

25

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF  
NEW AUGUSTA WOODS SUBDIVISION

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.

WHEREAS, Declarant intends to sell and convey the residential lots situated within the platted areas of such properties and before doing so desires to subject to and impose upon all real estate within the platted areas of such properties mutual and beneficial restrictions, covenants, conditions and charges under a general plan or scheme of improvement for the benefit and complement of the lots and future home owners thereof.

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.

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UNIVERSITY MICROFILMS

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Inst # 1994-0137724 SEP 06 1994

PIKE TOWNSHIP  
ASSESSOR

09/08/94 01:45PM JOAN H. ROMERIL KARIOW CITY RECORDER RAM 55.00 PAGES: 25

ARTICLE I

NAME

This subdivision shall be known and designated as New Augusta Woods Subdivision, a subdivision located in Marion County, Indiana, the Plat of Section I of which was recorded as Instrument 94-6137723 in the Office of the Recorder of Marion County, Indiana.

ARTICLE II

DEFINITIONS.

Section 1. "Association" shall mean and refer to New Augusta Woods 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, including any areas denominated as "Common Area" on the Plat.

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

Section 5. "Expansion Parcel" shall mean and refer to the real estate described in Exhibit "B" attached hereto.

Section 6. "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 7. "Lake Easement" shall mean the easement or easements for the existence of drainage retention lakes serving Lots within New Augusta Woods and for access to and maintenance of such retention lakes as provided in Article XI

Section 8. "Landscape Easement" means the areas, if any, within the Properties denoted as Landscape Easement or as "L S E." on the Plat.

Section 9. "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 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 subdivision plat or plats of New Augusta Woods recorded in the Office of the Recorder of Marion County, Indiana, as the same may be hereafter amended or supplemented.

Section 12. "Regular Assessments" shall mean and refer to the regular monthly or annual assessments levied pursuant to Article VII hereof.

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 any improvements within the 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, if any, 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. 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 2. Subdivision of Lots. No Lot shall be subdivided to form more residential lots than the number shown on the Plat.

Section 3. 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.

Section 4. Dedication of Streets. The streets shown on the Plat are hereby dedicated to the public.

## ARTICLE V

### USE RESTRICTIONS

Section 1. Type, Size and Nature of Improvements. So long as Declarant owns any Lots, no dwelling, garage, wall, mini-barn, fence 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 approved by Declarant, except in a manner approved in writing by Declarant or the Architectural Committee specified in Article XII 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 approval shall be strictly adhered to throughout construction unless modified or amended with further written approval); subject to the improvement on 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, one (1) private garage and structures accessory thereto. Each driveway shall be of hard surfaced material.
- (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) 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.
- (d) In the event storm water drainage from any Lot or Lots flows across another Lot, provision shall be made by the Owner of such Lot to permit such drainage to continue, without restriction or reduction, across the downstream Lot and into the natural drainage channel or course, although no specific drainage easement for such flow of water is provided on the Plat. The elevation of a Lot shall not be changed so as to affect materially the surface elevation or grade of surrounding Lots. Perimeter foundation drains, sump pump drains, downspouts and water softener drains shall not be outletted directly into streets or street rights-of-way.
- (e) Each Owner shall install and maintain a light in operable condition on his Lot at a location, having a height and of a style, style and manufacture approved by Declarant prior to the installation thereof. Each such light fixture shall be

equipped with a photo electric cell or similar device to insure automatic illumination from dusk to dawn each day.

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.

Section 7. Construction and Sale Period. Notwithstanding any provisions contained herein to the contrary, it shall be expressly permissible for Declarant or a builder to maintain, during the period of construction and sale of Lots, upon any portion of New Augusta Woods which Declarant owns or approves, 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.

Section 8 Signs. Except for such signs as Declarant may in its absolute discretion display or authorize builders to display in connection with the development of New Augusta Woods and the sale of Lots therein, no sign of any kind shall be displayed to the public view on any Lot except that one sign of not more than eight (8) square feet may be displayed at any time for the purpose of advertising the property for sale or for rent or such signage as may be allowed by the applicable zoning ordinance

#### ARTICLE VI

##### 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 members shall be the Declarant who shall be entitled to three (3) votes for each Lot owned, and the members of the first Board of Directors during their respective terms. 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, 1998

Section 3. Number of Lots. Section I of New Augusta Woods shall consist of 46 lots and it is contemplated that New Augusta Woods shall contain approximately 119 lots at such time as all of the Expansion Parcel is developed, but Declarant reserves the right to increase or decrease the number of lots. For purposes of Section 2 above, the total number of lots shall be deemed to be 119 until such time as all of the Expansion Parcel has been platted.

Section 4. 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 5. 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 VII

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments Each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) Regular Assessments or charges; and (2) special assessments for capital improvements and operating deficits, such assessments to be established and collected as hereinafter provided. No assessments shall be made for any Lots owned by Declarant or a builder until such Lot is actually used as a single family residence. The Regular Assessments 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 New Augusta Woods and for the improvement and maintenance of the Common Area and other areas of New Augusta Woods and other purposes as specifically provided herein.

Section 3. Maximum Regular Assessments.

(a) Until January 1, 1996, the maximum Regular Assessment on any Lot conveyed by Declarant shall be \$240.00 per Lot per year.

(b) From and after January 1, 1996, the Maximum Regular 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, 1990, the maximum Regular 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 Regular Assessment at an amount not in excess of the maximum and may determine whether the Regular Assessment shall be payable annually or monthly.

(e) A portion of such Regular 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 Regular 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 Regular Assessments 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 an annual or monthly basis.

Section 7. Date of Commencement of Monthly Assessments: Due Dates. The Regular Assessment provided for herein shall commence for any Lot on the first day of the first month following the date of conveyance by Declarant or a builder to an Owner of a Lot. The Board of Directors shall fix any increase in the amount of the Regular 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 VIII

##### DECLARANT'S RIGHTS

Section 1. Use of Property Declarant reserves the right to use, or to allow builders 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. 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 IX

##### MAINTENANCE

Section 1. Maintenance Obligations of Association. The Association may provide for snow removal from the paved portions of streets if the Board of Directors determines that such function is appropriate. The Association shall be responsible for the maintenance, repair and replacement of the Common Area and improvements thereon, if any, and for the maintenance, repair and replacement of the landscaping and improvements located within the following areas: (a) any Landscape Easements; (b) areas of grass, landscaping or the like within any islands located within dedicated streets; and (c) the "eyebrow" portion of right of way adjacent to any lots, including landscaping, paving and curbs. The Landscape Easements as shown on the Plat shall run in favor of the Association, its agents, officers, employees and contractors as well as any governmental agencies having jurisdiction.

Section 2. Lake Maintenance. The Association shall be responsible for maintenance of the retention lakes located within the Common Areas and within any Lake Easement, including (without limitation), any costs for treating the lake, dredging or repair of banks.

#### ARTICLE X

##### 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 whom 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 title

insurance companies all losses under policies purchased by the Association.

Section 3. 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 Regular 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 XI

##### 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, for the benefit of all Lots and Owners, to properly install and allow to be maintained all electrical, telephone, cable television, water, gas, sewer and other utility services (including all lines, pipes, wires, cables, ducts and the like) to the living units constructed on the various Lots.

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, fences, 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.

Section 3. Lake Easement. As noted on the Plat, certain lots may be subject to easements to allow the existence of a drainage retention lake and access to the Association for the repair and maintenance of such retention lake. Such easements are for the benefit of Declarant



(so long as it owns any Lots) and to the Association and such easements are not for lake access for other Owners. No fences or other obstructions shall be placed within the Lake Easement without the specific written approval of the Association. Declarant or the Association shall have the right to remove any fences or obstructions within the Lake Easement at the expense of the Owner of the Lot upon which the fence or obstruction is located, which expense may be collected in the same manner as maintenance assessments under Article VII above. Neither Declarant nor the Association shall be liable to any person for damage to or removal of any obstructions placed within the Lake Easement.

#### ARTICLE XII

##### ARCHITECTURAL CONTROL

Section 1. Architectural Committee. Declarant may, but shall not be obligated to, appoint an Architectural Committee consisting of three (3) or more persons selected by Declarant to perform the approval process described in Article V. At such time as Declarant no longer owns any Lots, the Architectural Committee shall terminate. If appointed, the Committee shall exercise the approval rights delegated to it by Declarant.

Section 2. Procedures. In the event the Architectural Committee fails to approve, modify or disapprove in writing an application within thirty (30) days after receipt by the Committee of an application, approval will be deemed to have been given. In the event the Committee denies an application, the Committee shall give the Owner a written list of deficiencies or objections.

Section 3. Costs of Enforcement. In the event the Architectural Committee or Declarant is required to take action to remove any unapproved structures, to perform any maintenance obligations on behalf of a defaulting Owner or to otherwise enforce the provisions of this Declaration, then all costs and expenses, including attorneys' fees, incurred by the Committee or Declarant shall be responsibility of the defaulting Owner and may be recovered by the Committee or Declarant in the same manner as the collection of delinquent assessments under Article VII.

### ARTICLE XIII

#### 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 New Augusta Woods, at any time within three (3) years after the recordation hereof in order to satisfy the requirements of any of the Federal Mortgage Agencies. As long as there is a Class B membership, the following actions will require the prior written approval of any of the Federal Mortgage Agencies having an interest in the New Augusta Woods or any portion thereof; annexation of additional properties (other than the Expansion Parcel), dedication of Common Area, and amendment of this Declaration. 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. Expansion Parcel. Declarant intends to develop additional sections of New Augusta Woods within the Expansion Parcel.

Declarant may annex additional sections by recording a Plat or Plats covering all or a portion of the Expansion Parcel along with a statement, either on such Plat or Plats or by separate instrument, stating generally that the new section is a part of New Augusta Woods and is bound by this Declaration. The expansion of New Augusta Woods within the Expansion Parcel by this method shall not require the consent of the Federal Mortgage Agencies, any Owner or any other party.

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 6<sup>th</sup> day of September, 1994.

TIMBER PARK DEVELOPMENT CORP.

By: Larry L. Dunkerly  
Larry L. Dunkerly, Secretary

STATE OF INDIANA )  
                          ) SS:  
COUNTY OF MARION )

Before me, a Notary Public in and for said county and state personally appeared Larry L. 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 6<sup>th</sup> day of September, 1994.

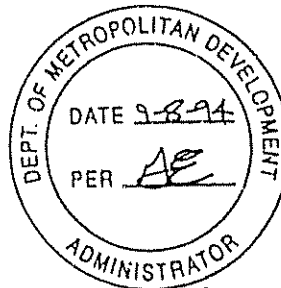
[Signature]  
(Marion Co., Ind.) Notary Public

My commission expires:

3-4-95

My county of residence:

Marion



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

X:G06\3168.nb



EXHIBIT "A"

CERTIFICATE OF SURVEY  
New Augusta Woods  
Section 1

I, the undersigned, do hereby certify the attached plat to be true and correct to the best of my knowledge and belief, representing a survey of part of the Northwest Quarter of Section 31, Township 17 North, Range 3 East, Marion County, Indiana, more particularly described as follows:

Commencing at the Northeast corner of said Quarter Section; thence North  $90^{\circ}00'00''$  West (assumed bearing) on and along said North line 1339.55 feet to a point in the Southwesterly right-of-way line of the C. C. C. and St. Louis Railroad, said point being the Point of Beginning of the herein described real estate; thence South  $19^{\circ}06'15''$  East 354.66 feet on and along said Southwesterly right-of-way line; thence South  $03^{\circ}45'01''$  West 235.00 feet; thence South  $01^{\circ}20'03''$  East 1245.34 feet; thence South  $90^{\circ}00'00''$  West 98.74 feet; thence South  $60^{\circ}01'31''$  West 121.28 feet; thence South  $47^{\circ}10'02''$  West 50.00 feet to a point on a non-tangent curve concave Northeasterly, having a central angle of  $22^{\circ}19'31''$  and a radius of 225 feet; thence Northeasterly along said curve an arc distance of 87.67 feet (said arc being subtended by a chord bearing of North  $31^{\circ}40'12''$  West and a length of 87.12 feet); thence North  $88^{\circ}59'29''$  West 117.22 feet; thence North  $87^{\circ}47'30''$  West 140.70 feet; thence North  $00^{\circ}20'26''$  East 1027.63 feet; thence North  $90^{\circ}00'00''$  East 403.45 feet to the Point of Beginning, containing 21.66 acres more or less, subject to all highways, rights-of-way and easements.

This subdivision consists of 46 lots numbered 1 through 46, both inclusive, and streets as shown hereon. The size of lots and widths of streets are shown on this plat by figures denoting feet and decimal parts thereof.

EXHIBIT "B"

PARCEL I:

A part of the Northwest Quarter of Section 31, Township 17 North, Range 3 East in Marion County, Indiana, more particularly described as follows:

Beginning at the Northeast corner of aforesaid Quarter Section; thence run West along and with the North line thereof 1743.00 feet; thence Southwardly parallel to the West line of the aforesaid Quarter Section 2400.00 feet to the place of beginning of the within described tract; thence continue Southwardly on the last above described course a distance of 314.20 feet to a point in the South line of the aforesaid Quarter Section; thence Eastwardly along and with said South line a measured distance of 1354.32 feet to a point in the Southwestwardly right-of-way line of the C.C.C. and St. L. Railroad; thence Northwardly along and with the aforesaid right-of-way line a measured distance of 330.62 feet; thence Westwardly parallel to the South line of the aforesaid Quarter Section 1243.06 feet to the place of beginning.

AND

PARCEL II:

A part of the Northwest Quarter of Section 31, Township 17 North, Range 3 East in Marion County, Indiana, more particularly described as follows:

Beginning at a point in the North line of said Quarter Section 1743.00 feet West of the Northeast corner of said Quarter Section; thence South parallel to the West line of said Quarter Section a measured distance of 2400.00 feet; thence Eastwardly parallel to the South line of said Quarter Section a measured distance of 1243.06 feet to a point in the Southwestwardly right-of-way line of the C.C.C. and St. L. Railroad; thence Northwardly along and with said Southwestwardly right-of-way line a measured distance of 2525.51 feet to the North line of the aforesaid Quarter Section; thence West along and with said North line 403.00 feet to the place of beginning.

AND

Part of the Northwest Quarter of Section 31 Township 17 North Range 3 East in Marion County Indiana more particularly described as follows:

Commencing at the Southwest Corner Northwest Quarter of Section 31 Township 17 North Range 3 East; thence North 00 degrees 00 minutes 00 seconds East (Assumed Bearing) 6000 feet on and along the West line of said Quarter to the POINT OF BEGINNING; thence continuing North 00 degrees 00 minutes 00 seconds East 30000 feet along said West line of said Quarter; thence North 89 degrees 00 minutes 10 seconds East 85812 feet; thence South 00 degrees 00 minutes 00 seconds West 30000 feet parallel with the West line of said Quarter; thence South 89 degrees 00 minutes 10 seconds West 85812 feet to the POINT OF BEGINNING containing 5.91 Acres more or less

Subject to all easements and legal rights-of-way

EXCEPT:

A part of the Northwest Quarter of Section 31, Township 17 North, Range 3 East in Marion County, Indiana, more particularly described as follows:

Commencing at the Northeast corner of said Quarter Section; thence North 90°00'00" West (assumed bearing) on and along said North line 1339.55 feet to a point in the Southwestwardly right-of-way line of the C.C.C. and St. Louis Railroad, said point being the Point of Beginning of the herein described real estate; thence South 19°06'15" East 354.66 feet on and along said Southwestwardly right-of-way line; thence South 03°45'01" West 235.00 feet; thence South 01°20'03" East 1245.34 feet; thence South 90°00'00" West 98.74 feet; thence South 60°01'31" West 121.28 feet; thence South 47°10'02" West 50.00 feet to a point on a non-tangent curve concave Northeastwardly, having a central angle of 22°19'31" and a radius of 225 feet; thence Northeastwardly along said curve an arc distance of 87.67 feet (said arc being subtended by a chord bearing of North 31°40'12" West and a length of 87.12 feet); thence North 88°59'29" West 117.22 feet; thence North 87°47'30" West 140.70 feet; thence North 00°20'26" East 1827.63 feet; thence North 90°00'00" East 403.45 feet to the Point of Beginning, containing 21.66 acres more or less, subject to all highways, rights-of-way and easements.