# 8817776

#### DECLARATION OF COVERA TS, CONDITIONS AND RESTRICTIONS

OF

#### COPPERWOOD SUBDIVISION

THIS DECLARATION, made on the date hereinafter set forth by COPPERWOOD, a Joint Venture, hereinafter referred to as "Declarant",

WITNESSETH:

This Instrument Recorded 22 1988
Sharon K. Cherry, Recorder, Hamilton County, IN

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

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

### ARTICLE I

#### NAME

This subdivision shall be known and designated as Copperwood Subdivision, a subdivision located in Hamilton County, Indiana, the plat of which was recorded in Book 15, Pages 57-60 in the Office of the Recorder of Hamilton County, Indiana.

# ARTICLE II DEFINITIONS

Subdivision Homeowners Association, Inc., an Indiana not-for-profit corporation, its successors and assigns of the successors

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

<u>Section 4.</u> "Declarant" shall mean and refer to Copperwood, a Joint Venture, its successors and assigns as a declarant or developer.

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

Section 6. "Lot" shall mean and refer to any parcel of land shown upon the Plat other than areas designated as Common Area or parcels conveyed to the Association as Common Areas.

<u>section 7.</u> "Original Builder" shall mean and refer to the person or entity (whether one or more) during the construction period to whom any Lot is first conveyed by Declarant for the purpose of the construction of a dwelling unit thereon and conveyance thereof to an Owner.

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

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

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

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#### ARTICLE III

#### Common Areas

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

#### ARTICLE IV

#### ACCESS RIGHTS OF ASSOCIATION

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

# ARTICLE V

# ASSOCIATION, MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership. Every owner of a Lot which is subject to assessment shall be a member of the Association.

Membership shall be appurtenant to and may not be separated from ownership of any Lot.

<u>Section 2. Classes of Membership.</u> The Association shall have two classes of voting membership:

Class A. Class A members shall be all Owners with the exception of the Declarant and shall be entitled to one vote

for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B member(s) shall be the Declarant, who shall be entitled to three (3) votes for each Lot owned and the first Board of Directors during their respective terms, who shall have no voting rights. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (a) when the total votes outstanding in the Class A membership equal the total vote
   outstanding in the Class B membership, ...
   (b) on January 1, 1991.
- Section 3. Soard of Directors. The Owners shall elect a Board of Directors of the Association as prescribed by the Association's By-Laws. The Board of Directors shall manage the affairs of the Association.

Section 4. Professional Management. No contract or agreement for professional management of the Association nor any other contract with Declarant shall be for a term in excess of three (3) years. Any such agreement or contract shall provide for termination by either party with or without cause without any termination fee by written notice of ninety (90) days or less.

# ARTICLE VI

# COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of
Assessments. Declarant, for each Lot owned within the
Properties, hereby covenants, and each Owner of any Lot by
acceptance of a deed therefor, whether or not it shall be so
expressed in such deed, is deemed to covenant and agree to pay to
the Association: (1) annual assessments or charges and

(2) special assessments for capital improvements and operating deficits; such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment shall not pass to his successors in title unless expressly assumed by them.

<u>section 2. Purpose of Assessments.</u> The assessments levied by the Association shall be used exclusively to promote the health, safety, and welfare of the residents in the Properties and for the improvement and maintenance of the Common Area and other purposes as specifically provided herein.

#### Section 3. Maximum Annual Assessments.

- (a) Until January 1, 1989, the maximum annual assessment on any Loc conveyed by Declarant shall be \$96.00 per Lot, except that if a Lot is undeveloped or construction of the residential unit thereon is incomplete, the maximum annual assessment for such Lot shall be twenty-five per cent (25%) of the annual assessment applicable to other Lots.
- (b) From and after January 1, 1989, the maximum annual assessment may be increased effective January 1 of each year without a vote of the membership by the greater of 15% or the increase, if any, of the Consumer Price Index for all urban consumers ("CPI-U") as published by the Bureau of Labor Statistics (or other comparable index in the event the CPI-U shall be discontinued) for the preceding month of September as compared to said price index twelve (12) months prior thereto.
- (c) From and after January 1, 1989, the maximum annual assessment may be increased by more than the amount specified in subsection (b) above by a vote of a majority of the members who

are voting in person or by proxy, at a meeting duly called for this purpose.

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- (d) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.
- (e) A portion of such annual assessments shall be set aside or otherwise allocated in a reserve fund for the purpose of providing repair and replacement of the Common Areas or of any capital improvement which the Association is required to maintain.

Section 4. Special Assessments for Capital Improvements and Operating Deficits. In addition to the annual assessments authorized above, the Association may levy a special assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any capital improvement which the Association is required to maintain or for operating deficits which the Association may from time to time incur, provided that any such assessment shall have the assent of a majority of the votes of the members who are voting in person or by proxy at a meeting duly called for this purpose.

section 5. Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting culled for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty per cent (60%) of all the votes of the membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

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

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

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Section 8. Effect of Nonpayment of Assessments: Remedies of the Association. If any assessment is not paid on the date when due, then the entire unpaid assessment shall become delinquent and shall become, together with such interest thereon and cost of collection thereof as hereinafter provided, a continuing lien on such Lot, binding upon the then Owner, his heirs, devisees, successors and assigns. The personal obligation of the then Owner to pay such assessments, however, shall remain his personal obligation and shall not pass to his successors in title unless expressly assumed by them.

If the assessment is not paid within thirty (30) days after the delinquency date, the assessment shall bear interest from the date of delinquency at the rate of 12% per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same or to foreclose the lien against the property, or both, and there shall be added to the amount of such assessment the costs of preparing and filing the complaint 'n such action; and in the event a judgment is obtained

such judgment shall include interest on the assessment as above provided and a reasonable attorneys' fee to be fixed by the court, together with the costs of the action in favor of the prevailing party.

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

Section 9. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof. Provided, however, the sale or transfer of any Lot pursuant to the foreclosure of any first mortgage on such Lot (without the necessity of joining the Association in any such foreclosure action) or any proceedings or deed in lieu the: of shall extinguish the lien of all assessments becoming due prior to the date of such sale or transfer.

#### ARTICLE VII

#### DECLARANT'S RIGHTS

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

#### ARTICLE VIII

#### MAINTENANCE

Section 1. Maintenance of Common Areas. The Association shall be responsible for the maintenance, repair and replacement of the Common Area and improvements thereon and for maintenance, repair and replacement of any signs, walls, landscaping or other improvements located on or within any sign easements.

Section 2. Lake Maintenance. The Owners of Lots 43, 44, 45 and 46 shall be responsible for maintenance of the retention lake located on such lots, including (without limitation), any costs for treating the lake, dredging or repair of banks. The maintenance and repair of the lake shall be determined by a three-fourths (3/4) majority vote of such Owners and all Owners shall be bound by such vote. Each Owner shall be personally liable for an equal share of such costs. In the event any Owner does not pay his share of such costs within thirty (30) days after payment is due, the remaining Owners may record a notice of such failure to pay with the Office of the Recorder of Mamilton County, Indiana, whereupon such amount plus interest at the rate of twelve per cent (12%) and attorneys' fees shall become a lien on such Owner's Lot. The non-defaulting owners shall have the right to file suit agains' such Owner, to file suit to enforce the lien, or both, and the non-defaulting Owners shall be entitled to recover their costs and expenses of collection and suit, interest at the rate of twelve per cent (12%) per annum and attorneys' fees.

#### ARTICLE IX

#### INSURANCE

<u>Section 1.</u> <u>Casualty Insurance.</u> The Association shall purchase such casualty insurance policy or policies as the Board of Directors shall deem appropriate.

Section 2. Liability Insurance. The Association shall also purchase public liability insurance policy in such amount or amounts as the Board of Directors shall deem appropriate from

time to time. Such comprehensive public liability insurance policy shall cover the Association, its Board of Directors, any committee or organ of the Association or Board of Directors, all persons acting or who may come to act as agents or employees of any of the foregoing with respect to the Association.

The Association shall also obtain any other insurance required by law to be maintained, including but not limited to workmen's compensation insurance, and such other insurance as the Board of Directors shall from time to time deem necessary, advisable or appropriate. Such insurance shall inure to the benefit of each Owner, the Association, its Board of Directors and any managing agent acting on behalf of the Association. Each Owner shall be deemed to have delegated to the Board of Directors his right to adjust with the insurance companies all losses under policies purchased by the Association.

# ARTICLE X

#### EASEMENTS

Section 1. <u>Drainage</u>, <u>Utility</u> and <u>Sewer Easements</u>. As noted on the Plat, Declarant has reserved portions of the Lots as Drainage, <u>Utility</u> and <u>Sewer Easements</u>.

Declarant further reserves unto itself an easement and right of way in and to the Common Areas and an easement of ingress and egress through so much of the remainder of the Properties as is reasonably necessary or appropriate, to perform such actions as are required or are reasonably necessary or appropriate for the purpose of establishing and maintaining proper surface water drainage throughout the Properties including the construction, repair and maintenance of retention and detention ponds or lakes in accordance with the requirements of all governmental agencies having jurisdiction. The easement hereby reserved shall terminate one (1) year after Declarant shall have conveyed the last lot on the Properties. Provided, however, the reservation of this easement and terms and provisions contained herein shall

not be construed so as to impose upon Declarant any higher or different duty or obligation than is imposed by applicable law.

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Section 2. Lake Easements. The Board of Directors, its agents, employees and contractors and any appropriate governmental body or agency shall have the right and easement of access to the retention lake located within the Properties as necessary to maintain proper storm water drainage within the Properties. Additional pipes and structures may be added and existing pipes and structures may be repaired, maintained or modified as needed for proper drainage. The Owners of Lots 43, 44, 45 and 46 shall have an easement for recreational use of such lake. No other Owners or persons shall have a right or easement for recreational use of such lake.

Section 3. Easement for Signs. Declarant reserves unto itself for so long as it owns any Lot, and thereafter reserves and grants to the Owners by and through the Association, the right and easement to erect and maintain signs, walls, landscaping and the like within the Common Areas or upon any sign easements shown on the Plat.

#### ARTICLE XI

#### ARCHITECTURAL CONTROL

Section 1. Approval of Buildings and Pences. No building, fence, wall, antenna, satellite dish or the like shall be commenced, erected or maintained upon the Properties until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by an architectural control committee composed of three (3) or more representatives appointed as hereinafter described.

Section 2. Architectural Control Committee. The initial members of the architectural control committee shall be appointed by Declarant. Such members may thereafter be removed by Declarant, and Declarant shall have the right to appoint new

members of the committee from time to time. At such time as Declarant shall have conveyed the last lot within the Properties, or such earlier time a Declarant may designate, the authority to appoint and remove the members of the committee shall be transferred to the Board of Directors. The members of the Board of Directors may serve as members of the committee. After transfer of such authority from Declarant to the Board, the committee shall approve or disapprove, in writing and within twenty (20) days, each request made to it. Any disapproval shall list the specific reasons for disapproval. The failure of the committee to respond within twenty (20) days after submission of a request to it shall be deemed to be an approval.

#### ARTICLE XII

# GENERAL PROVISIONS

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

<u>section 2.</u> <u>Amendment.</u> This Declaration may be amended or changed at any time by an instrument recorded in the Office of the Recorder of Hamilton County, Indiana, signed or approved in writing by at least a majority of the then Owners; provided, however, none of the rights or duties of Declarant reserved or set out hereunder may be amended or changed without Declarant's prior written approval. This Declaration may also be amended by

Declarant, if it then has any ownership interest in the Properties, at any time within three (3) years after the recordation hereof in order to satisfy the requirements of any of the Federal Mortgage Agencies. Any such amendments shall be recorded and shall be subject to the prior written approval of any of the Federal Mortgage Agencies having an interest in the Properties or any portion thereof. This Declaration shall run with the land and shall be anding upon all parties claiming under them for a period of twenty-five (25) years from the date of recordation in the Office of the Recorder of Hamilton County, Indiana, and shall automatically extend for successive periods of ten (10) years each unless it is amended or changed in whole or in part as hereinabove provided. Provided, however, no amendment which materially and adversely affects the easement rights set out in Articles IV and X hereof shall be effective without the written consent of any Owner or other person affected thereby (unless substantially equivalent easement rights shall have been substituted in lieu thereof). Invalidation of any of the covenants, conditions and restrictions of this Declaration by judgment or decree shall in no way effect any of the other provisions hereof, but the same shall remain in full force and effect.

Section 3. Annexation. Additional residential property may be annexed to the Properties with the consent of a majority of ownership of the Lots and of any of the Pederal Mortgage Agencies having an interest in the Properties or any portion thereof by the recording of a declaration applicable to such annexed real estate which incorporates the terms of the Declaration merein.

Section 4. Mortgagee Rights. Any lender or lenders holding a first mortgage or first mortgages upon any Lot or Lote may, jointly or singly, pay any real estate taxes or other taxes or charges which are in default and which may or have become a charge or lien against any Common Area or any property owned by the Association and such lender or lenders may pay any overdue premiums on any hazard, casualty, liability or other insurance

policies or secure new insurance coverage on the lapse of any policies for any such Common Area or other property owned by the Association or covering any property for which the Association has an obligation to maintain insurance coverage. Any such lender or lenders making payments in accordance with this section shall be entitled to immediate reimbursement therefore from the Association along with any costs incurred, including reasonable attorneys' fees.

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

IN WITNESS WHEREOF, Copperwood, a Joint Venture has caused this Declaration to be executed this 24 day of August, 1988.

COPPERWOOD, a Joint Venture

By: Timber Park Development Corp.,

By: In I would

STATE OF INDIANA )
(SS COUNTY OF MARION )

Before me, a Notary Public, in and for such County and State, personally appeared Lacey L. Downey, , the Section of Timber Park Development Corp., a general partner, who, after having been first duly sworn, acknowledged the execution of the foregoing Declaration for and on behalf of said corporation.

Dated this 24 day of ANNUST , 1988.

Notary Pi

My County of Residence:

MARION

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

#### EXHIBIT A

Real Estate located in Hamilton County, State of Indiana, more particularly described as follows:

The West Half or the West Half of the Northeast Quarter of Section 20, Township 18 North, Range 4 East in Hamilton County, Indiana, containing 40.29 acres, more or less.

Said Real Estate is also described as follows:

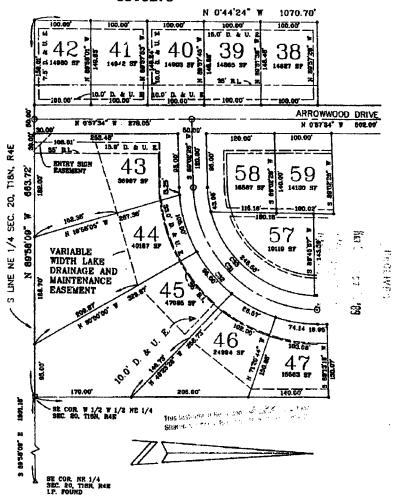
A part of the Northeast Quarter of Section 20, Township 18 Morth, Range 4 East in Hamilton County, Indiana, more particularly described as follows:

Beginning at the Northwest corner of the Northeast Quarter of Section 20. Township 18 North, Range 4 East in Hamilton County, Indiana; thence South 89 degrees 59 minutes 54 seconds East on the North line of said Quarter Section 661.95 feet to the Northeast corner of the West Half of the West Half of said Northeast Quarter Section; thence South 0 degrees 46 minutes 42 seconds East on the East line of the West Half of the West Half of said Northeast Quarter Section 2676.59 feet to the Southeast Quarter; thence North 89 degrees 58 minutes 09 seconds West on Quarter; thence North 89 degrees 58 minutes 09 seconds West on Southwest corner of said Northeast Quarter 663.72 feet to the Southeast Quarter 24 seconds West on the West line of said Northeast Quarter; thence North 0 Northeast Quarter 2647.92 feet to the point of beginning, containing 40.29 acres, more or less.

This Instrument Recorded 8-34 1988 Sharan K. Cherry, Recorder, Hamilton Gounty, My

2817776

INSTR. #89 06178



# CERTIFICATE OF CORRECTION

This Certificate of Correction was prepared to correct an omission on the plat of "COPPERWOOD", recorded as Instrument <u>#8802651</u> in the Office of the Recorder of Hamilton County, Indiana.

The Lot dimensions, along the street right-of-way, for Lots 43, 44 and 45 were missing on the final plat. These dimensions should appear as shown above.

Certified this 25th day of March, 1989.

Allan H. Weihe, Reg. L.S. - Indiana #10398

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