

THIRD 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 1, A SUBDIVISION IN PERRY TOWNSHIP, ALLEN COUNTY, INDIANA

This Third 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 1, a Subdivision in Perry Township, Allen County, Indiana (this "Third Amendment") is made effective as of the date this Third Amendment is recorded in the Office of the Recorder of Allen County, Indiana (the "Third 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, a Subdivision in Perry Township, Allen County, Indiana dated June 7, 2012, and recorded on July 3, 2012, as Instrument No. 2012036344 of the records of the Recorder's Office of Allen County, Indiana (the "Declaration"); and

WHEREAS, the Declaration was amended by a certain 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, a Subdivision in Perry Township, Allen County, Indiana dated December 29, 2012, and recorded on December 31, 2012, as Instrument No. 2012074352 of the records of the Recorder's Office of Allen County, Indiana (the "First Amendment"); and

WHEREAS, the Declaration was further amended by a certain Second Amendment to Primary Dedication, Declaration, Protective Restrictions, Covenants, Limitations, Easements and Approvals Appended to and as Part of the Dedication and Plat of Tuscany, a Subdivision in Perry Township, Allen County, Indiana dated July 12, 2013, and recorded on August 2, 2013, as Instrument No. 2013045031 of the records of the Recorder's Office of Allen County, Indiana (the "Second Amendment"); 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 desire to further amend the Declaration pursuant to the terms of this Third 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, as amended by the First Amendment and the Second Amendment. This Third Amendment is incorporated into and made a part of the Declaration, as amended by the First Amendment and the Second Amendment, and any and all references to the Declaration hereafter shall include this Third Amendment. Any inconsistency or conflict between this Third Amendment and the Declaration, as amended by the First Amendment and the Second Amendment, shall be governed and controlled by the terms of this Third Amendment.

2. **Amendments to Declaration**.

a. Article III, Section 4 of the Declaration entitled "Fencing" 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 22 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. Subject to the further limitations on fences as set forth in Section 18 of this Article III, no fences on any Lot shall 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.

b. Article III, Section 8 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.

- c. Article III, Section 18 of the Declaration entitled "Fences" shall be deleted in its entirety and replaced with the following:

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 Architectural Control Committee pursuant to terms and conditions set forth in Article III, Section 22 below. 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.

- d. Article III, Section 21 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 22 below 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.

- e. Article III, Section 22 of the Declaration entitled "Architectural Control Committee" shall be deleted in its entirety and replaced with the following:

Notwithstanding any provisions to the contrary set forth in Section 22 hereof, until such time as Declarant has conveyed title to all Lots and is no longer a Member of the Association, the following shall apply:

No Owner shall construct, or cause the construction of, a single-family residence on any Lot prior to obtaining Declarant's written approval of the licensed residential contractor the Owner intends to engage to construct said residence; and all plans and specifications for the construction of a new single-family residence shall be submitted to and approved or disapproved by Declarant pursuant to this Section 22.

No building, outbuilding, fence, wall, swimming pool, or spa, or other structure shall be commenced, erected or maintained upon any Lot, nor shall any exterior addition to or change or alteration therein be made until two (2) sets of plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by Declarant. Declarant's approval or disapproval as required herein shall be in writing. No structure of any kind which does not comply fully with such approved plans shall be erected, constructed, placed, or maintained upon any Lot, and no changes or deviations in or from such plans as approved shall be made without Declarant's prior written consent. In the event Declarant fails to approve or disapprove such improvements or other matters within ninety (90) days after said plans and specifications have been submitted to it, or in any event, if no suit to enjoin the erection, addition, alteration, or change has been commenced prior to the completion thereof, written approval will not be required, and this Section 22 will be deemed to have been duly complied with by the Lot Owner. Neither Declarant nor any heirs, personal representatives, successors or assigns thereof, shall be liable to anyone by reason of any mistake in judgment, negligence, or nonfeasance arising out of or relating to the approval or disapproval or failure to approve any plans so submitted, nor shall they, or any of them, be

responsible or liable for any structural defects in such plans or in any building or structure erected according to such plans or any drainage problems resulting therefrom. Every person and entity who submits plans to Declarant agrees, by submission of such plans, that he or she will not bring any action or suit against Declarant to recover any damages or to require Declarant to take, or refrain from taking, any action whatever in regard to such plans or in regard to any building or structure erected in accordance therewith. Neither the submission of any complete sets of plans to Declarant's office for review thereby, nor the approval thereof by Declarant, shall be deemed to guarantee or require the actual construction of the building or structure therein described, and no adjacent Lot Owner may claim any reliance upon the submission and/or approval of any such plans or buildings or structures described therein.

Once Declarant, or the Board, as appropriate, has appointed the Committee, as defined below, any plans and specifications for construction not considered new construction of a dwelling unit shall be submitted to and approved or disapproved by the Committee pursuant to the requirements set forth in this Section 22 above.

Declarant (or the Board following the formation by the Declarant of the Association) may designate representatives to serve on the Architectural Control Committee (The "Committee). The Committee shall consist of at least three (3) and no more than five (5) members appointed by the Declarant or the Board, if applicable. Once the Committee is established by Declarant or the Board, the Committee shall assume the rights and obligations of Declarant under Section 22 hereof.

- f. 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 Third 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, as amended by the First Amendment and the Second Amendment, remain in full force and effect.

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IN WITNESS WHEREOF, the Board has caused this Third Amendment to be executed as of the 4 day of Nov., 2022.

TUSCANY COMMUNITY ASSOCIATION, INC.

By: Kristi Abel
Kristi Abel, Board Member

By: Aris Eracleous
Aris Eracleous, Board Member

By: Pat Burch
Pat Burch, Board Member

By: Jodie Adams
Jodie Adams, Board Member

By: Cliff E. Conwell
Cliff E. Conwell, Board Member

By: Nathan J. Gaier
Nathan J. Gaier, Board Member

Amber Bouthot
Amber Bouthot

Adam Bouthot
Adam Bouthot

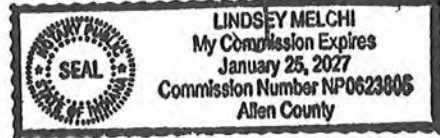
STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

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

Lindsay Melchi
Notary Public

My Commission Expires: 1/25/27



Resident of Allen County

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