY, SECTION 3, A SUBDIVISION IN PERRY TOWNSHIP, ALLEN COUNTY, INDIANA

This First Amendment to Primary Dedication, Declaration, Protective Restrictions, Covenants, Limitations, Easements and Approvals Appended to and as Part of the Dedication and Plat of Tuscany, Section 3, a Subdivision in Perry Township, Allen County, Indiana (this "First Amendment") is made effective as of the date this First Amendment is recorded in the Office of the Recorder of Allen County, Indiana (the "First Amendment Date").

WHEREAS, the Existing Property is encumbered by the Primary Dedication, Declaration, Protective Restrictions, Covenants, Limitations, Easements and Approvals Appended to and as Part of the Dedication and Plat of Tuscany, Section 3, a Subdivision in Perry Township, Allen County, Indiana dated October 1, 2013, and recorded on October 8, 2013, as Instrument No. 2013057858 of the records of the Recorder's Office of Allen County, Indiana (the "Declaration"); and

WHEREAS, the Members of each class of membership entitled to cast fifty-one percent (51%) of the votes of each such class of the Association, acting by and through the Board (the "Board") now desires to amend the Declaration pursuant to the terms of this First Amendment.

NOW, THEREFORE, in consideration of the mutual terms, covenants and conditions contained herein, the Board desires to amend the Declaration as follows:

1. **Definitions.** Any capitalized term not defined herein shall have the meaning ascribed to it in the Declaration. This First Amendment is incorporated into and made a part of the Declaration, and any and all references to the Declaration hereafter shall include this First Amendment. Any inconsistency or conflict between this First Amendment and the Declaration shall be governed and controlled by the terms of this First Amendment.
2. **Amendments to Declaration.**
 - a. Article III, Section 7 of the Declaration entitled "Waste" shall be deleted in its entirety and replaced with the following:

No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers, which may not be stored on the exterior of any residential structure erected or placed on any Lot, unless concealed by an enclosure approved the Architectural Control Committee. All equipment used for the storage and disposal for such material shall be kept in a clean and sanitary condition.

- b. Article III, Section 17 of the Declaration entitled "Fences" shall be deleted in its entirety and replaced with the following:

The plans and specifications for any fencing to be constructed on any Lot shall be submitted to Declarant, or to the Committee at any time after the appointment of the members of the Committee by Declarant, for approval prior to construction in accordance with Section 21.2 of this Article III. Any fencing shall be approved in writing by Declarant, or Committee where appropriate, and shall also meet the requirements of pertinent provisions of the Allen County Zoning Ordinance, or any successor having jurisdiction over this subject matter. At no time shall any fence on any Lot be constructed at a height of six (6) feet or higher, and further, no Owner shall construct any fence to contain said Owner's entire lot.

All fences shall be wood, vinyl or aluminum construction. No chain link fences shall be allowed on any Lot, or any portion of any Lot. All lake Lots must be split rail or picket-type fences. Said split-rail fences on lake Lots shall be limited to three (3) rails and not exceed four (4) feet in height. Picket-type fences on lake Lots or other Lots shall not exceed four (4) feet in height. The location of any proposed fence on any lake Lot or any other Lot shall be approved by the Committee in accordance with Section 21.2 of this Article III. All fences constructed on a corner lot shall not extend into or encroach upon the space between said building line and the street side of said corner Lot. In addition to the foregoing, all fences shall meet all applicable requirements of the Allen County Zoning Ordinance, or any successor having jurisdiction over this subject matter.

- c. Article III, Section 20 of the Declaration entitled "Pools" shall be deleted in its entirety, renamed "Pools and Sporting Equipment" and replaced with the following:

No above ground pools, except for spas, whirlpools and similar structures, shall be commenced, erected or maintained on any Lot. Above ground pools are defined as any portable or inflatable wading pools that exceed two (2) feet in height and five (5) feet in

diameter. Portable or inflatable wading pools, without filters, that are less than two (2) feet in height, shall be permitted on a Lot provided that such are located behind the residence situated on such Lot.

The commencement, erection or maintenance of any in-ground pool on any Lot shall be subject to the provisions of Section 21.2 governing the Architectural Control Committee and shall be prohibited on, in, or about any Lot within the community lacking the soil conditions suitable for such commencement, erection or maintenance of an in-ground pool thereon. No in-ground pool shall be located on any Lot nearer than a distance of six (6) feet from the rear or side property line of said Lot. In addition to the foregoing, all in-ground pools shall meet all applicable requirements of the Allen County Zoning Ordinance, or any successor having jurisdiction over this subject matter.

Portable basketball hoops, trampolines, and wood or poly play sets (“Sporting Equipment”) are permitted without approval of the Architectural Control Committee; except that, all Sporting Equipment shall be installed and erected in accordance with the manufacturer’s instructions and specifications. Further, no hollow tube swing sets are allowed on any Lot. All Sporting Equipment permitted hereunder shall adhere to the building set back restrictions set forth in Section 2 of this Article III of this Declaration.

- d. Article VIII of the Declaration entitled “General Powers and Duties of Board of Directors of the Association” shall be amended to incorporate a new Section 4 entitled “Declaration Amendments”, which shall provide as follows:

The Board shall have the right, upon confirming compliance with Article X, Section 3 of this Declaration, governing, among other things, amendments to the Covenants, Conditions and Restrictions of this Declaration, to evidence any amendments to this Declaration by recording an original or copy of the same in the Office of the Recorder of Allen County, Indiana.

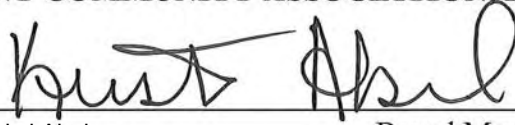
3. **Certification of Compliance.** The undersigned members of the Board certify, as evidenced by their respective signatures below, that this First Amendment was approved by the authority and consent of the Members of each class of membership entitled to cast fifty-one percent (51%) of the votes of each such class of the Association, and that such consent is evidenced by a written instrument as required by Ind. Code § 32-25.5-3-9(2)(B).


4. **Miscellaneous**. Except as herein expressly modified, the terms and provision of the Declaration remain in full force and effect.

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IN WITNESS WHEREOF, the Board has caused this First Amendment to be executed as of the 9 day of Nov., 2022.

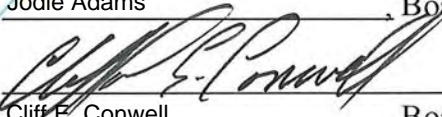
TUSCANY COMMUNITY ASSOCIATION, INC.

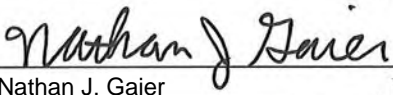
By: 
Kristi Abel, Board Member

By: 
Aris Eracleous, Board Member

By: 
Pat Burch, Board Member

By: 
Jodie Adams, Board Member

By: 
Cliff E. Conwell, Board Member

By: 
Nathan J. Gaier, Board Member


Amber Bouthot


Adam Bouthot

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

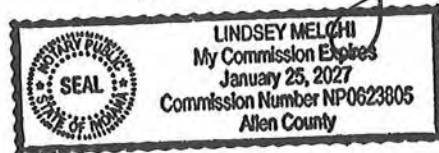
The undersigned, a notary public in and for the above County and State, certifies and witnesses that the above named individuals signed and are personally known to me to be the same persons whose names are subscribed to this instrument, appeared before me in person and acknowledged their signatures and delivered the instrument as a free and voluntary act, for the uses and purposes named in the instrument.

Date: 11/4/22

My Commission Expires: 1/25/27

Resident of Allen County

Lindsey Melchi
Notary Public



This instrument prepared by: Thomas B. Trent, Rothberg Logan & Warsco, 505 E. Washington Boulevard, Fort Wayne, Indiana 46802.

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. *Thomas B. Trent*

Return to:

Thomas B. Trent
The Rothberg Law Firm
505 E. Washington Boulevard
Fort Wayne, Indiana 46802