DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF
FOX ORCHARD

THIS DECLARATION, made on the date hereinafter set forth by
TIMBER PARK DEVELOPMENT Corp., an Indiana corporation, hereinafter
referred to as "Declarant",

WITNESSETH:

WHEREAS, Declarant is the fee simple owner of certain
property in Indianapolis, Marion County, Indiana, which is more
particularly described in Exhibit "A" attached hereto and by this
reference made a part hereof.

NOW, THEREFORE, Declarant hereby declares that all of the
properties described in Exhibit "A" shall hereafter be held, sold
and conveyed subject to the following easements, restrictions,
covenants, and conditions, which are for the purpose of
protecting the value and desirability of, and which shall run
with the real property and be binding on all parties having any
right, title or interest in the described properties or any part
thereof, their heirs, successors and assigns, and shall inure
to the benefit of each owner thereof.

ARTICLE I
NAME

This subdivision shall be known and designated as Fox
Orchard, a subdivision located in Marion County, Indiana, the
plat of which was recorded as Instrument No. 88-81670
the Office of the Recorder of Marion County, Indiana.

ARTICLE II
DEFINITIONS

Section 1. "Association" shall mean and refer to Fox Orchard
Homeowners Association, Inc., an Indiana not-for-profit
corporation, its successors and assigns.
Section 2. "Board of Directors" shall mean and refer to the Board of Directors of the Association.

Section 3. "Common Area" shall mean and refer to any and all real estate and facilities and all personal property leased or owned by the Association for the benefit, use and enjoyment of its members.

Section 4. "Declarant" shall mean and refer to Timber Park Development Corp., its successors and assigns as a declarant or developer.

Section 5. "Federal Mortgage Agencies" shall mean and refer to those federal agencies who have or may come to have an interest in the Properties, or any portion thereof, such as the Federal Housing Administration, the Veterans Administration, the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation, or successors to their interests.

Section 6. "Landscape Easement" means any area within the Properties denoted as Landscape Easement on the Plat.

Section 7. "Lot" shall mean and refer to any parcel of land shown upon the Plat other than areas designated as Common Area or parcels conveyed to the Association as Common Areas.

Section 8. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 9. "Plat" shall mean and refer to the subdivision plat of the Properties recorded in the Office of the Recorder of Marion County, Indiana, as the same may be hereafter amended or supplemented.

Section 10. "Properties" shall mean and refer to the real estate described in Exhibit "A" and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

ARTICLE III

Common Areas

Section 1. Obligations of the Association. The Association, subject to the rights of the Owners as set forth in the
Declaration, shall be responsible for the management and control, for the exclusive benefit of the Owners, of the Common Area, if any, conveyed or leased to it and all improvements thereon, and for the care and maintenance of Landscape Easements, and shall keep the same in good, clean, attractive and sanitary condition, order and repair in compliance with the standards of sound property management.

Section 2. Owners' Rights and Easements of Enjoyment. Every Owner shall have a non-exclusive right and easement of enjoyment in and to the Common Area which may be delegated to family members, lessees and guests of every such Owner (subject to any reasonable and nondiscriminatory rules and regulations which may be enacted by the Association) which shall be appurtenant to and shall pass with membership in the Association, subject to the following provisions:

(a) The right of the Association to promulgate reasonable rules and regulations governing the use of the Common Area;

(b) The rights of Declarant as provided in this Declaration;

(c) All other rights, obligations and duties as set forth in this Declaration, as the same may be from time to time amended or supplemented;

(d) The right of the Association to grant reasonable access, parking, utility and drainage easements across and through the Common Area for the benefit of its members.

ARTICLE IV

LOTS

Section 1. Number of Lots. This subdivision consists of 38 Lots with streets as shown on the Plat. The streets as shown on the Plat are hereby dedicated to the public.

Section 2. Land Use. All Lots shall be used exclusively for residential purposes (except that portions of Lots may be used for drainage, utility and access easements and other uses which are subordinate to or related with the primary residential use). Declarant shall have the right to subdivide, dedicate or otherwise convey or use a portion of any one or more Lots which it owns for recreational uses for the benefit of all Owners and other members of the Association. In the event any portion of any Lot or Lots is so

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used, reasonable rules and regulations shall be promulgated and
enforced so that the use and enjoyment of adjacent Lots by the Owners
thereof shall not be unreasonably disturbed.

Section 3. Subdivision of Lots. No Lot shall be subdivided to
form units of less area, except as otherwise provided in Section 2 of
this Article IV.

Section 4. Conveyance of Lots. Each Lot shall be conveyed as a
separately designated and legally described freehold estate subject
to the covenants, conditions and restrictions contained herein.

ARTICLE V
ACCESS RIGHTS OF ASSOCIATION

Certain utility lines, sewer and other facilities and other
improvements located on one Lot may serve other Lots. The
Association and any member thereof whose enjoyment of the use and
occupancy of his Lot is affected thereby, their respective officers,
agents, employees and contractors, shall have an easement thereto and
shall have the right, at reasonable times and at any time in case of
emergency, to go upon any other Lot for the purpose of maintaining or
causing to be maintained or repaired any party walls, utility lines,
sewer or other facilities which serve more than one Lot.

If any Owner shall fail to adequately maintain the open area
included within his Lot, the Association upon the giving of ten (10)
days written notice to such Owner, shall have the right to enter upon
such open area and do any necessary maintenance thereon. The cost of
such maintenance shall be a special assessment against such Lot and
the Owner thereof.

The Association shall have and is hereby granted an easement for
access to all Lots for ingress and egress as reasonably required by
its officers, directors, employees, and their agents and independent
contractors, in order to perform its obligations and duties as set
forth in this Declaration. The easement specified herein is also
reserved for the benefit of Declarant so long as Declarant owns any
Lot and for so long as Declarant may be liable under any builder's
warranty, including any construction, maintenance or repair work
reasonably required in connection with the Common Areas.

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ARTICLE VI
USE RESTRICTIONS

Section 1. **Type, Size and Nature of Improvements.** No dwelling, garage, fence, wall or other structure, including without limitation, patios, porches, satellite dishes or receivers, or other structures shall be erected, placed or constructed on any Lot, other than original construction by or on behalf of Declarant, except in a manner approved in writing by Board of Directors or the architectural committee specified in Article XIV hereof prior to the commencement of construction as to the type of materials, exterior facade, design, layout, location, finished grade elevations and the like. Approval shall be considered based upon satisfactory plans and specifications providing such detail as may be reasonably required (which upon approval shall be strictly adhered to throughout construction unless modified or amended with further written approval); subject to the improvement of any Lot satisfying the following minimum standards:

(a) No structure or building shall be erected, placed or constructed on any Lot other than one (1) single-family dwelling unit not to exceed two (2) stories in height and one (1) private garage for not more than two (2) cars.

(b) No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding shall be erected, placed or constructed on any Lot for use as a residence, either temporarily or permanently, or at any time be used for such purpose.

(c) Every single-family dwelling unit erected, placed or constructed on any Lot shall have a minimum finished floor area, exclusive of open porches, stoops, attached garages or carports, of one thousand (1000) square feet.

(d) Any tank for the storage of fuel erected, placed or constructed on any Lot outside of any structure or building permitted hereunder shall be concealed or otherwise located below the surface of the ground.

In the event that written approval is not received as required hereunder within thirty-five (35) days from the date requested, the failure to issue such written approval shall be construed as the disapproval of the request made.

Section 2. **Animals.** No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot except that dogs, cats or other household pets may be kept, provided that they are not kept, bred or maintained for any commercial purpose.

-5-
Section 3. Waste Disposal. No Lot shall be used or maintained as a dumping ground for rubbish, trash or garbage. Waste matter or materials shall be kept only in sanitary containers and all incinerators or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition.

Section 4. Prohibited Activities. No noxious or offensive activity shall be carried on upon any Lot nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

Section 5. Water and Sewer Systems. No individual water supply system or sanitary sewer system shall be permitted on any Lot.

Section 6. Certain Vehicles Prohibited. Any motor vehicle which is inoperative and not being used for normal transportation shall not be permitted to remain on any Lot except within a closed garage and motor vehicles shall not be parked upon grassy or landscaped areas. Unless otherwise provided by the rules and regulations of the Board, motor homes, mobile homes, boats, campers, commercial trucks and the like shall not be parked or stored upon the Properties unless the same are parked within a closed garage.

Section 7. Exterior Antennae. Without prior written approval and authorization of the Board of Directors, no exterior satellite dishes, television, radio or other type of antennae, or the like, shall be placed, allowed or maintained upon any portion of the Properties nor upon any structure or improvement situated upon the Properties.

Section 8. Construction and Sale Period. Notwithstanding any provisions contained herein to the contrary, it shall be expressly permissible for Declarant to maintain, during the period of construction and sale of Lots, upon any portion of the Properties which Declarant owns, such facilities as in the sole opinion of Declarant may be reasonably required, or be convenient or incidental to the construction and sale of the Lots, including, but without limitation, storage areas, signs, model residences, construction offices, sales offices, sales trailers and business offices.
ARTICLE VIII

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Declarant, for each Lot owned within the Properties, hereby covenants, and 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) monthly assessments or charges; (2) special assessments for capital improvements and operating deficits; and (3) special assessments as provided in Article V, such assessments to be established and collected as hereinafter provided. The monthly and special assessments, together with interest, costs, and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorneys' 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.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the health, safety, and welfare of the residents in the Properties and for the improvement and maintenance of the Common Area and the living units situated on the Properties and other purposes as specifically provided herein.

Section 3. Maximum Monthly Assessments. (a) Until January 1, 1990, the maximum monthly assessment on any Lot conveyed by Declarant shall be $50.00 per Lot, except that if a Lot is undeveloped or construction of the residential unit thereon is incomplete, the maximum monthly assessment for such Lot shall be twenty-five per cent (25%) of the monthly assessment applicable to other Lots.

(b) From and after January 1, 1990, the maximum monthly assessment may be increased effective January 1 of each year without a vote of the membership by the greater of 15% or the increase, if any, of the Consumer Price Index for all urban consumers ("CPI-U") as
ARTICLE VII

ASSOCIATION, MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership. Every owner of a Lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot.

Section 2. Classes of Membership. 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. 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.

Class B. The Class B member(s) shall be the Declarant, who shall be entitled to three (3) votes for each Lot owned and the first 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 events, 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, 1990.

Section 3. Board of Directors. The Owners shall elect a Board of Directors of the Association as prescribed by the Association's By-Laws. The Board of Directors shall manage the affairs of the Association.

Section 4. Professional Management. No contract or agreement for professional management of the Association nor any other contract with Declarant shall be for a term in excess of three (3) years. Any such agreement or contract shall provide for termination by either party with or without cause without any termination fee by written notice of ninety (90) days or less.
published by the Bureau of Labor Statistics (or other comparable index in the event the CPI-U shall be discontinued) for the preceding month of September as compared to said price index twelve (12) months prior thereto.

(c) From and after January 1, 1990, the maximum monthly assessment may be increased by more than the amount specified in subsection (b) above by a vote of a majority of the members who are voting in person or by proxy, at a meeting duly called for this purpose.

(d) The Board of Directors may fix the monthly assessment at an amount not in excess of the maximum.

(e) A portion of such monthly assessments shall be set aside or otherwise allocated in a reserve fund for the purpose of providing repair and replacement of the Common Areas or of any capital improvement which the Association is required to maintain.

Section 4. Special Assessments for Capital Improvements and Operating Deficits. In addition to the monthly assessments authorized above, the Association may levy a special assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any capital improvement which the Association is required to maintain or for operating deficits which the Association may from time to time incur, provided that any such assessment shall have the assent of a majority of the votes of the 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 sent to all members not less than 30 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty per cent (60%) of all the votes of the membership 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 one-half (1/2) of the required quorum.
at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both monthly and special assessments for Common Area expenses, Common Area capital improvements and operating deficits must be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

Section 7. Date of Commencement of Monthly Assessments: Due Dates. The monthly assessment provided for herein shall commence for any Lot on the first day of the first month following the date of conveyance by Declarant to an Owner of a Lot. The Board of Directors shall fix any increase in the amount of the monthly assessment at least thirty (30) days in advance of the effective date of such increase. Written notice of special assessments and such other assessment notices as the Board of Directors shall deem appropriate shall be sent to every Owner subject thereto. The due dates for all assessments shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate in recordable form signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate from the Association regarding the status of assessments for any Lot shall be binding upon the Association as of the date of its issuance.

Section 8. Effect of Nonpayment of Assessments: Remedies of the Association. If any assessment (or monthly installment of such assessment, if applicable) is not paid on the date when due (pursuant to Section 7 hereof), then the entire unpaid assessment shall become delinquent and shall become, together with such interest thereon and cost of collection thereof as hereinafter provided, a continuing lien on such Lot, binding upon the then Owner, his heirs, devisees, successors and assigns. The personal obligation of the then Owner to pay such assessments, however, shall remain his personal obligation and shall not pass to his successors in title unless expressly assumed by them.
If the assessment is not paid within thirty (30) days after the
delinquency date, the assessment shall bear interest from the date of
delinquency at the rate of 12% per annum, and the Association may
bring an action at law against the Owner personally obligated to pay
the same or to foreclose the lien against the property, or both, and
there shall be added to the amount of such assessment the costs of
preparing and filing the complaint in such action; and in the event a
judgment is obtained such judgment shall include interest on the
assessment as above provided and a reasonable attorneys' fee to be
fixed by the court, together with the costs of the action in favor of
the prevailing party.

No Owner may waive or otherwise escape liability for the
assessments provided for herein by abandonment of his Lot.

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. No sale or transfer shall relieve
such Lot from liability for any assessments thereafter becoming due
or from the lien thereof. Provided, however, the sale or transfer of
any Lot pursuant to the foreclosure of any first mortgage on such Lot
(without the necessity of joining the Association in any such
foreclosure action) or any proceedings or deed in lieu thereof shall
extinguish the lien of all assessments becoming due prior to the date
of such sale or transfer.

ARTICLE IX
DECLARANT'S RIGHTS

Section 1. Use of Property. Declarant reserves the right to use
any of the Lots as models and to sell, assign or conduct other
businesses in connection with the construction and development of the
project from any of such Lots prior to their being sold. This
reservation of right or privilege in Declarant includes, but is not
limited to, the right to maintain a model, erect signs, maintain an
office, staff the office with employees, and to show Lots then
unsold. Declarant retains the right to be considered an Owner of any
Lot that remains unsold. Declarant also reserves the right to make
changes in the location or manner of construction of buildings and other improvements.

ARTICLE X
MAINTENANCE

Section 1. Maintenance Obligations of Association. The Association shall provide for trash removal and snow removal from the paved portions of streets.

The Association shall be responsible for the maintenance, repair and replacement of the Common Area and improvements thereon, if any, off-site drainage facilities which serve Properties and which are not maintained by governmental agencies and for the maintenance, repair and replacement of the landscaping and improvements located within any Landscape Easements including wall and landscaping at the entry of the development.

ARTICLE XI
INSURANCE

Section 1. Casualty Insurance. The Association shall purchase such casualty insurance policy or policies insuring Common Areas as the Board of Directors deems appropriate. Such insurance coverage shall be for the benefit of the Association, each Owner, and, if applicable, the first Mortgagee of each Lot.

Such casualty insurance policy shall (to the extent the same are obtainable) contain provisions that the insurer (a) waives its right to subrogation as to any claim against the Association, its Board of Directors, its agents and employees, Owners, their respective agents and guests, and (b) waives any defense based on the invalidity arising from the acts of the insured.

Section 2. Liability Insurance. The Association shall also purchase public liability insurance policy in such amount or amounts as the Board of Directors shall deem appropriate from time to time. Such liability insurance policy shall cover the Association, its Board of Directors, any committee or organ of the Association or Board of Directors, all persons acting or who may come to act as agents or employees of any of the foregoing with respect to the Association, all Owners and all other persons entitled to occupy any Lot.
The Association shall also obtain any other insurance required by law to be maintained, including but not limited to workmen's compensation insurance, and such other insurance as the Board of Directors shall from time to time deem necessary, advisable or appropriate. Such insurance coverage shall also provide for and cover cross liability claims of one insured party against another insured party. Such insurance shall inure to the benefit of each Owner, the Association, its Board of Directors and any managing agent acting on behalf of the Association. Each Owner shall be deemed to have delegated to the Board of Directors his right to adjust with the insurance companies all losses under policies purchased by the Association.

Section 3. Monthly Assessment for Insurance. The premiums for all such insurance hereinabove described shall be paid by the Association and the cost thereof shall be a part of the monthly assessment to which each Lot conveyed by Declarant shall be subject under the terms and provisions hereof.

Section 4. Casualty and Restoration. Damage to or destruction of the Common Area or any Building due to fire or any other casualty or disaster shall be promptly repaired and reconstructed by the Association and the proceeds of insurance, if any, shall be applied for that purpose.

Section 5. Insufficiency of Insurance Proceeds. If the insurance proceeds received by the Association as a result of any such fire or any other casualty or disaster are not adequate to cover the cost of repair and reconstruction, or in the event there are no insurance proceeds, the cost for restoring the damage and repairing and reconstructing the Common Area so damaged or destroyed (or the costs thereof in excess of insurance proceeds received, if any) shall be paid by the Association which shall then have the right to levy a special assessment against all Lots for such deficiency.

Section 6. Surplus of Insurance Proceeds. In the event that there is any surplus of insurance proceeds after the reconstruction or repair of the damage has been fully completed and all costs paid, such sums may be retained by the Association as a reserve or may be used in the maintenance and operation of the Properties, or, in the
discretion of the Board of Directors, may be distributed to the Owners and their Mortgagees who are the beneficial owners of the fund. The action of the Board of Directors in proceeding to repair or reconstruct damage shall not constitute a waiver of any rights against another Owner for committing willful or malicious damage.

ARTICLE XII
EASEMENTS

Section 1. Drainage, Utility and Sewer Easements. As noted on the Plat, Declarant has reserved certain areas upon the Lots as utility and drainage, easement (U. & D.E.), for the benefit of all Lots and Owners, to properly install and allow to be maintained all electrical, telephone, water, gas, sewer and other utility services (including all lines, pipes, wires, cables, ducts, etc., including cable television, lawn sprinkling systems and the like) to the living units constructed on the various Lots.

Declarant further reserves unto itself an easement and right of way in and to the Common Areas and an easement of ingress and egress through the open area of any Lot as is reasonably necessary or appropriate, to perform such actions as are required or are reasonably necessary or appropriate for the purpose of establishing and maintaining proper surface water drainage throughout the Properties. The easement hereby reserved shall terminate one (1) year after Declarant shall have conveyed the last lot on the Properties. Provided, however, the reservation of this easement and terms and provisions contained herein shall not be construed so as to impose upon Declarant any higher or different duty or obligation than is imposed by applicable law.

Section 2. Easement for Signs and Landscape Easements. Declarant reserves unto itself for so long as it owns any Lot, and thereafter reserves and grants to the Owners by and through the Association, the right and easement to erect and maintain an entryway sign or signs, walls, landscape areas and the like within the Common Areas and within the Landscape Easements. Declarant reserves unto itself for so long as it owns any Lot, and thereafter reserves and grants to the Association, the right and easement to erect and
maintain directional signs upon the Common Areas and Landscape Easements. Such directional signs shall contain only directional information such as street addresses, shall comply with all applicable zoning requirements, shall not extend more than four (4) feet above grade and shall be maintained by the Association.

ARTICLE XIII
ARCHITECTURAL CONTROL

No building, fence, wall or other structure, except original construction of Buildings by or on behalf of Declarant shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein, other than by the Board of Directors, be made until the 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 the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board. Any change in the appearance or the color of any part of the exterior of a residence shall be deemed a change thereto and shall require the approval therefor as above provided.

ARTICLE XIV
GENERAL PROVISIONS

Section 1. Right of Enforcement. In the event of a violation, or threatened violation, of any of the covenants, conditions and restrictions herein enumerated, Declarant, the persons in ownership from time to time of the Lots and all parties claiming under them shall have the right to enforce the covenants, conditions and restrictions contained herein, and pursue any and all remedies, at law or in equity, available under applicable Indiana law, with or without proving any actual damages, including the right to secure injunctive relief or secure removal by due process of any structure not in compliance with the covenants, conditions and restrictions contained herein, and shall be entitled to recover reasonable
attorneys' fees and the costs and expenses incurred as a result thereof.

Section 2. Amendment. This Declaration may be amended or changed at any time by an instrument recorded in the Office of the Recorder of Marion County, Indiana, signed or approved in writing by at least seventy-five per cent (75%) of the then Owners; provided, however, none of the rights or duties of Declarant reserved or set out hereunder may be amended or changed without Declarant's prior written approval. This Declaration may also be amended by Declarant, if it then has any ownership interest in the Properties, at any time within three (3) years after the recordation hereof in order to satisfy the requirements of any of the Federal Mortgage Agencies. Any such amendments shall be recorded and shall be subject to the prior written approval of any of the Federal Mortgage Agencies having an interest in the Properties or any portion thereof. This Declaration shall run with the land and shall be binding upon all parties claiming under them for a period of twenty-five (25) years from the date of recordation in the Office of the Recorder of Marion County, Indiana, and shall automatically extend for successive periods of ten (10) years each unless it is amended or changed in whole or in part as hereinabove provided. Provided, however, no amendment which materially and adversely affects the easement rights set forth herein shall be effective without the written consent of any Owner or other person affected thereby (unless substantially equivalent easement rights shall have been substituted in lieu thereof).Invalidation of any of the covenants, conditions and restrictions of this Declaration by judgment or decree shall in no way effect any of the other provisions hereof, but the same shall remain in full force and effect.

Section 3. Annexation. Additional residential property may be annexed to the Properties with the consent of a majority of ownership of the Lots by the recording of a declaration applicable to such annexed real estate which incorporates the terms of the Declaration herein.

Section 4. Mortgagee Rights. Any lender or lenders holding a first mortgage or first mortgages upon any Lot or Lots may, jointly
or singly, pay any real estate taxes or other taxes or charges which are in default and which may or have become a charge or lien against any Common Area or any property owned by the Association and such lender or lenders may pay any overdue premiums on any hazard, casualty, liability or other insurance policies or secure new insurance coverage on the lapse of any policies for any such Common Area or other property owned by the Association or covering any property for which the Association has an obligation to maintain insurance coverage. Any such lender or lenders making payments in accordance with this section shall be entitled to immediate reimbursement therefore from the Association along with any costs incurred, including reasonable attorneys' fees.

Section 5. Notice to Mortgagees. The Association, upon request, shall provide written notification to any lender holding a first mortgage upon any Lot specifying the defaults of the Owner of such Lot, if any, in the performance of such Owner's obligations under this Declaration, the Articles of Incorporation of the Association, its By-Laws or any other applicable documents which default has not been cured within sixty (60) days.

IN WITNESS WHEREOF, Timber Park Development Corp. has caused this Declaration to be executed this ___ day of __________, 1988.

TIMBER PARK DEVELOPMENT CORP.

By: ____________________________
    Ronald R. Fisher, President

Attest: __________________________
       Larry Dunkerly, Secretary
STATE OF INDIANA 

SS

COUNTY OF MARION 

Before me, a Notary Public, in and for such County and State, personally appeared Ronald K. Fisher, President, and Larry Dunckerly, Secretary, of Timber Park Development Corp., an Indiana corporation, who, after having been first duly sworn, acknowledged the execution of the foregoing Declaration for and on behalf of said corporation.

Dated this ___ day of August, 1988.

[Signature]
Notary Public

[Signature]
Printed

My Commission Expires: 

April 13, 1991

My County of Residence: Marion

This Instrument was prepared by John W. Van Buskirk, Attorney.
EXHIBIT "A"

CERTIFICATE OF SURVEY
FOX ORCHARD

I, the undersigned, do hereby certify the attached plot to be true and correct, to the best of my knowledge and belief, representing a survey of a part of the Southwest Quarter of Section 23, Township 16 North, Range 2 East of the Second Principal Meridian, in Marion County, Indiana, more particularly described as follows:

Beginning at a point on the north line of said Southwest Quarter North 89°34'48" East (assumed bearing) 214.50 feet from the northwest corner of said Southwest Quarter; thence continuing North 89°34'48" East along said north line 600.00 feet; thence South 00°36'18" West parallel with the west line of said Southwest Quarter 720.00 feet; thence South 89°34'48" West parallel with said north line 600.00 feet; thence North 00°36'18" East parallel with said west line 720.00 feet to the Point of Beginning; containing 9.916 acres, more or less; subject to highways, rights-of-way, and easements.
DEDICATION OF SANITARY SEWER LINES

WHEREAS, Sumerdale Associates, an Indiana partnership
as the owner of certain real estate in Indianapolis, Marion
County, Indiana (hereinafter referred to as Grantor(s)), caused to be constructed
originally sanitary sewer lines and appurtenances thereto, which are shown upon
plan and specifications now on file with the Department of Public Works and its
Sanitary District of the City of Indianapolis (hereinafter referred to as Grantee) and

WHEREAS, the Grantor(s) desire(s) to and have agreed to transfer and dedicate
to the said Grantee, said sanitary sewer collection system without cost or charge to
such Grantee and in dedication, and to thereafter supervise and maintain said sewer
lines and appurtenances.

NOW THEREFORE, Grantor in consideration of the premises set forth in the forego-
ing recitals, but without payment of cash consideration, does hereby grant, transfer,
assign, and dedicate to the Department of Public Works of the City of Indianapolis,
Grantee, all the sanitary sewer lines and appurtenances located and described as
follows: All facilities located within the 20 foot offside sewer
easement described in Exhibit "A" attached hereto

Grantee accepts the dedication and transfer hereby evidenced and agrees that it
will hereafter supervise and maintain said sewer lines and appurtenances, excepting,
however, the laterals from the main line to the adjacent properties; as a part of its
Sanitary District Facility.
Grantor(s) hereby represents that he is the lawful owner of all of the sewers and appurtenances (and exceptions) hereby transferred and dedicated, and that he (they) has (have) the right to transfer title to all of the property hereby transferred and dedicated to Grantee.

IN WITNESS WHEREOF, Sunnerndale Associates has executed or caused to be executed, this instrument this day of February, 19__ and that said Department of Public Works, Sanitary District of the City of Indianapolis, has also duly executed the same.

SUNNERYDLE ASSOCIATES
By: BFNC INDIANA ASSOCIATES LIMITED PARTNER General Partner
By: BFNC INDIANA MANAGEMENT CORPORATION Owner, General Partner

By: ___________ Treasurer
Signature and Title
A. Harold Howell
Printed

ACCEPTED:
DEPARTMENT OF PUBLIC WORKS
9028564
By: ___________ Director
"Grantee" William Shessere

Subscribed and sworn to before me a Notary Public in and for said County and State this 19th day of February, 19__.

[Signature]
Notary Public

My Commission Expires: 7/29/94
My County of Residence: Suffolk

900034702
Approved as to Form:
Assistant Corporation Counsel
Heather Ridge Apartments

FOX ORCHARD

20' OFFSITE SEWER EASEMENT

EXHIBIT "A"

I-SI States Engineering Inc. 94 North Marlon Street, Indianapolis, IN 46204 (317) 536-5000
Consulting Engineers, Land Surveyors, Photogrammetrists, Digital Mapping Specialists

300034702