

45

**AMENDED AND RESTATED  
SUPPLEMENTARY DECLARATION OF COVENANTS  
AND RESTRICTIONS OF THE TIMBERS--SECTION 5**

This Amended and Restated Supplementary Declaration of Covenants and Restrictions for The Timbers - Section 5 was made as of the 29th day of February, 1996.

WITNESSETH THAT:

WHEREAS, The Timbers - Section 5 subdivision located in Marion County, Indiana (hereafter, "Timbers Section 5") was originally created and formed pursuant to a certain "Supplementary Declaration of Covenants and Restrictions--The Timbers - Section 5" recorded in the Office of the Recorder of Marion County, Indiana on May 11, 1982, as **Instrument No. 82-24076** (hereafter, "Original Declaration"); and

WHEREAS, Timbers Section 5 consists of nine (9) Lots, plus Common Areas and Community Area; and

WHEREAS, the original developer of the entire Timbers community filed a certain "Declaration of Covenants and Restrictions of The Timbers Residential Community" with the Marion County Recorder's Office on March 26, 1974, as **Instrument No. 74-16962** (hereafter, the "Overall Declaration"), which contemplated the formation of several horizontal property regimes and other subdivisions; and

WHEREAS, pursuant to the Overall Declaration, three (3) horizontal property regimes known as Timbers I, II, and III and one subdivision known as The Timbers-Section 4 were established, for which an Indiana nonprofit corporation known as The Timbers of Indianapolis, Inc. is responsible for management, maintenance, and operation; and

WHEREAS, The Timbers - Section 5 was also established pursuant to the Overall Declaration; however, Section 5 was and is an autonomous property and is completely separate in function from Timbers Section 4, Timbers I, II, and III; and

WHEREAS, the Owners of Lots within The Timbers - Section 5 desire to amend certain provisions of the Original Declaration and to restate the same for the convenience of the Owners; and

WHEREAS, Paragraph 16 of the Original Declaration provides that it may be amended by an instrument signed by the Owners of at least seventy-five percent (75%) of the Living Units in Section 5; and

WHEREAS, after notice was duly given, the Annual Meeting of all Owners of Living Units in Timbers - Section 5 was held on February 6, 1996, one of the stated purposes for which was to consider and discuss this Amended & Restated Declaration; and

WHEREAS, after said Annual Meeting, the undersigned Owners, representing more than seventy-five percent (75%) of the Living Units in Section 5, executed this Amended & Restated Declaration as set forth herein.

NOW, THEREFORE, the Owners hereby declare that the Parcel was, is and shall be held, transferred, sold, conveyed, hypothecated, encumbered, leased, rented, used, improved and occupied subject to the provisions, agreements, conditions, covenants, restrictions, easements, assessments, charges and liens hereinafter set forth, all of which were and are declared to be in furtherance of a plan for preservation and enhancement of the Parcel, and were and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Parcel as a whole and of each of the Lots and Living Units situated therein, and which ran and shall continue to run with the Parcel and be binding upon all parties having any right, title or interest in the Parcel, their heirs, successors and assigns.

1. Definitions. The following words, phrases and terms, as used in this Supplementary Declaration, unless the context clearly requires otherwise, mean the following:

- (a) "Board of Directors" means the board of directors of the Corporation.

(b) "Corporation" means The Timbers - Section Five Homeowners' Association, Inc., an Indiana nonprofit corporation.

(c) "Block" means a Block as approved by the Plat Committee of the Department of Metropolitan Development of the City of Indianapolis. There are eleven (11) Blocks in the Parcel.

(d) "Lot" means a Lot depicted up a Final Plat. There are nine (9) Lots in the Parcel.

(e) "Common Area" means all of the area within the Parcel other than the Lots and the Community Area.

(f) "Common Expenses" means expenses for the improvement, maintenance, repair, replacement and operation of the Common Area and Community Area and all monies required for the Replacement Reserve Fund to be used for re-painting the exterior walls of the Living Units, and replacing roofs on the Living Units, both to schedules as defined by the Board of Directors.

(g) "Community Area" means the real estate designated as Community Area on Exhibit "B" which was attached to the original Supplementary Declaration recorded with the Marion County Recorder's Office as Instrument No. 82-24076, and through which Wilderness Trails runs. That portion of Wilderness Trail which is within the Parcel is a private street owned and maintained by the Corporation.

(h) "Encroachment" means the encroachment upon a Lot or the Common Area or the Community Area by any Lot, the Common Area, the Community Area or any building, overhang, fixture, structure or improvement as a result of the construction, reconstruction, repair, movement, settling or shifting of a Living Unit or of other improvements upon the Parcel.

(i) "Final Plat" means maps or charts indicating a subdivision of the Parcel recorded in the Office of the Recorder of Marion County, Indiana.

(j) "Limited Common Areas" means that part of the Common Area depicted as Limited Common Area on the Final Plat and restricted in use to the Lot appurtenant thereto or the Lot served by such area such as driveways, decks, screen porches, concrete stoops, concrete sidewalks from the driveways to the homes, designated parking spaces and other similar areas.

(k) "Majority of the Owners" means the Owners of not less than 51% of the Lots.

(l) "Owner" means any Person, who at any time owns the fee simple title to a Lot and Living Unit, including contract sellers, but excluding those having such interest merely as security for the performance of any obligation.

(m) "Parcel" means the real estate described in Exhibit "A" which was attached to the original Supplementary Declaration recorded with the Marion County Recorder's Office as Instrument No. 82-24076.

(n) "The Timbers - Section 5" means the name by which the Parcel shall be known.

(o) "Living Unit" means a structure situated upon any Lot (including any appurtenant patio) designed and intended for use and occupancy as a residence by a single family.

2. Declaration. The Parcel shall be held, transferred, sold, conveyed and occupied subject to this Declaration, as amended. The Owner of any Lot at any time subject to this Declaration and all other persons having any right, title or interest therein, by (i) acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, or the acceptance of any right, title or interest therein or thereto, or (ii) by the act of occupancy of any Lot, shall accept such deed, execute such contract, accept such right, title or interest, and undertake such occupancy subject to

all of the terms, covenants, conditions, restrictions and provisions of this Declaration. By acceptance of such deed, execution of such contract, acceptance of such right, title or interest, or undertaking such occupancy, each Owner and all other such persons acknowledge the rights and powers of the Corporation with respect to or under this Declaration, and, for himself, his heirs, personal representatives, successors and assigns, covenants, agrees and consents to and with the Corporation, and the Owners and subsequent Owners of each of the Lots affected by this Declaration, to keep, observe, perform and comply with the terms and provisions of this Declaration.

3. Description of Blocks. The Parcel has been subdivided into eleven (11) Blocks numbered 1 through 11 which contain nine (9) Lots, and 3 Blocks labeled A, B and C which are part of the Common Area. The boundaries of each Lot shall be as shown on the Final Plats.

4. Description of Living Units. Nine (9) Living Units have been constructed upon the Parcel, each Living Unit being upon a Lot.

5. Title to Common Area. The Corporation owns fee simple title to the Common Area subject to restrictions, conditions, limitations and easements of record. The Corporation shall hold the Common Area for the use and enjoyment of the Owners, all of whom shall have the right and easement of enjoyment in and to the Common Area which right shall pass with title to every Lot subject to the provisions of this Supplementary Declaration, as amended.

6. Limited Common Area. Limited Common Area shall be as designated on the Final Plats and shall be limited to the use of the Lot or Lots to which it is appurtenant or to which such Limited Common Area serves. Limited Common Area consist of driveways, concrete stoops, concrete sidewalks from the driveway to the home, wood decks, and screen porches. No person, other than the Owner of the Lot, or the Owners of the Lot to which the Limited Common Area

1  
pertains, shall have the right to use such Limited Common Area. Owners shall maintain at their expense the Limited Common Areas which are appurtenant to their respective Lots.

7. Party Walls.

(a) General Rules of Law to Apply. Each wall which is built as a part of the original construction of a Living Unit and placed on the dividing line between Lots shall constitute a Party Wall and, to the extent not inconsistent with the provisions of this Paragraph 7, the general rules of law regarding party walls and liability for property damage due to negligent or intentional or willful acts or omissions shall apply thereto.

(b) 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.

(c) Destruction by fire or Other Casualty. If a Party Wall is destroyed or damaged by fire or other casualty, then, to the extent that such damage is not covered by insurance maintained by any of the Owners who make use of such Party Wall, and repaired out of the proceeds of same, any Owner who has used the Party Wall may restore it, and if the other Owners thereafter make use of the Party Wall, they shall contribute to the cost of restoration thereof in equal proportions 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, intentional or willful acts or omissions.

(d) Weatherproofing. Notwithstanding any other provisions of this Paragraph, to the extent that any damage to a Party Wall is not covered and paid for by the insurance provided for herein, 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.

(e) Rights and Duties Run with Land. The rights and duties of an Owner with respect to a Party Wall under this Paragraph 7 shall be appurtenant to such Owner's Lot and shall pass to the successor in title of such Owner.

(f) Arbitration. In the event of any dispute arising concerning a Party Wall, or under the provisions of this Paragraph, each party shall choose one arbitrator, and the decision shall be by a majority of all the arbitrators. (Should any party refuse to appoint an arbitrator within ten days after written request therefor from another party, the Board of Directors of the Corporation shall select an arbitrator for the refusing party.)

8. Board of Directors. In order to provide maintenance, repair, replacement, administration and operation of the Common Area and Community Area, and the re-painting of the exteriors of the Living Units and the re-roofing of the Living Units, there shall be a Board of Directors of the Corporation consisting of four (4) Owners elected by the Owners of Living Units in the Parcel. The Owners of each Living Unit in the Parcel shall have one (1) vote per Living Unit and the four (4) persons receiving the largest number of votes cast by Owners of Living Units in the Parcel shall be elected to serve as the Corporation's Board of Directors. The members of the Board shall elect from among their membership a President, a Secretary and such other officers as they may deem appropriate. The Board shall perform such functions as are specific herein and in the Corporation's By-Laws and such other functions not in conflict with the terms of this Supplementary Declaration as they may by majority vote determine.

9. Use.

(a) Restrictions. The following restrictions on the use and enjoyment of the Living Units, Lots, Common Area and Limited Common Area shall be applicable to The Timbers - Section 5.

(i) All Living Units shall be used exclusively for residential purposes and occupancy by a single family. No trade or business of any kind be carried on within a Living Unit or upon a Lot, nor shall any Lot or any part thereof be leased, sublet, assigned or suffered to be used for hotel or transient occupancy. No Lot may have more than one (1) Living Unit on it.

(ii) Nothing shall be done or kept on any Lot or in the Common Area or Limited Common Area which would be in violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body. Nothing shall be done or kept on any Lot or in any Living Unit or on or in any Common Area or any part thereof which would increase the rate of insurance on the Parcel or any part thereof over what the Corporation, but for such activity, would pay, without the prior written consent of the Corporation.

(iii) No waste shall be committed on any Lot or in the Common Area or Limited Common Area. No noxious, destructive or offensive activity shall be allowed in any Living Units, on any Lots or in the Common Area or any part thereof, nor shall anything be done thereon which may be or may become a nuisance to any other Owner or to any other person at any time lawfully residing on the Parcel.

(iv) All Owners and members of their families, their guests, or invitees, and all occupants of any Living Unit or other Persons entitled to use the same and to use and enjoy the Common Area, Limited Common Area or any part thereof, shall observe and be governed by such rules and regulations as may from time to time be promulgated and issued by the Board of Directors governing the operation, use and enjoyment of the Common Area and the Limited Common Area.

(v) There shall be no obstruction of the Common Area, nor shall anything be permitted on any part the Common Area, without the prior written consent of the Board of Directors. Nothing shall be altered on, constructed in, or removed from the Common Area except upon the prior written consent of the Board of Directors.

(vi) No Person shall remove, trim or permit the removal or trimming of any tree or shrub located on the Parcel without the consent of the Architectural Review Board, or shall

cultivate or permit the cultivation of the Parcel or any part thereof in such a manner as to cause or permit soil erosion.

(vii) No clothes, sheets, blankets, laundry of any kind or other articles shall be hung out on any portion of the Common Area, or on a Lot so as to be visible from outside the Lot. The Common Area and all Lots shall be kept free and clear of all rubbish, debris and other unsightly materials.

(viii) No animals, rabbits, livestock, fowl or poultry of any kind shall be raised, bred or kept in or on any Lot or on the Common Area or any part thereof, except that household pets may be kept on Lots, subject to rules and regulations adopted by the Board, provided that they are not kept, bred, or maintained for any commercial purposes; provided, further, that any such pet causing or creating a nuisance or unreasonable disturbance shall be permanently removed from the Property subject to these restrictions upon three days' written notice from the Board, and provided further, that upon written request of 25% of the voting power of the Corporation, the Board of Directors shall have the authority to, and shall order the removal of, any pet.

(ix) Except with the prior written approval and the authorization of the Board, no exterior satellite dish or television or radio antennae of any sort shall be placed, allowed or maintained upon any portion of the improvements or structures to be located upon the Parcel.

12. Enforcement. The covenants, restrictions and obligations in this Supplementary Declaration are for the mutual benefit and protection of the present and future Owners and shall run with the land and inure to the benefit of and be enforceable by any Owner or the Corporation. Present or future Owners or the Corporation shall be entitled to injunctive relief against any violation or attempted violation of these provisions and shall be entitled to damages for any injuries

resulting from any violations thereof, but there shall be no right of reversion or forfeiture of title resulting from such violation. Failure by the Corporation or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. Attorneys' fees and costs of any such actions to restrain violation or to recover damages as determined by the Court shall be assessable against and payable by any persons violating the terms contained herein.

13. Architectural Committee. No exterior additions, removals or alterations (including changes in color or appearance) to any building on the Parcel or on any Lot, hedges, walls, walkways and other structures, additional fences or exterior lighting, or changes in existing fences or exterior lighting, shall be commenced, erected or maintained (except such as were installed or approved by the original developer in connection with the initial construction of the Living Units and other buildings and improvements on the Parcel), until the written plans and specifications showing in reasonable detail the nature, kind, shape, height, composition, materials (including color), and location shall have been submitted to and approved in writing as to harmony of the external design and location in relation to surrounding buildings in the Parcel and the topography by an architectural committee (the "Architectural Committee") composed of the Board of Directors of the Corporation or three (3) or more representatives appointed by the Board of Directors. The chairperson of the Architectural Committee shall be a member of the Board of Directors. In the event said Board, or its designated Committee, fails to approve or disapprove such design and location within forty-five (45) days after said written plans and specifications have been submitted to it, such approval will be deemed to have been given. The approvals of the Architectural Committee required hereunder shall be in addition to, and not in lieu of, any approvals as to such matters required to be obtained from any other persons or governmental agencies pursuant to the terms of any subdivision plat, statute, law, ordinance, other governmental regulation or otherwise.

14. Assessments.

(a) Creation of the Lien and Personal Obligation for Assessments. Each Owner of a Living Unit by acceptance of a deed or other instrument of conveyance therefor, whether or not it shall be so expressed therein, shall be and is deemed to covenant and agree to pay to the Corporation:

- (i) Annual Assessments or charges, which shall be payable in regular installments, for the payment or provision of all expenses of administration of the Corporation, expenses for the upkeep, maintenance, repair and replacement of the Common Areas and the Community Area (i.e., Wilderness Trail) and all other expenses incurred or to be incurred by the Corporation for or in connection with the performance by the Corporation of its duties, obligations and responsibilities under this Declaration, which expenses may include, but shall not be limited to, the expenses and costs of hazard and liability insurance for Common Areas and the Community Area; exterior painting and roofs of Living Units according to schedules determined by the Board of Directors; snow removal, trash removal, sewer charges and water charges; street lighting; and an adequate reserve fund for the periodic maintenance, repair and replacement of those improvements and elements of the Common Area and Community Area and any other property that must be maintained, repaired or replaced on a periodic basis and which the Corporation may be obligated to maintain, and
- (ii) Special Assessments for capital improvements or operating deficits, such assessments to be established and collected as hereinafter provided.

Any assessments authorized herein, together with late charges, interest, costs and reasonable attorneys' fees, shall be a continuing lien from the first day of January (for annual assessments) and from the date the first installment is payable (for Special Assessments) against the Lot and Living Unit assessed. Such Annual Assessments shall be due and payable in advance in twelve (12) equal monthly installments on the first day of each and every month or, if so determined by the Board of

Directors, in such other periodic installments as may be specified by the Board of Directors. Each assessment, together with late charges, interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Lot on the date said assessment became due and payable. Said personal obligation of an Owner shall not pass to his successors in title or interest unless expressly assumed by them. No Owner shall escape liability for the assessments which fell due while he was the Owner by reason of non-use of the Common Area or non-use, transfer or abandonment of his Lot or Living Unit.

(b) Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the Owners and residents of the Parcel, to construct, manage, improve, maintain, repair and administer the Common Area and Community Area, for the exterior painting and roofing of Living Units, and for payment of any other costs and expenses incurred by the Corporation in connection with the performance of its duties, obligations and responsibilities hereunder. An adequate reserve fund shall be maintained for working capital and for the periodic maintenance, repair and replacement of those improvements and elements of the Common Areas and Community Area and any other property that must be replaced on a periodic basis and those portions of the Living Units which the Corporation is required to maintain and which must be replaced on a periodic basis. Such reserve fund shall be maintained out of the Annual Assessments.

The funds necessary for the exterior painting and roofing of the Living Units shall be calculated on the basis of each Living Unit having one thousand two hundred (1,200) square feet of living area. For any Living Unit having more than one thousand two hundred (1,200) square feet of living area, the Owner of such Living Unit shall pay a Special Assessment pursuant to Paragraph 14(d) below based upon the extra square footage of such home.

(c) Proposed Annual Budget. Annually, on or before the date of the annual meeting of the Corporation, the Board of Directors shall cause to be prepared a proposed annual budget for the ensuing fiscal year, estimating the total amount of the Common Expenses for the ensuing year, and furnish a copy of such proposed budget to each Owner prior to the annual meeting together with the notice of said meeting. The annual budget shall be submitted to the Owners at the annual meeting of the Corporation for adoption and, if so adopted, shall be the basis for the Annual Assessments (hereinafter defined) for the ensuing fiscal year. At the annual meeting of the Owners, the budget may be approved in whole or in part or may be amended in whole or in part by a majority of all Owners; provided, however, that in no event shall the annual meeting of the Owners be adjourned until an annual budget is approved at such meeting, either the proposed annual budget or the proposed annual budget as amended. The failure or delay of the Board of Directors to prepare a budget and furnish a copy thereof to the Owners shall not constitute a waiver or release in any manner of such Owner's obligation to pay the Common Expenses as herein provided, whenever determined, and in the absence of an annual budget, the Owner shall continue to pay the then existing monthly assessment until such new annual budget and monthly assessment is established.

(d) Special Assessments. In addition to the Annual Assessments authorized above, the Association, acting through the Board of Directors, may levy a Special Assessment for the purpose of defraying, in whole or in part:

- (a) the cost of any construction, reconstruction, repair or replacement of a capital improvement upon or which is deemed hereunder to be a part of the Common Area or Community Area, and/or
- (b) the cost of any unanticipated or extraordinary exterior painting or roofing of Living Units, or any other costs or expenses which were unexpected,

provided that any such Special Assessment shall have the assent of not less than a majority of all Owners who are voting in person or by proxy at a meeting duly called for this purpose.

In addition, the Owner of any Living Unit having more than one thousand two hundred (1,200) square feet of living area shall pay a Special Assessment prior to the time the Corporation causes the home to be repainted or reroofed. The Special Assessment shall be determined and assessed by the Board of Directors on behalf of the Corporation without a vote of the Owners, and shall be calculated, pro rata, based upon the square footage of the home which exceeds one thousand two hundred (1,200) square feet.

(e) Rate of Assessment. Subject to the Special Assessments for reroofing and repainting to be levied on the Owners of Living Units with more than one thousand two hundred (1,200) square feet of living area, the rate of assessment shall be equal for the Living Units. The rate of any Special Assessment shall be as approved by a majority of the Owners, except for Special Assessments attributable to reroofing and reroofing for Living Units with more than one thousand two hundred (1,200) square feet of living area. Annual Assessments shall be collected on a monthly basis (or other periodic basis, if and as determined by the Board) and Special Assessments shall be collected as the Board determines.

(f) Failure of Owner to Pay Assessments. Any assessments which are not paid when due shall be deemed delinquent. No Owner may exempt himself from paying Annual or Special Assessments, or from contributing toward the Common Expenses or toward any other expense lawfully agreed upon, by waiver of the use or enjoyment of the Common Area, or by abandonment of the Lot or Living Unit belonging to such Owner. Each Owner shall be personally liable for the payment of all Annual and Special Assessments. Where the Owner constitutes more than one person, the liability of such persons shall be joint and several. If any Owner shall fail, refuse or neglect to make any payment of any Annual or Special Assessments when due, the lien for such

assessment on the Owner's Lot and Living Unit may be foreclosed by the Board for and on behalf of the Corporation as provided by law. Upon the failure of an Owner to make payments of any Annual or Special Assessments within ten (10) days after such are due, the Board, in its discretion, may:

- (1) impose a late charge, which will be considered an addition to the assessment, in an amount not to exceed twenty-five percent (25%) of the assessment;
- (2) accelerate the entire balance of the unpaid assessments for the remainder of the fiscal year and declare the same immediately due and payable, notwithstanding any other provisions hereof to the contrary;
- (3) suspend such Owner's right to vote as provided in the Indiana Nonprofit Corporation Act of 1991, as amended.

In any action to foreclose the lien for any assessments, the Owner and any occupant of the Lot and Living Unit shall be jointly and severally liable for the payment to the Corporation of reasonable rental for such Lot and Living Unit, and the Board shall be entitled to the appointment of a receiver for the purpose of preserving the Lot and Living Unit and to collect the rentals and other profits therefrom for the benefit of the Corporation to be applied to the unpaid Annual or Special Assessments. The Board may, at its option, bring a suit to recover a money judgment for any unpaid Annual or Special Assessments without foreclosing or waiving the lien securing the same. In any action to recover an annual or special assessment, whether by foreclosure or otherwise, the Board, for and on behalf of the Corporation, shall be entitled to recover costs and expenses of such action incurred, including but not limited to reasonable attorney's fees, from the Owner of the respective Lot and Living Unit.

(g) Subordination of Lien. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage now or hereafter placed upon the property subject to

assessment. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or remedies provided in a first mortgage, or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to charges which were payable prior to such sale or transfer. No such sale or transfer shall relieve a Lot and Living Unit from liability for any assessments thereafter becoming payable or from the lien thereof or shall relieve the person personally obligated to pay the same from personal liability for assessments payable prior to such sale or transfer or acquisition. Any delinquent assessments the lien for which is extinguished by reason of this provision may be reallocated and assessed to all Lots and Living Units as a Common Expense.

15. Common Area.

(a) Ownership. The Common Area shall be owned by the Corporation as provided in Paragraph 6 of this Supplementary Declaration.

(b) Obligations of the Corporation. The Corporation, subject to the rights of Owners set forth in this Supplemental Declaration and subject to the provisions of paragraph 16, shall be responsible for the exclusive management and control of the Common Area and all improvements thereon or thereto and shall keep the Common Area in good, clean, attractive and sanitary condition, order and repair.

(c) Easements of Enjoyment. No person shall have any right or easement of enjoyment in and to the Common Area except as explicitly set forth in this Supplemental Declaration. The Owners, their tenants, guests and invitees may use the Common Area for such purposes as are authorized by this Supplemental Declaration or by resolution of the Board of Directors.

(d) Extent of Easements. The easements of enjoyment created hereby are subject to the following:

(i) The right of the Corporation to establish reasonable rules for the use of the Common Area.

(ii) The rights of Owners of certain Lots to the exclusive use of Limited Common Area depicted on the Final Plat limited to the use of a particular Lot or Lots.

(e) Damage or Destruction. In the event the Common Area is damaged or destroyed by and Owner or any of his guests, tenants, licensees, agents or members of his family, the Corporation shall be deemed authorized by such Owner to repair said damaged area, and the Corporation shall repair said damaged area in good workmanlike manner in conformance with the original plans and specifications of the area involved, or as the area may have been modified or altered subsequently by the Corporation in the discretion of the Board of Directors. The cost of such repairs shall become a Special Assessment against the Lot of said Owner.

16. Easement.

(a) Encroachments. A perpetual easement is hereby reserved for the benefit of the Corporation and of any Owner whose Lot is affected by an Encroachment. Such easement shall be for the Encroachment and for the maintenance of the same. In the event an encroaching Living Unit or other improvement shall be partially or totally destroyed as a result of fire or other casualty or as a result of the exercise of the power of eminent domain or a conveyance in anticipation thereof, and then rebuilt, any resulting Encroachment shall be permitted and a perpetual easement therefor is hereby reserved for the benefit of the Corporation and any Owner whose Lot is affected thereby.

(b) Access. Each Owner shall have the right to ingress and egress over, upon and across the Community Area and Common Area necessary for access to his Lot.

17. Maintenance of Living Units and Limited Common Areas. Except for the exterior painting and roofing which are the obligation of the Corporation, all maintenance of the Living

Units, both interior and exterior, and the Limited Common Areas, shall be the obligation of the Owner of such Living Unit and the cost thereof shall be paid by the Owner of each Living Unit.

18. Leases. No Owner of a Living Unit within The Timbers - Section 5 may lease such Living Unit for a period less than one (1) year. Any such lease shall (1) be in writing and (2) provide that the lessee shall comply in all respects with the provisions of the Supplementary Declaration, the Articles of Incorporation and By-Laws of Corporation, and all other rules and regulations applicable to the Living Unit and Lot and any failure of the lessee to comply with the terms of such documents shall constitute a default under the lease. The provisions of this paragraph shall not be applicable to a mortgagee who is a bank, life insurance company or savings and loan association or similar lending institution who acquires possession of a Lot and Living Unit during the period while a foreclosure proceeding is pending or who obtains title to a Lot and Living Unit as a result of foreclosure of its mortgage or a conveyance in lieu thereof.

19. Insurance.

(a) Casualty Insurance. The Corporation shall purchase and maintain fire and extended coverage insurance in an amount equal to the full replacement cost of all improvements, if any, which are within the Common Area and Community Area. If the Corporation can obtain such coverage for a reasonable amount, it shall also obtain "all risk coverage." The Corporation may also insure any other property, whether real or personal, owned by the Corporation against loss or damage by fire and such other hazards as the Board may deem desirable. Such insurance coverage shall name the Corporation as the insured. Such insurance policy or policies shall contain provisions that (i) the insurer waives its rights to subrogation as to any claim against the Corporation, its Board of Directors, officers, agents and employees, any committee of the Corporation or of the Board of Directors, and all Owners and their respective agents and guests, and (ii) waives any defense based on invalidity arising from the acts of the insured. Insurance proceeds







Robert W. Ashman  
(owner's signature)

Virginia M. Ashman  
(owner's signature)

ROBERT W. ASHMAN  
(printed)

VIRGINIA M. ASHMAN  
(printed)

4144 WILDERNESS TRAIL  
(street address)

7  
(Lot no.)

STATE OF INDIANA )  
 ) SS:  
COUNTY OF MARION )

Before me, a Notary Public, in and for said County and State, personally appeared ROBERT W. ASHMAN and VIRGINIA M. ASHMAN, who acknowledged the execution of the foregoing Amended and Restated Supplementary Declaration of Covenants and Restrictions for The Timbers - Section 5, and who, having been duly sworn, stated that the statements contained herein are true to the best of their knowledge and belief. Subscribed and sworn to before me this 6TH day of FEBRUARY, 1996.

P. Thomas Murray, Jr.  
Notary Public

P. THOMAS MURRAY, JR.  
Printed

My Commission Expires: 12-20-97 Residence County: MARION







**LEGAL DESCRIPTION  
THE TIMBERS -- SECTION FIVE**

Part of the Northwest Quarter of Section 33, Township 15 North, Range 4 East in Marion County, Indiana, more particularly described as follows:

Commencing at the Northwest corner of the said Northwest Quarter Section; thence South 00 degrees 12 minutes 12 seconds East along the West line of the said Quarter Section 929.01 feet to a point in Lick Creek (as located April 1978) said point lies North 00 degrees 12 minutes 12 seconds West 325.01 feet from a point on the said West line which lies North 89 degrees 47 minutes 48 seconds East 0.30 feet from the Northeast corner of an existing concrete monument, said monument assumed to be that monument as depicted on the site plans of the Timbers I, recorded March 26, 1974 as Instrument #74-16967 and the amended site plan recorded August 13, 1975 as Instrument #75-43359 in the Office of the Recorder of Marion County, Indiana; thence South 72 degrees 24 minutes 17 seconds East 89.63 feet to a concrete monument set at a point which lies North 15 degrees 47 minutes 48 seconds East 309.61 feet from the said point on the West Line of the said Northwest Quarter Section which lies North 89 degrees 47 minutes 48 seconds East 0.30 feet from the Northeast corner of said concrete monument said point being the Northwesterly corner of the said Timbers I as depicted on said site plans; thence North 72 degrees 17 minutes 17 seconds East along the Northerly line of the said Timbers I 402.67 feet to a concrete monument set at the Northwesterly corner of the Timbers II as depicted on the site plan, recorded August 30, 1974 as Instrument #74-55300 and the amended site plan recorded August 13, 1975 as Instrument #75-43360 in the said Recorder's Office and shown therein to be contiguous with the said Timbers I (the next two courses are along the Northerly Line of the said Timbers II as depicted on said site plans); thence North 46 degrees 26 minutes 06 seconds East 372.14 feet to a concrete monument set; thence South 48 degrees 00 minutes 48 seconds East 266.00 feet to a concrete monument set at the Northwesterly corner of the Timbers III as depicted on the site plan, recorded August 15, 1975 as Instrument #75-43967 and the amended site plan, recorded April 21, 1977 as Instrument #77-21075 in the said Recorder's Office and shown therein to be contiguous with the said Timbers II; thence North 88 degrees 00 minutes 00 seconds East along the Northerly line of the said Timbers III, 195.00 feet to a concrete monument set at the Northeasterly corner thereof;

thence North 78 degrees 00 minutes 00 seconds East 70.00 feet to a concrete monument set; thence South 72 degrees 00 minutes 00 seconds East 235.00 feet to a point in existing Beech Creek; thence South 27 degrees 53 minutes 37 seconds East 303.46 feet to a concrete monument set; thence South 23 degrees 00 minutes 00 seconds West 135.00 feet to a concrete monument set at the Place of Beginning; thence South 40 degrees 00 minutes 00 seconds East 175.88 feet to a concrete monument set; thence South 67 degrees 34 minutes 50 seconds East 230.86 feet to a iron rod set; thence South 22 degrees 25 minutes 10 seconds West 242.33 feet to a concrete monument set at an angle point on the Northerly line of right of way for I-465 (as located April 1978) per right of way grant to the State of Indiana, recorded August 11, 1961 in Volume 1876, page 67 and re-recorded April 26, 1963 in Volume 1990 page 486 in the said Recorder's Office, said angle point being depicted at 100 feet left of centerline ZZ at station 518 + 50 per plans on file in the Office of the State Highway Department of Indiana; thence North 87 degrees 44 minutes 10 seconds West along the said right of way line 410.27 feet to a concrete monument set on the East line of the Southwest Quarter of the said Northwest Quarter Section; thence North 00 degrees 10 minutes 09 seconds West along the East line of the said Quarter Quarter Section 335.29 feet to a point which bears North 88 degrees 39 minutes 12 seconds East from a point on the West line of the said Quarter Section, which point on the said West line lies South 00 degrees 12 minutes 12 seconds East 71.44 feet from a point on the said West line which lies North 89 degrees 47 minutes 48 seconds East 0.30 feet from the aforesaid Northeast corner of an existing concrete monument said point (on said East line) lies South 00 degrees 10 minutes 09 seconds East 0.72 feet from a concrete monument set at the Northeast corner of the said Quarter Quarter Section which Northeast corner of said Quarter Quarter Section (as set by split) bears North 88 degrees 23 minutes 54 seconds East 1334.65 feet from a concrete monument set, at the Northwest corner of the said Quarter Quarter Section, which Northwest corner of said Quarter Quarter Section (as set by split) bears South 00 degrees 12 minutes 12 seconds East 1330.86 feet from the Northwest corner of the said Quarter Section; thence North 88 degrees 39 minutes 12 seconds East along said line which bears North 88 degrees 39 minutes 12 seconds East from said point on the said West line 137.87 feet to a point which bears South 23 degrees 00 minutes 00 seconds West from the place of beginning; thence North 23 degrees 00 minutes 00 seconds East 100.00 feet to the place of beginning, containing 3.457 acres, more or less.

a:timbers5/timbers5.leg

**AMENDED AND RESTATED CODE OF BY-LAWS OF  
THE TIMBERS - SECTION FIVE HOMEOWNERS' ASSOCIATION, INC.**

**An Indiana Nonprofit Corporation**

**TABLE OF CONTENTS**

**ARTICLE I**

**NAME**

|              |            |   |
|--------------|------------|---|
| Section 1.1. | Name ..... | 1 |
|--------------|------------|---|

**ARTICLE II**

**IDENTIFICATION & APPLICABILITY**

|              |                                   |   |
|--------------|-----------------------------------|---|
| Section 2.1. | Identification and Adoption ..... | 1 |
| Section 2.2. | Individual Application .....      | 1 |

**ARTICLE III**

**MEETINGS OF CORPORATION**

|              |                                    |   |
|--------------|------------------------------------|---|
| Section 3.1. | Purpose of Meetings .....          | 2 |
| Section 3.2. | Annual Meeting .....               | 2 |
| Section 3.3. | Special Meetings .....             | 2 |
| Section 3.4. | Notice and Place of Meetings ..... | 2 |
| Section 3.5. | Voting .....                       | 2 |
| Section 3.6. | Conduct of Annual Meeting .....    | 3 |
| Section 3.7. | Conduct of Special Meeting .....   | 4 |
| Section 3.8. | Written Ballots .....              | 4 |

**ARTICLE IV**

**BOARD OF DIRECTORS**

|               |   |   |
|---------------|---|---|
| Section 4.1.  | Board of Directors .....  | 5 |
| Section 4.2.  | Additional Qualifications .....                                 | 5 |
| Section 4.3.  | Term of Office and Vacancy .....                                | 5 |
| Section 4.4.  | Removal of Directors .....                                      | 5 |
| Section 4.5.  | Duties of the Board of Directors .....                          | 6 |
| Section 4.6.  | Powers of the Board of Directors .....                          | 7 |
| Section 4.7.  | Limitations on Board Action .....                               | 7 |
| Section 4.8.  | Compensation .....  | 8 |
| Section 4.9.  | Meetings and Notice .....                                       | 8 |
| Section 4.10. | Waiver of Notice .....  | 9 |
| Section 4.11. | Quorum .....  | 9 |
| Section 4.12. | Bond .....  | 9 |
| Section 4.13. | Informal Action by Directors .....                              | 9 |
| Section 4.14. | Standards of Conduct and Liability of Directors and Officers .. | 9 |

|                              |  |    |
|------------------------------|--|----|
| <b>ARTICLE V</b>             |  |    |
| <b>OFFICERS</b>              |  |    |
| Section 5.1.                 | Officers of the Corporation . . . . .  | 9  |
| Section 5.2.                 | Election of Officers . . . . .         | 9  |
| Section 5.3.                 | The President . . . . .                | 9  |
| Section 5.4.                 | The Secretary . . . . .                | 10 |
| Section 5.5.                 | The Treasurer . . . . .                | 10 |
| Section 5.6.                 | Assistant Officers . . . . .           | 10 |
| <br>                         |  |    |
| <b>ARTICLE VI</b>            |  |    |
| <b>INDEMNIFICATION</b>       |  |    |
| Section 7.1.                 | Indemnification of Directors . . . . . | 10 |
| Section 7.2.                 | Indemnification of Officers . . . . .  | 10 |
| <br>                         |  |    |
| <b>ARTICLE VII</b>           |  |    |
| <b>NOTICES AND MORTGAGES</b> |  |    |
| Section 7.1.                 | Notice to Association . . . . .        | 11 |
| Section 7.2.                 | Notice of Unpaid Assessments . . . . . | 11 |
| <br>                         |  |    |
| <b>ARTICLE VIII</b>          |  |    |
| <b>MISCELLANEOUS</b>         |  |    |
| Section 8.1.                 | Fiscal Year . . . . .                  | 11 |
| Section 8.2.                 | Personal Interests . . . . .           | 11 |
| Section 8.3.                 | Contracts, Checks, Notes, Etc. . . . . | 11 |
| <br>                         |  |    |
| <b>ARTICLE IX</b>            |  |    |
| <b>AMENDMENT TO BY-LAWS</b>  |  |    |
| Section 9.1.                 | Amendment . . . . .                    | 12 |

**AMENDED AND RESTATED CODE OF BY-LAWS OF  
THE TIMBERS - SECTION FIVE HOMEOWNERS' ASSOCIATION, INC.**

**An Indiana Nonprofit Corporation**

**ARTICLE I**

**NAME**

**Section 1.1. Name.** The name of this corporation is The Timbers - Section Five Homeowners' Association, Inc. (hereinafter referred to as "Corporation").

**ARTICLE II**

**IDENTIFICATION & APPLICABILITY**

**Section 2.1. Identification and Adoption.** The provisions of these By-Laws shall apply to the Parcel and the administration and conduct of the affairs of the Corporation. These By-Laws shall also constitute the By-Laws of the Corporation.

**Section 2.2. Individual Application.** Each of the Owners within the Timbers - Section 5 subdivision shall automatically and mandatorily be Members in the Corporation and be entitled to all of the privileges and subject to all of the obligations thereof. All Owners, by their acceptance of their respective deeds to their Lots and Living Units, covenant and agree to be bound by the conditions, restrictions, and obligations contained in the Supplementary Declaration of Covenants & Restrictions of The Timbers - Section 5, said Declaration being recorded in the Marion County Recorder's Office on May 11, 1982, as Instrument No. 82-24076 (hereafter, "Declaration"), together with all amendments thereto, the Articles of Incorporation, the rules and regulations of the Corporation and of the provisions hereof. All of the Owners, future Owners, tenants, future tenants, their guests and invitees, or any other person who might now or hereafter use or occupy a Lot or Living Unit or any part of the Common Area shall be subject to the rules, restrictions, terms, and conditions set forth in the Declaration, the Articles of Incorporation, these By-Laws, and the Indiana Nonprofit Corporation Act of 1991 (the "Act"), all as the same may be amended from time to time, and to any rules and regulations adopted by the Board of Directors as herein provided. The Declaration is incorporated herein by reference. All of the covenants, rights, restrictions, and liabilities contained in the Declaration shall apply to and govern the interpretation of the Amended and Restated Articles of Incorporation and these Code of By-Laws. The definitions and terms, as defined and used in the Declaration, shall have the same meaning in the Amended and Restated Articles of Incorporation and these Code of By-Laws, and reference is specifically made to Paragraph 1 of the Declaration containing definitions for terms, unless otherwise indicated herein.

## ARTICLE III

### MEETINGS OF CORPORATION

Section 3.1. Purpose of Meetings. At least annually, and at such other times as may be necessary or appropriate, a meeting of the Members shall be held for the purpose of electing the Board of Directors, approving the annual budget, providing for the collection of Common Expenses and for such other purposes as may be required by the Declaration, these By-Laws, the Articles, or the Act.

Section 3.2. Annual Meeting. The annual meeting for the Members of the Corporation shall be held in the month of January or February each year, with the exact date, time and place to be determined by the Board of Directors. At each annual meeting, the Members shall elect the Board of Directors of the Corporation in accordance with the provisions of these By-Laws and transact such other business as may properly come before the meeting.

Section 3.3. Special Meetings. A special meeting of the Members of the Corporation may be called by the President, by resolution of the Board of Directors or upon a written petition of just one of the Owners. The resolution or petition shall be presented to the President or Secretary of the Corporation and shall state the purpose for which the meeting is to be called. No business shall be transacted at a special meeting except as stated in the petition or resolution.

Section 3.4. Notice and Place of Meetings. All meetings of the Members of the Corporation shall be held at any suitable place in Marion County, Indiana, as may be designated by the Board of Directors. Written notice stating the date, time, and place of any meeting, and in the case of a special meeting the purpose or purposes for which the meeting is called, shall be delivered or mailed by the Secretary of the Corporation to each Member entitled to vote thereat not less than fourteen (14) days prior to the date of such meeting. Any written notice delivered to the Members as part of a newsletter or other publication regularly sent to the Members constitutes a written notice. If at any meeting an amendment to the Declaration, the Articles of Incorporation, or these By-Laws is to be considered, the notice of such meeting shall describe the nature of such proposed amendment. All notices shall be mailed by first-class U.S. Mail, postage prepaid, or delivered to the Members at their respective addresses as the same shall appear upon the records of the Corporation. If an annual or special meeting of Members is adjourned to a different date, time or place, written notice is not required to be given of the new date, time or place so long as the new date, time and place is announced at the meeting pursuant to the Act before adjournment.

Section 3.5. Voting.

(a) Number of Votes. To avoid fractional votes and to facilitate the orderly conduct of the meeting, each Member shall be entitled to cast one (1) vote for each Living Unit of which such Member is the Owner. In voting for Directors, each Owner (or his or her representative) shall be entitled to cast one (1) vote for each directorship being filled at that meeting, and the candidate(s) receiving the highest number of votes shall fill the available directorship(s); provided that no Owner shall be allowed to accumulate his or her votes. To the extent provided in the Act, and

except as otherwise provided in the Declaration, the Articles of Incorporation or these By-Laws, plurality voting shall be permitted such that at a meeting, if a quorum exists, action on a matter is approved if the votes cast in favor of the action exceed the votes opposing the action.

(b) Multiple Owners. When more than one (1) person or entity constitutes the Owner of a particular Living Unit, all such persons or entities shall be Members of the Corporation, but all of such persons or entities shall have only one (1) vote for such Living Unit, which vote shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any such Living Unit.

(c) Voting by Corporation or Trust. Where a corporation or trust is an Owner or is otherwise entitled to vote, the trustees may cast the vote on behalf of the trust, and the agent or other representative of the corporation duly empowered by the board of directors of such corporation shall cast the vote to which the corporation is entitled. The secretary of such corporation or a trustee of such trust so entitled to vote shall deliver or cause to be delivered prior to the commencement of the meeting a certificate signed by such person to the Secretary of the Corporation stating who is authorized to vote on behalf of said corporation or trust.

(d) Proxy. An Owner may vote either in person or by his or her duly authorized and designated attorney-in-fact. Where voting is by proxy, the Owner shall duly designate his attorney-in-fact in writing, delivered to the Secretary of the Corporation prior to the commencement of the meeting. No such proxy shall remain valid for longer than eleven (11) months from the date of its execution, unless a longer term is specified in the proxy.

(e) Quorum. Except where otherwise expressly provided in the Declaration, these By-Laws, or the Articles or the Act, the presence of Owners or their duly authorized representatives owning at least five (5) of the nine (9) Living Units shall constitute a quorum at all meetings. Unless otherwise required herein or by the Act, the Owners at a meeting at which a quorum is initially present may continue to do business until adjournment, notwithstanding the withdrawal of enough Owners to leave less than a quorum. As used elsewhere in these By-Laws, the term "Majority of Owners" shall mean five (5) or more of the nine (9) Living Units, and the term "Majority of the Vote" shall mean a majority of the votes of the Owners present or represented at a meeting at which a quorum is present.

Section 3.6. Conduct of Annual Meeting. The Chairman of the annual meeting shall be the President of the Corporation. The President shall call the meeting to order at the duly designated time, and business will be conducted in the following order:

(1) Reading of Minutes. The Secretary shall read the minutes of the last annual meeting and the minutes of any regular or special meeting of the Members

held subsequent thereto, unless such reading is waived by a Majority of the Vote as defined in Section 3.5(e) hereof.

(2) Treasurer's Report. The Treasurer shall report to the Members concerning the financial condition of the Corporation and answer relevant questions of the Members concerning the Common Expenses and financial report for the prior year and the proposed budget for the current fiscal year.

(3) Budget. The proposed budget for the current calendar year shall be presented for approval or amendment by a Majority of the Owners.

(4) Election of Board of Directors. Nominations for the Board of Directors may be made by a Member from those persons eligible to serve. Such nominations must be in writing and presented to the Secretary of the Corporation at least ten (10) days prior to the annual meeting. Nominations for the Board of Directors will NOT be accepted from the Members attending the annual meeting. Voting for the Board of Directors will be by paper ballot. The ballot shall contain the name of each person nominated to serve as a Board member. Each Member may cast the total number of votes to which he or she is entitled for as many nominees as are to be elected; however, no Member shall be entitled to accumulate his or her votes. Those persons receiving the highest number of votes shall be elected.

(5) Other Business. Other business may be brought before the meeting only upon a written request submitted to the Secretary of the Corporation at least ten (10) days prior to the date of the meeting; provided, however, that such written request may be waived at the meeting if agreed by a Majority of the Vote as defined in Section 3.5(e) hereof.

(6) Committee Reports. Reports of committees designated to supervise and advise on the respective segments of maintenance and operations prescribed in the Declaration or assigned by the Board of Directors shall be presented.

(7) Adjournment. Upon completion of all business before the Corporation, the President, upon the motion of any Member, may adjourn the meeting; provided, however, that no annual meeting shall be adjourned until a budget is approved by the Owners for the upcoming year.

Section 3.7. Conduct of Special Meeting. The President of the Corporation shall act as Chairman of any special meetings of the Corporation. The Chairman shall call the meeting to order at the duly designated time and the only business to be considered at such meeting shall be in consideration of the matters for which such meeting was called, as set forth in the notice of such special meeting.

Section 3.8. Written Ballots. In lieu of any annual or special meeting of the Members, written ballots may be utilized in the manner prescribed in the Act.

## ARTICLE IV

### BOARD OF DIRECTORS

Section 4.1. Board of Directors. The affairs of the Corporation shall be governed and managed by the Board of Directors (herein sometimes collectively called "Board" and individually called "Directors"). The Board of Directors shall be composed of four (4) persons who each own at least one (1) Living Unit. The number of Directors comprising the Board may be increased by resolution adopted by not less than a majority of the Board of Directors, but said number shall not exceed seven (7). If the number of Directors is ever greater than four (4), said number may be decreased by resolution adopted by not less than a majority of the Board. In no event shall the number of Directors be less than three (3) nor more than seven (7) and no reduction in the number of Directors shall have the effect of removing a Director from office prior to the expiration of his or her term. In the event the number of Directors is increased as provided herein, the election of the additional Director or Directors shall be by a vote of the Members according to a procedure established by the Board by resolution.

Section 4.2. Additional Qualifications. Where an Owner consists of more than one person or is a partnership, corporation, trust or other legal entity, then one of the persons constituting the multiple Owner, or a partner or an officer or trustee shall be eligible to serve on the Board of Directors, except that no single Living Unit may be represented on the Board of Directors by more than one person at a time.

Section 4.3. Term of Office and Vacancy. Members of the Board of Directors shall be elected at each annual meeting of the Corporation. Each Director shall serve a term of two (2) years such that one-half (1/2) of the persons on the Board of Directors shall be elected at each annual meeting of the Corporation. Any vacancy or vacancies occurring in the Board caused by a death, resignation, or otherwise other than a vacancy created by removal or an increase in the number of Directors, shall be filled until the next annual meeting of the Members through a vote of a majority of the remaining Directors. At the first annual meeting of the Members following any such vacancy, a Director shall be elected by the Owners to serve for the balance of the term of the Director in respect to whom there has been a vacancy. Each Director shall hold office throughout the term of his or her election until his or her successor is elected and qualified.

Section 4.4. Removal of Directors. A Director or Directors elected by the Owners, or elected by the Directors to fill a vacancy, may be removed by the Owners with or without cause if the number of votes cast to remove would be sufficient to elect the Director(s) at a meeting to elect Directors. A Director or Directors may be so removed by the Owners only at a meeting called for the purpose of removing the Director(s). The meeting notice must state that the purpose of the meeting is for voting upon the removal of the Director(s). In such case, his or their successor(s) shall be elected at the same meeting from eligible Owners nominated at the meeting to serve for the remainder of the term(s) of the removed Director(s).

Section 4.5. Duties of the Board of Directors. The Board of Directors shall perform or cause to be performed, when and to the extent deemed necessary or appropriate in the Board's business judgment, the following:

- (a) Protection, repair and replacement of the Common Areas and the Community Area (i.e., Wilderness Trail), unless the same are otherwise the responsibility or duty of the Owners; provided, however, that this duty shall not include or be deemed or interpreted as a requirement that the Corporation, the Board or any Managing Agent must provide any on-site or roving guards, security service or security system for protection or surveillance, and the same need not be furnished;
- (b) Procuring of utilities, removal of garbage and waste if not provided by the municipality, and snow removal from the Community Area;
- (c) Landscaping, decorating, and furnishing of the Common Area and Community Area;
- (d) Surfacing, paving, and maintaining the private street known as Wilderness Trail, and the regulation of the use thereof;
- (e) Assessment and collection from the Owners of the Owners' pro-rata share of the Common Expenses;
- (f) Preparation of the proposed annual budget, a copy of which will be mailed or delivered to each Owner at the same time the notice of annual meeting is mailed or delivered;
- (g) Keeping a current, accurate, and detailed record of receipts and expenditures affecting the Common Areas and Community Area, and the roofing and exterior painting of the Living Units, specifying and itemizing the Common Expenses; all records and vouchers shall be available for examination by an Owner at any time during normal business hours;
- (h) Exterior painting of the Living Units, and repair, maintenance and replacement of the roofs of the Living Units;
- (i) Procuring and maintaining in force all insurance coverage required by the Declaration;
- (j) Performing such other duties as may be reasonably inferred from the provisions of the Declaration.

Section 4.6. Powers of the Board of Directors. The Board of Directors shall have such powers as are reasonably necessary or appropriate to accomplish the performance of its duties. These powers include, but are not limited to, the power:

- (a) To employ a reputable and recognized professional managing agent or real estate management company (either being hereinafter referred to as "Managing Agent") to assist the Board in performing its duties; provided, however, any management agreement shall be terminable for cause upon thirty (30) days written notice and terminable without cause upon sixty (60) days written notice, and any such agreement may not exceed one (1) year, renewable by agreement of the parties for successive one (1) year periods;
- (b) To purchase for the benefit of the Owners such equipment, materials, labor, and services as may be necessary in the judgment of the Board of Directors;
- (c) To procure for the benefit of the Owners fire and extended coverage insurance covering the improvements on the Common Area and Community Area to the full insurable value thereof, to procure public liability and property damage insurance and Worker's Compensation Insurance, if necessary, and to procure all such other insurance as is required or permitted under the Declaration, for the benefit of the Owners and the Corporation;
- (d) To employ legal counsel, architects, engineers, contractors, accountants, and others as in the judgment of the Board of Directors may be necessary or desirable in connection with the business and affairs of the Corporation;
- (e) To employ, designate, discharge and remove such personnel as in the judgment of the Board of Directors may be necessary for the maintenance, upkeep, repair and replacement of the Common Area and Community Area, and the exterior painting and roofing of the Living Units;
- (f) To include the costs of all of the above and foregoing as Common Expenses of the Corporation and to pay all of such costs therefrom;
- (g) To open and maintain a bank account or accounts in the name of the Corporation and to designate the signatories thereto;
- (h) To adopt, revise, amend, and alter from time to time reasonable rules and regulations with respect to use, occupancy, operation, and enjoyment of the Parcel provided that the Board shall give advance written notice to the Owners of such rules and any revision, amendment, or alteration thereof.

Section 4.7. Limitations on Board Action. The authority of the Board of Directors to enter into contract shall be limited to contracts involving a total expenditure of less than Two Thousand Five Hundred Dollars (\$2,500.00), unless the prior approval of a Majority of Owners (as defined in Section 3.5(e) hereof) is obtained, except in the following cases:

(a) Supervision and management of the replacement or restoration of any portion of the Common Area or Community Area damaged or destroyed by fire or other casualty, where the cost thereof is payable out of insurance proceeds actually received; and,

(b) Proposed contracts and proposed expenditures expressly set forth in the proposed annual budget as approved by the Owners at the annual meeting; However, specific items within the budget need not be approved separately by the Owners at the annual meeting. The Board may also reallocate funds to items in the budget so long as the total budgeted funds are not exceeded and by doing so, the total budget will not be increased; and

(c) Expenditures necessary to deal with emergency conditions in which the Board of Directors reasonably believes there is insufficient time to call a meeting of the Owners.

The said Two Thousand Five Hundred Dollar (\$2,500.00) maximum shall automatically be adjusted every five (5) years from the date of execution of these By-Laws to reflect changes in the purchasing power of the dollar, as determined by the most recently published annual GNP Implicit Price deflator or any comparable index.

Section 4.8. Compensation. No Director or Officer shall receive any compensation for his or her services as such except to such extent as may be expressly authorized by a Majority of Owners as defined in Section 3.5(e) hereof.

Section 4.9. Meetings and Notice. Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by a majority of Directors. No written or verbal notice need be given to Directors for regularly scheduled Board meetings of which the Directors are already aware. For all other Board meetings, the Secretary shall give notice of such meetings of the Board to each Director personally or by United States mail at least five (5) days prior to the date of such meetings. Special meetings of the Board may be called by the President or any two (2) members of the Board. The person or persons calling such meeting shall give written notice thereof to the Secretary, who shall either personally or by mail and at least three (3) days prior to the date of such special meeting, give notice to the Board members. The notice of the meeting shall contain a statement of the purpose for which the meeting is called. Such meeting shall be held at such place as shall be designated in the notice. To the extent provided in the Act, a Director may conduct or participate in a regular or special meeting of the Board of Directors through the use of conference telephone or any means of communication by which all Directors participating may simultaneously hear each other during the meeting. A Director participating in a meeting by this means is considered to be present in person at the meeting.

Section 4.10. Waiver of Notice. Before or after any meeting of the Board, any Director may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. The presence of any Director at a meeting shall, as to such Director, constitute a waiver of notice of the time, place, and purpose thereof. If all Directors are present at

Cross Reference: Instrument No. 1996-0034642



**SECOND AMENDED AND RESTATED  
SUPPLEMENTARY DECLARATION OF COVENANTS  
AND RESTRICTIONS OF THE TIMBERS--SECTION 5**

This Second Amended and Restated Supplementary Declaration of Covenants and Restrictions for The Timbers - Section 5 was made as of the 16th day of February, 2004

**WITNESSETH THAT:**

WHEREAS, The Timbers - Section 5 subdivision located in Marion County, Indiana (hereafter, "Timbers Section 5") was originally created and formed pursuant to a certain "Supplementary Declaration of Covenants and Restrictions--The Timbers - Section 5" recorded in the Office of the Recorder of Marion County, Indiana on May 11, 1982, as **Instrument No. 82-24076** (hereafter, "Original Declaration"); and

WHEREAS, Timbers Section 5 consists of nine (9) Lots, plus Common Areas and Community Area; and

WHEREAS, the original developer of the entire Timbers community filed a certain "Declaration of Covenants and Restrictions of The Timbers Residential Community" with the Marion County Recorder's Office on March 26, 1974, as **Instrument No. 74-16962** (hereafter, the "Overall Declaration"), which contemplated the formation of several horizontal property regimes and other subdivisions; and

WHEREAS, pursuant to the Overall Declaration, three (3) horizontal property regimes known as Timbers I, II, and III and one subdivision known as The Timbers-Section 4 were established, for which an Indiana nonprofit corporation known as The Timbers of Indianapolis, Inc. is responsible for management, maintenance, and operation; and

WHEREAS, The Timbers - Section 5 was also established pursuant to the Overall Declaration; however, Section 5 was and is an autonomous property and is completely separate in function from Timbers Section 4, Timbers I, II, and III; and

WHEREAS, the Original Declaration was amended and restated as the Amended and Restated Supplementary Declaration of Covenants and Restrictions of the Timber--Section 5, recorded in the Office of the Recorder of Marion County, Indiana, on March 15, 1996, as **Instrument No. 1996-0034642** (hereafter, the "Amended and Restated Supplementary Declaration"); and

WHEREAS, the Owners of Lots within The Timbers - Section 5 desire to amend certain provisions of the Amended and Restated Supplementary Declaration and to restate the same for the convenience of the Owners; and

**Inst # 2004-0048951**

03/01/04 02:18PM WANDA MARTIN MARION CTY RECORDER LHM 52.00 PAGES: 22

WHEREAS, Paragraph 20 of the Amended and Restated Supplementary Declaration provides that it may be amended by Owners of not less than two-thirds (2/3) of the Living Units in Section 5; and

WHEREAS, the undersigned Owners, representing one hundred percent (100%) of the Living Units in Section 5, executed this Second Amended & Restated Supplementary Declaration as set forth herein.

WHEREAS, the Amended and Restated Code of By-Laws of The Timbers - Section Five Homeowners' Association, Inc. as amended and restated on March 16, 1996, and attached to and recorded with the Amended and Restated Supplementary Declaration are also attached hereto and recorded herewith.

NOW, THEREFORE, the Owners hereby declare that the Parcel was, is and shall be held, transferred, sold, conveyed, hypothecated, encumbered, leased, rented, used, improved and occupied subject to the provisions, agreements, conditions, covenants, restrictions, easements, assessments, charges and liens hereinafter set forth, all of which were and are declared to be in furtherance of a plan for preservation and enhancement of the Parcel, and were and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Parcel as a whole and of each of the Lots and Living Units situated therein, and which ran and shall continue to run with the Parcel and be binding upon all parties having any right, title or interest in the Parcel, their heirs, successors and assigns.

1. Definitions. The following words, phrases and terms, as used in this Supplementary Declaration, unless the context clearly requires otherwise, mean the following:

- (a) "Board of Directors" means the board of directors of the Corporation.
- (b) "Corporation" means The Timbers - Section Five Homeowners' Association, Inc., an Indiana nonprofit corporation.
- (c) "Block" means a Block as approved by the Plat Committee of the Department of Metropolitan Development of the City of Indianapolis. There are eleven (11) Blocks in the Parcel.
- (d) "Lot" means a Lot depicted up a Final Plat. There are nine (9) Lots in the Parcel.
- (e) "Common Area" means all of the area within the Parcel other than the Lots and the Community Area.
- (f) "Common Expenses" means expenses for the improvement, maintenance, repair, replacement and operation of the Common Area and Community Area and all monies required for the Replacement Reserve Fund to be used for re-painting the exterior walls of the Living Units, and replacing roofs on the Living Units, both to schedules as defined by the Board of Directors.

(g) "Community Area" means the real estate designated as Community Area on Exhibit "B" which was attached to the original Supplementary Declaration recorded with the Marion County Recorder's Office as Instrument No. 82-24076, and through which Wilderness Trails runs. That portion of Wilderness Trail which is within the Parcel is a private street owned and maintained by the Corporation.

(h) "Encroachment" means the encroachment upon a Lot or the Common Area or the Community Area by any Lot, the Common Area, the Community Area or any building, overhang, fixture, structure or improvement as a result of the construction, reconstruction, repair, movement, settling or shifting of a Living Unit or of other improvements upon the Parcel.

(i) "Final Plat" means maps or charts indicating a subdivision of the Parcel recorded in the Office of the Recorder of Marion County, Indiana.

(j) "Limited Common Areas" means that part of the Common Area depicted herein and defined as Limited Common Area and restricted in use to the Lot appurtenant thereto or the Lot served by such area such as driveways, concrete stoops, concrete sidewalks from the driveways to the homes, designated parking spaces and other similar areas.

(k) "Majority of the Owners" means the Owners of not less than 51% of the Lots.

(l) "Owner" means any Person, who at any time owns the fee simple title to a Lot and Living Unit, including contract sellers, but excluding those having such interest merely as security for the performance of any obligation.

(m) "Parcel" means the real estate described in Exhibit "A" which was attached to the original Supplementary Declaration recorded with the Marion County Recorder's Office as Instrument No. 82-24076.

(n) "The Timbers - Section 5" means the name by which the Parcel shall be known.

(o) "Living Unit" means a structure situated upon any Lot (including any appurtenant patio, deck and screened or other porches and any extended roof) designed and intended for use and occupancy as a residence by a single family.

2. Declaration. The Parcel shall be held, transferred, sold, conveyed and occupied subject to this Declaration, as amended. The Owner of any Lot at any time subject to this Declaration and all other persons having any right, title or interest therein, by (i) acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, or the acceptance of any right, title or interest therein or thereto, or (ii) by the act of occupancy of any Lot, shall accept such deed, execute such contract, accept such right, title or interest, and undertake such occupancy subject to all of the terms, covenants, conditions, restrictions and provisions of this Declaration. By acceptance of such deed, execution of such contract, acceptance of such right, title or interest, or undertaking such occupancy, each Owner and all other such persons acknowledge the rights and powers of the Corporation with respect to or under this Declaration, and, for himself, his heirs, personal

representatives, successors and assigns, covenants, agrees and consents to and with the Corporation, and the Owners and subsequent Owners of each of the Lots affected by this Declaration, to keep, observe, perform and comply with the terms and provisions of this Declaration.

3. Description of Blocks. The Parcel has been subdivided into eleven (11) Blocks numbered 1 through 11 which contain nine (9) Lots, and 3 Blocks labeled A, B and C which are part of the Common Area. The boundaries of each Lot shall be as shown on the Final Plats.

4. Description of Living Units. Nine (9) Living Units have been constructed upon the Parcel, each Living Unit being upon a Lot.

5. Title to Common Area. The Corporation owns fee simple title to the Common Area subject to restrictions, conditions, limitations and easements of record. The Corporation shall hold the Common Area for the use and enjoyment of the Owners, all of whom shall have the right and easement of enjoyment in and to the Common Area which right shall pass with title to every Lot subject to the provisions of this Supplementary Declaration, as amended.

6. Limited Common Area. Limited Common Area shall be as designated on the Final Plats and shall be limited to the use of the Lot or Lots to which it is appurtenant or to which such Limited Common Area serves. Limited Common Area consist of driveways, concrete stoops, concrete sidewalks from the driveway to the home. No person, other than the Owner of the Lot, or the Owners of the Lot to which the Limited Common Area pertains, shall have the right to use such Limited Common Area. Owners shall maintain at their expense the Limited Common Areas which are appurtenant to their respective Lots.

7. Party Walls.

(a) General Rules of Law to Apply. Each wall which is built as a part of the original construction of a Living Unit and placed on the dividing line between Lots shall constitute a Party Wall and, to the extent not inconsistent with the provisions of this Paragraph 7, the general rules of law regarding party walls and liability for property damage due to negligent or intentional or willful acts or omissions shall apply thereto.

(b) 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.

(c) Destruction by fire or Other Casualty. If a Party Wall is destroyed or damaged by fire or other casualty, then, to the extent that such damage is not covered by insurance maintained by any of the Owners who make use of such Party Wall, and repaired out of the proceeds of same, any Owner who has used the Party Wall may restore it, and if the other Owners thereafter make use of the Party Wall, they shall contribute to the cost of restoration thereof in equal proportions 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, intentional or willful acts or omissions.

(d) Weatherproofing. Notwithstanding any other provisions of this Paragraph, to the extent that any damage to a Party Wall is not covered and paid for by the insurance provided for herein, 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.

(e) Rights and Duties Run with Land. The rights and duties of an Owner with respect to a Party Wall under this Paragraph 7 shall be appurtenant to such Owner's Lot and shall pass to the successor in title of such Owner.

(f) Arbitration. In the event of any dispute arising concerning a Party Wall, or under the provisions of this Paragraph, each party shall choose one arbitrator, and the decision shall be by a majority of all the arbitrators. (Should any party refuse to appoint an arbitrator within ten days after written request therefor from another party, the Board of Directors of the Corporation shall select an arbitrator for the refusing party.)

8. Board of Directors. In order to provide maintenance, repair, replacement, administration and operation of the Common Area and Community Area, and the re-painting of the exteriors of the Living Units and the re-roofing of the Living Units, there shall be a Board of Directors of the Corporation consisting of four (4) Owners elected by the Owners of Living Units in the Parcel. The Owners of each Living Unit in the Parcel shall have one (1) vote per Living Unit and the four (4) persons receiving the largest number of votes cast by Owners of Living Units in the Parcel shall be elected to serve as the Corporation's Board of Directors. The members of the Board shall elect from among their membership a President, a Secretary and such other officers as they may deem appropriate. The Board shall perform such functions as are specific herein and in the Corporation's By-Laws and such other functions not in conflict with the terms of this Supplementary Declaration as they may by majority vote determine.

9. Use.

(a) Restrictions. The following restrictions on the use and enjoyment of the Living Units, Lots, Common Area and Limited Common Area shall be applicable to The Timbers - Section 5.

(i) All Living Units shall be used exclusively for residential purposes and occupancy by a single family. No trade or business of any kind be carried on within a Living Unit or upon a Lot, nor shall any Lot or any part thereof be leased, sublet, assigned or suffered to be used for hotel or transient occupancy. No Lot may have more than one (1) Living Unit on it.

(ii) Nothing shall be done or kept on any Lot or in the Common Area or Limited Common Area which would be in violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body. Nothing shall be done or kept on any Lot or in any Living Unit or on or in any Common Area or any part thereof which would increase the rate of insurance on the Parcel or any part thereof over what the Corporation, but for such activity, would pay, without the prior written consent of the Corporation.

(iii) No waste shall be committed on any Lot or in the Common Area or Limited Common Area. No noxious, destructive or offensive activity shall be allowed in any Living Units, on any Lots or in the Common Area or any part thereof, nor shall anything be done

thereon which may be or may become a nuisance to any other Owner or to any other person at any time lawfully residing on the Parcel.

(iv) All Owners and members of their families, their guests, or invitees, and all occupants of any Living Unit or other Persons entitled to use the same and to use and enjoy the Common Area, Limited Common Area or any part thereof, shall observe and be governed by such rules and regulations as may from time to time be promulgated and issued by the Board of Directors governing the operation, use and enjoyment of the Common Area and the Limited Common Area.

(v) There shall be no obstruction of the Common Area, nor shall anything be permitted on any part the Common Area, without the prior written consent of the Board of Directors. Nothing shall be altered on, constructed in, or removed from the Common Area except upon the prior written consent of the Board of Directors.

(vi) No Person shall remove, trim or permit the removal or trimming of any tree or shrub located on the Parcel without the consent of the Architectural Review Board, or shall cultivate or permit the cultivation of the Parcel or any part thereof in such a manner as to cause or permit soil erosion.

(vii) No clothes, sheets, blankets, laundry of any kind or other articles shall be hung out on any portion of the Common Area, or on a Lot so as to be visible from outside the Lot. The Common Area and all Lots shall be kept free and clear of all rubbish, debris and other unsightly materials.

(viii) No animals, rabbits, livestock, fowl or poultry of any kind shall be raised, bred or kept in or on any Lot or on the Common Area or any part thereof, except that household pets may be kept on Lots, subject to rules and regulations adopted by the Board, provided that they are not kept, bred, or maintained for any commercial purposes; provided, further, that any such pet causing or creating a nuisance or unreasonable disturbance shall be permanently removed from the Property subject to these restrictions upon three days' written notice from the Board, and provided further, that upon written request of 25% of the voting power of the Corporation, the Board of Directors shall have the authority to, and shall order the removal of, any pet.

(ix) Except with the prior written approval and the authorization of the Board, no exterior satellite dish or television or radio antennae of any sort shall be placed, allowed or maintained upon any portion of the improvements or structures to be located upon the Parcel.

12. Enforcement. The covenants, restrictions and obligations in this Supplementary Declaration are for the mutual benefit and protection of the present and future Owners and shall run with the land and inure to the benefit of and be enforceable by any Owner or the Corporation. Present or future Owners or the Corporation shall be entitled to injunctive relief against any violation or attempted violation of these provisions and shall be entitled to damages for any injuries resulting from any violations thereof, but there shall be no right of reversion or forfeiture of title resulting from such violation. Failure by the Corporation or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. Attorneys' fees and

costs of any such actions to restrain violation or to recover damages as determined by the Court shall be assessable against and payable by any persons violating the terms contained herein.

13. Architectural Committee. No exterior additions, removals or alterations (including changes in color or appearance) to any building on the Parcel or on any Lot, hedges, walls, walkways and other structures, additional fences or exterior lighting, or changes in existing fences or exterior lighting, shall be commenced, erected or maintained (except such as were installed or approved by the original developer in connection with the initial construction of the Living Units and other buildings and improvements on the Parcel), until the written plans and specifications showing in reasonable detail the nature, kind, shape, height, composition, materials (including color), and location shall have been submitted to and approved in writing as to harmony of the external design and location in relation to surrounding buildings in the Parcel and the topography by an architectural committee (the "Architectural Committee") composed of the Board of Directors of the Corporation or three (3) or more representatives appointed by the Board of Directors. The chairperson of the Architectural Committee shall be a member of the Board of Directors. In the event said Board, or its designated Committee, fails to approve or disapprove such design and location within forty-five (45) days after said written plans and specifications have been submitted to it, such approval will be deemed to have been given. The approvals of the Architectural Committee required hereunder shall be in addition to, and not in lieu of, any approvals as to such matters required to be obtained from any other persons or governmental agencies pursuant to the terms of any subdivision plat, statute, law, ordinance, other governmental regulation or otherwise.

14. Assessments.

(a) Creation of the Lien and Personal Obligation for Assessments. Each Owner of a Living Unit by acceptance of a deed or other instrument of conveyance therefor, whether or not it shall be so expressed therein, shall be and is deemed to covenant and agree to pay to the Corporation:

(i) Annual Assessments or charges, which shall be payable in regular installments, for the payment or provision of all expenses of administration of the Corporation, expenses for the upkeep, maintenance, repair and replacement of the Common Areas and the Community Area (i.e., Wilderness Trail) and all other expenses incurred or to be incurred by the Corporation for or in connection with the performance by the Corporation of its duties, obligations and responsibilities under this Declaration, which expenses may include, but shall not be limited to, the expenses and costs of hazard and liability insurance for Common Areas and the Community Area; exterior painting and roofs of Living Units according to schedules determined by the Board of Directors; snow removal, trash removal, sewer charges and water charges; street lighting; and an adequate reserve fund for the periodic maintenance, repair and replacement of those improvements and elements of the Common Area and Community Area and any other property that must be maintained, repaired or replaced on a periodic basis and which the Corporation may be obligated to maintain, and

(ii) Special Assessments for capital improvements or operating deficits, such assessments to be established and collected as hereinafter provided.

Any assessments authorized herein, together with late charges, interest, costs and reasonable attorneys' fees, shall be a continuing lien from the first day of January (for annual assessments) and from the date the first installment is payable (for Special Assessments) against the Lot and Living Unit assessed. Such Annual Assessments shall be due and payable in advance in twelve (12) equal monthly installments on the first day of each and every month or, if so determined by the Board of Directors, in such other periodic installments as may be specified by the Board of Directors. Each assessment, together with late charges, interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Lot on the date said assessment became due and payable. Said personal obligation of an Owner shall not pass to his successors in title or interest unless expressly assumed by them. No Owner shall escape liability for the assessments which fell due while he was the Owner by reason of non-use of the Common Area or non-use, transfer or abandonment of his Lot or Living Unit.

(b) Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the Owners and residents of the Parcel, to construct, manage, improve, maintain, repair and administer the Common Area and Community Area, for the exterior painting and roofing of Living Units, and for payment of any other costs and expenses incurred by the Corporation in connection with the performance of its duties, obligations and responsibilities hereunder. An adequate reserve fund shall be maintained for working capital and for the periodic maintenance, repair and replacement of those improvements and elements of the Common Areas and Community Area and any other property that must be replaced on a periodic basis and those portions of the Living Units which the Corporation is required to maintain and which must be replaced on a periodic basis. Such reserve fund shall be maintained out of the Annual Assessments.

The funds necessary for the exterior painting and roofing of the Living Units shall be calculated on the basis of each Living Unit having one thousand two hundred (1,200) square feet of living area. For any Living Unit having more than one thousand two hundred (1,200) square feet of living area, the Owner of such Living Unit shall pay a Special Assessment pursuant to Paragraph 14(d) below based upon the extra square footage of such home.

(c) Proposed Annual Budget. Annually, on or before the date of the annual meeting of the Corporation, the Board of Directors shall cause to be prepared a proposed annual budget for the ensuing fiscal year, estimating the total amount of the Common Expenses for the ensuing year, and furnish a copy of such proposed budget to each Owner prior to the annual meeting together with the notice of said meeting. The annual budget shall be submitted to the Owners at the annual meeting of the Corporation for adoption and, if so adopted, shall be the basis for the Annual Assessments (hereinafter defined) for the ensuing fiscal year. At the annual meeting of the Owners, the budget may be approved in whole or in part or may be amended in whole or in part by a majority of all Owners; provided, however, that in no event shall the annual meeting of the Owners be adjourned until an annual budget is approved at such meeting, either the proposed annual budget or the proposed annual budget as amended. The failure or delay of the Board of Directors to prepare a budget and furnish a copy thereof to the Owners shall not constitute a waiver or release in any manner of such Owner's obligation to pay the Common Expenses as herein provided, whenever determined, and in the absence of an annual budget, the Owner shall continue to pay the then existing monthly assessment until such new annual budget and monthly assessment is established.

(d) Special Assessments. In addition to the Annual Assessments authorized above, the Association, acting through the Board of Directors, may levy a Special Assessment for the purpose of defraying, in whole or in part:

(a) the cost of any construction, reconstruction, repair or replacement of a capital improvement upon or which is deemed hereunder to be a part of the Common Area or Community Area, and/or

(b) the cost of any unanticipated or extraordinary exterior painting or roofing of Living Units, or any other costs or expenses which were unexpected,

provided that any such Special Assessment shall have the assent of not less than a majority of all Owners who are voting in person or by proxy at a meeting duly called for this purpose.

In addition, the Owner of any Living Unit having more than one thousand two hundred (1,200) square feet of living area shall pay a Special Assessment prior to the time the Corporation causes the home to be repainted or reroofed. The Special Assessment shall be determined and assessed by the Board of Directors on behalf of the Corporation without a vote of the Owners, and shall be calculated, pro rata, based upon the square footage of the home which exceeds one thousand two hundred (1,200) square feet.

(e) Rate of Assessment. Subject to the Special Assessments for reroofing and repainting to be levied on the Owners of Living Units with more than one thousand two hundred (1,200) square feet of living area, the rate of assessment shall be equal for the Living Units. The rate of any Special Assessment shall be as approved by a majority of the Owners, except for Special Assessments attributable to reroofing and reroofing for Living Units with more than one thousand two hundred (1,200) square feet of living area. Annual Assessments shall be collected on a monthly basis (or other periodic basis, if and as determined by the Board) and Special Assessments shall be collected as the Board determines.

(f) Failure of Owner to Pay Assessments. Any assessments which are not paid when due shall be deemed delinquent. No Owner may exempt himself from paying Annual or Special Assessments, or from contributing toward the Common Expenses or toward any other expense lawfully agreed upon, by waiver of the use or enjoyment of the Common Area, or by abandonment of the Lot or Living Unit belonging to such Owner. Each Owner shall be personally liable for the payment of all Annual and Special Assessments. Where the Owner constitutes more than one person, the liability of such persons shall be joint and several. If any Owner shall fail, refuse or neglect to make any payment of any Annual or Special Assessments when due, the lien for such assessment on the Owner's Lot and Living Unit may be foreclosed by the Board for and on behalf of the Corporation as provided by law. Upon the failure of an Owner to make payments of any Annual or Special Assessments within ten (10) days after such are due, the Board, in its discretion, may:

(1) impose a late charge, which will be considered an addition to the assessment, in an amount not to exceed twenty-five percent (25%) of the assessment;

(2) accelerate the entire balance of the unpaid assessments for the remainder of the fiscal year and declare the same immediately due and payable, notwithstanding any other provisions hereof to the contrary;

(3) suspend such Owner's right to vote as provided in the Indiana Nonprofit Corporation Act of 1991, as amended.

In any action to foreclose the lien for any assessments, the Owner and any occupant of the Lot and Living Unit shall be jointly and severally liable for the payment to the Corporation of reasonable rental for such Lot and Living Unit, and the Board shall be entitled to the appointment of a receiver for the purpose of preserving the Lot and Living Unit and to collect the rentals and other profits therefrom for the benefit of the Corporation to be applied to the unpaid Annual or Special Assessments. The Board may, at its option, bring a suit to recover a money judgment for any unpaid Annual or Special Assessments without foreclosing or waiving the lien securing the same. In any action to recover an annual or special assessment, whether by foreclosure or otherwise, the Board, for and on behalf of the Corporation, shall be entitled to recover costs and expenses of such action incurred, including but not limited to reasonable attorney's fees, from the Owner of the respective Lot and Living Unit.

(g) Subordination of Lien. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage now or hereafter placed upon the property subject to assessment. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or remedies provided in a first mortgage, or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to charges which were payable prior to such sale or transfer. No such sale or transfer shall relieve a Lot and Living Unit from liability for any assessments thereafter becoming payable or from the lien thereof or shall relieve the person personally obligated to pay the same from personal liability for assessments payable prior to such sale or transfer or acquisition. Any delinquent assessments the lien for which is extinguished by reason of this provision may be reallocated and assessed to all Lots and Living Units as a Common Expense.

#### 15. Common Area.

(a) Ownership. The Common Area shall be owned by the Corporation as provided in Paragraph 6 of this Supplementary Declaration.

(b) Obligations of the Corporation. The Corporation, subject to the rights of Owners set forth in this Supplemental Declaration and subject to the provisions of paragraph 16, shall be responsible for the exclusive management and control of the Common Area and all improvements thereon or thereto and shall keep the Common Area in good, clean, attractive and sanitary condition, order and repair.

(c) Easements of Enjoyment. No person shall have any right or easement of enjoyment in and to the Common Area except as explicitly set forth in this Supplemental Declaration. The Owners, their tenants, guests and invitees may use the Common Area for such purposes as are authorized by this Supplemental Declaration or by resolution of the Board of Directors.

(d) Extent of Easements. The easements of enjoyment created hereby are subject to the following:

(i) The right of the Corporation to establish reasonable rules for the use of the Common Area.

(ii) The rights of Owners of certain Lots to the elusive use of Limited Common Area depicted on the Final Plat limited to the use of a particular Lot or Lots.

(e) Damage or Destruction. In the event the Common Area is damaged or destroyed by and Owner or any of his guests, tenants, licensees, agents or members of his family, the Corporation shall be deemed authorized by such Owner to repair said damaged area, and the Corporation shall repair said damaged area in good workmanlike manner in conformance with the original plans and specifications of the area involved, or as the area may have been modified or altered subsequently by the Corporation in the discretion of the Board of Directors. The cost of such repairs shall become a Special Assessment against the Lot of said Owner.

16. Easement.

(a) Encroachments. A perpetual easement is hereby reserved for the benefit of the Corporation and of any Owner whose Lot is affected by an Encroachment. Such easement shall be for the Encroachment and for the maintenance of the same. In the event an encroaching Living Unit or other improvement shall be partially or totally destroyed as a result of fire or other casualty or as a result of the exercise of the power of eminent domain or a conveyance in anticipation thereof, and then rebuilt, any resulting Encroachment shall be permitted and a perpetual easement therefor is hereby reserved for the benefit of the Corporation and any Owner whose Lot is affected thereby.

(b) Access. Each Owner shall have the right to ingress and egress over, upon and across the Community Area and Common Area necessary for access to his Lot.

17. Maintenance of Living Units and Limited Common Areas. Except for the exterior painting and roofing which are the obligation of the Corporation, all maintenance of the Living Units, both interior and exterior, and the Limited Common Areas, shall be the obligation of the Owner of such Living Unit and the cost thereof shall be paid by the Owner of each Living Unit.

18. Leases. No Owner of a Living Unit within The Timbers - Section 5 may lease such Living Unit for a period less than one (1) year. Any such lease shall (1) be in writing and (2) provide that the lessee shall comply in all respects with the provisions of the Supplementary Declaration, the Articles of Incorporation and By-Laws of Corporation, and all other rules and regulations applicable to the Living Unit and Lot and any failure of the lessee to comply with the terms of such documents shall constitute a default under the lease. The provisions of this paragraph shall not be applicable to a mortgagee who is a bank, life insurance company or savings and loan association or similar lending institution who acquires possession of a Lot and Living Unit during the period while a foreclosure proceeding is pending or who obtains title to a Lot and Living Unit as a result of foreclosure of its mortgage or a conveyance in lieu thereof.

19. Insurance.

(a) Casualty Insurance. The Corporation shall purchase and maintain fire and extended coverage insurance in an amount equal to the full replacement cost of all improvements, if any, which

are within the Common Area and Community Area. If the Corporation can obtain such coverage for a reasonable amount, it shall also obtain "all risk coverage." The Corporation may also insure any other property, whether real or personal, owned by the Corporation against loss or damage by fire and such other hazards as the Board may deem desirable. Such insurance coverage shall name the Corporation as the insured. Such insurance policy or policies shall contain provisions that (i) the insurer waives its rights to subrogation as to any claim against the Corporation, its Board of Directors, officers, agents and employees, any committee of the Corporation or of the Board of Directors, and all Owners and their respective agents and guests, and (ii) waives any defense based on invalidity arising from the acts of the insured. Insurance proceeds shall be used by the Corporation for the repair or replacement of the property for which the insurance was carried.

(b) Liability Insurance. The Corporation shall also purchase and maintain a master comprehensive public liability insurance policy in such amount or amounts as the Board of Directors shall deem appropriate from time to time, but in any event with a minimum combined limit of One Million Dollars (\$1,000,000.00) per occurrence. Such comprehensive public liability insurance shall cover all of the Common Areas and the Community Area and shall insure the Corporation, its Board of Directors, officers, professional managers, agents and employees, any committee of the Corporation or of the Board of Directors, and all other persons acting or who may come to act as agents or employees of any of the foregoing with respect to the Parcel. Such public liability insurance policy shall include a "severability of interest" clause or endorsement which shall preclude the insurer from denying the claim of an Owner because of the negligent acts of the Corporation or other Owners.

(c) Other Insurance. The Corporation shall also purchase and maintain any other insurance required by law to be maintained, including but not limited to, workers' compensation and occupational disease insurance, and such other insurance as the Board of Directors shall from time to time deem necessary, advisable or appropriate, including but not limited to officers' and directors' liability insurance.

(d) Premiums. The premiums for the insurance described above shall be paid by the Corporation as part of the Common Expenses.

(e) Additional Insurance. Each Owner shall be solely responsible for and obtain such additional insurance as he deems necessary or desirable at his own expense affording coverage upon his real and personal property.

20. Amendment. This Supplementary Declaration may be amended at any time by the Owners of not less than two-thirds (2/3) of the Living Units. Any amendment shall become effective upon its recordation in the Office of the Recorder of Marion County, Indiana.

21. Interpretation. The underlined titles preceding the various paragraphs and subparagraphs of this Supplementary Declaration are for convenience of reference only, and none of them shall be used as an aid to the construction of any provision of this Supplementary Declaration. Wherever and whenever applicable, the singular form any work shall be taken to mean or apply to the plural, and the masculine form shall be taken to mean or apply to the feminine or to the neuter.

22. Duration. The foregoing covenants and restrictions are for the mutual benefit and protection of the present and future Owners, Mortgagees, and the Corporation, and shall run with the land and shall be binding on all parties and all Persons claiming under them until January 1, 2004, at which time said covenants and restrictions shall be automatically extended for successive periods of ten (10) years, unless changed in whole or in part by vote of those persons who are then the Owners of a majority of the Living Units.

23. Severability. Every one of the restrictions, covenants and conditions ("Restrictions") herein contained is hereby declared to be independent of, and severable from, the rest of the Restrictions and of and from every other one of the Restrictions. Therefore, if any of the Restrictions shall be held to be invalid or to be unenforceable, or to lack the quality of running with the land, that holding shall be without effect upon the validity, enforceability or "running" quality of any other one of the Restrictions.

**IN WITNESS WHEREOF**, we, the undersigned Timbers - Section 5 Owners, do hereby consent to and execute this **SECOND AMENDED AND RESTATED SUPPLEMENTARY DECLARATION OF COVENANTS AND RESTRICTIONS--THE TIMBERS - SECTION 5**, as of the 16th day of February, 2004.

This instrument prepared by and should be returned to: P. Thomas Murray, Jr., EADS MURRAY & PUGH, P.C., 7321 Shadeland Station, Suite 250, Indianapolis, IN 46256

Date: 2-16-04

To: Timbers Sections V Homeowner  
Parcel 5030597  
Arlene Holmes  
4206 Wilderness Trail  
Indianapolis, Indiana 46237

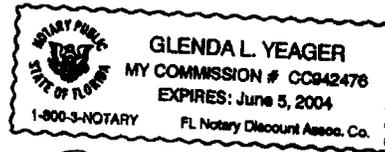
From: Timbers Homeowner's Association Board of Directors  
Jim O'Maley/President  
Bob Storey/Treasurer  
Peggy Obergfell/Secretary

RE: Wood Deck, Open Frame Porches & Roof Extensions

For the purpose of the conversion of certain limited common areas the Timbers Section V Board of Directors has agreed to amend the Declaration to redefine the porches, decks and extended roofs to be a part of the individual living units. This conversion will result in these tax amounts to now appear on your personal property tax bill.

I understand and agree that the Board of Directors has amended the Declarations as mentioned above.

Arlene Holmes  
Arlene Holmes



Witness my hand and Notarial Seal, this 23<sup>rd</sup> day of February 2004

Glenda L. Yeager  
Notary Public

GLENDAL YEAGER  
Printed

STATE OF FLORIDA COUNTY OF PASCO

On the 23rd day of February 2004, Arlene Holmes appeared before me and is personally known by me and did not take an oath and who executed the foregoing instrument acknowledging the signing thereof to be their voluntary act and deed for the uses and purposes therein mentioned.

WITNESS my hand and official seal this 23rd day of February 2004

Glenda L. Yeager My Commission expires  
State of Florida, County of Pasco  
Glenda L. Yeager, Notary Public

Date: 2-16-04

To: Timbers Sections V Homeowner  
Parcel 5030595  
Dennis & Janet Hunley  
4148 Wilderness Trail  
Indianapolis, Indiana 46237

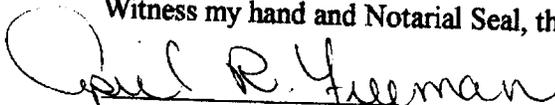
From: Timbers Homeowner's Association Board of Directors  
Jim O'Maley/President  
Bob Storey/Treasurer  
Peggy Obergfell/Secretary

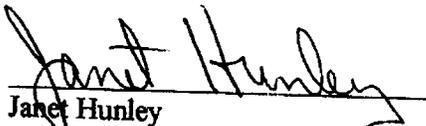
RE: Wood Deck, Open Frame Porches & Roof Extensions

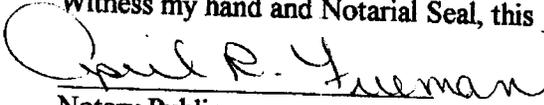
For the purpose of the conversion of certain limited common areas the Timbers Section V Board of Directors has agreed to amend the Declaration to redefine the porches, decks and extended roofs to be a part of the individual living units. This conversion will result in these tax amounts to now appear on your personal property tax bill.

I understand and agree that the Board of Directors has amended the Declarations as mentioned above.

  
Dennis Hunley

Witness my hand and Notarial Seal, this 18 day of February 2004  
  
Notary Public April R Freeman  
Printed

  
Janet Hunley

Witness my hand and Notarial Seal, this 19 day of February 2004  
  
Notary Public April R. Freeman  
Printed

Date: 2-16-04

To: Timbers Sections V Homeowner  
Parcel 5030593  
James & Virginia Adams  
4140 Wilderness Trail  
Indianapolis, Indiana 46237

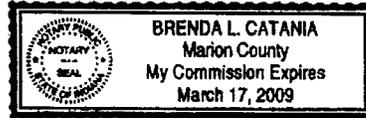
From: Timbers Homeowner's Association Board of Directors  
Jim O'Maley/President  
Bob Storey/Treasurer  
Peggy Obergfell/Secretary

RE: Wood Deck, Open Frame Porches & Roof Extensions

For the purpose of the conversion of certain limited common areas the Timbers Section V Board of Directors has agreed to amend the Declaration to redefine the porches, decks and extended roofs to be a part of the individual living units. This conversion will result in these tax amounts to now appear on your personal property tax bill.

I understand and agree that the Board of Directors has amended the Declarations as mentioned above.

James Adams  
James Adams

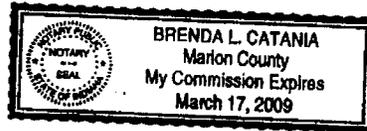


Witness my hand and Notarial Seal, this 19<sup>th</sup> day of FEBRUARY 2004

Brenda L. Catania  
Notary Public

BRENDA L. CATANIA  
Printed

Virginia Adams  
Virginia Adams



Witness my hand and Notarial Seal, this 19<sup>th</sup> day of FEBRUARY 2004

Brenda L. Catania  
Notary Public

BRENDA L. CATANIA  
Printed

Date: 2-16-04

To: Timbers Sections V Homeowner  
Parcel 5030590  
Jim & Barbara O'Maley  
4118 Wilderness Trail  
Indianapolis, Indiana 46237

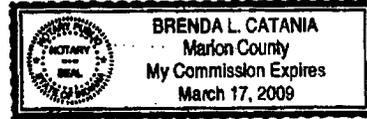
From: Timbers Homeowner's Association Board of Directors  
Jim O'Maley/President  
Bob Storey/Treasurer  
Peggy Obergfell/Secretary

RE: Wood Deck, Open Frame Porches & Roof Extensions

For the purpose of the conversion of certain limited common areas the Timbers Section V Board of Directors has agreed to amend the Declaration to redefine the porches, decks and extended roofs to be a part of the individual living units. This conversion will result in these tax amounts to now appear on your personal property tax bill.

I understand and agree that the Board of Directors has amended the Declarations as mentioned above.

*James O'Maley*  
James O'Maley

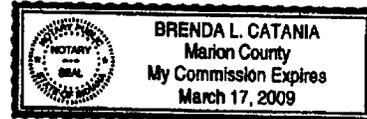


Witness my hand and Notarial Seal, this 19<sup>th</sup> day of FEBRUARY 2004

*Brenda L. Catania*  
Notary Public

*BRENDA L. CATANIA*  
Printed

*Barbara O'Maley*  
Barbara O'Maley



Witness my hand and Notarial Seal, this 19<sup>th</sup> day of FEBRUARY 2004

*Brenda L. Catania*  
Notary Public

*BRENDA L. CATANIA*  
Printed

Date: 2-16-04

To: Timbers Sections V Homeowner  
Parcel 5033598  
G. Robert and Mary Storey  
4110 Wilderness Trail  
Indianapolis, Indiana 46237

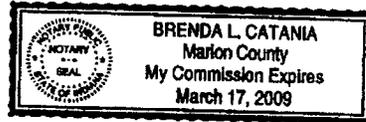
From: Timbers Homeowner's Association Board of Directors  
Jim O'Maley/President  
Bob Storey/Treasurer  
Peggy Obergfell/Secretary

RE: Wood Deck, Open Frame Porches & Roof Extensions

For the purpose of the conversion of certain limited common areas the Timbers Section V Board of Directors has agreed to amend the Declaration to redefine the porches, decks and extended roofs to be a part of the individual living units. This conversion will result in these tax amounts to now appear on your personal property tax bill.

I understand and agree that the Board of Directors has amended the Declarations as mentioned above.

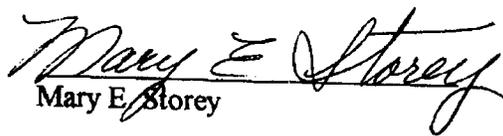
  
G. Robert Storey

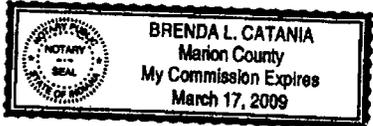


Witness my hand and Notarial Seal, this 19<sup>th</sup> day of FEBRUARY 2004

  
Notary Public

BRENDA L. CATANIA  
Printed

  
Mary E. Storey



Witness my hand and Notarial Seal, this 19<sup>th</sup> day of FEBRUARY 2004

  
Notary Public

BRENDA L. CATANIA  
Printed

Date: 2-16-04

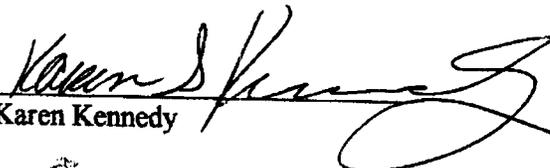
To: Timbers Sections V Homeowner  
Parcel 5033599  
Karen Kennedy  
4114 Wilderness Trail  
Indianapolis, Indiana 46237

From: Timbers Homeowner's Association Board of Directors  
Jim O'Maley/President  
Bob Storey/Treasurer  
Peggy Obergfell/Secretary

RE: Wood Deck, Open Frame Porches & Roof Extensions

For the purpose of the conversion of certain limited common areas the Timbers Section V Board of Directors has agreed to amend the Declaration to redefine the porches, decks and extended roofs to be a part of the individual living units. This conversion will result in these tax amounts to now appear on your personal property tax bill.

I understand and agree that the Board of Directors has amended the Declarations as mentioned above.

  
Karen Kennedy

Witness my hand and Notarial Seal, this 18<sup>th</sup> day of February 2004

  
Notary Public  
11-11-09  
Marion County

Jane E. Shaw  
Printed

Date: 2-16-04

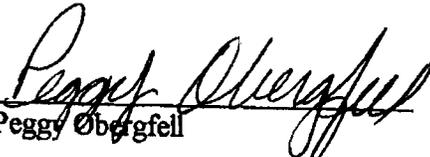
To: Timbers Sections V Homeowner  
Parcel 5030598  
Peggy Obergfell  
4210 Wilderness Trail  
Indianapolis, Indiana 46237

From: Timbers Homeowner's Association Board of Directors  
Jim O'Maley/President  
Bob Storey/Treasurer  
Peggy Obergfell/Secretary

RE: Wood Deck, Open Frame Porches & Roof Extensions

For the purpose of the conversion of certain limited common areas the Timbers Section V Board of Directors has agreed to amend the Declaration to redefine the porches, decks and extended roofs to be a part of the individual living units. This conversion will result in these tax amounts to now appear on your personal property tax bill.

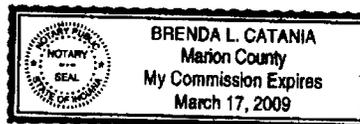
I understand and agree that the Board of Directors has amended the Declarations as mentioned above.

  
Peggy Obergfell

Witness my hand and Notarial Seal, this 19<sup>th</sup> day of February 2004

  
Notary Public

BRENDA L. CATANIA  
Printed



Date: 2-16-04

To: Timbers Sections V Homeowner  
Parcel 5030594  
Robert & Virginia Ashman  
4144 Wilderness Trail  
Indianapolis, Indiana 46237

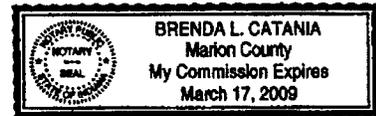
From: Timbers Homeowner's Association Board of Directors  
Jim O'Maley/President  
Bob Storey/Treasurer  
Peggy Obergfell/Secretary

RE: Wood Deck, Open Frame Porches & Roof Extensions

For the purpose of the conversion of certain limited common areas the Timbers Section V Board of Directors has agreed to amend the Declaration to redefine the porches, decks and extended roofs to be a part of the individual living units. This conversion will result in these tax amounts to now appear on your personal property tax bill.

I understand and agree that the Board of Directors has amended the Declarations as mentioned above.

Robert W. Ashman  
Robert Ashman

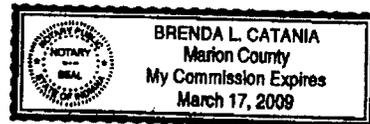


Witness my hand and Notarial Seal, this 19<sup>th</sup> day of FEBRUARY 2004

Brenda L. Catania  
Notary Public

BRENDA L. CATANIA  
Printed

Virginia Ashman  
Virginia Ashman



Witness my hand and Notarial Seal, this 19<sup>th</sup> day of FEBRUARY 2004

Brenda L. Catania  
Notary Public

BRENDA L. CATANIA  
Printed

Date: 2-16-04

To: Timbers Sections V Homeowner  
Parcel 5030596  
Helen Adams  
4152 Wilderness Trail  
Indianapolis, Indiana 46237

From: Timbers Homeowner's Association Board of Directors  
Jim O'Maley/President  
Bob Storey/Treasurer  
Peggy Obergfell/Secretary

RE: Wood Deck, Open Frame Porches & Roof Extensions

For the purpose of the conversion of certain limited common areas the Timbers Section V Board of Directors has agreed to amend the Declaration to redefine the porches, decks and extended roofs to be a part of the individual living units. This conversion will result in these tax amounts to now appear on your personal property tax bill.

I understand and agree that the Board of Directors has amended the Declarations as mentioned above.

  
Helen Adams

Witness my hand and Notarial Seal, this 18<sup>th</sup> day of Feb 2004

  
Notary Public

Nancy Jo Harding  
Printed

