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CROSS REFERENCE

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

OF

BAY POINT

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

RECEIVED FOR RECORD  
SEP 12 10 29 AM '86  
CLERK OF SUPERIOR COURT  
MARION COUNTY INDIANA

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.

FILED  
28026345  
EQUITY AUDITOR  
Wayne Township

ARTICLE I

NAME

This subdivision shall be known and designated as Bay Point,  
a subdivision located in Marion County, Indiana, the conditional  
final plat of which was recorded as Instrument  
No. 86- 89623 in the Office of the Recorder of Marion  
County, Indiana.

ARTICLE II

DEFINITIONS

Section 1. "Association" shall mean and refer to Bay Point  
Homeowners Association, Inc., an Indiana not-for-profit  
corporation, its successors and assigns.

WAYNE TOWNSHIP  
ASSESSOR  
PLAT APPROVED  
Date: Sept 12 1986  
By: Phillip D. Hinkle  
PHILLIP D. HINKLE  
ASSESSOR

Section 2. "Board of Directors" shall mean and refer to the Board of Directors of the Association.

Section 3. "Building" shall mean and refer to any building containing single-family attached or detached dwelling units that may be constructed on a Lot or a part of more than one Lot.

Section 4. "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 5. "Declarant" shall mean and refer to Timber Park Development Corp., its successors and assigns as a declarant or developer.

Section 6. "Driveway Easements" shall mean and refer to the easements for ingress and egress appurtenant to the Lots as shown on the Plat and labeled "D.E.". The rights of Owners as to their respective Driveway Easements are more specifically described in Article XII and in the Plat.

Section 7. "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 8. "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. With respect to any single-family portion of any Building that may be constructed on a part of more than one of such parcels, "Lot" shall mean and refer to the real estate conveyed in connection with such dwelling unit.

Section 9. "Original Builder" shall mean and refer to the person or entity (whether one or more) during the construction period to whom any Lot is first conveyed by Declarant for the purpose of the construction of a dwelling unit thereon (or his or its successors or assigns for the purpose of such construction).

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Section 10. "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 11. "Plat" shall mean and refer to the conditional preliminary 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 by other plats or sub-plats.

Section 12. "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 conveyed or leased to it and all improvements thereon, 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 charge reasonable admission and other fees for the use of recreational facilities (if any) situated upon the Common Area;
- (b) The right of the Association to promulgate reasonable rules and regulations governing the use of the Common Area;

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- (c) The rights of Declarant as provided in this Declaration;
- (d) All other rights, obligations and duties as set forth in this Declaration, as the same may be from time to time amended or supplemented;
- (e) The right of the Association to mortgage any or all of the Common Area with the assent of two-thirds (2/3) of the votes of each class of members and their mortgagees; and
- (f) 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.

Section 3. Conveyance of Common Areas. The areas shown on the final sub-plats as Common Area shall be conveyed by Declarant to the Association on or before the earlier of (a) thirty (30) days after the date upon which all of the Lots have been conveyed to Owners (other than an Original Builder) or (b) two (2) years following the date upon which the first Lot within the Properties is conveyed to an Owner (other than an Original Builder).

#### ARTICLE IV

##### LOTS

Section 1. Number of Lots. This subdivision consists of 48 Lots with streets as shown on the Plat.

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 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.

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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 (excluding the maintenance responsibilities of the Association as hereinafter provided), 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 and Original Builder so long as Declarant owns any Lot and for so long as Declarant or Original Builder 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, outbuilding, 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 or Original Builder, 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 three (3) stories in height, one (1) private garage for not more than three (3) cars and such other outbuildings as are usual and incidental to the use of such Lot for single-family residential purposes.
- (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 seven hundred (700) square feet. In the case of a two-story structure, at least four hundred (400) square feet of the required minimum floor area shall be on the first (1st) floor.
- (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.

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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.

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. Drainage. Any field tile or underground drain which is encountered in the construction of any improvements on any Lot shall be perpetuated or other suitable drainage provided and all Owners of Lots and their successors shall comply with The Indiana Drainage Code of 1965, and all amendments thereto.

Section 8. Exterior Antennae. Without prior written approval and authorization of the Board of Directors, no exterior television, radio or other type of antennae shall be placed, allowed or maintained upon any portion of the Properties nor upon any structure or improvement situated upon the Properties.

Section 9. 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 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, 1988.

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.

#### 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, Article X and Article XI; 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, 1987, 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, 1987, 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 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, 1987, 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. Other Lot assessments (not including special assessments under Article V and X hereof) shall be fixed at a uniform rate for all Lots, except that in the event Declarant or Original Builder shall construct Buildings of two (2) or more substantially different models or sizes, then that portion of Lot assessments for maintenance, repair, replacement or reserve and for casualty insurance for Lots and Buildings may be fixed at a uniform rate (based on a pro rata share of cost) for each class of Lots (based upon the type of Building constructed thereon by Declarant or Original Builder).

Section 7. Date of Commencement of Monthly Assessments: Due Dates. Declarant from time to time shall record final sub-plats describing by Lot number the portions or phases of the Properties to be currently developed. Declarant reserves the right to record such sub-plats notwithstanding the fact that one or more Lots included therein may have been conveyed to an Original

Builder. The monthly assessment provided for herein shall commence for all Lots within each final sub-plat on the first day of the first month following the date of conveyance to an Owner (other than the Original Builder) of a Lot within the area described in such final sub-plat. The maintenance responsibilities of the Association as further described in Sections 2 and 3 of Article X shall commence concurrently with the commencement of monthly assessments as provided herein for the phases described in each successive final sub-plat. The insurance assessment provided for in Article X shall commence as to each Lot on the first day of the first month following the conveyance of such Lot to an Owner (other than the Original Builder). 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 by Owners. The Owner of each Lot shall furnish and be responsible for, at his own expense, all the maintenance, repairs, decorating and replacements within his residence, including the heating and air conditioning system (whether located inside or outside or outside a unit) and any partitions and interior walls. He further shall be responsible for the maintenance, repair and replacement of all windows in his residence and also the doors leading into the residence, and any and all other maintenance, repair, and replacements of the improvements on his Lot unless otherwise provided herein.

To the extent that equipment, facilities and fixtures within any Lot shall be connected to similar equipment, facilities or fixtures affecting or serving other Lots, then the use thereof by the Owner of such Lot shall be subject to the rules and regulations of the Association. The authorized representatives of the Association or Board of Directors or the manager or managing agent for the Association shall be entitled to reasonable access to any Lot as may be required in connection with maintenance, repairs or replacements of or to any equipment, facilities or fixtures affecting or serving other Lots.

Section 2. Maintenance of Driveway Easements. The Association shall be responsible for the maintenance, repair and repaving of all Driveway Easements and for the maintenance and repair of any pedestrian walkways or sidewalks constructed or to be constructed within the Properties by Declarant for the benefit of all Owners of Lots. Driveway Easements shall be maintained at all times in such a manner as to provide ingress and egress, both pedestrian and vehicular, from each Lot to and from a public street or highway.

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Section 3. Exterior Maintenance Obligations of Association with Respect to Lots. In addition to maintenance upon the Driveway Easements, the Association shall provide exterior maintenance upon each Lot which is subject to assessment hereunder, as follows: paint, repair, replace and care for roofs, gutters, downspouts, exterior building surfaces, and other exterior improvements, lawns, shrubs (but excluding any plants or flowers installed by any Owner and excluding patios and any enclosed patio areas), trees, trash removal and snow removal from the paved portions of streets. Such exterior maintenance shall not include glass surfaces, doors and doorways, windows, and window frames.

In the event that the need for maintenance or repair is caused through the willful or negligent act of the Owner, his family, guests, or invitees, the cost of such maintenance or repairs shall be added to and become a part of the assessment to which such Lot is subject.

Section 4. Maintenance of the Common Area. The Association shall be responsible for the maintenance, repair and replacement of the Common Area and improvements thereon.

#### ARTICLE XI

##### INSURANCE

Section 1. Casualty Insurance. The Association shall purchase a master casualty insurance policy or policies affording fire and extended coverage insurance insuring the Properties, including the Common Area and all living units and Buildings, in an amount consonant with the full replacement value of the improvements excluding, as to any Lot and the improvements thereon, all fixtures, betterments and improvements installed by any Owner and excluding any personal property owned by any Owner whether located on a Lot or elsewhere. If the Association can obtain such coverage for reasonable amounts it shall also obtain "all risk" coverage. The Association shall be responsible for reviewing at least annually the amount and type of such insurance and shall purchase such additional insurance as is necessary to

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provide the insurance required above. If deemed advisable by the Association, it may cause such full replacement value to be determined by a qualified appraiser and the cost of any such appraisal shall be included in the monthly maintenance assessment for each Lot on a pro rata basis. Such insurance coverage shall be for the benefit of the Association, each Owner, and, if applicable, the first Mortgagee of each Lot. At the request of any first mortgagee holding an FHA or VA insured mortgage on any Lot, the monthly insurance assessments for such Lot may either be collected and held in escrow by such lender pending the payment of insurance premiums or casualty insurance for such Lot may be purchased separately and a certificate of insurance furnished to the Association.

Such master casualty insurance policy, and "all risk" coverage if obtained, 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, and providing further, if the Board of Directors is able to obtain such insurance upon reasonable terms, that the insurer shall not be entitled to contribution against casualty insurance which may be purchased by individual Owners as hereinafter permitted.

Section 2. Liability Insurance. The Association shall also purchase a master comprehensive public liability insurance policy in such amount or amounts as the Board of Directors shall deem appropriate from time to time. Such comprehensive public 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 pro-rata cost thereof shall become a separate monthly assessment to which each Lot conveyed by Declarant shall be subject under the terms and provisions of Article VIII. Each Owner shall prepay to the Association at the time his Lot is conveyed to such Owner an amount equal to thirteen (13) monthly insurance assessments and shall maintain such prepayment account at all times. The Association shall hold such funds in escrow for the payment for the purchase of insurance as herein provided or shall use such funds to prepay the premiums of the required insurance. When any such policy of insurance hereinabove described has been obtained by or on behalf of the Association, written notice of the obtainment thereof and of any subsequent changes therein or termination thereof shall be promptly furnished to each Owner or Mortgagee whose interest may be affected thereby, which notice shall be furnished by the officer of the Association who is required to send notices of meetings of the Association.

Section 4. Distribution to Mortgagee. In no event shall any distribution of proceeds be made by the Board of Directors directly to an Owner where there is a mortgagee endorsement on the certificate of insurance. In such event any remittances shall be to the Owner and his mortgagee jointly.

Section 5. Additional Insurance. Each Owner shall be solely responsible for and may obtain such additional insurance as he

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deems necessary or desirable at his own expense affording coverage upon his personal property, the contents of his residence (including, but not limited to, all floor, ceiling and wall coverings and fixtures, betterments and improvements installed by him) and his personal property stored elsewhere on the Properties, and for his personal liability, but all such insurance shall contain the same provisions for waiver of subrogation as referred to in the foregoing provisions for the master casualty insurance policy to be obtained by the Association. Each Owner may obtain casualty insurance at his own expense upon his Lot but such insurance shall provide that it shall be without contribution as against the casualty insurance purchased by the Association. If a casualty loss is sustained and there is a reduction in the amount of the proceeds which would otherwise be payable on the insurance purchased by the Association pursuant to this paragraph due to proration of insurance purchased by an Owner under this paragraph, the Owner agrees to assign the proceeds of this latter insurance, to the extent of the amount of such reduction, to the Association to be distributed as herein provided.

Section 6. 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 7. 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 or any Building or Buildings 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.

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For purposes of Section 5 above, repair, reconstruction and restoration shall mean construction or rebuilding of the Common Area or any Building or Buildings to as near as possible the same condition as it existed immediately prior to the damage or destruction and with the same or similar type of architecture.

Section 8. 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 of the Buildings affected 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 the open areas of the Lots as an undefined Drainage, Utility and Sewer Easement (D.U. & S. Easement). In doing so, it is the intention of Declarant to provide the needed flexibility to itself and Original Builder, 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. The D.U. & S. Easement shall include all open areas of the Lots outside the Buildings originally constructed by Declarant or an Original Builder, but not including any areas covered by chimneys, patios, porches or similar appurtenances of Buildings. No other improvements or permanent structures (excluding walkways, pavement on Driveway Easements and fences) shall be placed within the D.U. & S.

Easements and any fences so installed shall be and are expressly subject to the rights (including the right to remove where reasonably necessary without duty of replacement or reimbursement) of any public or private utility to construct, maintain, repair or remove any necessary facilities and the right of Declarant and Original Builder (while they own any Lots) and the Association to provide for and maintain appropriate drainage. Provided, this shall not prohibit walkways and pavement on the Driveway Easements.

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 so much of the remainder of the Properties 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 including the construction, repair and maintenance of retention and detention ponds or lakes in accordance with the requirements of all governmental agencies having jurisdiction. 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. Driveway Easements. Driveway Easements as specified in Article II, Section 6 and as shown on the Plat, are hereby reserved for the common use and enjoyment of the Owners of any Lot or Lots, their families and invitees. Such Driveway Easements shall not be used for parking of trucks or other commercial vehicles, except temporarily or incidentally for the making of pickups and deliveries to neighboring Lots. No velocipedes, bicycles, toys or other private property shall be allowed to obstruct any Driveway Easement, nor shall the same be stored in the open alongside building walls or other locations of public view. Cars, trucks and other vehicles shall not be parked on the paved portion of any Driveway Easement so as to impede

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access from or to any Lot or public street. No fence, barrier or other obstruction of any kind shall ever be placed or constructed on any Driveway Easement.

Section 3. Additional Easement Rights. Declarant further reserves unto itself, for the benefit of all Lots and Owners, an easement and the full right, title and authority to relocate, alter or otherwise change the location of any drainage, utility, and sewer easement or any Driveway Easement and to grant such further easements, licenses and rights-of-way, temporary or permanent, exclusive or non-exclusive, surface or otherwise, as Declarant may deem necessary or appropriate, for ingress, egress, utility and similar purposes on or within any Lot or Lots or any portion of the Properties. Declarant further reserves the right to more specifically describe or to change the description of any such drainage, utility and sewer easement, driveway easement, or other easement, license or right-of-way by written instrument, amended Plat or final sub-plat recorded in the Office of the Recorder of Marion County, Indiana and any Owner of any Lot shall take title subject to the rights and easements reserved herein; provided, however, the rights reserved in this Section 3 shall not be exercised in a manner which unreasonably and adversely affects any Building or portion thereof located upon any Lot or any Owner's use or enjoyment thereof or which unreasonably restricts the rights of ingress and egress to any Lot. The rights and easements reserved by Declarant in this Section 3 shall run with the land and Declarant's right to further alter or grant easements shall automatically terminate one (1) year after Declarant shall have conveyed the last Lot within the Properties or on January 1, 1989, whichever first occurs.

Section 4. Easement for Emergency Purposes. An easement is hereby dedicated and granted for use in the case of an emergency by emergency vehicles such as fire trucks, police cars, ambulances, etc., and emergency personnel, public and private, over and upon the Driveway Easements and any pedestrian walkways or sidewalks.

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Section 5. Easement for Signs. 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 within the Common Areas. 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. 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

PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the homes upon the Properties and placed on the dividing lines between the Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

Section 3. Destruction by Fire or Other Casualty. Subject to the provisions of Article XI hereof, if a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

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Section 4. Weatherproofing. Notwithstanding any other provision of this Article but subject to the provision of Article XI hereof, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 5. Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

#### ARTICLE XIV

##### ARCHITECTURAL CONTROL

No building, fence, wall or other structure, except original construction of Buildings by or on behalf of Declarant or Original Builder, 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 XV

##### SIGNS AND HOME OCCUPATIONS

Section 1. Signs. Prior to January 1, 1988, no advertising signs of any kind including rental or "for rent" signs (other than interior window signs) shall be displayed on any Lot without the prior written approval of Declarant. Further, no signs of any nature, kind or description (including incidental signs as regulated in Section 2.18 of the Dwelling District Zoning

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Ordinance of Marion County, Indiana, 58-AU-2, as amended) shall be erected, placed or maintained on any Lot which identify, advertise or in any way describe the existence or conduct of a home occupation.

Section 2. Home Occupations. No home occupation shall be conducted or maintained on any Lot other than one which is incidental to a business, profession or occupation of the Owner or occupant of any such Lot and which is generally or regularly conducted in another location away from such Lot. Nothing contained herein shall be construed or interpreted to effect the activities of Declarant or Original Builder in the sale of Lots or single-family dwellings as a part of the development of the Properties.

#### ARTICLE XVI

##### ENCROACHMENTS AND EASEMENTS FOR BUILDINGS

If, by reason of the location, construction, settling or shifting of a Building, any part of a Building consisting of the single-family residence appurtenant to a Lot (hereinafter in this Article XVI referred to as the "Encroaching Unit") now encroaches or shall hereafter encroach upon any minor portion of any other adjacent Lot or any Common Areas, then in such event, an exclusive easement shall be deemed to exist and run to the Owner of the Encroaching Unit for the maintenance, use and enjoyment of the Encroaching Unit and all appurtenances thereto.

Each Owner shall have an easement in common with each other Owner to use all pipes, wires, ducts, cables, conduits, utility lines and other common facilities located in or on any other Lot and serving his Lot.

#### ARTICLE XVII

##### 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 and the Department of Metropolitan Development, City of Indianapolis 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 out in Articles XII and XVI hereof 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. The Declarant may annex to the Properties the real estate described in Exhibit "B" attached hereto within three (3) years of the date of this Declaration by the execution and recordation of a written instrument subjecting such real estate to the terms and conditions of this Declaration. Additional residential property may be annexed to the Properties with the consent of a majority of ownership of the Lots and of any of the Federal Mortgage Agencies having an interest in the Properties or any portion thereof by the recording of a declaration applicable to such annexed real estate which incorporates the terms of the Declaration herein.

Section 4. HUD Approval. As long as there is a Class B membership, the following actions will require the prior approval of the Department of Housing and Urban Development: annexation of additional property, dedication of Common Area, and amendment of this Declaration.

Section 5. 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 6. 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 9th day of September, 1986.

TIMBER PARK DEVELOPMENT CORP.

By: [Signature]  
Ronald K. Fisher, President

Attest: [Signature]  
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 Dunkerly, 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 9th day of September 1986.

[Signature]  
Notary Public  
NANCY M. OWENS  
Printed

My Commission Expires:  
March 5, 1990

My County of Residence:  
Marion

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

Exhibit "A"

Part of the Northwest Quarter of Section 23, Township 16 North, Range 2 East, more particularly described as follows:

Commencing at the Southwest corner of the Northwest Quarter of Section 23, Township 16 North, Range 2 East; thence North  $89^{\circ} 57' 25''$  East, along the South line of said Northwest Quarter, 1,163.39 feet to the Southwest Corner of Summerfield Place Subdivision per Instrument Number 76-21698 in the Office of the Recorder of Marion County, Indiana; thence North  $00^{\circ} 02' 35''$  West, along the West line of said subdivision 45.00 feet to the POINT OF BEGINNING; thence North  $00^{\circ} 02' 35''$  West along said West line 455.00 feet to the Southeast Corner of a 14.142 acre tract set out to Chesapeake II Associates as Instrument Number 76-56934 in the Office of the Recorder of Marion County, Indiana; the next twelve calls being along the Southerly line of Chesapeake II Associates, tract; thence South  $89^{\circ} 57' 25''$  West 309.03 feet, thence South  $00^{\circ} 02' 35''$  East 91.87 feet; thence South  $89^{\circ} 57' 25''$  West 33.00 feet; thence North  $57^{\circ} 32' 35''$  West, 108.00 feet; thence North  $32^{\circ} 32' 35''$  West 58.00 feet; thence North  $82^{\circ} 32' 35''$  West 59.00 feet; thence North  $09^{\circ} 17' 35''$  West 65.00 feet; thence North  $80^{\circ} 02' 35''$  West 111.00 feet; thence South  $00^{\circ} 27' 25''$  West 59.00 feet; thence South  $35^{\circ} 57' 25''$  West 49.00 feet; thence South  $62^{\circ} 57' 25''$  West 51.00 feet; thence South  $89^{\circ} 14' 54''$  West 57.03 feet to the East right of way line of Bayhead Drive, per Instrument Number 76-56934 in the Office of the Recorder of Marion County, Indiana; the next three calls being along said Easterly right of way line; thence South  $28^{\circ} 51' 51''$  East 100.00 feet to the point of curvature of a curve concave Southwesterly having a radius of 402.34 feet; thence Southeasterly along said curve through a central angle of  $29^{\circ} 00' 00''$  an arc distance of 203.64 feet; thence South  $00^{\circ} 08' 09''$  West a distance of 155.88 feet to the North right of way line of West 34th Street; thence North  $89^{\circ} 57' 25''$  East, parallel with the South line of said Northwest Quarter, and along said North right of way line 676.76 feet to the point of beginning.

EXCEPT: A strip of ground twenty (20) feet in width in a part of the Northwest Quarter of Section 23, Township 16 North, Range 2 East in Marion County, Indiana, the centerline of said strip being more particularly described as follows:

Commencing at the Southwest Corner of said Northwest Quarter Section; thence North  $89^{\circ} 57' 25''$  East along the South line of the Northwest Quarter 486.62 feet; thence North  $00^{\circ} 02' 35''$  West 45.00 feet to the intersection of the North right of way line for West 34th Street and the East right of way line of Bayhead Drive; thence North  $00^{\circ} 08' 09''$  East, along said East right of way line a distance of 155.88 feet to the point of curvature of a curve concave Southwesterly having a radius of 402.34 feet; thence Northwesterly along said curve through a central angle of  $29^{\circ} 00' 00''$  an arc distance of 203.64 feet; thence North  $28^{\circ} 51' 51''$  West a distance of 4.39 feet to the POINT OF BEGINNING; thence North  $00^{\circ} 59' 44''$  East a distance of 84.37 feet to the END POINT OF THIS DESCRIPTION (said end point being on the southerly line of Chesapeake Landing Phase II and North  $89^{\circ} 14' 54''$  East a distance of 47.62 feet from the East right of way line of Bayhead Drive).

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Exhibit "B"

Part of the Northwest Quarter of Section 23, Township 16 North,  
Range 2 East, more particularly described as follows:

Commencing at the Southwest Corner of said Northwest Quarter;  
thence North  $00^{\circ} 36' 58''$  East, along the West line of said  
Northwest Quarter, 45.00 feet to the POINT OF BEGINNING; thence  
North  $00^{\circ} 36' 58''$  East, along the West line of said Northwest  
Quarter 455.03 feet to the Southwest corner of a 6.489 acre tract  
of real estate set out to Bayhead Village Associates as Instrument  
Number 77-61354 in the Office of the Recorder of Marion County,  
Indiana; thence North  $89^{\circ} 57' 25''$  East along the South line of said  
6.489 acre tract 298.84 feet to the West right of way line of  
Bayhead Drive, per Instrument Number 76-56934 in the Office of the  
Recorder of Marion County, Indiana; (said point being on a curve  
concave Northeasterly having a radius of 395.04 feet) the next four  
courses being along the said West right of way line; thence  
Southeasterly along said curve through a central angle of  $08^{\circ} 00'$   
 $08''$ , an arc distance of 55.17 feet; thence South  $28^{\circ} 51' 51''$  east  
100.00 feet to the point of curvature of a curve concave  
Southwesterly having a radius of 332.34 feet; thence Southeasterly  
along said curve through a central angle of  $29^{\circ} 00' 00''$  an arc  
distance of 168.21 feet; thence South  $00^{\circ} 08' 09''$  West 121.10 feet  
to the Northerly line of a Drainage Conveyance as per Instrument  
Number 76-56935 in the Office of the Recorder of Marion County,  
Indiana; thence South  $78^{\circ} 23' 14''$  West along said Drainage  
Conveyance, 174.61 feet to the North right of way line of West 34th  
Street, thence South  $89^{\circ} 57' 25''$  West, parallel with the South line  
of said Northwest Quarter, 245.13 feet to the point of beginning.

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