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Julie L. Voorhies,
Marion County Recorder



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FIRST AMENDMENT TO DECLARATION OF COVENANTS
CONDITIONS AND RESTRICTIONS
FOR
TIMBERFIELD SUBDIVISION

THIS AMENDMENT made this 18th day of March, 2011 by **Timberlake Development Company, LLC.**, an Indiana Limited Liability Company, by Jerry Martin, Member, ("Declarant") to the Declaration of Covenants Conditions and Restrictions for Timberfield made May 24, 2001, and recorded in the Office of the Recorder of Marion County, Indiana, on May 29, 2001, as Instrument No. 2001-0088742("Declaration"),

WITNESSETH THAT:

WHEREAS, Timberlake Development Company, LLC. was the Declarant in the above-mentioned Declaration; and

WHEREAS, Section 12 of the Declaration reserves the right for Declarant to make amendments to the Declaration so long as Declarant owns at least ten (10) Lots within Timberfield Subdivision; and

WHEREAS, Declarant owns at least ten (10) Lots within Timberfield Subdivision on the date hereof; and

WHEREAS, Declarant platted the real estate subject to this Declaration as Timberfield Subdivision on May 4, 2001, and recorded said final plat in the Office of the Recorder of Marion County, Indiana, on May 29, 2001, as **Instrument No. 2001-0088743**, and

WHEREAS, Declarant executed the Declaration of Covenants Conditions and Restrictions for Timberfield on May 24, 2001, and recorded the same in the Office of the Recorder of Marion County, Indiana, on May 29, 2001, as **Instrument No. 2001-0088742**.

NOW, THEREFORE, pursuant to Section 12 of the Declaration, the Declarant hereby

amends the Declaration as follows:

- (1) Article III, Section 1 shall be deleted in its entirety and replaced by the following language:

SECTION 1. MAINTENANCE OF PREMISES. In order to maintain the standards of Timberfield, no weeds, underbrush or other unsightly growths shall be permitted to grow or remain upon any lot, and no refuse pile or unsightly objects shall be allowed to be placed or suffered to remain anywhere thereon. All owners shall maintain their lots and improvements situated thereon in a manner so as to prevent the lot or improvements from becoming unsightly, and specifically, owner shall:

- (a) Mow the lot at such times as may be reasonably required in order to prevent the unsightly growth of vegetation and noxious weeds. Grass allowed to grow to a height in excess of six inches (6") shall be deemed unsightly.
- (b) Cut down and remove dead trees.
- (c) Keep the exterior of all improvements in such state of repair or maintenance so as to avoid their becoming unsightly. This includes, but is not limited to, structural maintenance and repair of all fences.
- (d) Remove any refuse, rubbish, litter, waste or other unapproved useless items of clutter from your yard.
- (e) Prevent the existence of any other condition that reasonably tends to detract from or diminish the appearance of the lot and/or Timberfield.

Failure to comply shall warrant the Declarant, authorized agents of Marion County or the Association to cut the growth or weeds, or clear the refuse from the lot at the expense of the owner. The Association shall place and record a lien against said lot in an amount equal to the expenses therefore and costs which costs may include reasonable attorney fees for the placement of said lien should be deemed necessary by the Association, said liens shall be subject and subordinate only to taxes, municipal liens, and the lien of any bona fide mortgage upon any lot. At the option of the Association, said liens may be foreclosed upon in any court of competent jurisdiction by the Association as plaintiff for the amount of lien with interest, attorney's fees and costs. Any judgment obtained shall be without relief from valuation or appraisal laws.

- (2) Article III, Section 2 shall be deleted in its entirety and replaced by the following language:

SECTION 2. RESIDENTIAL PURPOSE AND GARAGE REQUIREMENTS. No lot shall be used except for residential purposes. No building shall be erected, altered, placed or permitted on any lot other than a dwelling not to exceed two (2) stories in height. A dwelling shall have an attached garage of a size to accommodate at least three (3) cars.

- (3) Article III, Section 6 shall be deleted in its entirety and replaced by the following language:

SECTION 6. INOPERABLE VEHICLES AND ON-STREET PARKING. At no time shall any unlicensed and/or inoperable vehicle be permitted on any lot, common area, street or easement within the Timberfield Subdivision, unless kept entirely within a garage. Inoperable vehicles include, but are not limited to, those vehicles with flat tires, missing parts, or the inability to be driven. No refurbishing of any vehicle is allowed, except within an enclosed garage where such activity is not visible by other residents in the subdivision. Routine repairs and maintenance of approved vehicles are allowed within a forty-eight (48) hour period. On street parking of approved vehicles is allowed, to the extent it is not inconsistent with local ordinances, however said parking must be for a reasonable period of time and not interfere with adequate ingress and egress on the streets in the subdivision as determined in the sole discretion of the Board.

- (4) Article III, Section 7 shall be deleted in its entirety and replaced by the following language:

SECTION 7. TRUCKS, BOATS, TRAILERS AND RECREATIONAL VEHICLES. No semi-truck, trailer, boat or trailer, mobile home, or recreational vehicle, or any similar equipment shall be permitted to be kept on any lot unless kept entirely within a garage. Nothing in this provision shall be construed as preventing owners from temporarily parking a camper or recreational vehicle in their driveway for the limited purposes of loading or unloading of the same, as long as said loading and unloading is for a reasonable period not to exceed seventy-two (72) hours.

- (5) Article III, Section 18 shall be deleted in its entirety and replaced by the following language:

SECTION 18. MINIMUM LIVING SPACE. The minimum square footage of living space of dwellings within Timberfield (approved for construction after the date of recordation of this covenant amendment) exclusive of porches, garages or basements shall be no less than:

- (a) 2000 square feet for a single story dwelling; and
- (b) 2500 square feet for a two story dwelling.

- (6) Article III, Section 21 shall be deleted in its entirety and replaced by the following language:

SECTION 21. COMMUNICATION DEVICES. In accordance with the current Federal Telecommunications Act of 1996, and the Federal Communications Commission rules governing Over-the-Air Reception Devices (OTARD), owners may only install satellite dishes that are one meter or less in diameter. One meter is equal to 39.37 inches, and "diameter" is the distance measured across the widest part of the dish. Only one dish may be installed upon each Lot, unless additional dishes are required to receive additional or unique transmissions that cannot be received by a previously installed dish. The Architectural Review Committee (Committee) reserves the right to require written verification for the installation of additional dishes upon any Lot.

The OTARD Rule allows Associations to designate a preferential order of placement for dishes in their community. To that end, the Committee desires that satellite dishes be permanently mounted in a location on the Lot that is the least visible from the street directly in front of the Lot which will not result in a substantial degradation of reception. This priority shall be: 1) in the rear of the Lot; 2) on the side of the Lot or home; and 3) the front of the home, in this specified order. Therefore, an Owner shall install a satellite dish in the rear portion of the Lot if acceptable reception can be received from that location. If acceptable reception cannot be obtained in the rear portion of the Lot, then the dish may be located along the side of the home if adequate reception can be received from that location. If adequate reception cannot be received from a location along the side portion of the home, then a dish may be located in the front of a home. However, if a dish is located in the front portion of a Lot, the Committee reserves the right to request an Owner provide adequate documentation from a reputable dish installation expert that the placement of the dish had to be located in the front portion of the Lot to prevent a substantial degradation of reception. So long as the Owner

follows this preferential placement guideline for installation, the Owner does not need to receive prior written approval of the Committee before installing a dish.

After a dish is installed, if the Committee believes or determines that the device could have been installed in another location on the Lot less visible from the street directly in front of the home, or that the Owner did not comply or follow the preferred placement order when installing the satellite dish, then the Committee reserves the right to require the Owner to move the dish to another location less visible from the street, or to seek the removal of the dish from its location, so long as the relocation of the dish does not substantially impact or degrade the reception of the device. For example, if an Owner locates a dish on the front of his home, and it is determined that the dish could have been installed in a location on the rear or side of the home that would have still allowed adequate reception, then the Committee may require the Owner to move the dish, at the Owner's expense, to this less visible location.

In addition, the Committee reserves the right to require landscaping, fencing or other screening around the dish to hide it from direct view of the street, or to cover or paint the dish to make it more acceptable in appearance to its surroundings, so long as none of these changes or screenings impair the reception of signals by the device. If an Owner fails to install or make the improvements or modifications requested by the Committee, then the Association reserves the right to enter upon the Owner's Lot upon thirty (30) days prior notice and make said improvements or modifications, the expense of which shall be added to the Owner's account. The thirty (30) day notice provided to the Owner shall set forth the specific work to be performed. If an Owner objects to or prevents the Association from making such improvements or modifications, then the Association reserves the right to seek injunctive relief to compel the Owner to make the requested improvements or modifications, or to seek the removal of the dish completely.

Other antennae, aerals or devices, towers or radio antennae that are not covered by the OTARD rule, such as dishes larger than one (1) meter in diameter and ham or amateur radio antennas, are strictly prohibited on any Lot in the Timberfield Subdivision. The Committee hereby reserves the authority to adopt additional rules and regulations regarding shapes, styles, colors and number of dishes, but only if those rules and regulations comply with or conform to the requirements or limitations imposed by Federal, state or local laws regarding satellite dishes and similar devices.

- (7) Article III, Section 23 shall be deleted in its entirety and replaced by the following language:

SECTION 23. YARD LIGHTS AND LANDSCAPING REQUIREMENTS. All lots shall upon their initial development and thereafter have yard lights or coach lights of uniform appearance. All new construction, approved after the recordation of this amendment, shall also be sodded in the front yard of the new dwelling from the front lot line up to the rear foundation line of the structure. The remaining rear or backyard area may be seeded or sodded at the owners discretion, but must be graded appropriately for adequate drainage and in compliance with all local laws and ordinances. Further, all new construction must meet certain landscaping requirements. The style, type and location of all landscaping and lighting shall be determined by the Architectural Control Committee (hereinafter "ACC"). Owners shall be prohibited from removing, altering or substituting the yard lights without approval by the ACC. Owners shall be responsible to maintain the yard lights, landscaping and other lighting in the form in which they were originally installed, kept functional at all times and in a state of good repair.

- (8) Article III, Section 25 shall be deleted in its entirety and replaced by the following language:

SECTION 25. SWIMMING POOLS. Above-ground swimming pools are prohibited. Wading Pools or "Kiddie Pools" which are constructed of plastic or rubber, are not a permanent structure or improvement, which can be filled with water for wading or sitting and which are no greater than (1') one foot, (6") six inches in depth when completely filled, are not considered "Above-ground swimming pools" for purposes of this covenant, provided that said Wading Pools or "Kiddie Pools" are emptied of water and stored out of sight each night.

- (9) Article III, Section 27 shall be deleted in its entirety and replaced by the following language:

SECTION 27. FENCES, WALLS, BARRIERS. All fences, walls, barriers or like structures must be approved in writing by the Architectural Control Committee prior to construction. No such structures shall exceed eight feet (8') in height. No such structure shall be placed closer to the front lot line than the furthest back front corner of the residence. Any farm fence existing along the perimeter of Timberfield shall be repaired or replaced as necessary and maintained at all times. Any fencing erected with the back yards of Lots 56, 1, 4 and 5, along Shelbyville Road shall be uniform in type and shall be repaired or replaced as necessary and maintained at all times.

(10) Article III, Section 30 is hereby added and shall read as follows:

SECTION 30. RENTAL RESTICTION. Lots or homes in Timberfield sold or transferred in title after the date this amendment to the Declaration of Covenants Conditions and Restrictions for Timberfield is recorded with the Marion County Recorder's Office shall be owner-occupied only and shall not be rented or leased to any party. Upon approval and recordation of this covenant amendment, the terms thereof shall run with the land in perpetuity and be binding upon all Owners and their heirs, successors, and assigns in interest. Lots or homes in Timberfield that are owner-occupied or vacant and are not being rented or leased as of the date this amendment is recorded cannot thereafter be rented, leased, sold on contract, rented to own, or transferred by other similar agreement and must remain owner-occupied only.

B. Retroactivity. Owners of Lots or homes in Timberfield who are renting or leasing their home(s) prior to the date this amendment is recorded may continue to rent or lease the home(s) so long as they own the home, but only if the following requirements are met:

- (i) All rental or lease agreements executed after the date this amendment is recorded must be for minimum of six (6) months and may not be for a period longer than one (1) year unless approved by the Board of Directors in writing;
- (ii) All rental or lease agreements shall be in writing and a copy of each lease agreement shall be provided to the Board of Directors within thirty (30) days of said agreement being executed. A copy of all rental or lease agreements in place at the time this amendment is recorded must be provided to the Board of Directors within thirty (30) days of said amendment being recorded;
- (iii) All rental or lease agreements shall contain a provision stating that the renter or tenant has been advised of or provided a copy of the Declaration of Covenants, Conditions and Restrictions for Timberfield, the Bylaws, the Articles of Incorporation, the Handbook, and all other applicable rules and regulations for Timberfield and has been informed they must follow these covenants, rules and regulations the same as any other Owner in Timberfield;
- (iv) All rental or lease agreements shall contain a statement that the Owner of the property understands and acknowledges that any violation of the covenants, rules or regulations, including the failure to pay assessments, shall be the ultimate responsibility of the Owner, not the renter.
- (v) No rental or lease agreement shall provide for, or be interpreted to provide for, a release of the Owner from his obligations to the Association for compliance with the provisions in the Declaration or from the Owner's liability to the Association for payments of assessments or any other charges.

- (vi) For the purposes of this Section, "rental or lease agreement" shall include all forms of rental, lease, lease or rent to buy, land or purchase contracts, or other form of agreement that involves the occupation of any Lot or home in Timberfield by an occupant other than the titled Owner for compensation paid to the titled Owner.

Owners of Lots or homes in Timberfield who are renting or leasing their Home(s) prior to the date this amendment is recorded but stop using the Home as a rental after the date this amendment is recorded may not rent or lease their Home again in the future. Once a Home becomes owner-occupied after the date this amendment is recorded, it must thereafter remain owner-occupied.

C. Hardship Exceptions. The Board of Directors may approve an exception to any or all of the requirements set forth in Subsections A and B in cases of undue hardships, but only if so requested or petitioned in writing by the Owner. Such petition must set forth the reasons said exception is being requested and the terms, if applicable, of said exception being requested. The Board of Directors may request further information regarding the petition or may seek modification of the terms of said petition before entering a ruling on the petition. Whether a petition for an undue hardship exception will be granted lies solely within the discretion and authority of the Board of Directors, and the Board of Directors may place limits on the length of the exception if deemed appropriate. An exception shall be deemed approved only by a majority vote of the Board of Directors in writing. The Board of Directors has thirty (30) days from the date of receiving the petition to make a ruling on the request. If the Board of Directors does not rule on the petition within time period, then the request is automatically deemed denied. For purposes of this Section, an "undue hardship" includes, but is not limited to,

- (i) unexpected unemployment due to layoff or business closing;
- (ii) necessary relocation of the Owner's residence to a point more than fifty (50) miles from the property's address due to a change in employment or the retirement an Owner;
- (iii) relocation of an Owner due to mental or physical reasons or disability or another health related issues;
- (iv) divorce or marriage of an Owner;
- (v) death of an Owner.

D. Estate Planning Transfers. Any transfer of property title by the Owner to another party for the purpose of estate planning or inheritance, shall not be considered a transfer of title requiring Owner-occupancy for purposes of this section.

E. Other Resident Occupants. All Owners who do not reside in home(s) in the Timberfield Subdivision, but are not renting or leasing the home to another party for monetary or other compensation, must provide the Board of Directors with the name of the resident(s) living in the home. For purposes of enforcement of rights under this provision, all residents of a home, whether a tenant or guest, shall be treated as a tenant for enforcement purposes under subsection (G).

F. Rules & Regulations. The Board of Directors shall also have the power to promulgate any additional Rules, Regulations or Guidelines as, in its discretion, may be necessary or appropriate concerning leasing or the conduct of renters, tenants, lessees, purchasers or occupants.

G. Violations and Enforcement. The Association or any Owner in Timberfield shall have the right to exercise any and all available remedies at law or in equity, and the following specific remedies shall be available to the Association to ensure the rules set forth in this Section are followed:

- (i) If any enforcement action is taken by the Association, regardless of the actual filing of a lawsuit, against a tenant and/or Owner of a home for failing to comply with or follow any provision in the Declaration, then the Association is entitled to reimbursement of any expenses incurred by the Association for the enforcement action from the tenant, the Owner, or if both the tenant and Owner have been joined in the action, then by the both the tenant and Owner as joint tenants in common;
- (ii) Any failure of the tenant or Owner of a Home to fully comply with the terms set forth in the Declaration, or any purported lease executed in violation of this section, shall constitute an automatic default under the lease and/or this Amendment to the Declaration of Horizontal Property Ownership for Timberfield, and the Association may elect to void and terminate said rental or lease agreement pursuant to the rules as set forth in this section. If the Association shall so elect, the Owner shall be deemed to have authorized and empowered the Association to institute legal proceedings to evict the purported renter, tenant, lessee, purchaser or occupant (in case of an unauthorized leasing) in the same of, and as attorney in fact of said Owner, as the proposed landlord. If an eviction action is taken by the Association, then the Owner shall reimburse the Association for all expenses (Including reasonable attorney's fees and disbursement) incurred in connection with such proceedings.

H. Severability Clause. If any provision of this Section is found to be invalid or unenforceable, it shall not affect or impair the enforceability or validity of any other provision of this rental and leasing restriction covenant; nor shall the Association be liable for damages of any kind to any person for failure

either to abide by, enforce or carry out any provision of this Rental Restriction Amendment or any rules, regulations, procedures, guidelines or standards adopted by the Association thereto.

- (11) Article VI, Section 1 shall be deleted in its entirety and replaced by the following language:

SECTION 1. APPOINTMENT OF ARCHITECTURAL CONTROL COMMITTEE. Upon the recordation of this amendment, the Timberfield Architectural Control Committee shall consist of three members. The Board of Directors of the Association shall appoint one member of the Architectural Control Committee (hereinafter "ACC"). The second member of the ACC shall be the currently selected Vice President of the Association. Until all remaining vacant lots within Timberfield are sold and construction of residential structures on each has been approved and completed, the third members of the ACC shall be Jerry Martin. Thereafter, the ACC shall consist of three members consisting of the Vice President of the Association and two others who shall be appointed by the Association. The term of any Association appointed member of the ACC shall be one (1) year in length.

- (12) Article VI, Section 2 shall be deleted in its entirety and replaced by the following language:

SECTION 2. CONSTRUCTION APPROVALS. No construction of any building or structure of any kind, including additions, alterations, swimming pools, fences, screens and walls shall begin within Timberfield until the plans and specifications, locations and plot plan thereof, in detail and to scale have been submitted to and approved by the Architectural Control Committee (hereinafter "ACC"). The plans and specifications of and location of all construction shall be in compliance with all applicable regulatory codes, including those relating to building, plumbing and electrical requirements, and shall also comply with all zoning covenants and restrictions which are applicable to the real estate. Refusal of approval of plans and specifications, location and plot plan by the ACC may be based on any ground, including purely aesthetic grounds, in the sole and absolute discretion of the ACC. Neither the ACC, any individual member thereof, nor the Association shall be responsible for any defects in such plans or specifications, or in any building or structure erected according to such plans and specifications.

The plans and specification submitted to the ACC shall contain a plot plan to scale with adequate provision for landscaping, including the planting of trees and shrubs. The determination of whether adequate

provision has been made for landscaping shall be at the sole discretion of the ACC. The required landscaping and driveways shall be complete at the time of completion of the building, or as soon as weather and season permit. Neither the ACC, any individual member thereof, nor the Association shall be responsible for any defects in such plans or specifications, or in any building or structure erected according to such plans and specifications.

(13) Article VIII, Section 2 shall be deleted in its entirety and replaced by the following language:

SECTION 2. MEMBERSHIP. The members of the Association shall consist of the Declarant and the owners of lots in Timberfield provided that, in the event that any one lot shall be owned by more than one person, partnership, trust, corporation or other entity, they shall be treated collectively as one member for voting purposes.

The Association shall have two classes of voting membership:

CLASS A. Class A Members shall be all owners with the exception of the Declarant and shall be entitled to one vote for each lot owned. Class A members shall have their voting rights temporarily suspended for failure to pay any regular or special assessment levied by the Association, or for failure to pay any requisite pond maintenance fees. Only Members in good standing at the time of a vote may cast said vote. Voting rights of Class A Member may also be suspended after notice and hearing, for a period not to exceed sixty (60) days for infraction of any covenant, restriction, published rules and regulations. When more than one person holds an interest in any lot, all such persons shall be members. The vote for such lot shall be exercised as they amongst themselves determine, but in no event shall more than one vote be cast with respect to any lot.

CLASS B. The Class B Members shall be the Declarant, who shall be entitled to three (3) votes for each lot owned, and the Board of Directors during their respective terms, who shall have no voting rights. The Class B Membership shall cease and be converted to Class A Membership on the happening of either of the following event, whichever occurs earlier:

- (a) When the total votes outstanding in the Class A Membership equal the total votes outstanding in the Class B Membership; or
- (b) On January 1, 2006

- (14) Article VIII, Section 4 shall be deleted in its entirety and replaced by the following language:

SECTION 4. BOARD MEMBERS. Initially, the Board of Directors shall consist of three members, those persons being Jerome P. Martin, Jeffrey K. Smith and Michael Shotts (hereinafter referred to as Initial Board). The Initial Board shall serve as said Board Members until 75% of the lots of Timberfield have been sold and developed on June 1, 2006 whichever occurs earlier. THEREAFTER, the Board shall consist of six members who shall be Association Members elected by the Association Membership. Each Board Member shall serve a two year term.

A Board Member must be an Owner in the Timberfield subdivision and not have their membership voting rights in the corporation suspended for any reason as set forth in the Declaration or any amendments thereto, including, but not limited to suspension for any reason set forth in Art. VIII, Section 2. However, the first, Board Members elected the Association shall serve terms as follows:

- (a) 2 newly elected Board Members shall serve one year terms
- (b) 2 newly elected Board Members shall serve two year terms
- (c) 2 newly elected Board Members shall serve three year terms

All subsequent Board Members shall serve two year terms. The terms of Board Members shall be staggered in pairs so that two new board members are elected at each annual meeting.

IN WITNESS WHEREOF, the Declarant has caused this Amendment to be executed on this 18 day of March, 2011.

Timberlake Development Company, LLC.

By: [Signature]
Jerry Martin, Member

STATE OF INDIANA)
COUNTY OF JOHNSON) SS:

Before me, a Notary Public, in and for said State and County, appeared **Timberlake Development Company, LLC.**, by its authorized Member **Jerry Martin**, who acknowledged, subscribed and swore to the provisions of the foregoing Amendment and Supplement to Declaration of Covenants Conditions and Restrictions for Timberfield Subdivision, this 18th day of March 2011.

My Commission Expires: 3/17/2016
IN Notary Public, Debra K. Kriese
Resident of Marion County.

I SWEAR AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE FOREGOING REPRESENTATIONS ARE TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE AND BELIEF.

I affirm, under the penalties of perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. Shelli Anderson

This instrument was prepared by and should be returned to:

Shelli S. Anderson, VAN VALER LAW FIRM, LLP, 299 West Main Street, Greenwood, IN 46142

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