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Jan 27 1982

26 December  
1981  
W. W. Larson  
Recorder

THIRD AMENDMENT

TO

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR TIMBERCREST FIRST ADDITION  
IN THE CITY OF COUNCIL BLUFFS, IOWA

WHEREAS, Timbercrest Venture, Ltd., an Iowa limited partnership, as the "Declarant", placed of record certain Covenants, Conditions, and Restrictions on certain real property, which is more particularly described as follows:

Lot One (1) through Fifty-six (56), inclusive, in Timbercrest First Addition, in Council Bluffs, as surveyed, platted and recorded in Pottawattamie County, Iowa, and

WHEREAS, said above-referred to Covenants, Conditions and Restrictions for the above-described lots in Timbercrest First Addition, were recorded in Book 76 at Page 21188, in the Office of the Recorder of Pottawattamie County, Iowa, said Covenants, Conditions and Restrictions hereinafter referred to as "Covenants", and

WHEREAS, the Covenants have been amended twice by Timbercrest Venture, Ltd., which Amendments are recorded in Book 78, at Page 825, and Book 78, at Page 1781, respectively, all in the Office of the Recorder of Pottawattamie County,

WHEREAS, this Declarant, Timbercrest Development, Inc., an Iowa corporation, is the successor and assign of Timbercrest Venture, Ltd., and now desires to amend said Covenants pursuant to Article III, Paragraph B of the Covenants by the addition of the herein described "Article IV Definitions"; "Article V Property Rights"; "Article VI Membership"; "Article VII Voting Rights"; and "Article VIII Covenants for Maintenance Assessments", which Articles will be more completely described herein,

NOW, THEREFORE, Timbercrest Development, Inc., an Iowa corporation, does hereby amend said Covenants by the addition of the following "Article IV Definitions"; "Article V Property Rights"; "Article VI Membership"; "Article VII Voting Rights"; and "Article VIII Covenants for Maintenance Assessments", which Amendment and Articles provide as follows:

# COMPARED

## ARTICLE IV

### DEFINITIONS

Section 1. "Association" shall mean and refer to the TIMBERCREST HOMES ASSOCIATION, an Iowa non-profit Association, its successors, and assigns.

Section 2. "Owner" shall mean and refer to the record Owner, whether one or more persons or entities, of a fee simple title to all or any part, parcel or portion of a platted Lot which is a part of the Properties as defined herein, including contract buyers and sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 3. Properties shall mean and refer to that certain real property more particularly described as follows:

Lots One (1) through Fifty-six (56), inclusive, in Timbercrest First Addition, in Council Bluffs, as surveyed, platted and recorded in Pottawattamie County, Iowa, and in addition hereto, all other Properties as defined in certain other Declarations of Covenants, Conditions, and Resolutions for Timbercrest Second Addition and Timbercrest Third Addition, as recorded in Pottawattamie County, Iowa, and any additions to be made to Timbercrest.

Section 4. "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the Owners and/or members of the Association, subject to the limitations and restrictions hereinafter noted. The Common Area to be owned by the Association at the time of the conveyance of the first Lot or any part, parcel, or portion thereof, is described as follows:

Outlot One (1), Outlot Three (3), Outlot Four (4), and Outlot Five (5), in Timbercrest First Addition, in Council Bluffs, as surveyed, platted and recorded in Pottawattamie County, Iowa, and Outlot One Hundred One (101) in Timbercrest Second Addition, in Council Bluffs, as surveyed, platted and recorded in Pottawattamie County, Iowa.

Section 5. "Lot" shall mean and refer to the property, or any part thereof described in Article IV, Section 3 herein.

Section 6. "Declarant" shall mean and refer to Timbercrest Development, Inc., an Iowa corporation, its successors and

# COMPARED

assigns if such successors and assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

Section 7. "Member" shall mean and refer to every person or entity who holds membership in the Association.

## ARTICLE V

### PROPERTY RIGHTS

Section 1. Owner's Easements of Enjoyment. Every Owner and/or member of the Association, shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) the right of the Association to suspend the voting and rights to use of the Common Area by an Owner for any period during which any assessment against his Lot remains unpaid, and for a period not to exceed 60 days for any infraction of its published rules and regulations.

(b) the right of the Association to dedicate or transfer all or any part of the Common Area, subject to any then existing ingress and egress requirements in connection therewith, to any public agency, non-profit corporation to use for purposes similar to those for which the Association was formed, authority or utility for such purposes and subject to such conditions as may be agreed to by the Owners and/or members of the Association and by persons holding mortgages or any portion of the subject property. No such dedication or transfer shall be effective unless an instrument signed by Owners entitled to cast two-thirds (2/3) of the votes has been recorded, agreeing to such

## COMPARED

dedication or transfer, and unless written notice of the proposed action is sent to every Owner not less than 30 days or more than 60 days in advance. Declarant, or its assigns, shall have the right at any time to use so much of the Common Area as it may deem necessary or advisable for the purpose of aiding in the construction and development of the unimproved lots, except that such use may not interfere with the homeowner's use and reasonable access to the Common Area, nor with their right of ingress or egress to their homes.

(c) the right of the Association to limit the number of guests of Owners on recreational facilities.

(d) the right of the Association to borrow money for the purpose of improving the Common Area and facilities and in aid thereof to mortgage said Common Area and facilities, which mortgage shall be subordinate to the rights of the owners hereunder.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the By-Laws, his right of enjoyment of the Common Area and facilities, together with any other right, license, privilege or easement conferred upon such owner by this Declaration, to the members of his family, his tenants, guests, or contract purchasers who reside on the property.

Section 3. Title to the Common Area. The Declarant will convey a fee simple title to the Common Area described in Section 4, of Article IV above, to the Association, free and clear of all encumbrances and liens, except easements, restrictions, covenants, and conditions then of record.

# COMPARED

## ARTICLE VI

### MEMBERSHIP

Every Owner as defined in Article IV, Section 2, under this Declaration shall be a member of the Association. No Owner shall have more memberships than the number of lots owned by such Owner. Memberships shall be appurtenant to and may not be separated from ownership of the Lots. Ownership of a Lot or Lots shall be the sole qualification for membership.

## ARTICLE VII

### VOTING RIGHTS

Members shall be all Owners of the Lots and shall be entitled to one vote for each Lot owned. 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 among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

## ARTICLE VIII

### COVENANTS FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as herein provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be continuing lien upon the property against which each such assessment is made. All subsequent purchasers shall take title subject to said lien and shall be bound to inquire to the Association as to the amount of any unpaid assessments. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.



## COMPARED

Section 2. Purpose of Assessments. The assessments levied by the Association on said Lots in Timbercrest First Addition shall be used for the following purposes:

- (a) To promote the recreation, health, safety, and welfare of the residents of the Properties.
- (b) For the improvement, maintenance, and insurance of the Common Area and the payment of any taxes and assessments levied or assessed against such Common Area by any governmental body or entity having lawful jurisdiction to do so.
- (c) For the construction of recreational facilities thereon.

Section 3. Maximum Annual Assessment. Until January 1, 1980, the maximum annual assessment shall be Twelve and no/100 Dollars (\$12.00) per Lot.

- (a) From and after January 1, 1980, the maximum annual assessment may be increased each year not more than ten percent (10%) above the maximum assessment for the previous year without a vote of the membership.
- (b) From and after January 1, 1980, the maximum annual assessment may be increased above ten percent (10%) by a vote of two-thirds (2/3) of the members who are voting in person or by proxy at a meeting duly called for this purpose.
- (c) The Board of Directors must fix the annual assessment at an amount not in excess of the maximum.
- (d) Until December 31, 1979, the Declarant shall maintain the Common Area at no expense to any owner. From and after January 1, 1980, the Declarant shall have no obligation to maintain the Common Area, nor to pay assessments, except for lots of which Declarant is the owner.

# COMPARED

## Section 4. Special Assessments for Capital Improvements.

In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have two-thirds (2/3) of the votes of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be delivered either personally or by mail to all members not less than ten (10) days nor more than fifty (50) days in advance of the meeting. At the first such meeting called, the presence of members or proxies entitled to cast sixty percent (60%) of all the votes shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be fifty percent (50%) of all of the votes. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

Section 7. Date of Commencement of Annual Assessments:  
Due Dates. The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the Common Area, EXCEPT THAT SUCH ASSESSMENTS SHALL NOT BE APPLICABLE TO ANY LOT OWNED BY THE DECLARANT UNTIL DECEMBER 31, 1979. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least (30) days in advance of each

## COMPARED

annual assessment period. The annual assessments shall be and become a lien as of the date of the annual assessment. Written notice of the annual assessment shall be sent to every Owner subject thereto immediately following the assessment date. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether assessments or a specific Lot have been paid.

### Section 8. Effect of Non-Payment of Assessments -

Remedies of the Association. Any assessment installment which is not paid within thirty (30) days after the due date the assessment installment shall bear interest from the due date at the rate of nine percent (9%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property in proceedings in the nature of a mechanics lien foreclosure. In either a personal or foreclosure action, the Association shall be entitled to recover as a part of the action, the interest, costs and reasonable attorney's fees with respect to the action. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot. The mortgagee of the subject property shall have the right to cure any delinquency of an Owner by payment of all sums due, together with interest, costs and fees. The Association shall assign to such mortgagee all of its rights with respect to such lien and rights of foreclosure of the mortgagee.

### Section 9. Subordination of the Lien to Mortgages.

The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any lot shall not affect the assessment lien. However, the sale or transfer of any lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to the payments which become due prior to such sale or transfer. No sale or transfer shall relieve such lot from liability for any assessments thereafter becoming due or from the lien thereof.



# COMPARED

Section 10. Exempt Property. The following property subject to this Declaration shall be exempt from the assessments created herein:

- (a) all Properties dedicated to and/or accepted by a local public authority;
- (b) the Common Area;
- (c) Lots owned by the Declarant until December 31, 1979.

Except as herein amended, and as amended in any prior amendments, all provisions of said Covenants, Conditions, and Restrictions for Timbercrest First Addition, shall remain in full force and effect.

EXECUTED this 20<sup>th</sup> day of December, 1979.

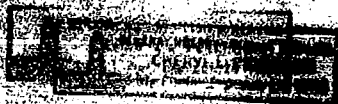
TIMBERCREST DEVELOPMENT, INC.,  
an Iowa corporation,

By: Gene D. Svensen  
Gene D. Svensen, President

Approved by:

STATE OF NEBRASKA )  
COUNTY OF DOUGLAS ) SS.

The foregoing instrument was acknowledged before me this 20<sup>th</sup> day of December, 1979, by Gene D. Svensen, President of Timbercrest Development, Inc., an Iowa corporation, on behalf of the corporation.



Cheryl A. Johnson  
Notary Public