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DECLARATION OF HORIZONTAL PROPERTY OWNERSHIP

The Timbers I Horizontal Property Regime

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DECLARATION OF HORIZONTAL PROPERTY OWNERSHIP THE Timbers I Horizontal Property Regime TABLE OF CONTENTS

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DECLARATION OF HORIZONTAL PROPERTY OWNERSHIPcommentation and the assemble of the THE PROPERTY OF THE PROPERTY O The Timbers I Horizontal Property Regime of the state of t This Declaration; made this 14th day of March, 1974,

by CONWOOD LIMITED PARTNERSHIP and Indiana Limited

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(a) Those of Managerall means the landwice of WHEREAS, the following facts are true; we

- Declarant is the sole owner of the fee simple fere face of the Phice ; where at when an his will title to the real estate located in Marion County, Indiana, more particularly described in Exhibit A attached hereto and incorporated herein by this reference in the Plant
- This Declaration is a Supplementary Declaration 180 alleged mas a money at Early Street, as the as that term is defined in the Declaration of Covenants and Restrictions is conform to the charge and less are a conformation of the productions of the second of the productions of the second of the
- Declarant; by executions of this Declaration; berein to reference hereby creates a Horizontal Property Regime upon the parcel, subject to the provisions of the Horizontal Property ជីង និងភេស 🔻 THE THE PROPERTY OF OF SELECTION AND PROPERTY. Act of the State of Indiana and the terms and conditions of the Declaration of Covenants and Restrictions and this Declaration spair and separate separate

NOW THEREFORE, Declarant heroty makes this Declaration as follows:

Dafinitions, o The following terms, as used in this Declaration, unless the context clearly requires otherwise, shall mean the following:

(a) "Act" means the Horizontal Property Act of the State of Indiana, Acta 1963; Chapter 349, Sections 1 through 31, as camended, The Acta is incorporated herein by reference.

(b) "Apartment" means one of the thirty-eight

and the last of the same of

- (b) "Apartment" means one of the thirty-eight (38) "living imits constituting The Timbers I, each individual unit being more particularly described and identified on the Plans and in paragraphs 4 and 5 of this Declaration.
- (c) "Architectural Review Board" means that entity established pursuant to paragraph 6 of the Declaration of Covenants and Restrictions.
- (d) "Association" means the unincorporated association rof: Concorners of The Timbers I more particularly described in paragraph 11
- more particularly described in paragraph 11

 (a) "Board of Managera "means the governing body of the Association elepted by the Co-owners in accordance with the the By-Laws . The term "Board of Managers," as used herein and in the By-Laws, shall be synonymous with the term "Board of Directors" as used in the Act.
- (f) "Building" meens one of the seven (7) buildings on the Parcel in which Apartments are located. The Buildings are more particularly described and identified in the Plans and in paragraph 3 of this Declaration.
- (g) "By-laws" means the By-laws of the Association providing for the administration and management of the Property as required by and in conformity with the provisions of the Act. CA true copy of the By-laws is attached to this Declaration and incorporated herein by reference:
- (h): "Common Areas" means the common areas and facilities appurtenant to the Property as defined in paragraph 6 of this Declaration.

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(1) "Common Expenses" means expenses of administration of the Association and expenses for the upkers waittingnes repair and ruplacement of the Common Areas and Limited Areas and pil sums lawfully assessed against filesowners by the Corporation of the Association, or as declared by the Acts the Declaration of Covenants and Restrictions; this Declaration or the Dy Linus

-2-

- (j) "Community Area" means those areas of land and the facilities thereon which are (1) owned by the Corporation or located in the Tract but not in the Parcel and (2) are intended for the common use and enjoyment of members of the Corporation, and any utility service lines or facilities not maintained by a public utility company or governmental agency which are located on over or below or cross through more than are to one (1) Parcel.
- (k) "Co-owners" meens the Owners of all the Apartments
- (1) "Corporation" means, The Timbers, Inc.
- Partnership, the owner of the Property at the time of the filing of the Declaration, its successors and assigns to its interest therein, other than Dwners purchasing Apartments by deed from Declarant (unless the conveyance indicates an intent that the grantes assume the rights and obligations of Declarant)
- (n) Declaration of Covenants and Restrictions", means, the Declaration of Covenants and Restrictions of The Timbers Residental Community datad March 14, 1974, and recorded in the Office of the Recorder of Marion County, Indians, as instrument No. 174-76762, as amended from time to time
- top of Covenents and Restrictions
- (p) "Insurance Trustee means such bank with trust powers authorized to do business in Mariom County indianayas the Board of Managers shall designate for the custody and disposition, as herein or in the By-Laws provided, of insurance proceeds and condemnation awards. The Insurance proceeds and condemnation awards. The Insurance proceeds and condemnation awards for insurance premiums, the renewal of the sufficiently of insurance polities her for the sufficiently of insurance proceeds or condemnation awards. The duty of the Insurance Trustee shall be to receive such proceeds or awards as are paid and to hold the same in trust for the purposes herein and in the By-Laws stated, and for the benefit of the Go-comers and their Mortgages as herein and in the By-Laws provided.
- (q) "Limited Areas" means the limited common areas and facilities as defined in paragraph 7 of this Daclaration.
- (r) "Majority of Owners" means the Owners entitled to not less then fifty-one per cent (51%) of the Percentage Votes in accordance with the applicable percentage set forth in this Declaration

- "Majority of the Percentage Vote" has the same meaning as Majority of Owners
- "Mortgagee" means the holder of a first
- mortgage lien on an Apartment of the light o
- in Exhibit A which is a part of this Declaration
- (w) "Part of the Development Area" means any part of the Development Area Which is not included in the Tracty was and the Area which is not included in the Tracty was and the Tracty wa
- (x) "Persentage Interest" means the percentage of undivided interest in the fee simple title to the Common Areas and Dimited Areas appercaining to each Apartment as specifically expressed in Exhibit B which is a part of this Declaration.
- (y) "Percentage Vote" means that partentage of the total vote accruing to all of the Apartments which is appurtenant to each particular. Apartment and accrues to the Owner thereoff. The Percentage Vote to which each Owner whalls be entitled on any matter upon which the Co-Tha owners are entitled to vote shall be the same percentage as the Percentage Interest appur - 1 tenant to such Owner's Apartments Transfirm (z) "Person Ameans an individual, "firm, Tcorporation, partnership, association, trust or other legal entity; or any combination thereof.
- (aa) "Plans" means the floor and building plans of the Buildings and Apertments prepared by A & E Engineering, Inc. 1 certified by Raymond M. Stone, d registered engineer, under date of February 28, 1974, and a site plan of the Parcel and Buildings prepared and fartified by Charles L. Thompson, a registered land surveyor, under date of March 6, 1974; all or which are incorporated herein by reference.
 - (bb) "Property" means the Parcel and appur-tenant easements, the Apartments, the Bulldings, improvements, and property of over kind and nature whatsoever, real; personal of mixed, located upon the Parcel and used in connection with the operation, use and enjoyment of The
 - S. P. MATHER STREET, SALES (cc) "Restoration" means construction or re-building of the Apartments, Common Areas and Limited Areas to the same condition as they

Party Englishmen in marginal and a particular existed immediately prior formy damage or destruction and with the same type of architecture unless the Architectural Review Board determines that addifferent types of architecture would be appropriate has a financial and the control of the contr

(bb) "The Timbers I means the name by which the Property and this Horizontal Property Regime shall be known. The address of The Timbers I is 4201 South Sherman Drive, Indianapolis, Indiana 45227;

(cc) "Tract" means the real estate which is subject to the covenants, rastrictions easements, charges and liens imposed by the Declaration of Covenants and Restrictions.

2. Declaration: Declarant hereby expressly declares that the Property shall be a Horizontal Property Regime in accordance with the provisions of the Act.

Description of Buildings: There are seven (7) Buildings; containing thirty eight (38) Apartments on the Parcel as shown on the Plans. Each Building is identified and designated on the Plans and in Exhibit B to this Declaration by letter, commencing with Building A and concluding with Building G. The Buildings vary in height and are constructed over crawl spaces. The references in Paragraph 4 and in Exhibit B to aduare footage of each Apartment are for identification only and are only approximate figures. All Buildings and Apartments are built in accordance with the Plans which must be consulted for antual dimensions, including square footage.

4. Identification of Apartments. There are five (5) types of Apartments designated on the Plans and in Exhibit B by Apartment Designation letters: A through E. The types are as follows:

Apartment Peach prions

Apartment Peach prions

A Tower Peach prions

(2 bedrooms, 2 baths)

A upper Peach prions

A upper Peach prior

A upper Peach pri

existed immediately prior to any damage or destruction and with the same type of archie tecture unless the Architectural Review Board determines that addifferent typesof architectura would be appropriate and instante about

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- Identification of Apartments There are five (5) types of Apartments designated on the Plans and in Exhibit B by Apartment Designation letters A through E. The types ere as follows:

Apartment Description A lower 1 Story 1204 sq. fp. (2, bedrooms 2 baths) A upper 1 tetory (1185 eq. fn. (2 bedrooms 12 beths) B corres of 123 vst ft. (2.0 daysons acht 1/2 baths)

D 2 stories 4 1303 eq. ft.

2 stories 4 1334 eq. ft.

2 stories 4 172 stories 4 1763 eq. ft.

(3 bedround pr2-1/2 baths)

There are a total of ten (10) Type A Apartments seven (7) Type B Apartments six (6) Type C Apartments ments six (6) Type C Apartments six (6) Type C Apartments six (6) Type E Apartments constructed upon the Partel Type A Apartments are stacked and in each Instance the ground floor Apartment is denoted as "lower" and designated by an even number and the second floor Apartment is denoted as "upper" and designated by an odd humber and the second floor Apartment is denoted as "upper" and designated by an odd humber and the second floor Apartment is denoted as "upper" and designated by an odd humber and the second floor Apartment is denoted as "upper" and designated by an odd humber and the second floor Apartment is denoted as "upper" and designated by an odd humber and the second floor apartment as denoted as "upper" and designated by an odd humber and the second floor apartment as denoted as "upper" and designated by an odd humber and the second floor apartment as denoted as "upper" and designated by an odd humber and the second floor apartment as denoted as "upper" and designated by an odd humber and the second floor apartment as denoted as "upper" and designated by an odd humber and the second floor apartment as denoted as "upper" and designated by an odd humber and the second floor apartment as a · 对研究的编辑的 [2] 安静山 海绵的铜铁红

Each Apartment 18 identified by letter and number on the Plant the letter referring to the Building in which the Apartment is located and the number referring to the Individual Apartment within the Building. The Building dumber Apartment number Apartment Designator, type of Apartment number area in aquare feet number of bedrooms and the Percentage Interest and Percentage Vote apputtenant to each apartment are set forth in Exhibit B which is a part of this Declaration.

The legal description for each Adartment shall consist first of the identifying letter of the Building in which the Apartment is located and second the humber designation of the particular Apartment in that Building.

5. Description of Apartments.

(a) Appurtenances Bach Apartment shall consist of all space within the boundaries thereof as he singter defined and all portions of the Building situated within such boundaries including but not limited to all fixtures, facilities, utilities, equipment, appliances, and structural components designed and intended solely and exclusively for the carloyment, use and benefit or the Apartment wheyeld the same are located to the which that designed or intended for the which intended for intended for the suspection of the public may be necessary sother Apartment of which may be necessary for the safety support, maintendance designed or any of the Buildings or which are normally designed for composituse provided however that all fitties equipment and appliances designed for composituse provided however that all fitties equipment and appliances designed or intended for the exclusive an owner; use and benefit of the house and which apartment shall constitute a marrial with Apartment whether of bot the said which apartment whether of bot the said within or partie within the blumdaries of ship Apartment whether or por located within or partie within the blumdaries of an Apartment whether or por located within or partie within the boundaries of an Apartment and all interior walls (except folia Bearing while) within the boundaries of an Apartment, are considered part of the Apartment. the Bullding situated within such boundaries the the training the same of t

West of the second seco

(b) Boundaries The boundaries of each Apartment shall be as shown on the Plans without regard to the existing construction measured between the surface of the imfinished subfloors, the exterior surface of the interior ceilings including the dry wall, and the exterior surface of the interior perimeter or load-bearing walls including the dry wall, windows and doors (excluding frames) of each Apartment but excluding rames) of each Apartment but excluding rames of each Apartment frames of each Apartment containing fire lace to be measured from wall to wall as herein provided on the assumption that said fire place opening was closed with dry-wall identical to that employed in the wall in which such fireplace opening exists. In the event any horizontal or vertical boundary line as sliden of the Plans does not coincide with the actual location of the respective wall, floor or ceiling surface of the Apartment because of inexactness of construction settling later donstruction, or for any Sther reagons. The Boundary lines of each Apartment shall be deemed to be and treated for purposs of occupancy, possession maintenance detoration use and enjoyment as in accordance with the actual existing construction. In such case, permanent easements for exclusive use shall exist in favor of the Owner of each Apartment in and to such apartment in and to such apartment in and to such apartment in and the actual points of the schartment but within the appropriate wall floor or ceiling surfaces of the Apartment of the Apartment of the actual points are such apartment of the actual points are such apartment of the actual points are such apartment.

TORREST TO THE STATE OF THE STA

Common Area and Facilities Common Areas means and includes (1) the Parcel (2) the foundations, columns Firders beams supports and roofs of the Buildings (3) the yards gardens drivaways aldewalks and parking areas (excluding carports); (4) water and smiltary sever mains serving the Buildings (5) exterior lighting the extantor of the Buildings (5) exterior lighting the extantor of the Buildings (5) master television antimus system with connecting outlets to each Apartment If any; (7) pipes, ducts electrical wiring and conduits and public utilities lines; (8) subfloors, cellings and perimeter and other load-bearing walls, except the exterior surface of interior cellings and perimeter and there is a subflow walls including the dry wall; and (9) all facilities and appurtunances located outside of the boundary lines of the Apartments, except those areas and facilities expressly defined as Limited Areas and Facilities Expressly defined as Limited Areas and Facilities. Limited

7. Limited Common Areas and Facilities. "Limited Areas and those Aparements to which use thereof is limited are sollows:

(a) The mix conditioning compressors attached to each building are limited to the use of the Apartments to which they are compaced.

- (b) Patios, together with an area around such patio specifically shown and designated on the Plans, shall be limited to the exclusive use of the Apartment to which there is direct access. THE HARMANIE
- (c) Balconies shall be limited to the exclusive use of the Apartment to which there is direct accessories the level to the
- (d) Fireplaces including the chimney, flue damper and any other accessory or appurtenance, except such as are located entirely within the boundary of the Apartment shall be dimited to the exclusive user of the Apartment to which they appart in the continuous of the Apartment to which they appart in the continuous of the Apartment to which they appart in the continuous the Plans (a) carports as shown on the Plans (a) because its part to the continuous the Plans (a) because its part to the continuous the Plans (a) because its part to the continuous the Plans (a) because its part to the continuous the Plans (a) because its part to the continuous the Plans (a) because its part to the continuous the plans (a) because its part to the continuous the cont
 - as shown on the Plans . One such carport shall be limited for the exclusive use of
 - each Apartment as designated on the Plans

 (f) Structural separations between Apartments or the space which would be occupied by such structural separations. tions may become Limited Areas for the exclusive use of the Owner or Owners of the Apartments or either side thereof as provided in paragraph 17.
- Ownership of Common Areas . The Percentage Interest appertaining to each Apartment is set forth in Exhibit B to this Declaration. percentages have been determined upon the basis of the approximate relation which the gross area of each separate Apartment bears to the total gross arear of all Apartments. The Percentage Interest appertaining to each separate Apartment in the Common Areas and Limited Areas Bhall remain constant and shall not besatcared without the unanimous ronsent of all the Co-comers and compliance with all requirements of the Act.

The Percentage Interest appearaining to each Apartment shall also beathe Percentage Votecallo-cable to the Owner thereof mineal matters with respect to The Timbers I and the Association upon which the Co-owners are entitled to vote including but not limited to the election of the Board of Manageract :

9. Encroachments and Essements for Common Areas. If, by reason of the location from truction worthing or shifting of a Building, any Common Area or Limited Area now, encrosches or shall hereafter encroach upon any Apartment without in such event, an easement shall be deemed to exist and tun to the Co-owners and the Association ror the maincenance, use and enjoyment of such Common Area or Limited Area.

Each Owner shall have an essement in common with each other Owner to use all pipes, wires, ducts, cables, conduits, utility lines, chimneys and other common facilities located in any of the other Apartments and serving his Apartment.

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Each Owner shall have the right to ingreas and egrees over the common areas and Community Area necessary for access to the Parcel, his Apartment and any Limited Area designated for use in connection with his Apartment, and shall have the right to the Horizontal and lateral support of his Apartment. Such rights shall be appurtenant to and pass with the firtle to each Apartment.

10. Future Easements If there are additional horizontal property regimes, constructed on the Development Area after the date of this Declaration, the Declarant, for itself, its successors, and assigns, hereby declares that subject to the provisions of paragraph 19. hereof, each owner in such horizontal property regimes shall have a perpetual easement in the Parcel and each Owner shall have a perpetual easement in the land of such other horizontal property regimes for the following purposes.

(a) to maintain, use, repair and replace all existing storm, water and sewerage systems and roadways used by the owners in the horizontal property regimes as ingress or agress ito their spartments; and

(b), for the subtetrement installation, maintenance and repeir of any pipe, cable or other conduit of liquids or energy supplying water, sawrage, telephone, radio, television, electricity heat or other similar services to the horizontal property regimes.

subject, however to the provision that any such installation, maintenance or repair shall be done only with the written parmission of the Architectural Review Board, which permission shall not be unressonably withheld and subject to the further provision that upon the completion of any such installation, maintenance of repair the area disturbed by such work shall be restored to as near the original condition as 18 practicable.

11. Association of Owners In Order to provide for the maintenance, regalive replacement, administration and operation of the Property and in compliance with the provisions of the Audi there is hereby created an association of the Audi there of the Apartments on That Tubbers I to be known as the The Timbers I iomscoppers association. Back Owner shall be a member of the audi person coases to be an Owner, and will be transferred to the new Owner.

The Association shall sledt a Board of Managers annually in accordance with and as prescribed by the By Laws. The Co-owners shall be entitled to cast their Parcentage Vote for the election of the Board of Managers.

The Board of Managers shall be the governing body of the Association representing all of the Co-owners, in providing for the management maintenance, repair, replacement and upkeep of the Property.

12. Casualty and Restoration. In the event of damage or destruction of the Property by fire or other casualty and following provisions shall be applicable in the saled the company of the property by fire or other casualty and the following provisions shall be applicable in the saled the company of the

(a) Partial Destruction lin the event that less than two thirds of the Apartments are destroyed by the occurrence of fire or other leas than two-thirds of the Apartments are destroyed by the occurrence of fire or other casualty, then the Association shall cause the Property to be promptly repaired and restored. The proceeds of the insurance carried by the Association shall be inplied to the cost of such Restoration. It the insurance proceeds are not adequate to cover the cost of Restoration of the fost of increased the cost of the proceeds the cost of a not restoring the damage shall be yaid by all of the Owners of the Apartments directly affected by the damage in the projection shall be restored by the damage in the projection shall be deemed to be directly affected if all affected Apartments An Apartment shall be deemed to be directly affected if and only if such Apartment to located within the Building in which the fire of other casualty occurs. If any Owners shall of other casualty occurs. If any Owners shall of the required payments, the other Owners shall of the cost thereof and the course of the restoration and pay the owner of Owners, and the time required by the Restoration are the time required by the Board of Managers; shall become a lish on such defaulting Owners at the but able to the such defaulting owner a spiritment and may be foreclosed in the same manner as provided for the right for Common Expenses.

(b) Restoration in the Event of Two-Thirds

(b) Restoration in the Event of Two-Thirds
Destruction In the event that more than
two-thirds of the Apartments are destroyed
by fire or other casualty then Restoration
of the Apartments must be approved within one
hundred twoney (120) days from the date of
daming or destruction by no less than diffy
one pay cent it? In the aparograph of the
total Percentige Vote. If such approvid it
obtained this Horizontal Property Regime
shall terminate the Pioperty shall be deamed
owned in common by all of the Owners and
the provisions of Section 21 of the Act
shall apply shall apply in the absolute at the state of the state of

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13. Condemnation. If at any time or times during the continuance of this Hoffzontal Property Regime, all or a part of the Property shall be taken or condemned by any Person with the power of eminent domain or sold or otherwise disposed of in lieu of or in avoidance thereof, the following provisions shall be applicable:

- (a) Proceeds "All compensation, damages, or other proceads therefrom, the sum of which is hereinafter called the "Condemnation Award," shall be payable to the Insurance Trustee as trustee for all Condes according to their respective interests therein
- respective interests therein

 (b) fortitraking in the thereof that the entire Property is taken or condemned or sold or otherwise disposed of in lieu of or in avoidance thereof, this Horisontal Property Regime shall be apportioned among the Co-owners in accordance with their respective Percentage interests and paid into separate accounts account shall be apportioned among the Co-owners in account shall be apported to the insurance Trustee and shall be further inchtified by the last description of the hart ment aid the name of the Owner. Trust each separate account the insurance Trustee shall use and disburds the total amount of a such accounts of the other inchtific in the payment of the other first to the payment of a shall use and disburds the total amount of a such accounts in favor of any government of the Apartment in favor of any government in the order account which is a session of the Declaration of the By laws, next to any assessments and account of the Declaration of the By laws, next to any assessments and account of the Declaration of the By laws, next to any assessments and account to the Declaration of the By laws, next to any assessment in the order of priority of the Apartment in the account the order of condemned.
- (c) Farrial Taking In the event that less than the entire Property is taken or condemned, or sold or otherwise disposed of in lieu of or sold or otherwise disposed of in lieu of or in svoldmes thereof this Horizontal Property Rogine Shall not terminate. Each Owner shall be intitled to a share of the Condemnation Award to be definined in the Tollowing manner. As about set practitable the Internation Trustee shall reasonably and in good tatch selected the Condemnation Award Tollowing and Shall supportion the unbunity selected and Shall supportion the unbunity selected among the Owners as follows that it will be condent at the Fallows that it is a lideated to the Fallows that the Common Areas and Limited Areas shall be
- and appropriately described of the Berlaines :

apportioned among the Owners In proportion for their respective Parks centage interacts: (ii) the total amount silocated to seem seem to the combine of those apartments which were not taken or condemned. (iii) the respective amounts allocated to the taking of or injury to a pay the figure and or improvements an owner has tade within his own that the common of the particular Apartment shall be appoint the common of the particular Apartment shall be appoint the involved and (iv) the total amount allocated to consequential damages and any other takings or injuries shall be appointed as the insurance inside determines to be equitable in the circumstances.

If an allocation of the Condemnation Award is already established in negociation, judicial decree, or otherwise then in allocating the Condemnation Award the Insurance Trustee shall employ such allocation to the extent it is relevant and applicable Distribution of apportioned by the case and their respective protects payable jointly to the respective provided that with respective morrages and their respective morrages and their respective morrages. In provided that with respect to an owner whose Abarthent was token or condemned, there shall first be deducted therefrom and prid or applied by the Insurance Trustee as appropriate such their special abarthent as a provider, the enomits of any valid tex or special abases ment lies and favor of the provider as assessment the such price and the governmental taxing or assessing authority underly sessessing ments made pursuant to this Declaration the Ry-Laws, the Declaration of Covenants and Restrictions, or the Articles or By-Laws of the Corporation.

Restrictions, or the Articles or By-Laws of the Corporation

(d) Reorganization III the Visit partial taking results in the taking of a complete Apartment the Done; thereof shat By-Done ideally cease to be an Owner and a member of the Association. Thereafter the Hoard of Immagers shall reallocate to the remaining Dynera, the Percentage Interest and Percentage Uniterest and Percentage Uniterest and Percentage Uniterest and Percentage Centage Interest spiritement to an Apartment is computed by taking a past of the gross area of all Apartments. Such reallocation chief the Submitted by the Board of Managers to the Owners of the remaining Apartments for approval Owners of the remaining Apartments for approval and appropriate amendment of this Declaration.

(e) "Restoration and Repairs Anything to the contrary in this paragraph 13 notwiths tanding, in the event that less than the entire Property 1s taken or condemied for sold or otherwise disposed of in lieu of or in avoidance thereof and any Apartment Common Area of Limited Area ? may reasonably be wastored or rapalred to We decemined by an independent Micensed with tect or engineer employed by the Board of Managers Tor making such determination or by a majority of the Morrgagees, the ambunt laft any, Condemnation Award allocable to the taking of dr thijury to the Common Afers and Limited Areas and to severance damagos shall be applied to the tost of Restoration or repair of such Common and Area and/or Limited Area and the smount, if any, allocable to the taking of on in jury ito a parsection of the transfer of the state of the repaired shells applied to the cost of such in Restoration or repair it from smooth of the Condemnation Award them transitis beauth amount shall be allocated and disbursed in accordance with the provisions of subparagraph (c) above. The biomit of the condemiation Award is insufficient to dover the cost of eny such Restoration or repair the provisions of paragraph at 12 (a) shall apply the provisions of paragraph at 12 (a) shall apply the paragraph at 12 (a) shall apply the paragraph at 12 (a) shall apply the provisions of the paragraph at 12 (b) shall apply the paragraph at 12 (b) shall apply the paragraph at 12 (c) shall apply the (f) Alternative Valuation in Event of Total Taking "In the event the amount of the Condemnation Award is determined in negotiation; Judiciab dacree or otherwise according to the value of individual aparaments as separately determined the Condemia-fion Award shall be apportioned with respect to such aparaments, according to the values sold determined and not in according to the values sold the condemial and not in accordance with the condemial and the condem Trapecolve Percentage inveresterof the Owners provided that it the value of the Common Areas and/or Limited Areas is determined separately the ambine of the Common Areas in determined separately the ambine of the London article table thereto shall be allocated among the Common in Accordance with their separately Percentage Covenants and Restrictions. The covenants and restrictions applicable to the use and enjoyment of the Apartments are set forth in Article CVII: of the By-Laws) These covergater and restrictions are for the burgel benefit and provection of the present and future owners and enall compath the land and inerated the benefit of hadd be enforceable by any Owner of the Co-owners hither association for the Cornora-tion of Present on Luting Owners of the Association for the Corporation shall be entitled to did both relief against invivious in the attempted wielstion of these provisions and about the contilled to damages for any injuriou resulting from any wiolations thereoff but there shall be nouright of reversion or forfatture of cirle resulting of on such wiolation.

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The covenants and restrictions provided in the By-Laws shall be in addition to and not in lieu or derogation of the bovenants and restrictions contained in the Declaration of Covenants and Restrictions. The Architectural Review Board shall adopt general rules with respect to and otherwise enforce and udminister the covenants and restrictions provided in the By-Laws in the same manner and to the same extent as the covenants and restrictions contained in the Declaration of Covenants and Restrictions.

15 Merget This Horizhital Property Regime may be merged into another horizontal property regime or regime, and thereby expanded if all of the Co-owners, of the horizontal property regimes to be merged, by appropriate mendment of the declaration for each such horizontal property regime, duly executed and recorded in compliance with the act, waive the horizontal property regime tonstituted by such declaration and simultaneously regroup or merge into enother horizontal property regime.

16: The Timbers Inc. Certain recreational and other community facilities are or will be located in the Davelopment Area. The Community Area is not separt of The Timbers I but shall remain with the Declarable intil such time as title is conveyed to the Corporation as provided in the Daclaration of Covenants and Restrictions. There has been created under the laws of the State of Indiana, not form membership is comprised of limited for and the oblication of all Owners residents and owners of any poses and powers of the Corporation are as further send to the Tract. The classes of membership purposes and powers of the Corporation of Covenants and sense in the Beclaration of Covenants and any powers of the Corporation are as further and sylaws of the Corporation but he articles and sylaws of the Corporation which are invorporated and sylaws of the Corporation which are invorporated and sylaws of the Corporation have are pursuant to another accordance with the provisions and the Articles and By Laws of the Corporation have along and the Articles and By Laws of the Corporation.

17. Right to Combine Apartments with the written

consent of the Board of Managers the outer Apartments they were apartments they were apartment to the Apartment of the Apartment they were apartment to the affect permitted in the written consent of the Purit of damagers, any walls, floors of other structural separations paigean any two such Apartments of any space thich would be occupied by such structural separations but tortife willight of the two Apartments as one Apartment may reformed as the two Apartments are utilized as one Apartment; be ments as Limited Areas except to the adjoining Apartment such structural separations are necessary or contain ment of other parts of the support use of enjoyment of other parts of the Building of which they

are a part. At any time, upon the request of the Owner of one of such adjoining Apartments, any opening between the two Apartments which, but for joint utilization of the two Apartments would have been occupied by a structural separation, shall be closed, at the equal expense of the Owners of each of the two Apartments and the structural separations between the two Apartments and the structural separations between the two Apartments and the structural points common Areas

- 18. Additions to Property: The Board of Managers shall have the power for and on behalf of the power for and on behalf of the power for and to be the Property by? purchase or otherwise; and to be seed for personal property for the use of the Co-owners. The cost of acquiring any such saddltions to the Property of leasing any such real or personal property shall be deemed to be Common Expenses and Shall be assessed against the Co-owners in accordance with their respective Personals interests and shall be assessed.
- 19. Reservation to Grant Easements The Declarant reserves unto itself until December 31, 1980, the right to grant, convey, transfer, cancel, relocate and otherwise deal with any and all utility and other asements now or nefeafter located on the Parcel, subject to the approval of the Architectural Review Board.
- 20. Fireplaces: Declarant reserves unto itself until the conveyance by Declarant of the last Apartment the right to grait easements with respect to install, and to designate as Limited Areas, fireplaces (including chimneys, flues, dampers and other accessories and appurtenances thereto) to setvite Apartments whose Owners have contracted with Declarant for their installation, and no action by Declarant lands of the therewith shall constitute an encreachment upon the Common Area nor require the consent of approval of any other Owner. In coinection therewith, Declarant hereby reserves unto itself the exclusive right acting alone and without the notessity for the consent of concurrence of any other, Owner or of any Mortgages to amend the Plans to show thereof the installation of any such Tireplace and the designation thereof as a limited Area; such amendment to be executed by Declarant and filed in the office of the Recorder of Marion Country. Indiana
- 21. Weiver of Damages Reither Declarant; nor its partners, nor its respective representatives or designees shall be liable for any claim whatsoever arising out of or by leason of any solicity performed pursuant to any suchority reserved, granted or delegated to it by or pursuant to this Declaration or in the Declarant's (or in its partners, its respective representatives, or designees) capacity as developer, contractor, manager or sellar, of the Parcel whather or not such claim

(a) shall be asserted by any Owners, owner, occupant, or the Board of Managers, or by any Person cluiming through any of them, or

- (b) shall be on account of injury to person or damage to or lose of property wherever located and however caused, or a second of the control of the control
- (c) arising from contract or negligence: 1.000x 126.015 Without limiting the generality of the foregoing, the foregoing enumeration includes all claims for or arising by reason of the Property or any part thereof being or becoming out of repair or containing any patent or latent defects, or by reason of any act or neglect of any Owners towner; occupant, the Board of Managers the Association or their respecrive agentam employees o guests or invitees, or by reason of any neighboring property or personal prop-erty located on or about the Property, or by reason of the failure to function or disrepair of any utility services, (heat; air conditioning; electricity; gas, water; sewage and light); provided however, the terms of any warranty of Declarant Constantantanter. respective representatives or designees) given in connection with the sale by Declarant of any Apartment shall prevail over the terms and conditions of this paragraph, and harifactory of himself and the market before the heart and 22. Amendment of Declaration : Except with respect to amendments to the Plans pursuant to Paragraph 20 amendments to this Declaration shall be proposed and
- adopted in the following manners to the factor of the proposed amendment shall be included in the notice of any meeting at which the proposed amendment is considered.
- (b) Resolution A resolution to adopt a proposed amendment may be proposed by the Board of Hanagers or by a Majority of Owners
 - (c): Meeting of The resolution concerning as proposed amendment must be adopted by the testing add the designated yote, at a meeting duly held the ecoordance with the provisions of the By have.
- (d) Adoptions Any proposed amondment to this Declaration must be approved by a vote of not less than seventy five personts (75%) in the aggregate of the Percentage Vote. In the sevent any Apertment described to first mortgage, the Mortgages shall be notified of the meeting and the proposed Amendment laythe manner provided in the By-Laws if the Mortgages has given prior notice of its mortgage interest to the Board of Managers in accordance with the provisions of the By-Laws.
 - (a) Special Amondments. No amondment to this Declaration shall be adopted which changes (1) the Percentage Interest with respect to any Apartment or the applicable share of an Owner's liability for the Common Expenses, without the approval of one hundred per cent (100%) of the Co-owners,

TO THE CONTROL OF THE PARTY OF

- (2) the provisions of paragraph 12 of this Daclaration with respect to reconstruction or repair in the event of fire or casualty and paragraph 13 with respect to condemnation, without the unanimous approval of all Mortgages whose mortgage interests have been made known to the Board of Managers in accordance with the provisions of the By-laws, provided that if notice of disapproval has not been received by the Board of Managers within thirty. (30) days of delivery of notice to a Mortgagee, approval of said amendment by the Mortgagee shall be deemed given.
 - (f) Recording. Each amendment to the Declaration shall be executed by the President and Secretary of the Association and shall be recorded in the office of the Recorder of Marion County, Indiana, and such amendment shall not become effective until so recorded.
- future Owners, Mortgagees, tenants and occupants of the Apartments shall be subject to and shall comply with the provisions of the Declaration of Covenants and Restrictions, this Declaration of Covenants and Restrictions, this Declaration of Covenants as adopted by the Board of Managers as each may be amended from time to time. The acceptance of a deed of conveyance or the act of occupancy of any Apartment shall constitute an agreement that the provisions of the Declaration of Covenants and Restrictions, this Declaration, The Act. the By-Laws and rules and regulations as sach may be amended from time to time are accepted and ratified by such Owner, tenant or occupant, and all such provisions shall be covenants running with the land and shall bind any Person having at any time any interest or estate in an Apartment or the Property as though such provisions were recited and stipulated at length in each and every deed, conveyance, mortgage or lease thereof. All Persons who may occupy, use enjoy or control an Apartment or Apartments or any part of the Property in any manner shall be subject to the Declaration of Covenants and Restrictions, the Act, the Daclaration, the By-Laws and the rules and regulations applicable thereto as each may be amended from time to time.
- 24. Severability Clause. The invalidity of any covenant, restriction, condition, limitation or other provision of this Declaration or the By-Laws filed herewith shall not impair or affact in any manner the validity, enforceability or affact of the rest of this Declaration or the attached By-Laws.
- 25. Floor Plans. The Plans setting forth the layout, location, identification numbers and dimensions of all of the Apartments and the Property are incorporated into this Declaration by reference, and have been filed in the office of the Recorder of Marion County, Indians, in Horizontal Property Plan File as of March, 1974.

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26. Interpretation. The provisions of this Declaration and the By-Laws are to be construed and interpreted with reference to the Declaration of Covenants and Restrictions in such manner as to give full force and effect to the general scheme of development set forth in the Declaration of Covenants and Restrictions.

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IN WITNESS WHEREOF, the undersigned have caused this Declaration to be executed the day and year first above written.

Service of the servic

CONWOOD LIMITED PARTNERSHIP

a record to the control of the contr

By LANDECO, INC., General Partner

Kenneth W. Brown, President

ATTEST:

Apsoph S. Porlum

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COUNTY OF MARION
SS: 1 of the State of the building of the

Before me, a Notary Public in and for said County and State, personally appeared Kenneth W. Brown and Joseph S. Brown, by me known, and by me known to be the President and Secretary, respectively, of Landeco, Inc., an Indiana corporation, the general partner of CONWOOD LIMITED PARTNERSHIP, an Indiana Limited partnership, who acknowledged the execution of the above and foregoing Declaration of Horizontal Property Ownership for and on behalf of and limited partnership.

WITNESS my hand and Notarial Seal this 14th day of March , 1974.

Committee on expires.

Notary Public

Convigsion expires:

August 24,1821

CONSENT OF MORTGAGEE

form of the contract of the second of the se

The undersigned, The Trustees of C. I. Mortgage Group, being the holder of an existing mortgage on the Parcel, as defined in the above and foregoing Declaration, which Mortgage was dated August 29, 1973, and recorded in the office of the Recorder of Marion County, Indiana, on August 31, 1973, as Instrument No. 73-56759, hereby consents to the recording of the above and foregoing Declaration and the submission of the Parcel to the provisions of

the Horizontal Property Act, of the State of Indiana, and further agrees that its mortgage shall be subject to the provisions of the Act and the above and foregoing Declaration and exhibits attached thereto and the documents incorporated therein.

	EXECUTED this 15th day of March , 1974.
By C. I Mert; Bability, on:	THE TRUSTEES OF C. A. MORTGAGE GROUP
property b	to a resolution of the state of
brentity ag	of the property of the state of Tout makes the State of Tout makes the State of Stat
which the Trust wa	By As Trustee, but not individually
	ATTEST:
	Neither the frustess por sharefulders, efficers, employees, or events of C. I. Mortings Goup the frust, shall be field to any personal fiability, under the provisions of the
	properly be first to the standard man, nor shall their priveto
	es enlify agreef to door sales also and any such person
	SS: which the Trust was created.
	COUNTY OF NEW YORK)
	Before me, a Notary Public in and for said County
	and State, personally appeared JAMES V. TOMAT, JR.,
	##dxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
	ardrugeneeneeneeneeneeneeneeneeneeneeneeneene
	MORTGAGE GROUP , who acknowledged the execu-
	tion of the above and foregoing Consent for and on behalf
	of The Trustees of C. I. Mortgage Group.
	Comments on their courtes & the Control of the Cont
	WITNESS my hend and Notarial Seal this 15th day of
	March 1974.
	the second se
	Of an analysis of the same of
	Hotary, Public wild Mind
	My Commission expires: JOHN D. GOLDMAN
	Notary Public State of New York: pp 100 100 100 100 100 100 100 100 100
	Germ Expires Merch 30, 1974

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FIRST AMENDMENT

DECLARATION OF HORIZONTAL PROPERTY OWNERSHIP:

The Timbers I Horizontal Property Regime

THIS FIRST AMENDMENT dated as of the 7th day of May, 1975, made by The Timbers I Homeowners Association, a voluntary association existing pursuant to The Indiana Horizontal Property Act,

WITNESSES THAT:

WHEREAS, the following facts are true:

- 1. The Declaration of Horizontal Property Ownership of The Timbers I Horizontal Property Regime was filed of record as Instrument No. 74-16967 in the office of the Recorder of Marion County, Indiana, on March 26, 1974.
- 2. Paragraph 22 of the Declaration provides that the same may be amended by vote of not less than 75% of the Percentage Vote and that any amendment shall become effective upon its recordation in the office of the Recorder of Marion County, Indiana.
- 3. This First Amendment has been approved by not less than 75% of the Percentage Vote.

NOW, THEREFORE, the Declaration is amended as follows:

- 1. The legal description attached to this First Amendment and marked "Exhibit A" is substituted for the legal description marked "Exhibit A" which is attached to and heretofore formed a part of the Declaration.
- 2. Subparagraph (aa) of Paragraph 1 is deleted and the following is substituted therefor:
 - (aa) "Plans" means the floor and building plans of the Buildings and Apartments prepared by A & E Engineering, Inc., certified by Raymond M. Stone, a registered engineer, under date of February 28, 1974, and a site plan of the Parcel and Buildings prepared and certified by Charles L. Thompson, a registered land surveyor, under date of March 6, 1974, as amended and recertified under date of June 18, 1974, all of which are incorporated herein by reference, as the same may be amended from time to time.
- 3. The Site Plan filed of record in connection with the recordation of this First Amendment shall be substituted for Sheet 2 of the Plans which heretofore formed a part of the Declaration.

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MARION COUNTY AUDITO

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Any undefined term used in this First Amendment shall, if the context so permits, have the meaning set forth in Paragraph 1 of the Declaration. and the same of the same of

IN WITNESS WHEREOF, the First Amendment has been executed for and on behalf of The Timbers I Homeowners Association by its duly authorized President and Secretary.

THE TIMBERS I HOMEOWNERS ASSOCIATION

Sweet, President

STATE OF INDIANA

COUNTY OF Skrill

Before me, a Notary Public in and for said County and State, personally appeared George P. Sweet and William H. Merrill, Jr., known to me to be the President and Secretary, respectively, of The Timbers I Homeowners Association, who acknowledged the execution of the foregoing First Amendment for and on behalf of said association.

WITNESS my hand and Notarial Seal this day of

Notary Public

My commission expires:

My Commission Expires Jan. 12, 1977

ARTHUR HENRY PANKOP

MOTARY

This instrument prepared by Tom Charles Huston, Attorney at law 1212 Merchants Bank Building, Indianapolis, Indiana 46204

EXHIDIT "A" to Declaration of Horizontal Property Regime

A tract of land situated in the Northwest Quarter of Section 33, T 15 N, R 4 E, Perry Township, Marion County, State of Indiana, more particularly described as follows: The second state and the second secon

Commencing at the Northwest corner of said quarter section; Thence, S 0°-12'-12" E upon and along the West line of said quarter section a distance of 1271, 42 feet to the point of beginning;

Thence, N 15° -47'-48" E a distance of 309, 61 feet; Thence, N 72° -17'-17" E a distance of 402, 67 feet; Thence, S 20° - 10'- 48" E a distance of 360.00 feet;

Thence, N 88° -39'-12" E a distance of 92,00 feet; Thence, S 1º -20'-48" E a distance of 140,00 feet;

Thence, S 88° -39'-12" W a distance of 687, 25 feet;

Thence, N 0°-12'-12" W upon and along the West line of said quarter section a distance of 71.44 feet to the point of beginning and containing 5.346 acres, more or less, but subject to all legal right of ways and easements thereunto belonging.

EXCEPT: A tract of land situated in the Northwest Quarter of Section 33, T 15 N, R4 E, Perry Township, Marion County, State of Indiana, more particularly described as follows:

Commencing at the Northwest corner of said quarter section; Thence, S 0°-12'-12" E upon and along the West line of said quarter section a distance of 1271.42 feet to the point of beginning;

Thence, N 15° -47'-48" E a distance of 83.00 feet; Thence, S 49° -12'-12" E a distance of 52.00 feet;

Thence, N 40° -47'-48" E a distance of 19.00 feet;

Thence, S 49° -12'-12" E a distance of 22.00 feet; Thence, S 40° -47'-48" W a distance of 20.00 feet; Thence, S 49° -12'-12" E a distance of 12.00 feet;

Thence, S 54° -57'-12" E a distance of 23.00 feet; Thence, S 61° -57'-12" E a distance of 14.00 feet;

Thence, N 28° -02'-48" E a distance of 21.00 feet; Thence, S 61° -57'-12" E a distance of 22.00 feet;

Thence, S 28° -021-48" W a distance of 20,00 feet;

Thence, Easterly 65. 52 feet along an arc to the left and having a radius of 150.00 feet and subtended by a long chord having a bearing of s 89° -371-12" E and a length of 65,00 feet;

Thence, N 44° -37'-12" W a distance of 20,00 feet;

Thence, N 45° -22'-48" E a distance of 12,00 feet;

Thence, S 44° -37'-12" E a distance of 8,00 feet;

Thence, N 15° -22'-48" E a distance of 10,00 feet;

Thence, S 44° - 37'-12" E a distance of 22,00 feet; Thence, N 67° -22'-48" E a distance of 37,00 feet: Thence, N 67° -22'-48" E a distance of 37.00 feet; Thence, N 77° -28'-55" E a distance of 35.13 feet;

Thence, Easterly 108, 48 feet along an arc to the right and having a radius of 245,00 feet and subtended by a long chord having a bearing of s 89° -051-2011 E and a length of 107, 60 feet;

Thence, S 78° -05'-48" E a distance of 47.00 feet; Thence, N 51° -09'-12" E a distance of 25.00 feet;

Thence, Northerly 117.46 feet along an arc to the left and having a radius of 165.00 feet and subtended by a long chord having a bearing of N 18° -00'-48" W and a length of 115.00 feet;

Thence, N 65° -00'-48" W a distance of 18.00 feet; Thence, S 43° -59'-12" W a distance of 13.50 feet; Thence, N 46° -00' 48" W a distance of 156.00 feet; Thence, N 43° -59'-12" E a distance of 17.84 feet; Thence, N 69° -39'-12" E a distance of 100.82 feet; Thence, S 20° -20'-48" E a distance of 190.00 feet; Thence, N 69° -39'-12" E a distance of 23.00 feet; Thence, S 20° -20'-48" E a distance of 91.00 feet; Thence, S 69° -39'-12" W a distance of 26.00 feet; Thence, S 3° -39'-12" W a distance of 10.00 feet; Thence, S 42° -20'-48" E a distance of 18.50 feet;

Thence, Easterly 155.80 feet along an arc to the left and having a radius of 980.00 feet and subtended by a long chord having a bearing of 588° -341-49" E and a length of 155.64 feet;

Thence, N 1° -20'-48" W a distance of 48.00 feet; Thence, N 88° -39'-12" E a distance of 23.00 feet; Thence, S 1° -20'-48" E a distance of 103.00 feet; Thence, S 88° -39'-12" W a distance of 687.25 feet;

Thence, N 1°-12'-12" W upon and along the West line of said quarter section a distance of 71.44 feet to the point of beginning and containing 1.645 acres, more or less, but subject to all legal right of ways and easements thereunto belonging.

And containing after said exception 3, 701 acres, more or less.



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FIRST AMENDMENT

DECLARATION OF HORIZONTAL PROPERTY OWNERSHIP

The Timbers II Horizontal Property Regime

THIS FIRST AMENDMENT dated as of the 7th day of May, 1975, made by The Timbers II Homeowners Association, a voluntary association existing pursuant to The Indiana Horizontal Property Act,

WITNESSES THAT:

WHEREAS, the following facts are true:

- 1. The Declaration of Horizontal Property Ownership of The Timbers II Horizontal Property Regime was filed of record as Instrument No. 74-55300 in the office of the Recorder of Marion County, Indiana, on August 30, 1974.
- 2. Paragraph 22 of the Declaration provides that the same may be amended by vote of not less than 75% of the Percentage Vote and that any amendment shall become effective upon its recordation in the office of the Recorder of Marion County, Indiana.
- 3. This First Amendment has been approved by not less than 75% of the Percentage Vote.

NOW, THEREFORE, the Declaration is amended as follows:

- 1. The legal description attached to this First Amendment and marked "Exhibit A" is substituted for the legal description marked "Exhibit A" which is attached to and heretofore formed a part of the Declaration.
- 2. Subparagraph (aa) of Paragraph 1 is deleted and the following is substituted therefor:

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- (aa) "Plans" means the floor and building plans of the Buildings and Apartments prepared by A & E Engineering, Inc., certified by Charles L. Thompson, a registered engineer, under date of June 24, 1974, and a site plan of the Parcel and Buildings prepared and certified by Charles L. Thompson, a registered land surveyor, under date of July 10, 1974, as amended and recertified under date of May 5, 1975, all of which are incorporated herein by reference, as the same may be amended from time to time.
- 3. The Site Plan filed of record in connection with the recordation of this First Amendment shall be substituted for Sheet 3 of the Plans which heretofore formed a part of the Delegration.
- 4. Subparagraph (e) of Paragraph 7 is deleted and the following is substituted therefor:

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(e) Carports are located on the Parcel as shown on the Plans and each such carport is identified by a letter-number designation corresponding to the legal description of an Apartment. Such carports shall be limited for the exclusive use of the Apartments as designated on the Plans.

Any undefined term used in this First Amendment shall, if the context so permits, have the meaning set forth in Paragraph 1 of the Declaration.

IN WITNESS WHEREOF, this First Amendment has been executed for and on behalf of The Timbers II Homeowners Association by its duly authorized President and Secretary.

THE TIMBERS II HOMEOWNERS ASSOCIATION

By George P. Sweet, President

Ment!

COUNTY OF Leveller) SS:

Before me, a Notary Public in and for said County and State, personally appeared George P. Sweet and William H. Merrill, Jr., known to me to be the President and Secretary, respectively, of The Timbers II Homeowners Association, who acknowledged the execution of the foregoing First Amendment for and on behalf of said association.

WITNESS my hand and Notarial Seal this # day of ___

1975.

ARTHUR HANRY PARKOP

My Commission Expires At. 12, 1977

My Commission Expires Jan. 12, 1977

This instrument prepared by Tom Charles Huston, Attorney at law 1313 Merchants Bank Building, Indianapolis, Indiana 46204

Declaration of Horizontal Property Ownership

DESCRIPTION

A tract of land situated in the Northwest Quarter of Section 33, T 15 N. R 4 E. Perry Township, Marion County, State of Indiana, more particularly described as follows:

Commencing at the Northwest corner of said quarter section; Thence, S 0°-12'-12" E upon and along the West line of said quarter section a distance of 1342, 86 feet:

Thence, N 88°-39'-12" E a distance of 687.25 feet to the point of beginning;

Thence, N 1º-201-48" W a distance of 140,00 feet;

Thence, S 880-391-12" W a distance of 92,00 feet;

Thence, N 200-10'-48" W a distance of 360, 00 feet;

Thence, N 46°-26'-6" E a distance of 372. 14 feet;

Thence, S 48°-00'-48" E a distance of 266, 00 feet;

Thence, S 21°-09'-43" W a distance of 268.72 feet; Thence, S 1°-20'-48" E a distance of 300.00 feet;

Thence, S 88°-39'-12" W a distance of 158.00 feet to the point of beginning and containing 4.548 acres, more or less, but subject to all legal right-of-ways and easements thereunto belonging.

EXCEPT: A tract of land situated in the Northwest Quarter of Section 33, T 15 N, R 4 E, Perry Township, Marion County, State of Indiana, more particularly described as follows:

Commencing at the Northwest corner of said quarter section; Thence, S 0°-12'-12" E upon and along the West line of said quarter section a distance of 1342.86 feet;

Thence, N 88°-39'-12" E a distance of 687.25 feet to the point of beginning:

Thence, N 10-201-48" W a distance of 144,00 feet; Thence, N 880-39'-12" E a distance of 3,00 feet; Thence, N 10-20'-48" W a distance of 36,00 feet; Thence, S 880-391-12" W a distance of 26,00 feet; Thence N 1°-20'-48" W a distance of 22,00 feet; Thence N 88°-39'-12" E a distance of 26,00 feet; Thence N 1º-20'-48" W a distance of 72,00 feet; Thence S 880-391-12" W a distance of 8.00 feet; Thence N 1°-20'-48" W a distance of 21,00 feet; Thence N 880-391-12" E a distance of 8,00 feet; Thence N 10-201-48" W a distance of 72,00 feet; Thence S 880-391-12" W a distance of 8,00 feet; Thence N 1°-20'-48" W a distance of 22,00 feet; Thence N 41°- 50'-48" W a distance of 18.00 feet; Thence N 480-091-1211 E a distance of 5.00 feet; Thence N 41°-50'-48" W a distance of 73.00 feet; Thence N 48°-09'-12" E a distance of 6,00 feet; Thence N 41°-50'-48" W a distance of 20,00 feet; Thence N 48°-09'-12" E a distance of 36,00 feet; Thence N 410-50'-48" W a distance of 5,00 feet; Thence N 48°-09'-12" E a distance of 20.00 feet; Thence S 410-501-48" E a distance of 5, 00 feet; Thence N 48°-09'-12" E a distance of 10,00 feet; Thence S 41°-50'-48" E a distance of 23,00 feet; Thence N 48°-09'-12" E a distance of 36,00 feet; Thence N 39°-50'-48" W a distance of 23,00 feet; Thence N 50°-09'-12" E a distance of 62,00 feet; Thence S 48°-00'-48" E a distance of 25,00 feet; Thence S 410-59'-12" W a distance of 7,00 feet; Thence S 480-00'-48" E a distance of 55,00 feet; Thence N 41°-59'-12" E a distance of 4.00 feet; Thence S 48°-00'-48" E a distance of 18.00 feet;

Thence S 410-59'-12" W a distance of 29.00 feet; Thence N 48°-00'-48" W a distance of 18.00 feet; Thence S 16°-28'-51"W a distance of 19.85 feet; Thence S 20°-33'-12" W a distance of 72,00 feet; Thence S 69°-26'-48" E a distance of 23.00 feet; Thence S 20°-33'-12" W a distance of 86.00 feet; Thence N 69°-26'-48" W a distance of 15.09 feet; Thence S 10-201-48" E a distance of 24.00 feet; Thence N 88°-39'-12" E a distance of 14.00 feat; Thence S 10-20'-48" E a distance of 256, 00 feet; Thence S 88°-39'-12" W a distance of 16,00 feet; Thence S 210-20'-48" E a distance of 19.16 feet; Thence N 88°-39'-12" E a distance of 125. 50' feet; Thence N 1°-20'-48" Wa distance of 20,00 feet; Thence N 88° - 39'-12" E a distance of 4.50 feet;
Thence S 1°-20'-48" E a distance of 75.00 feet;
Thence S 88°-39'-12" W a distance of 158.00 feet to the point of beginning and containing 0.904 acres, more or less, but subject to all legal right-ofways and easements thereunto belonging.

And containing after said exception 3.644 acres, more or less.

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FIRST AMENDMENT TO THE BY-LAWS
OF

THE TIMBERS II HORIZONTAL PROPERTY REGIME

THIS FIRST AMENDMENT dated as of the 7th day of May, 1975, made by The Timbers II Homeowners Association, a voluntary association existing pursuant to The Indiana Horizontal Property Act,

WITNESSES THAT:

WHEREAS, the following facts are true:

- 1. The By-Laws of The Timbers II Horizontal Property Regime were filed of record as Instrument No. 74-55300 in the office of the Recorder of Marion County, Indiana, on August 30, 1974.
- 2. Section 13.01 of the By-Laws provides that the same may be amended by vote of not less than 75% of the Percentage Vote of the Co-Owners in a duly constituted meeting called for that purpose.
- 3. This First Amendment has been approved by not less than 75% of the Percentage Vote.

NOW, THEREFORE, the By-Laws are amended as follows:

1. Section 3.17 of Article III is deleted and the following is substituted therefor:

Section 3.17. Additional Indomnity of Managers and Officers. The Co-Owners shall indemnify any person, his heirs, assigns and legal representatives, made or threatened to be made a party to any action, suit or proceeding by reason of the fact that he is or was a Manager or officer of the Association, against the reasonable expenses, including attorneys' fees, actually and necessarily incurred by him in connection with the defense of such actual or threatened action, suit or proceeding, or in connection with any appeal therein, except as otherwise specifically provided herein in relation to matters as to which it shall be adjudged in such action, suit or proceeding that such Manager or officer is liable for gross negligence or misconduct in the performance of his duties. The Co-Owners shall also reimburse to any such Manager or officer the reasonable costs of settlement of or judgment rendered in any actual or threatened action, suit or proceeding, if such Manager or officer was not guilty of gross negligence or misconduct. In making such findings and notwithstanding the adjudication in any action, suit or proceeding against a Manager or officer, no Manager or officer shall be considered or deemed to be guilty of or liable for negligence or misconduct in the performance of his duties where, acting in good faith, such Manager or officer relied on the books and records of the Association or statements or advice made by or prepared by the Managing Agent of The Timbers Hor any officer or employee thereof, or any accountant, attorney or other Person employed by the Association to render advice or service unless such Manager or officer had actual knowledge of the falsity or incorrectness thereof; nor shall a Manager or officer be deemed guilty of or liable for negligence or misconduct by virtue

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of the fact that he failed or neglected to attend a meeting or meetings of the Board of Managers. Any indemnification authorized in these By-Laws shall be made by the Association only as authorized in the specific case upon a determination that indemnification of the Manager or officer is proper in the circumstances because he has met the applicable standard of conduct set forth herein. Such determination shall be made by (1) by the Board of Managers by a majority vote of a quorum consisting of Managers who were not parties to such actual or threatened action, suit or proceeding, or (2) if such a quorum is not obtainable, or, even if obtainable, a quorum of disinterested Managers so directs, by independent legal counsel in a written opinion, or (3) by a Majority of the Co-Owners.

IN WITNESS WHEREOF, this First Amendment has been executed for and on behalf of The Timbers II Homeowners Association by its duly authorized President and Secretary.

THE TIMBERS II HOMEOWNERS ASSOCIATION

By George P. Sweet, Preside

William H. Merrill Ir. Secretary

COUNTY OF Hamilton) SS:

Before me, a Notary Public in and for said County and State, personally appeared George P. Sweet and William H Merrill, Jr., known to me to be the President and Secretary, respectively, of The Timbers II Homeowners Association, who acknowledged the execution of the foregoing First Amendment for and on behalf of said association.

WITNESS my hand and Notarial Scal this day of

1975.

ARTHUR RENRY PAREOP

My commission expires:

My Commission Express Jan. 12, 1977

This instrument prepared by Tom Charles Huston, Attorney at law 1313 Merchants Bank Building, Indianapolis, Indiana 46204

AMENDMENTS TO THE DECLARATION OF COVENANTS AND RESTRICTIONS--THE TIMBERS RESIDENTIAL COMMUNITY

These Amendments to the Declaration of Covenants and Restrictions--The Timbers Residential Community were executed the You day of Marcy , 1995.

WITNESSETH THAT:

WHEREAS, the original developer of The 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. 71-16962 (hereafter, the "Overall Declaration"), which contemplated and provided for the formation of several horizontal property regimes and other subdivisions; and

WHEREAS, the Overall Declaration provided for a not-forprofit corporation known as The Timbers, Inc. (now known as The Timbers of Indianapolis, Inc.) which was created upon the filing of Articles of Incorporation with the Indiana Secretary of State on January 31, 1974 (hereafter, "Corporation"); and

WHEREAS, by the terms of the Overall Declaration, the Corporation owns certain property, including but not limited to The Timbers clubhouse and other real and personal property; and

WHEREAS, pursuant to terms of the Overall Declaration, the "Declaration of Horizontal Property Ownership--The Timbers I Horizontal Property Regime" was recorded in the Office of the Recorder of Marion County, Indiana, on March 26, 1974, as Instrument No. 74-16967 which established the Timbers I horizontal property regime consisting of thirty-eight (38) homes (hereafter, "Timbers I"); and

WHEREAS, pursuant to terms of the Overall Declaration, the "Declaration of Horizontal Property Ownership - The Timbers II Horizontal Property Regime" was recorded in the Office of the Recorder of Marion County, Indiana, on August 30, 1974, as Instrument No. 74-55200 which established the Timbers II horizontal property regime consisting of forty-five (45) homes (hereafter, "Timbers II"); and

WHEREAS, pursuant to terms of the Overall Declaration, the "Declaration of Horizontal Property Ownership--The Timbers III Horizontal Property Regime" was recorded in the Office of the Recorder of Marion County, Indiana, on August 15, 1975, as Instrument No. 75-43967 which established the Timbers III horizontal property regime consisting of thirty-five (35) homes (hereafter, "Timbers III"); and

WHEREAS, pursuant to the terms of the Overall Declaration, the "Supplementary Declaration of Covenants and Restrictions--The

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Timbers - Section 4" was recorded in the Office of the Resorder of Marion County, Indiana on September 30, 1977, as Instrument No. 77-64851 which established The Timbers - Section 4 planned unit development consisting of twenty-nine (29) Lots and the Community Area as described and set forth in said (hereafter, "Timbers Section 4") was originally created and formed pursuant to a certain (hereafter, "Section 4 Declaration"); and

WHEREAS, by the terms of the Overall Declaration, all Owners of homes in Timbers I, II, III, and Section 4 are mandatory members of the Corporation and must pay lien-supported assessments to the Corporation for expenses pertaining to the clubhouse and other property owned by the Corporation; and

WHEREAS. 1. >> ; I, Timbers II, Timbers III and Timbers Section 4 are part >f a community known as The Timbers; and

WHEREAS, a "Supplementary Declaration of Covenants and Rescrictions - The Timbers - Section 5" recorded with the Marion County Recorded on May 11, 1982 as Instrument No. 82-24076 established The Timbers - Section 5 planned unit development consisting of ten (10) omes at present (hereafter, "Section 5"); however, the owners of homes within Section 5 have their own homeowners resociation which governs them such that although Section 5 is commonly thought of as being part of The Timbers community, Section 5 is an autor mous property and is completely separate in function from Timbers I, II, III, and Section 4; and

WHEREAS, the Owners of homes within Yimbers I, II, III, and Section 4 desire to amend certain provisions of the Overall Declaration; and

WHENEAS, Paragraph 13 of the Overall Declaration states that it may be amended at any time by an instrument signed by at least seventy-five percent (75%) of the Owners; and

WHEREAS, after notice was duly given, a Special Meeting of all Owners of homes in Timbers I, Timbers II, Timbers III, and Section 4 was held on the 3rd day of November, 1994, for the purpose of considering and discussing these Amendments; and

WHEREAS, after said Special Meeting, the undersigned Owners, representing more than seventy-five percent (75%) of the homes in Timber I, Timbers II, Timbers III, and Section 4, executed this document to approve the Amendments set forth herein; and

WHEREAS, the provisions below were approved contemporaneously with the Amended & Restated Articles of Incorporation for The Timbers of Indianapolis, Inc., the Amended & Restated Code of By-Laws for The Timbers of India.appolis, Inc., the Amended, Restated & Constituted Code of By-Laws of The Timbers I, II, and III, the 1 lentical and Contemporateous

Amendments to the Declarations of Horizontal Property Ownership for The Timbers I, II, and III Horizontal Property Regimes, and the Amendments to the Supplementary Declaration of Cover Amba and Restrictions for The Timbers-Section 4.

NOW, THEREFORE, the Declaration of Covenants and Restrictions for The Timbers Residential Community (the Overall Declaration) is amended as follows:

- 1. Paragraph 1(a) of the Declaration is hereby deleted in its entirety and replaced with the following:
 - (a) "Apartment" or "Condominium Apartment" means a Living Unit in either Timbers I, Timbers II, or Timbers III horizontal property regimes.
- 2. Paragraph 1(d) of the Declaration is hereby deleted in its entirety and replaced with the following:
 - (d) "Assessments" means and includes all sums lawfully assessed against the Members of the Corporation or as declared by this Declaration, any Supplementary Declaration, the Articles, the By-Laws, or the Consolidated By-Laws.
- 3. Paragraph 1(h) of the Declaration is hereby deleted in its entirety and replaced with the following:
 - (h) "Corporation" means The Timbers of Indianapolis, Inc., an Indiana nonprofit corporation.
- 4. Paragraph 1(1) of the Declaration is hereby deleted in its entirety and replaced with the following:
 - (1) "Horizontal Property Regime" means a the Timbers I, Timbers II, and Timbers III horizontal property regime established in the Tract.
- 5. Paragraph 1(o) of the Declaration is hereby deleted in its entirety and replaced with the following:
 - (o) "Member" means any Owner of a Condominium Apartment in Timbers I, Timbers II, or Timbers III, and any Owner of a Lot in Timbers Section 4, all of whom are members of the Corporation.
- 6. Paragraph 1(y) of the Declaration is hereby deleted in its entirety and replaced with the following:
 - (y) "Supplementary Declaration" means the Declarations of Horizontal Property Ownership for Timbers I, Timbers II, and Timbers III, and the Supplementary Declaration

of Covenants and Restrictions for Timbers - Section 4, which extend the provisions of this Declaration to a Parcel and contain such complementary provisions for such Parcel as are required by this Declaration.

7. There shall be added new subparagraphs 1(bb) through 1(ff) to the Declaration as follows:

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(bb) "Timbers I" Leans the horizontal property regime established pursuant to the Indiana Horizontal Property Act and a certain "Declaration of Horizontal Property Ownership--The Timbers I Horizontal Property Regime" recorded in the Office of the Recorder of Marion County, Indiana, on March 26, 1974, as Instrument No. 74-16967, consisting of thirty-eight (38) Condominium Apartments and the Common Areas applicable thereto.

(cc) "Timbers II" means the horizontal property regime established pursuant to the Indiana Horizontal Property Act and a certain "Declaration of Horizontal Property Ownership--The Timbers II Horizontal Property Regime" recorded in the Office of the Recorder of Marion County, Indiana, on August 30, 1974, as Instrument No. 74-55300, consisting of forty-five (45) Condominium Apartments and the Common Areas applicable thereto.

(dd) "Timbers III" means the horizontal property regime established pursuant to the Indiana Horizontal Property Act and a certain "Declaration of Horizontal Property Ownership--The Timbers III Horizontal Property Regime" recorded in the Office of the Recorder of Marion County, Indiana, on August 15, 1975, as Instrument No. 75-43967, consisting of thirty-five (35) Condominium Apartments and the Common Areas applicable thereto.

(ee) "Timbers - Section 4" means the planned unit development established pursuant to a certain "Supplementary Declaration of Covenants and Restrictions--The Timbers--Section 4" recorded in the Office of the Recorder of Marion County, Indiana on September 30, 1977, as Instrument No. 77-64851, consisting of twenty-nine (29) Lots and the Common Areas applicable thereto.

(ff) "Consolidated By-Laws" means the Amended, Restated and Consolidated Code of By-Laws of Timbers I, Timbers II, and Timbers III Horizontal Property Regimes.

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- 8. Paragraph 4(b) of the Declaration is hereby deleted in its entirety and replaced with the following:
 - (b) Powers. The Corporation shall have such powers as are set forth in this Declaration, the Corporation's Articles, the Corporation's By-Laws, the Consolidated By-Laws, and the applicable provision of the Timbers Section 4 Declaration.
- 9. Paragraph 4(c) of the Declaration is hereby deleted in its entirety and replaced with the following:
 - (c) Classes of Membership. The Corporation shall have one class of membership, of which all Members shall be a part.
- 10. Paragraph 5 of the Declaration is hereby deleted in its entirety and replaced with the following:

5. Assessments.

- (a) Creation of the Lien and Personal Obligation for Assessments. Each Owner of any Condominium Apartment within Timbers I, Timbers II, or Timbers III, or any Section 4 Lot, by acceptance of a deed therefor, whether or not it shall be expressed in such deed, is deemed to covenant and agree to pay to the Corporation: (1) General Assessments; (2) Extraordinary Assessments; and (3) annual or special Parcel Assessments, such Assessments to be established and collected as hereinafter provided. All Assessments, together with late fees, costs, reasonable attorney's, fees, and any other obligation which may be charged to an Owner pursuant to this Declaration, the Consolidated By-Laws or the Declaration for Timbers Section 4, shall be a charge on the applicable Condominium Apartment and Section 4 Lot, and shall be a continuing lien upon the property against which each such assessment or charge is made. Each such assessment or charge, together with late fees, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due.
- (b) <u>Proposed Annual Rudget</u>. The General Assessments levied by the Corporation shall used exclusively to promote the recreation, health, safety, and welfare of the residents of The Timbers Residential Community and, in particular, for the improvement, maintenance and operation of the Community Area including, but not limited to, The Timbers clubhouse and Wilderness Trail. Annually, on or before the date

of the annual meeting of the Corporation in April of each year, the Corporation's Board of Directors shall cause to be prepared a proposed annual budget for the current fiscal year, estimating the total amount of the Common Expenses for the ensuing year which shall form the basis for the General Assessments and furnish a copy of such proposed budget to each Owner prior to the annual meeting together with the notice of said meeting. If the proposed annual budget is equal to or less than one hundred ten percent (110%) of the previous year's annual budget, the Board of Directors shall have the full right, power and authority to adopt such budget without the approval of the Owners. However, if the proposed annual budget exceeds one hundred ten percent (110%) of the previous year's annual budget, such budget must be submitted to the Owners at the annual meeting for approval. In such case, the annual budget shall be submitted to the Owners for adoption and, if so adopted, shall be the basis for the General Assessment (hereinafter defined) for the current fiscal year. At the annual meeting, the proposed annual budget for the Corporation which would exceed one hundred ten percent (110%) of the previous year's annual budget may be approved in whole or in part or may be amended in whole or in part by a Majority of the Vote (which shall mean a majority of the votes of the Owners present or represented at such meeting at which a quorum is present); provided, however, that in no event shall the annual meeting of the Owners be adjourned until an annual budget is approved at such meeting for the Corporation, 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 Owners shall continue to pay the then existing monthly assessment until such new annual budget and monthly assessment is established.

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The annual budget and the General Assessments shall provide for the establishment and maintenance of an adequate replacement reserve fund for capital expenditures and replacement and major repair of the Community Area, including but not limited to The Timbers clubhouse and Wilderness Trail, which replacement fund shall be used only for those purposes and not for usual and ordinary repair expenses. In determining the amount for replacement reserves, the Board of Directors shall consider the expected useful

life of such components of the Community Area, projected increases in the cost of materials and labor, interest to be earned by such funds, and the advise of any consultants the Board may employ for such purpose. Such fund shall be conclusively deemed to be a Common Expense of the Corporation. The Board of Directors shall annually review the adequacy of any reserve fund. The proportionate interest of any Owner in any reserve for replacements shall be considered an appurtenance of his Condominium Apartment or Section 4 Lot, and shall not be separately withdrawn, assigned or transferred or otherwise separated from the Condominium Apartment or Section 4 Lot to which it appertains and shall be deemed to be transferred with such Condominium Apartment or Section 4 Lot. Such replacement reserve fund for capital expenditures and replacement and repair of the Community Area shall be maintained by the Corporation in a separate interest bearing account or accounts with one or more banks or savings and loan associations authorized to conduct business in Marion Councy, Indiana, or deposited in a special account with a lending institution the accounts of which are insured by an agency of the United States of America or may, in the discretion of the Board, be invested in obligations of or fully guaranteed as to principal by, the United States of America.

General Assessments. Promptly following the adoption of the annual budget as described in subparagraph (b) above, the Board of Directors shall give written notice of the assessment against each respective Condominium Apartment and Section 4 Lot (herein called the "General Assessment"). Condominium Apartment and Section 4 Lot shall be assessed at a uniform race. The General Assessment against each Condominium Apartment and Section 4 Lot shall be assessed on a quarterly basis beginning on May 1st of each year following the annual meeting and shall be due and payable in equal monthly installments, in advance, on the first day of each month. Payment of the monthly installments of the General Assessment shall be made to the Corporation's Board of Directors or the Managing Agent, or otherwise, as directed by the Board of Directors. The General Assessment shall automatically become a lich on that Condominium Apartment and Section 4 Lot on the date it is due and payable. The Secretary of the Corporation shall, upon due request and for a reasonable charge, cause to be furnished a certificate setting forth whether the General, Extraordinary Assessments, and Parcel Assessments on a designated Condominium Apartment or Section 4 Lot have been paid, or the amount of any

unpaid and delinquent General, Extraordinary or Parcel Assessments.

- (d) Ext: ordinary Assessments. From time to time, Common Lipenses of an unusual or extraordinary nature or otherwise not anticipated may arise pertaining to the Community Area. At such time and without the approval of the Owners, the Corporation's Board of Directors shall have the full right, power and authority to annually levy and impose extraordinary assessments (applicable only to the assessment year in which made) not in excess of ten percent (10%) of the total General Assessments applicable for such time period which, upon resolution of the Board, shall become a lien on each Condominium Apartment and Section 4 Lot at a uniform rate (herein called "Extraordinary Assessment"). Any Extraordinary Assessment exceeding this amount must be first approved by a Majority of the Vote (as that phrase is defined in subparagraph 5(c) above) by the Owners at a special meeting called for such purpose.
- (e) Parcel Aggessments. Parcel Assessments (whether Regular Assessments or Special Assessments applicable to either Timbers I, II, III, or Section 4) shall be used for such purposes as are authorized by, and calculated pursuant to, the Consolidated By-Laws for Timbers I, II, and III, and by the applicable provisions of the Declaration for Timbers Section 4 (hereafter, "Parcel Assessments). Reference is specifically made to the Consolidated By-Laws and the Declaration for Timbers Section 4 for all matters pertaining to such Parcel Assessments, and such provisions are incorporated herein.
- (f) Failure of Owner to Pay Assessments. No Owner may exempt himself or herself from paying General, Extraordinary, or Parcel Assessments, or from contributing toward the expenses of administration and of maintenance and repair of the Community Area and toward any other expense lawfully agreed upon, by waiver of the use or enjoyment of the Community Area, or by abandonment of the Condominium Apartment or Section 4 Lot belonging to such Owner. Each Owner shall be personally liable for the payment of all General, Extraordinary, and Parcel 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 General, Extraordinary, or Parcel Assessmente when due, the lich for such assessment on the Owner's Condominium Apartment or Section 4 Lot 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 General, Extraordinary, or Parcel Assessments within fifteen (15) 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 to be determined by the Board of up to twenty-five percent (25%) of the amount 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, and (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 Condominium Apartment shall be jointly and severally liable for the payment to the Corporation of reasonable rental for such Condominium Apartment or Section 4 Lot, and the Board shall be entitled to the appointment of a receiver for the purpose of preserving the Condominium Apartment or Section 4 Lot and '? collect the rentals and other profits therefrom for the benefit of the Corporation to be applied to the unpaid General, Extraordinary, and/or Parcel Assessments. The Board may, at its option, bring a suit to recover a money judgment for any unpaid General, Extraordinary, or Parcel Assessments without foreclosing or waiving the lien securing the same. In any action to recover a General, Extraordinary, or Parcel Assessment, whether by foreclosure or otherwise, the Foard, 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 Cwner of the respective Condominium Apartment or Section 4 Lot.

(g) Subordination of the Lien to Mortgages. 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. Notwithstanding anything contained in this section or elsewhere in the Supplementary Declarations, these By-Laws, or the Consolidated By-Laws, any sale or transfer of a Condominium Apartment or Section 4 Lot to a mortgagee pursuant to a foreclosure on its mortgage or conveyance in lieu thereof, or a conveyance to any person at a public sale in the manner provide by law with respect to mortgage foreclosures, shall extinguish the lien of any unpaid installment of any General, Extraordinary, or Parcel Assessment as to such installments which became due prior to such sale,

transfer or conveyance; provided, however, that the extinguishment of such lien shall not relieve the prior Owner from personal liability therefor. No such sale, transfer or conveyance shall relieve the Condominium Apartment or Section 4 Lot or the purchaser at such foreclosure sale, or grantee in the event of conveyance in lieu thereof, from liability for any installments of Regular or Extraordinary Assessments thereafter becoming due or from the lien therefor. Such unpaid share of any General or Extraordinary Assessments, the lien for which has been divested as aforesaid, shall be deemed to be a Common Expense collectible from all Owners (including the party acquiring the subject Condominium Apartment of Section 4 Lot from which it arose).

- (h) Exempt Property. The following property subject to this Declaration shall be exempted from the Assessments, charge and lien created herein: (1) all properties to the extent of any easement or other interest therein dedicated and accepted by the local public authority and devoted to public use; (2) the Community Area; (3) all properties exempted from taxation by state or local governments upon the terms and to the extent of such legal exemption. Notwithstanding any provision herein, no land or improvement devoted to dwelling use, including the Condominium Apartments and Section 4 Lots, shall be exempt from said Assessments, charges or liens.
- 11. Paragraph 6(a) of the Declaration is hereby deleted in its entirety and replaced with the following:
 - (a) The Architectural Review Board. An Architectural Review Board consisting of three (3) or more Owners of Condominium Apartments or Section 4 Lots shall be appointed by the Board of Directors.
- 12. Paragraph 7(a) of the Declaration is hereby deleted in its entirety and replaced with the following:
 - (a) Ownership. The Community Area shall remain private, and neither the Declarant's or Corporation's execution or recording of an instrument portraying the Community Area, nor the doing of any other act by Declarant or the Corporation is, or is intended to be, or shall be construed as, a dedication to the public of such Community Area; provided that the Corporation may dedicate or transfer all or any part of the Community Area to any public agency, authority or utility for use as roads, utilities, parks or other public purposes. The Community Area is not a part of or including in any

Parcel and is not to be made a part of any Parcel. Ownership of the Community Area shall be retained by the Corporation.

- 13. Paragraph 7(e)(iii) of the Declaration is hereby amended by deleting the reference to Class C and Class A Members, replacing the same with "Members". All other provisions of Paragraph 7(e)(iii) shall be unchanged and shall remain in full force and effect.
- 14. Since the Corporation already acquired legal title to the Community Area from the Declarant, Paragraph 7(i) of the Declaration is hereby deleted in its entirety and shall be left intentionally blank.
- 15. Since the Declarant's construction of homes ceases several years ago, Paragraph 9 of the Declaration is hereby deleted in its entirety and shall be left intentionally blank.
- 16. There shall be added a new paragraph to the end of Paragraph 10 of the Declaration which shall provide as follows:

In any proceeding arising because of the failure of an Owner to make any payments required or to comply with any provision of the Declaration, the Supplementary Declarations, the Indiana Nonprofit Corporations Act of 1991, the Indiana Horizontal Property Act (if applicable), these By-Laws, the Consolidated By-Laws, or the rules and regulations adopted pursuant to any of the above, as each may be amended from time to time, the Corporation shall be entitled to recover its reasonable attorneys fees incurred in connection with such default or failure.

All other provisions of Paragraph 10 shall be unchanged and shall remain in full force and effect.

- 17. Since there is now only class of membership, and since the Declarant's interests have ceased, Paragraphs 11 and 12 of the Declaration are hereby deleted in their entirety and shall be left intentionally blank.
- 18. Paragraph 13 of the Declaration is hereby deleted in its entirety and replaced with the following:
 - 13 Amendment. This Declaration may be amended at any time by a vote of at least two-thirds (2/3) of the one hundred forty-seven (147) Condominium Apartments and Section 4 Lots in a duly constituted recting called for such purpose, except as prohibited by any provision of the Supplementary Declarations, the Indiana Horizontal Property Act (if applicable), or

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this Declaration, as the same may be amended from time

- 19. <u>Definitions</u>. The definitions of terms defined in the Declaration, as used herein shall be applicable to these Amendments to this Declaration, unless otherwise expressly defined herein.
- 20. Acceptance and Ratification. The acceptance of a deed of conveyance or the act of occupancy of any Condominium Apartment in Timbers I, II, or III, or any Section 4 Lot, shall constitute a ratification of this Amendments, together with the Declaration (including all amendments and supplements thereto), the Corporation's By-Laws, the Corporation's Articles of Incorporation, and any Rules or Regulations adopted pursuant thereto, together with any amendments to any of the foregoing, and all such provisions shall be covenants running with the land and shall bind any person having at any time any interest or estate in such a Condominium Apartment or Section 4 Lot or the Property as if such provisions were recited and stipulated at length in each and every deed, conveyance, mortgage or lease.

IN WITNESS WHEREOF, we, the undersigned Owners of homes within The Timbers I, II, III, and Section 4, do hereby execute these Amendments to the Declaration of Covenants and Restrictions—The Timbers Residential Community, this 9m day of MARCA, 1995.

timberoy dec December 13, 1998 This instrument prepared by, and should be returned to, P.V.Thomas Hurray, Jr., Attorney at Law, P.O. Box 501040, Indianapolis, IN 46250./9 (317) 842-8550.



AMENDED, RESTATED AND CONSOLIDATED CODE OF BY-LAMS OF THE TIMBERS I HORIZONTAL PROPERTY REGIME, THE TIMBERS II HORIZONTAL PROPERTY REGIME, and THE TIMBERS III HORIZONTAL PROPERTY REGIME

This Amended, Restated and Consolidated Code of By-Laws of THE TIMBERS I HORIZONTAL PROPERTY REGIME, THE TIMBERS II HORIZONTAL PROPERTY REGIME, and THE TIMBERS III HORIZONTAL PROPERTY REGIME was made as of the 9th day of MARCO 1995

WITNESSETH THAT:

WHEREAS, The Timbers I Horizonal Property Regime located in Marion County, Indiana (hereafter, "Timbers I") was originally created and formed pursuant to the Indiana Horizontal Property Act and a certain "Declaration of Horizontal Property Ownership" recorded in the Office of the Recorder of Marion County, Indiana, on March 26, 1974, as Instrument No. 74-16967 (hereafter, "Timbers I Declaration" or "Declaration for Timbers I"), to which were attached as an exhibit the Code of By-Laws of The Timbers I Horizontal Property Regime (hereafter, "Original By-Laws of Timbers I"), said By-Laws being recorded on the same date and under the same Instrument No. 74-16967, all as the same may have been amended from time to time; and

WHEREAS, The Timbers II Horizonal Property Regime located in Marion County, Indiana (hereafter, "Timbers II") was originally created and formed pursuant to the Indiana Horizontal Property Act and a certain "Declaration of Horizontal Property Ownership" recorded in the Office of the Recorder of Marion County, Indiana, on August 30, 1974, as Instrument No. 74-55300 (hereafter, "Timbers II Declaration" or "Declaration for Timbers II"), to which were attached as an exhibit the Code of By-Laws of The Timbers II Horizontal Property Regime (hereafter, "Original By" Laws of Timbers II"), said By-Laws being recorded on the same date and under the same Instrument No. 74-55300, all as the same may have been amended from time to time; and

WHEREAS, The Timbers III Horizonal Property Regime located in Marion County, Indiana (hereafter, "Timbers III") was originally created and formed pursuant to the Indiana Horizontal Property Act and a certain "Declaration of Horizontal Property Ownership" recorded in the Office of the Recorder of Marion County, Indiana, on August 15, 1975, as Instrument No. 75-41967 (hereafter, "Timbers III Declaration" or "Declaration for Timbers III"), to which were attached as an exhibit the Code of By-Laws of The Timbers III Horizontal Property Regime (hereafter, "Original By-Laws of Timbers III"), said By-Laws being recorded on the same date and under the same Instrument No. 75-43967, all as the same may have been amended from time to time; and

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WHEREAS, Timbers I consists of thirty-eight (38) Condominium Apartments and the Common Areas and Facilities as described and set forth in the Timbers I Declaration; and

WHEREAS, Timbers II consists of forty-five (45) Condominium Apartments and the Common Areas and Facilities as described and set forth in the Timbers II Declaration; and

WHEREAS, Timbers III consists of thirty-five (35) Condominium Apartments and the Common Areas and Facilities as described and set forth in the Timbers III Declaration; and

WHEREAS, pursuant to the Indiana Horizontal Property Act, Ind. Code Sec. 32-1-6-8, the associations of co-owners for the Timbers I, II and III were established as unincorporated associations; and

WHEREAS, the original developer of The 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, which contemplation was partially realized by the creation of The Timbers I, II, and III horizontal property regimes; and

WHEREAS, the Overall Declaration provided for a not-forprofit corporation known as The Timbers, Inc. (now known as The Timbers of Indianapolis, Inc.) which was created upon the filing of Articles of Incorporation with the Indiana Secretary of State on January 31, 1974 (hereafter, "Corporation"); and

WHEREAS, by the terms of the Overall Declaration, the Corporation owns certain property, including but not limited to The Timbers clubhouse and other real and personal property; and

WHEREAS, by the terms of the Overall Declaration, all Owners of Condominium Apartments in Timbers I, II, and III are mandatory members of the Corporation and must pay lien-supported assessments to the Corporation for expenses pertaining to the clubhouse and other property owned by the Corporation; and

WHEREAS, by the terms of the Overall Declaration, the "Supplementary Declaration of Covenants and Restrictions - The Timbers - Section 4" recorded with the Marion County Recorder on September 30, 1977 as Instrument No. 77-64851 which established The Timbers - Section 4 planned unit development consisting of twenty-nine (29) homes (hereafter, "Section 4"), all owners of themes within Section 4 are also mandatory members of the Corporation and must pay lien-supported assessments to the

Corporation to the same extent as Owners of Condominium Apartments in Timbers I, II, and III; and

WHEREAS, Timbers I, Timbers II, Timbers III, and Section 4 are part of a community known as The Timbers; and

MHEREAS, a "Supplementary Declaration of Covenants and Restrictions - The Timbers - Section 5" recorded with the Marion County Recorder on May 11, 1982 as Instrument Mo. 82-24175 established The Timbers - Section 5 planned unit development consisting of ten (10) homes at present (hereafter, "Section 5"); however, the owners of homes within Section 5 have their own howevers association which governs them such that although homeowners association which governs them such that although Section 5 is commonly thought of as being part of The Timbers community, Section 5 is an autonomous property and is completely separate in function from Timbers I, II, III, and Section 4; and

WHEREAS, since The Timbers I, II and III are so similar, are adjoining properties, and are horizontal property regimes governed by Indiana's Horizontal Property Act, the Owners of the Condominium Apartments within The Timbers I, II, and III desire to adopt this single Code of By-Laws which will govern each of the three (3) regimes; and

WHEREAS, said Owners further desire to amend certain provisions of their respective By-Laws and to transfer to The Timbers of Indianapolis, Inc. the obligations for maintenance, repairs, and replacements of the Condominium Apartments and the Common Areas and Facilities within their respective regimes rather than having the three (3) separate, unincorporated associations of co-owners perform such functions; and

WHEREAS, the Owners further desire that the Board of Directors of The Timbers of Indianapolis, Inc. shall be composed of members elected in the manner set forth below such that The Timbers of Indianapolis, Inc. Foard of Directors shall be responsible for the matters which were originally assigned separately to the Boards of Managers for each of the three (3) regimes; and

WHEREAS, Section 5.06 of each of the original By-Laws for Timbers I, II and III empower the Board of Managers for each of the three (3) regimes to delegate their duties to a Managing Agent; and

WHEREAS, the same Section 5.06 stated that The Timbers of Indianapolis, Inc. could serve as such Managing Agent; and

WHEREAS, Section 13.01 of the original Codes of By-Laws for Timbers I, II, and III enables said Codes of By-Laws to be amended by a vote of not less than seventy-five percent (75%) of

the Percentage Vote of the Co-Owners within each respective regime in a duly constituted meeting called for such purpose; and

WHEREAS, the Co-Cwners within The Timbers I, II, and III horizontal property regimes desire to adopt certain amendments to their respective Codes of By-Laws as set forth herein and to incorporate such amendments into an Amended, Restated and Consolidated Code of By-Laws which will collectively govern all Co-Owners of Condominium Apartments within The Timbers I, II, and III; and

WHEREAS, after notice As duly given pursuant to the original By-Laws of each of the three (3) regimes, a Special Meeting of all Co-Owners was held on the 3rd day of November, 1994, for the purpose of considering and adopting this Amended, Restated, and Consolidated Code of By-Laws; and

WHEREAS, at said Special Meeting, the Owners holding more than seventy-five percent (75%) of the Percentage Vote of the Co-Owners within The Timbers I horizontal property regime voted to approve this Amended, Restated, and Consolidated Code of By-Laws to replace their original By-Laws; and

WHEREAS, at said Special Meeting, the Owners holding more than seventy-five percent (75%) of the Percentage Vote of the Co-Owners within The Timbers II horizontal property regime voted to approve this Amended, Restated, and Consolidated Code of By-Laws to replace their original By-Laws; and

WHEREAS, at said Special Meeting, the Owners holding more than seventy-five percent (75%) of the Percentage Vote of the Co-Owners within The Timbers III horizontal property regime voted to approva this Amended, Restated, and Consolidated Code of By-Laws to replace their original By-Laws; and

WHEREAS, the provisions below were approved contemporaneously with the Amended & Restated Articles of Incorporation for The Timbers of Indianapolis, Inc., the Amended & Restated Code of By-Laws for The Timbers of Indianapolis, Inc., Amendments to the Declarations for Timbers I, II, and III, and the Amendments to the Declaration for Section 4.

NOW, THEREFORE, the original By-Laws for Timbers I, II, and III are amended, restated and consolidated as follows:

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AMENDED, RESTATED, AND CONSOLIDATED CODE OF BY-LAWS OF THE TIMBERS I HORIZONTAL PROPERTY REGIME, THE TIMBERS II HORIZONTAL PROPERTY REGIME, and THE TIMBERS III HORIZONTAL PROPERTY REGIME

ARTICLE I

IDENTIFICATION & APPLICABILITY

Section 1.1. Identification and Adoption. The provisions of these By-Laws shall apply to the Timbers I, II, and III horizontal property regimes and the administration and conduct of the affairs of the unincorporated associations of Co-Owners which are described in Paragraph 11 of each of the Declarations for Timbers I, II, and III (hereafter individually referred to as the "Association" when in the context of being specific to either to Timbers I, II, or III, and collectively referred to as the "Associations".) These By-Laws shall also constitute the By-Laws of the Associations.

Section 1.2. Individual Application. Each of the Owners within the Timbers I horizontal property regime, The Timbers II horizontal property regime, and The Timbers III horizontal property regime located in Marion County, Indiana shall automatically and mandatorily be Members in the respective Association applicable to such regime and be entitled to all of the privileges and subject to all of the obligations thereof. All Owners of property within the Timbers I horizontal property regime, by their acceptance of their respective deeds to their Condominium Apartments, covenant and agree to be bound by the conditions, restrictions, and obligations contained in the "Declaration of Horizontal Property Ownership, Timbers I Horizontal Property Regime", said Declaration being recorded in the Marion County Recorder's Office on the 26th day of March, 1974, as Instrument No. 74-16967 together with all amendments or supplements thereto, the rules and regulations of the Timbers I Association and of the provisions hereof. All Owners of property within the Timbers II horizontal property regime, by their acceptance of their respective deeds to their Condominium Apartments, covenant and agree to be bound by the conditions, restrictions, and obligations contained in the "Declaration of Horizontal Property Ownership, Timbers II Horizontal Property Regime", said Declaration being recorded in the Marion County Recorder's Office on the 30th day of August, 1974, as Instrument No. 74-55300 together with all amendments or supplements thereto, the rules and regulations of the Timbers II Association and of the provisions hereof. All Owners of property within the Timbers TII horizontal property regime, by their acceptance of their respective deeds to their Condominium Apartments, covenant and agree to be bound by the conditions, restrictions, and obligations contained in the "Declaration of Horizontal Property Ownership, Timbers III Horizontal Property Regime", said Declaration being recorded in the Marion County Recorder's Office

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> on the 15th day of August, 1975, as Instrument No. 75-43967 together with all amendments or supplements thereto, the rules and regulations of the Timbers III Association and of the provisions hereof. (Rereafter, the Declarations for the three (3) horizontal property regimes identified above shall be collectively referred to as the "HPR Declarations".) Furthermore, all Owners of Condominium Apartments within The Timbers I, II, and/or III, by their acceptance of their deeds to the same, covenant and agree to be bound by the conditions, the same, covenant and agree to be bound by the conditions, restrictions, and obligations contained in the "Declaration of Covenants and Restrictions for The Timbers Residential Community", said Declaration being recorded in the Marion County Recorder's Office on the 26th day of March, 1974, as Instrument No. 74-16962 together with all amendments or supplements thereto (heroafter, the "Overall Declaration"), the rules and regulations of The Timbers of Indianapolis, Inc. (hereafter, the "Corporation"), and the Articles of Incorporation and Code of By-Laws for the Corporation, all as the same may be amended. All of the Co-Owners, future Owners, tenants, future tenants, their guests and invitees, or any other person who might now or hereafter use or occupy a Condominium Apartment within The Timbers I, II, or III, or any part of the Common Areas and Pacilities of the same, shall be subject to the rules, restrictions, terms, and conditions set forth in the respective restriction for the applicable regime, these By-Laws, the Indiana Horizontal Property Act (hereafter, the "Act"), the Overall Declaration, the Corporation's Articles of Incorporation and By-Laws, and the Indiana Nonprofit Corporation Act of 1991, and By-Laws, and the Indiana Nonprofit Corporation Act of 1991, at as the same may be amended from time to time, and to any tules and regulations adopted by the Corporation's Board of Directors. The HPR Declarations are incorporated herein by reference. All of the covenants, rights, restrictions, and liabilities contained in the HPR Declarations shall apply to and govern the interpretation of this Code of By-Laws. The definitions and terms, as defined and used in the HPR Declarations, shall have the same meaning in this Code of By-Laws, and reference is specifically made to Paragraph 1 of each of the HPR Declarations containing definitions for terms, unless otherwise indicated herein. Further, the term "Condominium Apartment" shall have the same meaning as the term "Apartment" as used and defined in the HPR Declarations.

Section 1.3. Membership. Every person or entity who owns one or more Condominium Apartments within either Timbers I, Timbers II, or Timbers III, including contract sellers, shall automatically upon becoming an Owner of such a Condominium Apartment be and become a member of the Corporation (hereafter, "Member"); provided, however, that any such person or entity who holds such interest merely as security for the performance of an obligation shall not be a Member. The Corporation shall have one class of membership, of which all Members shall be a part. Further, all Members shall also be members of the unincorporated

association of Owners of Condominium Apartments within the particular regime in which the Condominium Apartment is located. For example, the Owner of a Condominium Apartment in Timbers II is a Member of the Corporation and a member of the unincorporated association of Owners of Timbers II.

ARTICLE II

MRETINGS OF CORPORATION

Section 2.1. Purpose of Meetings. At least annually, and at such other times as may be necessary or appropriate, a maxting of the Co-Owners shall be held for the purpose of electing the Corporation's Board of Directors in the manner described below, and for such other purposes as may be required by the HPR Declarations, these By-Laws, or the Act.

Section 2.2. Annual Meeting. In lieu of having three (3) separate meetings of the Co-Owners for each of the three (3) regimes, there shall be a single annual meeting for all Owners of Condominium Apartments within The Timbers I, II, and III. (This meeting will also coincide with the annual meeting of the Corporation and with the annual meeting of the owners of homes located in The Timbers - Section 4 planned unit development.) Such annual meeting shall be held in the month of April of each year with the specific date and time to be determined by the Board of Directors of the Corporation. At each annual meeting, the Co-Owners shall elect the Board of Directors of the Corporation in accordance with the provisions of these By-Laws and transact such other buriness as may properly come before the meeting. In lieu of an annual meeting, the Board of Directors may elect to utilize written ballots in the manner prescribed in the Indiana Nonprofit Corporations Act of 1991, as amended.

Section 2.1. Special Meetings Concerning Only Ont Regime.
A special meeting of the Co-Owners within either The Timbers I,
II, or III may be called: (1) by the Corporation's President; or
(2) by the Director elected by the Owners from the applicable
regime; or (3) by resolution of the Corporation's Board of
Directors; or (4) upon a written petition of the Owners of not
less than ten percent (10%) of the total Percentage Vote of the
Co-Owners within The Timbers I. II, or III. Thus, a Special
Meeting of the Co-Owners within only one (1) of the three (3)
regimes may be called for matters affecting that regime only.
The resolution or petition shall be presented to the President or
Secretary of the Corporation, or the Director elected by the
Owners from the applicable regime, 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.

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Section 2.4. Special Meetings Concerning All Three Regimes. A special meeting of all Co-Owners may be called: (1) by the Corporation's President; or (2) by resolution of the Corporation's Board of Directors; or (3) upon a written petition of the Owners of not less than ten percent (10%) of the total Percentage Vote attributable to all Co-Owners within The Timbers I, II, and III. Thus, a Special Meeting of the Co-Owners may be called for matters affecting all three (3) regimes. 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 2.5. Notice and Place of Meetings. All meetings of the Co-Owners shall be held at The Timbers clubhouse or at any suitable place in Marion or Johnson 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 Owner entitled to vote thereat not less than fourteen (14) days prior to the date of such meeting. Any written notice delivered to the Co-Owners as part of a newsletter or other publication regularly sent to the Co-Owners constitutes a written notice. If at any meeting an amendment to the Overall Declaration, the Corporation's Articles of Incorporation or By-Laws, any of the HPR Declarations, 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 Co-Owners at their respective addresses as the same shall appear upon the records of the Corporation. If an annual or special meeting of Co-Owners 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 Indiana Nonprofit Corporations Act of 1991 before adjournment.

Section 2.6. Voting.

(a) Number of Voten. To avoid fractional votes and to facilitate the orderly conduct of the meeting, each Owner shall be entitled to cast that number of votes on each matter coming before the meeting which is equal to the Percentage Vote to which the Owner is entitled. Such Percentage Vote is equal to the Percentage Interest applicable to the Owner's Condominium Apartment or Apartments as set forth in Exhibit "B" of each of the HPR Declarations. The total number of votes for all Co-Owners within a single regime will be one hundred percent (100%). The total number of votes for all three

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regimes will be three hundred percent (300%). The total number of votes for or against any matter shall then be divided by the total applicable Percentage Vote to determine the respective proportions of Owners supporting or opposing such matter, or by the number of votes of those Owners who are present or represented at such meeting, to determine the respective proportions of Owners present or represented at such meeting supporting or opposing such matter. In voting for directors, each Owner (or his or her representative) shall be entitled to cast such number of votes 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 Indiana Nonprofit Corporations Act of 1991, as amended, and except as otherwise provided in the HPR Declarations, the Articles of Incorporation of the Corporation, 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 Condominium Apartment, such persons or entities shall have only such number of votes applicable to the Condominium Apartment which is equal to the Percentage Vote applicable to the Owne.'s Condominium Apartment as set forth in Exhibit "B" to the applicable HPR Deslaration, which votes shall be exercised as they among themselves determine, but in no event shall more than such number of votes be cast with respect to any such Condominium Apartment. In the event agreement is not reached, the votes attributable to such Condominium Apartment shall not be cast.
- (c) Yoting 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
- (d) <u>Proxy</u>. An Owner may vote either in person or by his or her duly authorized and designated attorney-in-fact. Where toting 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. For meetings affecting all three regimes, except where otherwise expressly provided in the Indiana Porizontal Property Act, any of the HPR Declarations, or these By-Laws, the presence of Owners or their duly authorized representatives owning at least ten percent (10%) of the total Percentage Vote within each of the three regimes shall constitute a quorum at all such meetings. For meetings affecting only one of the regimes, except where otherwise expressly provided in the Indiana Horizontal Property Act, the applicable HPR Declaration, or these By-Laws, the presence of Owners or their duly authorized representatives owning at least ten percent (10%) of the total Percentage Vote within such regime shall constitute a quorum at all such 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, unless otherwise expressly indicated, more than fifty percent (50%) of the total Percentage Vote as determined by the applicable provisions set forth in the HPR Declarations, and the term "Majority of the Vote" shall mean a majority of the votes of the Owners present or represented at such meeting at which a quorum is present.

Section 2.7. 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 2.6(e) hereof.
- (2) Treasurer's Report. The Treasurer shall report to the Owners concerning the financial condition of the Corporation and answer relevant questions of the Owners concerning the Common Expenses and financial report for the prior year and the proposed budget for the current fiscal year.

- (3) <u>Budget</u>. The proposed budget for the current calendar year shall be presented to the Owners for approval or amendment, if necessary, as more fully described below.
- (4) Election of Board of Directors. Nominations for the Corporation's Board of Directors may be made by an Owner from those persons eligible to serve. Nominations shall also be made by the Nominating Committee which shall consist of a Chairman who shall be a Director, and two (2) or more Owners. The Nominating Committee shall be appointed by the Board of Directors at least three (3) months prior to each annual meeting. Such nominations (whether from an Owner or the Nominating Committee) must be in writing and presented to the Secretary of the Corporation at least thirty (30) days prior to the annual meeting. Nominations for the Board of Directors shall NOT be accepted from the Owners attending the annual meeting. Voting for the Board of Directors will be by paper ballet. Each Owner must sign his or her ballet. The ballot shall contain the name of each person nominated to serve as a Board member. Each Owner may cast the total number of votes to which he or she is entitled for as many nomineed as are to be elected from such Owner's regime (as described below in Article III, Sections 3.1 and 3.3); however, no Owner 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 2.5(e) hereof.
- (6) <u>Committee Reports</u>. Reports of committees designated to supervise and advise on the respective segments of maintenance and operations prescribed in the HPR Declarations 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 Owner, 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, if necessary.
- Section 2.8. Conduct of Special Meeting. The President of the Corporation shall act as Chairman of any special meetings of the Owners of Condominium Apartments from all three (3) regimes. For any special meetings of the Owners of Condominium Apartments from a single regime, the Director elected by the Owners from

that regime shall act as Chairman. 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 2.9. Written Ballots. In lieu of any annual or special meeting of the Co-Owners, written ballots may be utilized in the manner rescribed in the Indiana Nonprofit Corporation Act of 1991, as arended.

ARTICLE III

BOARD OF DIRECTORS

Section 3.1. Loard of Directors. Rather than having a separate Board of Managers for each of the three unincorporated Associations of Co-Owners in Timbers I, II, and III, the affairs of Timbers I, II, and III shall collectively be governed and managed by the Corporation's Board of Directors (herein sometimes collectively called "Board" and individually called "Directors"). The powers and duties which were originally assigned to the Board of Managers for each of the three unincorporated Associations pursuant to the provisions of the HPR Declarations and Codes of By-Laws for Timbers I, II, and III, are hereby delegated to, and accepted by, the Board of Directors of the Corporation.

The Board of Directors shall be composed of five (5) persons. Of these five (5), one Director shall be an Owner of a Condominium Apartment from Timbers I, one Director shall be an Owner of a Condominium Apartment from Timbers II, one Director shall be an Owner of a Condominium Apartment from Timbers III, one Director shall be an Owner of a Lot from the Section 4 planned unit development, and one Director shall serve "at large" (owning a home within Timbers I, II, or III or Section 4).

Section 3.2. Additional Oualifications. 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 Condominium Apartment may be represented on the Board of Directors by more than one person at a time.

Section 3.3. Term of Office and Vacancy. Members of the Board of Directors shall be elected at each annual meeting of Co-Owners. Except for the "at large" Director, each Director shall serve a term of two (2) years. The "at large" Director shall serve a term of one (1) year. In addition to the "at large" Director being elected annually, the terms of the remaining Directors shall be staggered such that two (2) Directors shall be elected at each annual meeting (not counting the "at large"

Director), with the two (2) other Pirectors serving until the next annual meeting. Any vacancy or vacancies occurring in the Board caused by a death, resignation, or otherwise other than a vacancy created by removal, shall be filled until the next annual meeting of the Co-Owners through a rote of a majority of the remaining Directors. At the first annual meeting of the Co-Owners following any such vacancy, a Director shall be elected by the applicable 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.

In electing Directors, each Owner shall be entitled to vote only for the Director who owns a Condominium Apartment within the Owner's regime, as well as the "at large" Director. For example, an Owner of a Condominium Apartment within Timbers I will only vote for the Timbers I Director and the "at large" Director.

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Section 3.4. 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 applicable 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 applicable Owners only at a meeting called for the purpose of removing the Diractor(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 3.5. Duties of the Board of Directors. Rather than having three separate Boards of Managers for the unincorporated Associations of Co-Owners within Timbers I, II, and III, the Corporation's 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 Limited Areas within each of the three regimes, 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 onsite 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 Common Areas of each of the three regimes;
- (c) Landscaping, painting, decorating, and furnishing of the Common Areas and Limited Areas in accordance with the HPR Declarations and the other provisions of these By-Laws;
- (d) Surfacing, paving, and maintaining streets, parking areas, and sidewalks;
- (e) Assessment and collection from the Owners of the Owners' pro-rate share of the Common Expenses;
- (f) Preparation of the proposed annual budget, a copy of which will be mailed, delivered, or made available to each Owner at the same time the notice of annual meeting is mailed or delivered;
- (g) Preparing annually a full accounting of all receipts and expenses incurred during each year, which accounting may be made available or delivered to each Owner simultaneously with delivery of the notice of the annual meeting of the Owners;
- (h) Keeping a current, accurate, and detailed record of receipts and expenditures affecting the three regimes, 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;
- (i) Procuring and maintaining in force all insurance coverage required by the HPR Declarations and the Indiana Horizontal Property Act, as amended;
- (j) Performing such other duties as may be reasonably inferred from the provisions of the HPR Declarations or the Indiana Horizontal Property Act.
- Section 3.6. Powers of the Board of Directors. The Corporation's 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 causa 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 Co-Owners such equipment, materials, labor, and services as may be necessary in the judgment of the Board of Directors;
- (c) To produce for the benefit of the Co-Owners fire and extended coverage insurance covering the buildings and improvements on the Property of each of the three regimes to the full insurable value thereof, to produce public liability and property damage insurance and Worker's Compensation Insurance, if necessary, and to produce all such other insurance as is required or permitted under the Declaration, the Indiana Nonprofit Corporations Act of 1991, or the Indiana Horizontal Property Act, all as amended, for the benefit of the Co-Owners and the Corporation;

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- (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 Areas and the Limited Areas within each of the three regimes;
- (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 Property within each regime provided that the Board shall give advance written notice to the Owners of such rules and any revision, amendment, or alteration thereof;

- (i) To purchase Condominium Apartments in the name of the Corporation on behalf of the Co-Owners at foreclosure or other judicial sales;
- (j) To grant or relocate easements.

Section 3.7. Limitations on Board Action. The authority of the Corporation's Board of Directors to enter into contract shall be limited to contracts involving a total expenditure of less than Ten Thousand Dollars (\$10,000.00), unless the prior approval of a Majority of Owners (as defined in Section 2.6(e) hereof) is obtained, except in the following cases:

- (a) Supervision and management of the replacement or restoration of any portion of the Common Areas or Limited Areas damaged or destroyed by fire or other casualty, where the cost thereof is payable out of insurance proceeds actually received or out of the reserve for replacements; and,
- (b) Proposed contracts and proposed expenditures expressly set forth in the proposed annual budget as presented to 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 Ten Thousand Dollar (\$10,000.00) maximum shall automatically be adjusted every five (5) years from the date of recording 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 3.8. 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 2.6(e) hereof. The Managing Agent, if any, shall be entitled to reasonable compensation for its services, the cost of which shall be a Common Expense.

Section 3.9. 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

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 Indiana Nonprofit Corporations Act of 1991, 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.

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Section 3.10. 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 any meeting of the Board, no notice shall be required and any business may be transacted at such meeting.

Section 3.11. Quorum. At all meetings of the Board, unless the Indiana Nonprofit Corporations Act of 1991 or these By-Laws provide otherwise, a majority of the Directors shall constitute a quorum for the transaction of business and the votes of the majority of the Directors present at a meeting at which a quorum is present shall be the decision of the Board.

Section 3.12. Bond. The Board of Directors may require the Managing Agent, Treasurer and such other officers as the Board deems necessary to provide surety bonds, indemnifying the Corporation against larceny, theft, embezzlement, forgery, misappropriation, wrongful abstraction, willful misapplication, and other acts of fraud or dishonesty, in such sums and with such sureties as may be approved by the Board of Directors and any such bond shall specifically include protection for any insurance proceeds received for any reason by the Board. The expense of any such bond shall be a Common Expense.

Section 3.13. Informal Action by Directors. Any action required or permitted to be taken at any meeting of the Board of Directors may be taken without a meeting, if prior to such action a written consent to such action is signed by all members of the

Board and such written consent is filed with the minutes of proceedings of the Board or committee.

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Section 3.14. Standards of Conduct and Liability of Directors and Officers. The standard and duty of conduct for and the standard or requirements for liability of the Directors and Officers of the Corporation shall be as set forth in the Indiana Nonprofit Corporations Act of 1991, as the same may be amended from time to time.

ARTICLE IV

OFFICERS

Section 4.1. Officers of the Corporation. The principal officers of the Corporation shall be the President, Vice-President, Secretary and Treasurer, all of whom shall be elected by the Board. The Directors may appoint an Assistant Treasurer and an Assistant Secretary and such other officers as in their judgment may be necessary. Any two or more offices may be held by the same person, except that the duties of the President and Secretary shall not be performed by the same person.

Section 4.2. Election of Officers. The officers of the Corporation shall be elected annually by the Board at the first meeting of the Board following each election thereof. Each officer thall hold office for one (1) year or until his successor shall have been duly elected and qualified, unless earlier removed by the Board of Directors. Upon recommendation of a majority of all members of the Board or upon an affirmative vote of a Majority of Owners (as defined in Section 2.6(e) hereof), any officer may be removed either with or without cause and his or her successor elected at any regular meeting of the Board or at any special meeting of the Board called for such purpose.

Section 4.3. The President. The President shall be elected from among the Directors and shall be the chief executive officer of the Corporation. The President shall preside at all meetings of the Corporation and of the Board, shall have and discharge all the general powers and duties usually vested in the office of the president or chief executive officer of a nonprofit corporation organized under the laws of Indiana, including, but not limited to, the power to appoint committees from among the Owners as he or she may deem necessary to assist in the affairs of the Corporation and to perform such other duties as the Board may from time to time prescribe.

Section 4.4. The Vice-President. The Vice-President shall be elected from among the Directors and shall perform all duties incumbent upon the President during the absence or disability of the President. The Vice-President shall also perform such other duties as these By-Laws may prescribe or as shall, from time to

time, be imposed upon him or her by the Board or by the President.

Section 4.5. The Secretary. The Secretary shall be elected from among the Owners or Directors. The Secretary shall attend all meetings of the Corporation and of the Board and shall keep or cause to be kept a true and complete record of proceedings of such meetings, shall authenticate the Corporation's records, shall perform all other duties incident to the office of the Secretary, and such other duties as from time to time may be prescribed by the Board. The Secretary shall specifically see that all notices of the Corporation or the Board are duly given, mailed or delivered, in accordance with the provisions of these By-Laws.

Section 4.6. The Treasurer. The Board shall elect from among the Owners or Directors a Treasurer who shall maintain a correct and complete record of account showing accurately at all times the financial condition of the Corporation and such other duties incident to the office of Treasurer. The Treasurer shall be legal custodian of all monies, notes, securities, and other valuables which may from time to time come into possession of the Corporation. He or she shall immediately deposit all funds of the Corporation coming into his or her hands in some reliable bank or other depository to be designated by the Board and shall keep such bank account in the name and for the exclusive benefit of the Corporation. The Treasurer may permit the Managing Agent, if any, to handle and account for monies and other assets of the Corporation to the extent appropriate as part of its duties.

Section 4.7. Assistant Officers. The Board of Directors may from time to time designate and elect from among the Owners an Assistant Secretary and Assistant Treasurer, who shall have such powers and duties as the Officers whom they are elected to assist shall delegate to them and such other powers and duties as these By-Laws or the Board of Directors may prescribe.

ARTICLE V

ADDITIONAL RIGHTS AND DUTIES OF BOARD

Saction 5.1. Right of Entry. An Owner or occupant of a Condominium Apartment shall be deemed to have granted the right of entry to his Cordominium Apartment to the Board, the Managing Agent, or any person authorized by the Board in case of any emergency, in order to remedy any circumstance threatening his or her Condominium Apartment, the building located therein, or any other property or person, whether the Owner is present at the time or not. Any Owner shall permit persons authorized by the Board to perform any work, when required, to enter his Condominium Apartment for the purpose of performing installations, alterations, or repairs to the mechanical or

electrical facilities or equipment, or to make structural repairs, provided that requests for entry are made in advance and that such entry is at a time convenient to the Owner. In case of emergencies, such right or entry shall be immediate.

Section 5.2. Right of Board to Adopt Rules and Regulations. The Board may promulgate such reasonable rules and regulations regarding the operation of Timbers I, II, and III as the Board may deem desirable, including but not limited to the use of the Common Areas, Limited Areas, and Condominium Apartments. Such rules as are adopted may be repealed or amended by a vote of a majority of the Board. The Board shall cause copies of all such rules and regulations, including any amendments or repeals thereof, to be delivered or mailed promptly to all Owners at least fifteen (15) days prior to the effective date thereof. Any rule or regulation promulgated by the Board shall be properly and consistently enforced by the Board.

ARTICLE VI

INDEMNIFICATION

Section 6.1. Indemnification of Directors. To the extent not inconsistent with the laws of the State of Indiana, every person (and the heirs and personal representatives of such person) who is or was a director of the Corporation shall be indemnified by the Corporation as provided in the Indiana Nonprofit Corporation Act of 1991, as it now exists or as hereinafter amended.

Section 6.2. Indemnification of Officers. To the extent not inconsistent with the laws of the State of Indiana, every person (and the heirs and personal representatives of such person) who is or was an officer of the Corporation shall be indemnified by the Corporation as provided in the Indiana Nonprofit Corporation Act of 1991, as it now exists or as hereinafter amended. In addition, every person (and the heirs and personal representatives of such person) who is or was an officer of the Corporation shall be indemnified by the Corporation to the same and fullest extent that directors are indemnified by the Corporation as provided for in the Indiana Nonprofit Corporation Act of 1991, as it now exists or is hereinafter amended.

ARTICLE VII

NOTICES AND MORTGAGES

Section 7.1. Notice to Corporation. Any Owner who places a first mortgage lien upon his or her Condominium Apartment or the Mortgagee thereof shall notify the Secretary of the Corporation and provide the name and address of the Mortgagee. A record of

such Mortgagee and name and address shall be maintained by the Recretary and any notice required to be given to the Mortgagee pursuant to the terms of the Declaration, these By-Laws, or the Indiana Horizontal Property Act shall be deamed effectively given if mailed to such Mortgagee at the address shown in such record in the time provided. Unless notification of any such mortgages and the name and address of the Mortgagee are furnished to the Secretary, either by Owner or by the Mortgagee, no notice to any Mortgagee as may be otherwise required by the Declaration or these By-Laws shall be required, and no Mortgagee shall be entitled to vote on any matter on which he otherwise may be entitled to vote by virtue of the Declaration or By-Laws or proxy granted to such Mortgagee in connection with the mortgage.

Section 7.2. Notice of Unpaid Assessments. Upon ten (10) days written notice to the Corporation and the payment of a reasonable fee, the Corporation shall deliver to any Owner, Mortgages, prospective Mcrtgages, title insurance company, purchaser or other prospective transferse of a Condominium Apartment, a written statument setting forth the amount of all unpaid assessments, if any, with respect to the subject Condominium Apartment, together with the amount of the current assessments for Common Expenses and the date(s) such assessments become due and payable. Any such written statement shall be binding upon the Corporation in favor of any person relying thereon in good faith, and any Mortgagee or grantee of the Condominium Apartment shall not be liable for nor shall the Condominium Apartment conveyed be subject to any lien for any unpaid assessments in excess of the amount set forth in such statement.

Section 7.3. Notice. Any notice required to be given to a Mortgagoe pursuant to the terms of the HPR Declarations or these By-Laws shall be given by certified mail. return receipt requested, to such Mortgagee as the address shown in the record of Mortgagees maintained by the Corporation and shall be deemed effectively given upon receipt by such Mortgagee as evidenced by the return receipt.

Section 7.4 Examination of Books. Each Mortgagee shall be permitted to examine the books of account of the Corporation at any time during normal business hours for purposes reasonably related to his interest as a Mortgagee.

ARTICLE VIII

HISCELLANDOUS

Section 8.1. Fiscal Year. The fiscal year of the Corporation shall be the calendar year, unless otherwise fixed by resolution of the Board of Directors.

Section 8.2. Personal Interests. Except as permitted under Section J.8 hereof, no Owner shall have or receive any earnings from the Corporation; provided, however, that an Owner who is an officer, director, employee, or agent of the Corporation may be reimbursed for expenses incurred on the Corporation's behalf.

Saction 8.3. Contracts, Checks, Notes, Etc. All contracts and agreements entered into by the Corporation and all checks, drafts and bills of exchange and orders for the payment of money shall, in the conduct of the ordinary course of business of the Corporation, unless otherwise directed by the Board of Directors, or unless otherwise required by law, be signed by two (2) individuals serving on the Board of Directors.

section 8.4. Commingling of Funds. In order to facilitate and encourage uniform and cooperative management of Timbers I, II, and III, the Corporation's Board of Directors and/or the Managing Agant shall have the right and authority to commingle any funds of the Corporation (including any reserve funds) with the funds paid to the Corporation by Owners from Timbers I, II, and III, and Section 4, and the Board of Directors and/or the Managing Agent shall have the authority to make and/or to authorize disbursements from such funds for purposes related to the maintenance and operation of Timbers I, Timbers III, and Section 4.

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ARTICLE IX

AMENDMENT TO BY-LAWS

Section 9.1. Amendment. These By-Laws may be amended by a vote of two-thirds (2/3) of the total Percentage Vote by the Owners within all three regimes in a duly constituted meeting called for such purpose, except as prohibited by any provision of the HPR Declarations, the Indiana Horizontal Property Act, or these By-Laws, as the same may be amended from time to time. Thus, these By-Laws may only be amended by a vote of two-thirds (2/3) of the total Percentage Vote from Timbers I and two-thirds (2/3) of the total Percentage Vote from Timbers III and two-thirds (2/3) of the total Percentage Vote from Timbers III.

ARTICLE X

ASSESSMENTS

Section 10.1. Creation of the Lien and Personal Obligation for Assessments. Each Owner of any Condominium Apartment within Timbers I, II, or III, by acceptance of a deed therefor, whether or not it shall be expressed in such deed, is deemed to covenant and agree to pay to the Corporation: (1) Regular Assessments; and (2) Special Assessments, such assessments to be established and collected as hereinafter provided. The Regular and Special

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Assessments, together with late fees, costs, reasonable atterney's fees, and any other obligation which may be charged to an Owner pursuant to these By-Laws or the HPR Declarations, shall be a charge on the Condominium Apartment, and shall be a continuing lien upon the property against which each such assessment or charge is made. Each such assessment or charge, together with late fees, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due.

Section 10.2. Proposed Annual Budget. Annually, on or before the date of the annual meeting of the Corporation in April of each year, the Corporation's Board of Directors shall cause to be prepared separately for Timbers I, II, and III a proposed Do prepared separately for Timbers I, II, and III a proposed annual budget for the current fiscal year, estimating the total amount of the Common Expenses for the ensuing year for each of the three (3) regimes, and furnish a copy of such proposed budget to each Owner prior to the annual meeting together with the notice of said meeting. If the proposed annual budget for Timbers I, Timbers II, and/or Timbers III is equal to or less than one hundred ten percent (110%) of the previous year's annual budget, the Board of Directors shall have the full right, power budget, the Board of Directors shall have the full right, power and authority to adopt such budget without the approval of the Co-Owners. However, if the proposed annual budget for Timbers I, Timbers II, and/or Timbers III exceeds one hundred ten percent (110%) of the previous year's annual budget, such budget must be submitted to the Co-Owners of the applicable regime at the annual meeting for approval. The annual budget shall be submitted to the Co-Owners of Timbers I, II, and III separately at the annual meeting of the Corporation for adoption (if necessary) and, if so adopted, shall be the basis for the Regular Assessments (hereinafter defined) for the current fiscal year. At the annual meeting of the Owners, the proposed annual budget for any or each of the three (3) regimes (i.e., Timbers I, II, and III) which would exceed one hundred ten percent (110%) of the previous year's annual budget may be approved in whole or in part or may be amended in whole or in part by a Majority of the Vote as defined in Section 2.6(e) hereof by the Owners within each applicable regime, provided to the vote as a section 2.6(e) hereof by the Owners within each applicable regime. applicable regime; provided, nowever, that in no event shall the annual meeting of the Owners be adjourned until an annual budget is approved at such meeting for Timbers I, II, and III, 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 waiter or release in any money of such Owners. 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 Owners shall continue to pay the then existing monthly assessment until such new annual budget and monthly assessment is astablished.

The annual budget and the Regular Assessments shall provide for the establishment and maintenance on an adequate replacement reserve fund for capital expenditures and replacement and major repair of the Common Areas and Limited Areas, including but not limited to painting and/or staining the exterior of Buildings and fences, and resurfacing, repairing or replacing streets, parking areas, sidewalks, roofs and fences, which replacement fund shall be used only for those purposes and not for usual and ordinary repair expenses. In determining the amount for replacement reserves, the Board of Directors shall consider the expected useful life of such Common by and I life of such Common by an analysis of the life of such Common by an analysis of the life of such Common by an analysis of the life of such common by an ana useful life of such Common Perens and Limited Areas, projected increases in the cost of materials and labor, interest to be earned by such funds, and the advise of any consultants the Board may employ for such purpose. Such fund shall be conclusively deemed to be a Common Expense. The Board of Directors shall annually review the adequacy of any reserve fund. The proportionate interest of any Owner in any reserve for replacements shall be considered an appurtenance of his Condominium Apartment and shall not be separately withdrawn, assigned or transferred or otherwise separated from the Condominium Apartment to which it appertains and shall be deemed to be transferred with such Condominium Apartment. Such replacement reserve fund for capital expenditures and replacement and repair of the Common Areas and Limited Areas shall be maintained by the Corporation in a separate interest bearing account or accounts with one or more banks or savings and loan associations authorized to conduct business in Marion County, Indiana, selected from time to time by the Board of Directors.

Section 10.3. Regular Assessments. Promptly following the adoption of the annual budget for each of the three (3) regimes, the Board of Directors shall give written notice of the assessment against each respective Condominium Apartment based on its Percentage Interest (herein called the "Regular Assessment"). The Regular Assessment against each Condominium Apartment shall be assessed on a quarterly basis beginning on May 1st of each year following the annual meeting and shall be due and payable in equal monthly installments, in advance, on the first day of each month. Payment of the monthly installments of the Regular Assessment shall be made to the Corporation's Board of Directors or the Managing Agent, or otherwise, as directed by the Board of Directors. The Regular Assessment shall automatically become a lien on that Condominium Apartment on the date it is due and payable. An Officer or the Managing Agent of the Corporation shall, upon due request and for a reasonable charge, cause to be furnished a certificate setting forth whether the Regular and Special Assessments on a designated Condominium Apartment have been paid, or the amount of any unpaid and delinquent Regular or Special Assessments.

Section 10.4. Special Assessments. From time to time, Common Expenses of an unusual or extraordinary nature or otherwise not anticipated may arise, either applicable to Timbers I, or II, or III, or to all three (3) regimes. At such time and without the approval of the Owners, the Corporation's Board of Directors shall have the full right, power and authority to annually levy and impose special assessments (applicable only to the assessment year in which made) not in excess of ten percent (10%) of the total Regular Assessments applicable for such time period which, upon resolution of the Board, shall become a lien on each Condominium Apartment within the applicable regime or regimes, prorated in accordance with the Percentage Interest of each Condominium Apartment (herein called "Special Assessment"). Any Special Assessment exceeding this amount must be first approved by a Majority of the Vote (as that phrase is defined in Section 2.6(e) above) by the Owners within the applicable regime or regimes at a special meeting called for such purpose.

Section 10.5. Failure of Owner to Pay Assessments. No Owner may exempt himself or herself from paying Regular or Special Assessments, or from contributing toward the expenses of administration and of maintenance and repair of the Common Areas and Limited Areas and toward any other expense lawfully agreed upon, by waivar of the use or enjoyment of the Common Areas or Limited Areas, or by abandonment of the Condominium Apartment belonging to such Owner. Each Owner shall be personally liable for the payment of all Regular and Special Assessments. Where for the payment of all Regular and Special Assessments. 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 Regular or Special Assessments when due, the lien for such assessment on the Owner's Condominium Apartment 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 Regular or Special Assessments within fifteen (15) 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 to be determined by the Board of up to twenty-five percent (25%) of the amount of the Assessment, (2) accelerate the entire balance of the unpaid Assessments for the remainder of the fiscal year and declure the same immediately due and payable, notwithstanding any other provisions hereof to the contrary, and (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 Condominium Apartment shall be jointly and severally liable for the payment to the Corporation of reasonable rental for such Condominium Apartment, and the Board shall be entitled to the appointment of a receiver for the purpose of preserving the Condominium Apartment and to collect the rentals and other profits therefrom for the benefit of the Corporation to be applied to the unpaid Regular or Special Assessments. The Board

may, at its option, bring a suit to recover a money judgment for any unpaid Regular or Special Assessments without foreclosing or waiving the lien securing the same. In any action to recover a Regular 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 Condominium Apartment.

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Section 10.6. Subordination of the Lien to Mortgages. 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. Notwithstanding anything contained in this section or elsewhere in the HPR Declarations or these By-Laws, any sale or transfer of a Condominium Apartment to a mortgagee pursuant to a foreclosure on its mortgage or conveyance in lieu thereof, or a conveyance to any person at a public sale in the manner provide by law with respect to mortgage foreclosures, shall extinguish the lien of any unpaid installment of any Regular or Special Assessment as to such installments which became due prior to such sale, transfer or conveyance; provided, however, that the extinguishment of such lien shall not relieve the prior Owner from personal liability therefor. No such sale, transfer or conveyance shall relieve the Condominium Apartment or the purchaser at such foreclosure sale, or grantee in the event of conveyance in lieu thereof, from liability for any installments of Regular or Special Assessments thereafter becoming due or from the lien therefor. Such unpaid share of any Regular Assessments or Special Assessments, the lien for which has been divested as afcresaid, shall be deemed to be a Common Expense collectible from all Owners within the applicable regime (including the party acquiring the subject Condominium Apartment from which it arose).

ARTICLE XI

RESTRICTIONS ON USE

Section 11.1. The following restrictions on the use and enjoyment of the Condominium Apartments, Common Areas, Limited Areas and the Property shall be applicable to The Timbers I, II, and III and are in addition to those set forth in the Declaration. These are as follows:

(a) All Condominium Apartments shall be used exclusively for residential purposes and the occupancy of a single family. "Single Family" is defined as a single housekeeping unit, operating on a nonprofit, non-commercial basis between its occupants with a common kitchen and dining area.

- (b) No additional buildings shall be erected or located in Timbers I, II, or III other than the Buildings designated in the HPR Declarations and shown on the Plans.
- (c) Nothing shall be done or kept in any Condominium Apartment or in the Common Areas or Limited Areas which will cause an increase in the rate of insurance on any Building or the contents thereof. No Owner shall permit anything to be done or kept in his Condominium Apartment or in the Common Areas or Limited Areas which will result in a cancellation of insurance on any Building or contents thereof, or which would be in violation of any law or ordinance.
- (d) No nuisance shall be permitted and no waste shall be committed in the Cordominium Apartments, Common Areas or Limited Areas.
- (e) No animals, livestock or poultry of any kind shall be raised, bred or kept in any Condominium Apartment or the Common Areas or Limited Areas, except that small dogs, cats or customary household pets may be kept in a Condominium Apartment; provided that such pet is not kept, bred or, maintained for any commercial purpose, and does not create a nuisance. An Owner shall be fully liable for any damage to the Common Areas or Limited Areas caused by his pet. The Board may adopt such other rules and regulations regarding pets as it may deem necessary from time to time. Any pet which, in the judgment of the Board, is causing or creating a nuisance or unreasonable disturbance or noise, shall be permanently removed from the Property upon three (3) days' written notice from the Board to the respective Owner.
- (f) Nothing shall be done or permitted in any Condominium Apartment which will impair the structural integrity of any Building or which would structurally change any Building, except as otherwise provided in the Declaration or these By-Laws.
- (g) No clothes, sheets, blankets, rugs, laundry or other things shall be hung out or exposed on any part of the Common Areas or Limited Areas. The Common Areas and Limited Areas shall be kept free and clear of rubbish, debris and other unsightly materials.
- (h) No industry, trade, or any commercial or religious activity, educational or otherwise, designed for profit, altruism or otherwise, shall be conducted, practiced or permitted in Timbers I, II, or III other

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than home professional pursuits without employees, public visits or nonresidential storage, mail or other use of a Condominium Apartment. No Condominium Apartment shall be used or rented for transient, motel or hotal purposes.

- (i) No "For Sale", "For Rent" or "For Lease" signs or other window or advertising (lisplay shall be maintained or permitted on any part of Timbers I, II, or III, or any Condominium Apartment Therein without the prior consent of the Board.
- (j) All Owners and members of their families, their guests, or invitees, and all occupants of any Condominium Apartment or other persons entitled to use the same and to use and enjoy the Common Areas and Limited Areas 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 governing the operation, use and enjoyment of the Condominium Apartment, Common Areas and Limited Areas.
- (k) No Owner, tenant or occupant of a Condominium Apartment or his agent shall remove, trim or permit the removal or trimming of any tree located within Timbers I, II, or III which is more than three inches (3") in diameter without the prior written consent of the Board of Directors, or shall cultivate or permit the cultivation of any part of Timbers I, III, or III in such a manner as to cause or permit soil erosion.

ARTICLE ZII

INSURANCE

Ection 12.1 Coverage. On behalf of the Co-Owners and the unincomporated Associations of Co-Owners for Timbers I, II, and III and as a Common Expense, the Board of Directors of the Comporation shall cause to be obtained and kept in full force and effect at all times the following insurance coverage provided by companies duly authorized to do business in Indiana:

(a) Casualty or physical damage insurance in an amount equal to the full replacement value (i.e., 100% of "replacement cost") of all buildings and improvements (as hereinafter defined) and all personal property owned by the Corporation with an "agreed amount" endorsement, without deduction or allowance for depreciation (as determined annually by the Board with the assistance of the insurance company affording such coverage), such coverage to afford protection against at least the following:

- (i) loss or damage by five or other hazards covered by the standard extended coverage endorsement together with coverage for Common Expenses with respect to Condominium Apartments during any period of repair or construction;
- (ii) such other risks as are customarily covered with respect to projects similar in construction, location and use, including, but not limited to, vandalism, malicious mischief, windstorm, water damage, machinery explosion or damage, and such other insurance as the Board may determine.
- (b) Comprehensive public liability insurance in such amounts as may be considered appropriate by the Board including, but not limited to, water damage, legal liability, hired automobile, non-owned automobile, and any and all other liability incident to the ownership and/or the cf Timbers I, II, and III or any portion thereof.
- (c) Workers' compensation and employer's liability insurance in respect to employees of the Corporation in the Lamounts and in the form necessary to comply with any applicable law.
- (d) Such other policies of insurance, including insurance for other risks of a similar or dissimilar nature, as are or shall hereafter be considered appropriate by the Board of Directors of the Corporation.

The provisions of this Section 12.1 shall not be construed to limit the power or authority of the Board of Directors to obtain and maintain insurance coverage, in addition to any insurance coverage required hereunder, in such amounts and in such forms as the Board of Directors may deem appropriate from time to time.

Section 12.2. Definition. As used in Section 12.1, the term "all buildings and improvements" shall include, without limitation, the Common Areas, Limited Areas, and the standard partition walls, fixtures and installations initially inscalled in Condominium Apartments by the original developer, as shown on the Plans as amended from time to time, and replacements thereof; and shall exclude fixtures, alterations, installations or additions situated within a portion of the Timbers I, II, or III used exclusively by an individual Owner of that portion of Timbers I, II, or III.

Section 12.1. Form. Casualty insurance shall be carried in a form or forms naming as the insured the Board of Directors as trustee for all Owners within Timbers I, II, and III and the Mortgagees according to the loss or damage to their respective Condominium Apartments and Percentage Interests and payable in

case of loss to the Insurance Trustee. Every such policy of insurance shall:

(a) provide that the liability of the insurer thereunder shall not be affected by, and that the insurer shall not claim any right of set-off, counterclaim, apportionment, proration, or contribution, by reason of any other insurance obtained by or for any Owner;

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- (b) contain no provisions relieving the insurer from liability for loss occurring while the hazard to such building is increased, whether or not with the knowledge or control of the Board of Directors, or because of any breach or warranty or condition or any other act or neglect by the Board of Directors or any Owner or any other Person under either of them;
- (c) provide that such policy may not be cancelled (whether or not requested by the Board of Directors) except by the insurer giving at least thirty (30) days prior written notice thereof to the Insurance Trustee, the Board of Directors, all Owners, all Mortgagees and every other Person in interest who shall have requested such notice of the insurer;
- (d) contain a waiver by the insurer of any right of subrogation to any right of the Board of Firectors or Owners against any of them or any Person under them;
 - (e) contain a standard mortgage clause which shall:
 - (i) provide that any reference to a mortgage in such policy shall mean and include any Mortgagee, whether or not named therein;
 - (ii) provide that such insurance as to the interest of any Mortgagee shall not be invalidated by any act or neglect of the Board of Directors or any Owner, or any Person under any of them;
 - (iii) waive any provision invalidating such mortgage clauses by reason of the failure of any Mortgagee to notify the insurer of any hazardous use or vacancy, and requirement that the Mortgagee pay any premium thereon, and any contribution clause; and
 - (iv) provide that without affecting any protection afforded by such mortgagee clause, any proceeds payable under such policy shall be payable to the Board of Directors or to the Insurance Trustee.

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Public liability and property damage insurance shall be carried in a form or forms naming as the insured the Board of Directors as trustee for each individual Owner, the Corporation, the Board of Directors, the Managing Agent, and any Person acting on behalf of the Corporation, and providing for payment of any proceeds therefrom to the Insurance Trustee. The Board shall proceeds therefrom to the Insurance deposit with each Owner promptly upon effecting such insurance deposit with each Owner who so requests a current certificate of such insurance, without prejudice to the right of any Owner to maintain addition public liability insurance for his Condominium Apartment.

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event of damage or destruction of Insurance Proceeds. In the condominium Apartments covered by insurance written in the name of the Board of Directors as trustee for Co-Owners and their Mortgagues, the following provision shall apply:

- (a) <u>Common Areas and Limited Areas</u>. Proceeds on account of damage to Common Areas and Limited Areas shall be allocated among the Co-Owners in accordance with their respective Percentage Interests.
- (b) Apartments Proceeds on account of damage to Condominium Apartments shall be allocated as follows:
 - (i) If the Building in which the damaged Condominium Apartment is located is to be restored, insurance proceeds shall be allocated to such Condominium Apartment in the proportion which the cost of restoration of such Condominium Apartment bears to the cost of Restoration of all damaged Condominium Apartments, such cost to be determined by the Board of Directors. In determining such cost, the Board of Directors shall not take into consideration the cost of repairing any items specifically excluded from insurance coverage pursuant to the provision of Section 12.2 hereof.
 - (ii) If the Building in which the damaged Condominium Apartment is located is not to be restored, insurance proceeds shall be allocated to such Condominium Apartment in accordance with the Percentage Interest of the Owner of such Condominium Apartment.
 - (iii) In the event a mortgage endorsement has been issued with respect to a particular Condominium Apartment, the amount of the insurance proceeds allocated to the Owner of such Condominium Apartment shall be held in trust for the Mortgagee and the Owner as their interests may appear; provided, however, that no Mortgagee shall have the right to determine or

participate in the determination as to whether or not any damaged property shall be restored or repaired.

Section 12.5. Distribution of Insurance Proceeds. Proceeds of insurance policies received by the Insurance Trustee shall be distributed to or for the benefit of the Owners and their Mortgagees as their respective interests appear, in the following manner:

- (a) Expense of Trust. All expenses of the Insurance Trustee shall be first paid or provision made therefor.
- (b) Reconstruction or Repair. If the damage for which the proceeds are paid is to be repaired or reconstructed, the remaining proceeds shall be paid to defray the cost thereof. Any proceeds remaining after defraying such costs shall be retained by the Corporation and added to the reserve for replacements established pursuant to Section 10.2, except that, with respect to a Condominium Apartment in which there was damage to items excluded from insurance coverage pursuant to Section 12.2, the Owner of such Condominium Apartment shall be entitled to receive out of such remaining proceeds his pro-rata share thereof determined according to his Percentage Interest.
- (c) Failure to Reconstruct or Repair. If it is determined that the damage for which the proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be distributed in accordance with Section 21 of the Indiana Horizontal Property Act.
- (d) <u>Certificate</u>. In making distributions to Owners and their mortgagees, the Insurance Trustee may rely upon a certificate issued by the Board of Directors as to the names of the Cwners and their respective shares of the distribution, and, with respect to the names of Mortgagees, may rely upon a certificate from an attorney-at-law who has examined the mortgage records in the office of the Recorder of Marion County, Indiana, 's to the names of the holders of mortgages of record.

Section 12.6. Corporation as Owner's Agent. The Corporation, acting by its Board of Directors, is hereby irrevocably appointed agent for each Owner and for each owner of a mortgage or other lien upon a Condominium Apartment and for each owner of any other interest in the Timbers I, II, or III to adjust all claims arising under insurance policies purchased by the Board of Directors, and to execute and deliver releases upon the payment of claims.

Section 12.7. Individual Policies - Recommendation of Original Developer. Any Owner or Mortgagee may obtain additional insurance (including a "condominium unit-owner's endorsement" for improvements and betterments to a Condominium Apartment made or acquired at the expense of the Owner) at his own expense. Such insurance shall be written by the same insurer affording coverage to the Corporation or shall provide that it shall provide that it shall be without contribution as against the same. Such insurance shall contain the same waiver of subrogation provision as that set forth in Section 12.3(d). It is recommended that each Owner obtain, in addition to the insurance hereinabove provided to be obtained by the Board of Directors, a "Tenant's Homeowners Policy", or equivalent, to insure against loss or damage to personal property used or incidental to the occupancy of the Condominium Apartment, additional living expense, vandalism or malicious mischief, theft, personal liability and the like. Such policy should include a "condominium unit-owner's endorsament" covering losses to improvements and betterments to the Condominium Apartment made or acquired at the expense of the Owner.

Section 12.8. Filing of Individual Policies. Each Owner shall file any individual policies of insurance (excluding policies restricted to personal property) or duplicate originals thereof with the Corporation within thirty (30) days after the purchase thereof. The Corporation or the Managing Agent shall maintain the file thereof.

ARTICLE XIII

DAMAGE OR DESTRUCTION

Section 13.1. Procedure for Restoration or Repair. In the event of damage or destruction to Timbers I, II, or III by fire, other casualty, or as a result of condemnation, and Restoration or repair of Timbers I, II, or III is required or authorized pursuant to the HPR Declarations, such Restoration or repair shall be undertaken in accordance with this Article.

Section 13.2. Estimate of Cost. Promptly after the occurrence of the damage or destruction to Timbers I, II, or III which the Corporation has the responsibility to restore or repair, the Board of Directors shall obtain reliable and detailed estimates of the cost to restore or repair. The Board of Directors shall adjust any loss, and, in the event of damage to any structure exceeding \$10,000.00, shall retain the services of an architect to assist in such negotiations and supervise the Restoration or repair and the disbursement of the construction funds.

Section 13.3. Plans and Specifications. Any Restoration or repair must be either substantially in accordance with the Plans or according to plans and specifications approved by the Architectural Review Board and a Majority of Owners within the Architectural Review Board and a Majority of Owners within the Affected regime, and if the damaged property contains any Condominium Apartments, by all of the Owners of the damaged Condominium Apartments therein, which approval shall not be unreasonably withheld.

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Section 13.4. Sealed Bids. The Board of Directors shall advertise for sealed bids with any licenses contractors, and then may negotiate with any contractor, who shall be required to provide a full performance and payment bond for the Restoration or repair of the damaged property.

Section 13.5. Responsibility. If the damage is only to those parts of a Condominium Apartment for which the responsibility of maintenance and repair is that of an Owner, the Apartment Owner shall be responsible for the cost of Restoration and repair unless such damage is specifically covered by the and repair unless such damage is specifically covered by the insurance purchased by the Board of Directors, in which event the insurance purchased by the Board of Directors. The Restoration Corporation shall be responsible for said costs. The Restoration or repair of damaged property, including that for which an individual Condominium Apartment Owner is responsible, shall be subject to approval by the Architectural Review Board.

Section 13.5. Construction Funds. The funds for payment of the costs of Restoration or repair, which shall consist of the proceeds of insurance held by the Insurance Trustee, such amounts from the reserve for replacements as are authorized by the Board of Directors for the purpose of Restoration or repair, and the funds collected by the Board of Directors from Special funds collected by the Board of Directors from Special Assessments against Owners, shall be deposited with the Insurance Trustee who shall disburse the same in payment of the costs of Restoration or repair as provided in this Article.

Section 13.7. Certificates. The Insurance Trustee may rely upon a certificate from the Board of Directors to determine whether or not the damaged property within Timbers I, II, or III is to be restored or repaired and upon a certificate from the architect employed by the Board of Directors to supervise the Restoration and/or repair.

ARTICLE XIV

MANAGEMENT

Section 14.1. Maintenance, Repairs and Replacements.

(a) <u>Condominium Apartments</u>. Each Owner shall, at his or her expense, be responsible for the maintenance, repairs, decoration and replacement within his or her own Condominium

Apartment, except as may otherwise be provided herein or in the HPR Declarations. Each Owner shall promptly perform all maintenance and repair with his Condominium Apartment which, if maintenance and repair with his Condominium Apartment, neglected, might adversely affect any Condominium Apartment, Common Area or Limited Area. Such maintenance and repairs include, but are not limited to, internal water lines, plumbing, electric lines, appliances, gas lines, telephones, air conditioning, doors, windows, lamps and all other accessories belonging to the Owner and appurtenant to the Condominium Apartment. In the event that the maintenance or repair of any Condominium Apartment is reasonably necessary in the discretion of the Board of Directors of the Corporation to protect the Common Areas or Limited Areas, or to preserve the appearance or value of the Timbers I, II, and/or III, or is otherwise in the interest of the general welfare of the Co-Owners, the Board of Directors shall have the power to undertake such maintenance or repair; provided that no such maintenance or repair shall be undertaken without a resolution by the Board and reasonable written notice to the Owner of the Condominium Apartment proposed to be maintained and, provided further, that the cost thereof shall be assessment shall become due and payable and a continuing lien and obligation of said Owner is all respects as provided in Section 10.5 hereof.

- (b) Certain Limited Areas. Each Owner shall, at his expense, be responsible for the maintenance, repair and replacement of the air conditioning compressor installed to service his Condominium Apartment and for the decorat; on and general maintenance of any patio, balcony or porch to which there is direct access from the interior of his Condominium Apartment. Any such patio, balcony or porch shall be kept free and clear of snow, ice and any other accumulation by the Owner of such Condominium Apartment who shall also make all repairs thereto caused or permitted by his negligence, misuse or neglect. All other repairs or replacements in, to or with respect to such patio, balcony or porch shall be made by the Corporation, and the cost thereof shall be a Common Expense.
- (c) Common Areas and Limited Areas. All maintenance, repairs and replacements to the Common Areas and Limited Areas (except as otherwise provided in the HPR Daclarations or these By-Laws), including the painting and decorating of the exterior doors and exterior window sashes, shall be furnished by the Corporation as part of the Common Expenses. The Board of Directors may adopt rules and regulations concerning maintenance, repairs, use and enjoyment of the Common Areas and Limited Areas.

Section 14.2. Alterations and Additions. No Person shall make any alterations or additions to the Common Areas or Limited Areas without the prior written approval of the Board of Directors and the Architectural Review Board, nor shall any Owner

make any alteration or addition within the boundaries of his Condominium Apartment which would affect the safety or structural integrity of the Building in which the Condominium Apartment is located.

Section 14.1. Real Estate Taxes. Real estato taxes are to be separately taxed to each Condominium Apartment as provided in the Act.

Section 14.4. Utilities. Each Owner shall pay for his own utilities which are separately metered. Utilities which are not separately metered shall be treated as and paid as part of the Common Expenses of the applicable regime, unless otherwise provided by the Board of Directors.

Section 14.5. Limitation of Liability. The Corporation shall not be liable for any failure of water supply or other services to be obtained by the Corporation or paid for out of the Common Expenses, or for injury or damage to person or property caused by the elements or by the Owner of any Condominium Apartment, or any other Person, or resulting from electricity, water, snow or ice which may leak or flow from any portion of the Common Areas or Limited Areas or from any pipe, drain, conduit, appliance or equipment. The Corporation shall not be liable to any Owner for loss or damage, by theft or otherwise, of articles which may be stored upon any of the Common Areas or Limited Areas. No diminution or abatement of assessments of Common Expenses shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements to the Common Areas or Limited Areas or from any action taken by the Corporation to comply with any law, ordinance, or with the order or directive of any municipal or other governmental authority.

Section 14.6. Newligence. Each Owner shall be liable for the expenses of any maintenance, repair or replacement rendered necessary by his negligence or by that of any member of his family or household, or his or their guests, employees, agents or lessees, to the extent that such expense is not covered by the proceeds of insurance carried by the Corporation. An Owner shall pay the amount of any increase in insurance premiums occasioned by his use, misuse, occupancy or abandonment of his Condominium Apartment or its appurtenances or of the Common Areas or Limited Areas.

Section 14.7. Costs and Attorneys Fees. In any proceeding arising because of the failure of an Owner to make any payments required or to comply with any provision of the HPR Declarations, the Overall Declaration, the Act, these By-Laws, the Corporation's By-Laws, or the rules and regulations adopted pursuant to any of the above, as each may be amended from time to time, the Corporation shall be entitled to recover its reasonable



AMENDMENTS TO THE SUPPLEMENTARY DECLARATION OF COVENANTS AND PRETRICTIONS --THE TIMBERS - SECTION 4

These Amendments to the Supplementary Declaration of Covenants and Restrictions for The Timbers - Section 4 were made as of the Timbers day of Maker, 1995.

THATE WITNESSETH

WHEREAS, The Timbers - Section 4 planned unit development located in Marion County, Indiana (hereafter, "Timbers Section 4") was originally created and formed pursuant to a certain "Supplementary Declaration of Covenants and Restrictions--The "Supplementary Declaration of Type Office of the Recorder of Type Office of the Recorder of Timbers - Section 4" recorded in the Office of the Recorder of Marion County, Indiana on September 30, 1977, as Instrument No. 77-64851 (hereafter, "Section 4 Declaration"); and

WHEREAS, Timbers Section 4 consists of twenty-nine (29) Lots and the Community Area as described and set forth in the Section 4 Declaration; and

WHEREAS, the original developer of The 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, office on March 26, 1974), which contemplated the formation of the "Overall Declaration"), which contemplated the formation of several horizontal property regimes and other subdivisions; and

WHEREAS, the Overall Declaration provided for a not-forprofit corporation known as The Timbers, Inc. (now known as The Timbers of Indianapolis, Inc.) which was created upon the filing of Articles of Incorporation with the Indiana Secretary of State on January 31, 1974 (hereafter, "Corporation"); and

WHEREAS, by the terms of the Overall Declaration, the Corporation owns certain property, including but not limited to The Timbers clubhouse and other real and personal property; and

WHEREAS, by the terms of the Overal) Declaration, all Owners of Lots in Timbers Section 4 are mandatory members of the Corporation and must pay lien-supported assessments to the Corporation for expenses pertaining to the clubhouse and other property owned by the Corporation; and

WHEREAS, pursuant to terms of the Overall Declaration, the "Declaration of Horizontal Property Ownership -- The Timbers "Declaration of Horizontal Property Ownership--The Timbers I Horizontal Property Regime" was recorded in the Office of the Horizontal Property Regime" was recorded in the Office of the Recorder of Marion County, Indiana, on March 26, 1974, as Recorder of Marion County, Indiana, on March 26, 1974, as Instrument No. 74-16967 which established the Timbers I horizontal property regime consisting of thirty-eight (38) homes horizontal property regime consisting of thirty-eight (38) homes (hereafter, "Timbers I"), such that all owners of homes within timbers I are also mandatory members of the Corporation and must

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pay lien-supported assessments to the Corporation to the same extent as Owners of Locs in Timbers Section 4; and

WHEREAS, pursuant to terms of the Overall Declaration, the "Declaration of Horizontal Property Ownership--The Timbers II Horizontal Property Regime" was recorded in the Office of the Recorder of Marion County, Indiana, on August 30, 1974, as Instrument No. 74-55300 which established the Timbers II horizontal property regime consisting of forty-five (45) homes (hereafter, "Timbers II"), such that all owners of homes within Timbers II are also mandatory members of the Corporation and must pay lien-supported assessments to the Corporation to the same extent as Owners of Lots in Timbers Section 4; and

WHEREAS, pursuant to terms of the Overall Declaration, the "Declaration of Horizontal Property Ownership--The Timbers III Horizontal Property Regime" was recorded in the Office of the Recorder of Marion County, Indiana, on August 15, 1975, as Instrument No. 75-43967 which established the Timbers III horizontal property regime consisting of thirty-five (35) homes (hereafter, "Timbers III"), such that all owners of homes within Timbers III are also mandatory members of the Corporation and must pay lien-supported assessments to the Corporation to the same extent as Owners of Lots in Timbers Section 4; and

WHEREAS, Timbers Section 4, Timbers I, Timbers II, and Timbers II" are part of a community known as The Timbers; and

WHEREAS, a "Supplementary Declaration of Covenants and Restrictions - The Timbers - Section 5" recorded with the Marion County Recorder on May 11, 1982 as Instrument No. 82-24076 established The Timbers - Section 5 planned unit development consisting of ten (10) homes at present (hereafter, "Section 5"); however, the owners of homes within Section 5 have their own homeowners association which governs them such that although Section 5 is commonly thought of as being part of The Timbers community, Section 5 is an autonomous property and is completely separate in function from Timbers Section 4, Timbers I, II, and III, and

WHEREAS, the original Section 4 Declaration provided for an "Advisory Committee" to be elected by the Owners of Lots in Section 4 which would coordinate with the Board of Directors of The Timbers of Indianapolis, Inc. to provide for the management of Timbers Section 4; and

WHEREAS, Owners of Lots within Timbers Section 4 wish to delete all references in the Section 4 Declaration to the "Advisory Committee" and delegate and transfer to The Timbers of Indianapolis, Inc. all management, maintenance, repair and replacement responsibilities pertaining to Timbers Section 4; and

WHEREAS, the Owners further desire that the Board of Directors of The Timbers of Indianapolis, Inc. shall be composed of members elected in the manner set forth below such that The Timbers of Indianapolis, Inc. Board of Directors shall be responsible for the matters which were originally assigned to the "Advisory Committee"; and

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WHEREAS, Paragraph 16 of the Section 4 Declaration provides that it may be amended by an instrument signed by the Owners of at least seventy-five percent (75%) of the Lots in Section 4; and

WHEREAS, after notice was duly given, a Special Meeting of all Owners of Lots in Timbers - Section 4 was held on the 3rd day of November, 1994, for the purpose of considering and discussing these Amendments; and

WHEREAS, after said Special Meeting, the undersigned Owners, representing more than seventy-five percent (75%) of the Lots in Section 4, executed this document to approve the Amendments set forth herein; and

WHEREAS, the provisions below were approved contemporaneously with the Amended & Restated Articles of Incorporation for The Timbers of Indianapolis, Inc., the Amended & Restated Code of By-Laws for The Timbers of Indianapolis, Inc., the Amended, Restated & Consolidated Code of By-Laws of The Timbers I, II, and III, and the Identical and Contemporaneous Amendments to the Declarations of Horizontal Property Ownership for The Timbers I, II, and III Horizontal Property Regimes.

NOW, THEREFORE, the Supplementary Declaration of Covenants and Restrictions for The Timbers - Section 4 is amended as follows:

- 1. Paragraph 1(a) of the Section 4 Declaration (which originally referred to the Advisory Committee) is hereby deleted in its entirety and is replaced with the following:
 - (a) "Board of Directors" means the Board of Directors of the Corporation.
- Paragraph 1(e) of the Section 4 Declaration is hereby deleted in its entirety and is replaced with the following:
 - (e) "Block Lot" or "Lot" means a Lot depicted upon a Final Plat.
- 3. Paragraph 1(m) of the Section 4 Declaration is hereby deleted in its entirety and is replaced with the following:
 - (m) "Majority of the Owners" means more than fifty percent (50%) of the Block Lots. "Majority of the Vote"

means a majority of the votes of the Owners present or represented at such meeting at which a quorum is present.

- 4. There shall be added to the Section 4 Declaration a new Paragraph 1(r) as follows:
 - (r) "Corporation" means The Timbers of Indianapolis, Inc., an Indiana nonprofit corporation. The Corporation was formerly known as The Timbers, Inc. However, through an amendment to the Corporation's Articles of Incorporation filed with the Indiana Secretary of State on April 19, 1994, the name was changed to The Timbers Of Indianapolis, Inc.
- 5. Paragraph 3 of the Saction 4 Declaration is hereby deleted in its entirety and is replaced with the following:
 - 3. <u>Description of Block Lots</u>. The Timbers Section 4 has been subdivided into Blocks containing twenty-nine (29) Block Lots. The boundaries of each Block Lot are as shown on the Final Plans.
- 6. Paragraph 9 of the Section 4 Declaration (which originally established the Advisory Committee) is hereby deleted in its entirety and is replaced with the following:
 - g. Corporation. In order to provide for the maintenance, repair, replacement, administration and operation of The Timbers Section 4, the original Declarant created an Advisory Committee to be elected from among the Owners of Block Lots which was to assist the Corporation's Board of Directors. Rather than having an Advisory Committee, the Owners now elect the Board of Directors of the Corporation in the manner as set forth in this Declaration. The Corporation, acting through the Board of Directors, is now obligated to maintain, repair, replace, administer and operate the Block Lots, Community Area, and Limited Community Area within The Timbers Section 4 to the same extent as the Advisory Committee (in conjunction with the Board of Directors) was originally. Thus, the Corporation, acting through the Board of Directors, shall be the governing body of The Timbers Section 4, representing all of the Owners, in providing for the management, maintenance, repair, replacement and upkeep of The Timbers Section 4.

Certain recreational and other community facilities, including, but not limited to The Timbers Clubhouse and Wilderness Trail, are located in the Development Area. The Community Area is owned by the Corporation. The membership of the Corporation is comprised of, limited to and the obligation of all Owners of homes in The Timbers I, The

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Timbers II, The Timbers III, and The Timbers - Section 4.
The purposes and powers of the Corporation are set forth
The purposes and powers of Covenants and Restrictions
and more special and the Articles of Transporter and and more specifically in the Articles of Incorporation and By-Laws of the Corporation which are incorporated herein by reference. Members of the Corporation have the right to use, occupy and enjoy the Community Area pursuant to and in accordance with the provisions of the Declaration of Covenants and Restrictions and the Articles and By-Laws of the Corporation.

7. Paragraph 10 of the Section 4 Declaration is hereby deleted in its entirety and is replaced with the following:

- (a) Restrictions. The following restrictions on the use and enjoyment of the Living Units, Block Lots, Community Area, and Limited Community Area shall be applicable to The Timbers - Section 4.
- (i) All Living Units shall be used exclusively for residential purposes and the occupancy of a single family. "Single Family" is defined as a single housekeeping unit, operating on a nonprofit, non-commercial basis between its occupants with a common kitchen and dining area.
- (ii) Nothing shall be done or kept in any Living Unit or in the Community Area or Limited Community Area which will cause an increase in the rate of insurance on any building or the contents thereof. No Owner shall permit anything to be done or kept in his Living Unit or in the Community Area or Limited Community Area which will result in a cancellation of insurance on any building or contents thereof, or which would be in violation of any law or ordinance.
- (iii) No nuisance shall be permitted and no waste shall be committed in the Living Units, Community Area or Limited Community Area.
- (iv) No animals, livestock or poultry of any kind shall be raised, bred or kept in any Living Unit or the Community Area or Limited Community Area, except that small dogs, cats or customary household pets may be kept in a Living Unit; provided that such pet is not kept, bred or, maintained for any commercial purpose, and does not create a nuisance. An Owner shall be fully liable for any damage to the Community Area or Limited Community Area caused by his pet. The Board may adopt such other rules and regulations regarding

pets as it may deem necessary from time to time. Any pet which, in the judgment of the Board, is causing or creating a nuisance or unreasonable disturbance or noise, shall be permanently removed from The Timbers - Section 4 upon three (3) days' written notice from the Board to the respective Owner.

(v) Nothing shall be done or permitted in any Living Unit which will impair the structural integrity of any building or which would structurally change any building, except as otherwise provided in this Declaration.

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- (vi) No clothes, sheets, blankets, rugs, laundry or other things shall be hung out or exposed on any part of the Community Area or Limited Community Area. The Community Area and Limited Community Area shall be kept free and clear of rubbish, debris and other unsightly materials.
- (vii) No industry, trade, or any commercial or religious activity, educational or otherwise, designed for profit, altruism or otherwise, shall be conducted, practiced or permitted The Timbers - Section 4 other than home professional pursuits without employees, public visits or nonresidential storage, mail or other use of a Living Unit. No Living Unit shall be used or rented for transient, motel or hotel purposes.
- (viii) No "For Sale", "For Rent" or "For Lease" signs or other window or advertising display shall be maintained or permitted on any part of The Timbers Section 4, or any Living Unit therein without the prior consent of the Board.
 - (ix) 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 Community Area and Limited Community 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 governing the operation, use and enjoyment of the Community Area and Limited Community Area.
 - (x) No Owner, tenant or occupant of a Living Unit or his agent shall remove, trim or permit the removal or trimming of any tree located within The Timbers -Section 4 which is more than three inches (3") in diameter without the prior written consent of the Board of Directors, or shall cultivate or permit the

cultivation of any part of The Timbers - Section 4 in such a manner as to cause or permit soil erosion.

(b) Enforcement. The foregoing covenants and restrictions, as well as all other covenants and restrictions which are set forth in this Declaration, the Duclaration of Covenants and Restrictions, the Corporation's Code of By-Laws, and any regulations promulgated by the Board of Directors or the Architectural Review Board, all as the same may be amended from time to time, 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 he 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 such 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. The foregoing covenants and restrictions are in addition and not in lieu or derogation of the covenants and restrictions contained in the Declaration of Covenants and Restrictions. The Architectural Review Board shall adopt general rules with respect to and otherwise enforce and administer the foregoing covenants and restrictions in the same manner and to the same extent as the covenants and restrictions contained in the Declaration of Covenants and Restrictions.

In any proceeding arising because of the failure of an Owner to make any payments required or to comply with any provision of this Declaration, the Declaration of Covenants and Restrictions, the Corporation's By-Laws, or the rules and regulations adopted pursuant to any of the above, as each may be amended from time to time, the Corporation shall be entitled to recover its reasonable attorneys fees incurred in connection with such default or failure.

- 8. Paragraphs 11 and 12 of the Section 4 Declaration are hereby deleted in their entirety and shall be left intentionally blank.
- 9. Paragraph 13 of the Section 4 Declaration is hereby deleted in its entirety and replaced with the following:

Assessments.

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(a) <u>Creation of the Lien and Personal Obligation for Assessments.</u> Each Owner of any Living Unit, by acceptance of a deed therefor, whether or not it shall be expressed in such deed, is deemed to covenant and agree to pay to the Corporation: (1) Regular Assessments; and (2) Special Assessments, such assessments to be established and

collected as hereinafter provided. The Regular and Special Assessments, together with late fees, costs, reasonable attorney's fees, and any other obligation which may be charged to an Owner pursuant to this Declaration, shall be a charge on the Lot and Living Unit, and shall be a continuing lien upon the property against which each such assessment or charge is made. Each such assessment or charge, together with late fees, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due.

(b) <u>Proposed Annual Budget</u>. Annually, on or before the date of the annual meeting of the Corporation in April of each year, the Corporation's Board of Directors shall cause to be prepared for The Timbers - Section 4 a proposed annual budget for the current 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. If the proposed annual budget for The Timbers -Section 4 is equal to or less than one hundred ten percent (110%) of the previous year's annual budget, the Board of Directors shall have the full right, power and authority to adopt such budget without the approval of the Owners. However, if the proposed annual budget exceeds one hundred ten percent (110%) of the previous year's annual budget, such budget must be submitted to the Section 4 Owners at the annual meeting for approval. The annual budget shall be submitted to the Section 4 Owners at the annual meeting of the Corporation for adoption (if necessary) and, if so adopted, shall be the basis for the Regular Assessments (hereinafter defined) for the current fiscal year. At annual meeting of the Owners, the proposed annual budget which would exceed one hundred ten percent (110%) of the previous year's annual budget may be approved in whole or in part or may be amended in whole or in part by a Majority of the Vote as defined in Paragraph 1(m) hereof; 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 Owners shall continue to pay the then existing monthly assessment until such new annual budget and monthly assessment is established.

The annual budget and the Regular Assessments shall provide for the establishment and maintenance on an adequate replacement reserve fund for capital expenditures and replacement and major repair of the Limited Community Area and such portions of the exteriors of the Living Units for which the Corporation is responsible, including but not limited to painting and/or staining the exterior of buildings and fences, and resurfacing, repairing or replacing streets, parking areas, sidewalks, roofs and fences, which replacement fund shall be used only for those purposes and not for usual and ordinary repair expenses. I determining the amount for replacement reserves, the Board of Directors shall consider the expected useful life of such Limited Community Areas and applicable portions of the exteriors of the Living Units, projected increases in the cost of materials and labor, interest to be earned by such funds, and the advise of any consultants the Board may employ for such purpose. Such fund shall be conclusively deemed to be a Common Expense. The Board of Directors shall annually review the adequacy of any reserve fund. The proportionate interest of any Owner in any reserve for replacements shall be considered an appurtenance of his Living Unit and shall not be separatel; withdrawn, assigned or transferred or otherwise separated from the Living Unit to which it appertains and shall be deemed to be transferred with such Living Unit. Such replacement reserve fund shall be maintained by the Corporation in a separate interest bearing account or accounts with one or more banks or savings and loan associations authorized to conduct business in Marion County, Indiana, selected from time to time by the Board of Directors.

(c) Regular Assessments. Promptly following the adoption of the annual budget, the Board of Directors shall give written notice of the assessment against each respective Living Unit (herein called the "Regular Assessment"). The Regular Assessment against each Living Unit shall be equal and uniform for all Living Units, and shall be assessed on a quarterly basis beginning on May 1st of each year following the annual meeting and shall be due and payable in equal monthly installments, in advance, on the first day of each month. Payment of the monthly installments of the Regular Assessment shall be made to the Corporation's Board of Directors or the Managing Agent, otherwise, as directed by the Board of Directors. The Regular Assessment shall automatically become a lien on that Living Unit and Block Lot Apartment on the date it is due and payable. An Officer or the Managing Agent of the Corporation shall, upon due request and for a reasonable charge, cause to be furnished a certificate setting forth whether the Regular and Special Assessments on a designated Living Unit have been paid, or the amount of any unpaid and

delinquent Lugular or Special Assessments.

- (d) Special Assessments. From time to time, Common Expanses of an unusual or extraordinary nature or otherwise not anticipated may arise pertaining to The Timbers Section 4. At such time and without the approval of the Owners, the Corporation's Board of Directors shall have the full right, power and authority to annually levy and impose special assessments (applicable only to the assessment year in which made) not in excess of ten percent (10%) of the total Regular Assessments applicable for such time period which, upon resolution of the Board, shall become a lien on each Living Unit and Block Lot (herein called "Special Assessment"). Any Special Assessment exceeding this amount must be first approved by a Majority of the Vote (as that phrase is defined in Paragraph 1(m) above) at a special meeting called for such purpose.
- (e) Failure of Owner to Pay Assessments. No Owner may exempt himself or herself from paying Regular or Special Assessments, or from contributing toward the expenses of administration and of maintenance and repair of the Limited Community Area and toward any other expense lawfully agreed upon, by waiver of the use or enjoyment of the Community Area or Limited Community Area, or by abandonment of the Living Unit belonging to such Owner. Each Owner shall be personally liable for the payment of all Regular 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 Regular or Special Assessments when due, the lien for such assessment on the Owner's Living Unit and Block Lot 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 Regular or Special Assessments within fifteen (15) 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 to be determined by the Board of up to twenty-five percent (25%) of the amount 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, and (3) suspend such Owner's right to vote as provided in the Indiana Nonprofit Corporation Act of 1991, as amended. In any action to foraclose the lien for any Assessments, the Owner and any occupant of the Living Unit and Block Lot shall be jointly and severally liable for the payment to the Corporation of reasonable rental for such Living Unit and Block Lot, and the Board shall be entitled to the appointment of a receiver for the purpose of preserving the Living Unit and Block Lot

and to collect the rentals and other profits therefrom for the benefit of the Corporation to be applied to the unpaid Regular or Special Assessments. The Board may, at its option, bring a suit to recover a money judgment for any unpaid Regular or Special Assessments without foreclosing or waiving the lien securing the same. In any action to recover a Regular 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 Living Unit and Block Lot.

- (f) Subordination of the Lien to Mortgagos. 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. Notwithstanding anything contained in this Paragraph or elsewhere in this Declaration, any sale or transfer of a Living Unit and Block Lot to a mortgagee pursuant to a foreclosure on its mortgage or conveyance in lieu thereof, or a conveyance to any person at a public sale in the manner provide by law with respect to mortgage foreclosures, slill excinguish the lien of any unpaid Installment of any Regular or Special Assessment as to such installments which became due prior to such sale, transfer or conveyance; provided, however, that the extinguishment of such lien shall not relieve the prior Owner from personal liability therefor. No such sale, transfer or conveyance shall relieve the Living Unit and Block Lot or the purchaser at such foreclosure sale, or grantee in the event of conveyance in lieu thereof, from liability for any installments of Regular or Special Assessments thereafter becoming due or from the lien therefor. Such unpaid share of any Regular Assessments or Special Assessments, the lien for which has been divested as aforesaid, shall be deemed to be a Common Expense collectible from all Owners within the applicable regime (including the party acquiring the subject Living Unit and Block Lot from which it arose).
- 10. Paragraph 16 of the Soction 4 Declaration is hereby deleted in its entirety and replaced with the following:
 - 16. Amendment. This Supplementary Declaration may be amended at any time upon the approval of the Owners of at least two-thirds (2/3) of the Block Lots within The Timbers Section 4 at a special meeting called for such purpose. Any amendment shall become effective upon its recordation in the Office of the Recorder of Marion County, Indiana.

- 11. There shall be added a new Paragraph 20 to the Section 4 Declaration as follows:
 - 20. | iembership and Meetings of the Corporation.
 - (a) Membership. Every person or antity who owns one or more Living Units within The Timbers Section 4, including contract sellers, shall automatically upon becoming an Owner of such a Living Unit be and become a becoming an Owner of such a Living Unit be and become a member of the Corporation (hereafter, "Member"); provided, member of the Corporation or entity who holds such however, that any such person or entity who holds such interest mergly as security for the performance of an interest mergly as security for the performance of an interest mergly as security for the performance of an interest mergly as security for the performance of an interest mergly as security for the performance of an interest mergly as security for the performance of an interest mergly as security for the performance of an interest mergly as security for the performance of an interest mergly as security for the performance of an interest mergly as security for the performance of an interest mergly as security for the performance of an interest mergly as security for the performance of an interest mergly as security for the performance of an interest mergly as security for the performance of an interest mergly as security for the performance of an interest mergly as security for the performance of an interest mergly as security for the performance of an interest mergly as a security for the performance of an interest mergly as a security for the performance of an interest mergly as a security for the performance of an interest mergly as a security for the performance of an interest mergly as a security for the performance of an interest mergly as a security for the performance of an interest mergly as a security for the performance of an interest mergly as a security for the performance of an interest mergly and the performance of an interest mergly as a security for the performance of an interest mergly and t nowever, that any such person of entrry who holds such interest merely as security for the performance of an obligation shall not be a Member. The Corporation shall be have one class of membership, of which all Members shall be
 - (b) <u>Purpose of Meetings</u>. At least annually, and at such other times is may be necessary or appropriate, a meeting of the Section 4 shall be held for the purpose of electing the Corporation's Board Directors in the manner described below, and for such oth purposes as may be required by this Declaration or the Indiana Nonprofit Corporations Act of 1991. Corporations Act of 1991.
 - shall be held in the month of April of each year with the specific date and time to be determined by the Board of Directors of the Corporation. (This meeting will also coincide with the annual meeting of the owners of homes located in The Timbers I, II, and III.) At each annual meeting, the Owners shall elect the Board of Directors of meeting, the Owners shall elect the Board of Directors of the Corporation in accordance with these provisions and the Corporation in accordance with these provisions and transact such other business as may properly come before the meeting. In lieu of an annual meeting, the Board of Directors may elect to utilize written ballots in the manner prescribed in the Indiana Nonprofit Corporations Act of 1991, as amended.
 - (d) Special Meetings. A special meeting of the Section 4 Owners may be called: (1) by the Corporation's President; or (2) by the Director elected by the Section 4 Owners; or (3) by resolution of the Corporation's Board of Directors; or (4) upon a written petition of the Owners of not less than ten percent (10%) of the total Living Units within The Timbers Section 4. The resolution or petition shall be presented to the President or Secretary of the Corporation, and shall state the purpose for which the 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.

(e) Notice and Place of Meetings. All meetings of th Section 4 Owners shall be held at The Timbers clubhouse or at any suitable place in Marion or Johnson County, Indiana, All meetings of the 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 Owner entitled to vote thereat not less than fourteen (14) days prior to the date of such meeting. Any written notice delivered to the Owners as part of a newsletter or other publication regularly sent to the Owners constitutes a written notice. If at any meeting an amendment to the Declaration of Covenants and Restrictions, the Corporation's Articles of Incorporation or By-Laws, or this Declaration 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 Owners at their respective addresses as the same shall appear upon the records of the Corporation. an annual or special meeting of Owners 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 Indiana Nonprofit Corporations Act of 1991 before adjournment.

(f) Voting

(i) Number of Votes. To avoid fractional votes and to facilitate the orderly conduct of the meeting, each Momber shall be entitled to cast one (1) vote for each Living Unit of which such Member is the Owner. The total number of votes for or against any matter shall then be divided by the twenty-nine (29) Living Units in The Timbers - Section 4, to determine the respective proportions of Owners supporting or opposing such matter, or by the number of Living Units the Owners of which are present or represented at such meeting, to determine the respective proportions of Owners present or represented at such meeting supporting or opposing such matter. 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 Corporation's Articles of Incorporation or 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.

- (ii) 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.
- (iii) 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 diver 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.
- (iv) 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.

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(v) Quorum. Except where otherwise expressly provided in the Act, the presence of Owners or their duly authorized representatives owning at least ten percent (10%) of the total number of 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, unless otherwise expressly indicated, more than fifty percent (50%) of the total number of Lots, 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.

- (g) 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.
 - (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) <u>Budget.</u> The proposed budget for the current calendar year shall be presented to the Members for approval or amendment, if necessary.
 - (4) Election of Board of Directors. Nominations for the Board of Directors may be made by a Member from those persons eligible to serve. Nominations shall also be made by the Nominating Committee which shall consist of a Chairman who shall he a Director, and two (2) or more Owners. The Nominating Committee shall be appointed by the Board of Directors at least three (3) months prior to each annual meeting. Such nominations (whether from an Owner or the Nominating Committee) must be in writing and presented to the Secretary of the Corporation at least thirty (30) days prior to the annual meeting. Nominations for the Board of Directors shall NOT be accepted from the Owners attending the annual meeting. Voting for the Board of Directors will be by paper ballot. Each Owner must sign his or her ballot. The ballot shall contain the name of each person nominated to serve as a Board member. Each Owner may cast the total number of votes to which he or she is entitled for as many nominees as are to be elected from the Timbers Section 4 (as described below); however, no Owner 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 above.
- (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 s budget is approved by the Owners for the upcoming year, if necessary.
- (h) Conduct of Special Meeting. The President of the Corporation shall act as Chairman of any special meetings of the Corporation. For any special meetings of the Section 4 Owners only, the Director elected by the Section 4 Owners shall act as Chairman. 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.
- (i) Written Ballots. In lieu of any annual or special meeting of the Members, written ballots may be utilized in the manner prescribed in the Indiana Nonprofit Corporations Act of 1991.
- 12. There shall be added a new Paragraph 20 to the Section 4 Declaration as follows:

20. Board of Directors.

(a) Board of Directors. Rather than having an Advisory Committee for The Timbers - Section 4, the affairs of The Timbers - Section 4 shall be governed and managed by the Corporation's Board of Directors (herein sometimes collectively called "Board" and individually called "Directors"). The powers and duties which were originally assigned to the Advisory Committee for The Timbers - Section 4 pursuant to the provisions of the original Section 4 Declaration are hereby delegated to, and accepted by, the Board of Directors of the Corporation.

The Board of Directors shall be composed of five (5) persons. Of these five (5), one Director shall be an Owner of a Condominium Apartment from Timbers I, one Director shall be an Owner of a Condominium Apartment from Timbers II, one Director shall be an Owner of a Condominium Apartment from Timbers III, one Director shall be an Owner of a Living Unit from The Timbers - Section 4, and one Director shall serve "at large" (owning a home within Timbers I, II, or III or Section 4).

(b) 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.

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(c) Term of Office and Vacancy. Members of the Board of Directors shall be elected at each annual meeting of Owners. Except for the "at large" Director, each Director shall serve a term of two (2) years. The "at large" Director shall serve a term of one (1) year. In addition to the "at large" Director being elected annually, the terms of the remaining Directors shall be staggered such that two (2) Directors shall be elected at each annual meeting (not counting the "at large" Director), with the two (2) other Directors serving until the next annual meeting. Any vacancy or vacancies occurring in the Board caused by a death, resignation, or otherwise other than a vacancy created by removal, shall be filled until the next annual meeting of the Owners through a vote of a majority of the remaining Directors. At the first annual meeting of the Owners following any such vacancy, a Director shall be elected by the applicable 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.

In electing Directors, each Section 4 Owner shall be entitled to vote only for the Director who owns a Living Unit within The Timbers - Section 4, as well as the "at large" Director. For example, each Owner of a Living Unit in Section 4 will only vote for the Timbers Section 4 Director and the "at large" Director.

(d) <u>Removal of Directors</u>. A Director or Directors elected by the Owners, or elected by the Directors to fill a vacancy, may be removed by the applicable 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 applicable 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).

- (e) <u>Dutles of the Board of Directors</u>. 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:
 - (i) Protection, repair and replacement of the Community Area and Limited Community Area and such exterior portions of the Living Units for which the Corporation is responsible under the terms of this Declaration, 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 onsite or roving guards, security service or security system for protection or surveillance, and the same need not be furnished;
 - (ii) Procuring of utilities, removal of garbage and waste if not provided by the municipality, and snow removal;
 - (iii) Landscaping, painting, decorating, and furnishing of the Community Area and Limited Community Area in accordance with this Declaration;
 - (iv) Surfacing, paving, and maintaining streets, parking areas, and sidewalks;
 - (v) Assessment and collection from the Owners of the Owners' pro-rata share of the Common Expenses;
 - (vi) Preparation of the proposed annual budget, a copy of which will be mailed, delivered or made available to each Owner at the same time the notice of annual meeting is mailed or delivered;
 - (vii) Preparing annually a full accounting of all receipts and expenses incurred during each year, which accounting may be made available or delivered to each Owner simultaneously with delivery of the notice of the annual meeting of the Owners;

- (viii) Keeping a current, accurate, and detailed record of receipts and expenditures affecting the Timbers Section 4, 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;
- (ix) Procuring and maintaining in force all insurance coverage required by this Declaration;
- (x) Performing such other duties as may be reasonably inferred from the provisions of this Declaration.
- (f) 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:
 - (i) 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;
 - (ii) 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;
 - (iii) To procure for the benefit of the Owners fire and extended coverage insurance covering the buildings and improvements on the Lots, the Community Area and Limited 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 this Declaration, for the benefit of the Owners and the Corporation;
 - (iv) 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;
 - (v) 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 Community Area, Limited Community Areas, and the exterior portions of the Living Units for which the Corporation is responsible for maintenance;

- (vi) 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;
- (vii) To open and maintain a bank account or accounts in the name of the Corporation and to designate the signatories thereto;
- (viii) To adopt, revise, amend, and alter from time to time reasonable rules and regulations with respect to use, occupancy, operation, and enjoyment of the Property within The Timbers Section 4 provided that the Board shall give advance written notice to the Owners of such rules and any revision, amendment, or alteration thereof.
- (g) <u>Limitations on Board Action</u>. The authority of the Board of Directors to enter into contract shall be limited to contracts involving a total expenditure of less than Ten Thousand Dollars (\$10,000.00), unless the prior approval of a Majority of Owners (as defined above) is obtained, except in the following cases:
 - (i) Supervision and management of the replacement or restoration of any portion of the Community Area, Limited Community Area, or the Living Units damaged or destroyed by fire or other casualty, where the cost theraof is payable out of insurance proceeds actually received; and,
 - (ii) Proposed contracts and proposed expenditures expressly set forth in the proposed annual budget as presented to 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
 - (iii) 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 Ten Thousand Dollar (\$10,000.00) maximum shall automatically be adjusted every five (5) years from the date

of recording of this Declaration 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.

- (h) Misc. Matters. Matters pertaining to the compensation of Directors and Officers. Board Meetings and notices thereof, waiver of notice, the quorum at Board meetings, bonds, informal actions by the Directors, the standards of conduct and liability of Directors and Officers, the Officers of the Corporation and their duties, and indemnification of Directors and Officers shall be as set forth in the Code of By-Laws for the Corporation, as the same may be amended from time to time.
- 13. There shall be added a new Paragraph 21 to the Section 4 Declaration as follows:

21. Additional Rights and Duties of Board,

- (a) Right of Entry. An Owner or occupant of a Living Unit shall be deemer to have granted the right of entry to his Lot and Living Unit to the Board, the Managing Agent, or any person authorized by the Board in case of any emergency, in order to remedy any circumstance threatening his or her Lot and/or Living Unit, the building located thereon, or any other property or person, whether the Owner is present at the time or not. Any Owner shall permit persons authorized by the Board to perform any work for which the Corporation is responsible, when required, to enter his Lot and Living Unit for such purpose, provided that requests for entry are made in advance and that such entry is at a time convenient to the Owner. In case of emergencies, such right or entry shall be immediate.
- (b) Right of Board to Adopt Rules and Regulations. The Board may promulgate such reasonable rules and regulations regarding the operation of The Timbers Section 4 as the Board may deem desirable, including but not limited to the use of the Community Area, Limited Community Area, the Lots and the Living Units. Such rules as are adopted may be repealed or sended by a vote of a majority of the Board. The Board shall cause copies of all such rules and regulations, including any amendments or repeals thereof, to be delivered or mailed promptly to all Owners at least fifteen (15) days prior to the effective date thereof. Any rule or regulation promulgated by the Board shall be properly and consistently enforced by the Board.

14. There shall be added a new Paragraph 22 to the Section 4 Declaration as follows:

22. Maintenance, Repairs and Replacements,

- (a) Community Area and Limited Community Area.
 Maintenance, repairs, replacements and upkeep of the
 Community and Limited Community Area shall be furnished by
 the Corporation, as a part of its duties, and the cost
 thereof shall constitute a part of the Common Expenses.
- (b) Living Units and Lots. In addition to maintenance upon the Community Area and Limited Community Area, the Corporation shall provide exterior maintenance upon each Lot which is subject to assessment hereunder as follows: paint, repair, replacement and care of roofs, gutters, downspouts, and exterior building surfaces. Such exterior maintenance shall not include any exterior doors (including garage doors) or windows, glass surfaces, screens and screen doors, door and window fixtures and other hardware, and such other items as the Board of Directors may so designate (unless specifically designated in the Declaration as the Corporation's obligation) so long as such items of exception shall apply to all Living Units equally. Each Owner shall be responsible for maintaining and keeping all other portions of his or her Lot and Living Unit and all improvements thereon in a good, clean and sanitary condition and shall do all work thereon which is not required hereunder to be performed by the Corporation.
- (c) Owner's Actions or Omissions. Notwithstanding any obligation or duty of the Corporation to repair or maintain any Lot, Living Unit, Community Area or Limited Community Area, if, due to the willful, intentional or negligent acts or omissions of an Owner or of a member of his or her family, or of a guest, tenant, invitee or other occupant or visitor of such Owner, damage shall be caused, or if maintenance, repairs or replacements shall be required thereby which would otherwise be a Common Expense, then such Owner shall pay for damage and such maintenance, repairs and replacements, as may be determined by the Corporation, unless such loss is covered by the Corporation's insurance with such policy having a waiver of subrogation clause. If not paid by such Owner upon deman. by the Corporation, the cost of repairing such damage shall be added to and become a part of the assessment to which Owner's Lot and Living Unit is subject, and shall be secured by the Corporation's lien on the Owner's property.
- (d) Owner's Lot and Living Unit. If any Owner shall fail so to maintain and keep his or her property or any part thereof in a good, clean and sanitary condition, the

Corporation may perform any work necessary to do so and charge the Owner thereof for such cost, which cost shall be added to and become a part of the assessment to which. Owner's Lot and Living Unit is subject, and shall be secured by the Corporation's lien on the Owner's property.

15. There shall be added a new Paragraph 23 to the Section 4 Declaration as follows:

23. Insurance.

(a) Casualty Insurance. The Corporation shall purchase a master, or "blanket", casualty insurance policy or policies affording fire and extended coverage insurance insuring the Community, Limited Community and all Living Units in an amount consonant with the full replacement value of the improvements excluding, as to any Lot and Living Unit and the improvements thereon, all fixtures, betterments and improvements installed by any Owner or occupant whether located on a Lot or elsewhere. If the Corporation can obtain such coverage for reasonable amounts, it shall also obtain "all risk" coverage. The Board of Directors shall be responsible for reviewing at least annually the amount and type of such insurance and shall purchase such additional insurance as is necessary to provide the insurance required above. If deemed advisable by the Board of Directors, it shall cause such full replacement value to be determined by a qualific appraiser and the cost of any such appraisal shall be a Common Expense. Such insurance coverage shall be for the benefit of the Corporation, each Owner, and, if applicable, the first mortgage of each Lot and Living Unit.

Such master casualty insurance policy, and "all rink" coverage if obtained, shall (to the extent the same are obtainable) contain provisions that the insurer (a) waives its right to subrogation as to any claim against the Corporation, its Board of Directors, its agents and employees, Owners, their respective agents and guests, and (2) waives any defense based on the invalidity arising from the acts of the insured, and providing further, if the Board of Directors is able to obtain such insurance upon reasonable terms, that the insurer shall not be entitled to contribution against casualty insurance which may be purchased by Owners as hereinafter permitted.

(b) <u>Liability Insurance</u>. The Corporation shall also purchase a master comprehensive public liability insurance policy in such amount or amounts as the Board of Directors shall deem appropriate from time to time. Such comprehensive public liability insurance policy shall cover the Corporation, its Board of Directors, any committee or organ of the Corporation 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 Corporation, all Owners and occupants.

The Corporation shall also obtain any other insurance required by law to be maintained, including but not limited to worker's compensation insurance, and such other insurance as the Board of Directors shall from time to time deem necessary, advisable or appropriate. Such insurance coverage shall also provide for the coverage of cross liability claims of one insured party against another insured party. Such insurance shall inure to the benefit of each Owner, the Corporation, its Board of Directors and any Managing Agant acting on behalf of the Corporation. Each Owner shall be deemed to have delegated to the Board of Directors lin or her right to adjust with the insurance companies a cosses under policies purchased by the Corporation.

- (c) <u>Distribution to Mortgages</u>. In no event shall any distribution of proceeds be made by the Board of Directors directly to an Owner where there is a mortgage endorsement on the certificate of insurance. Ind such event any remittances shall be to the Owners and his or her mortgagee jointly.
- (d) Additional Insurance. Each Owner and/or occupant shall be responsible for and may obtain such additional insurance as he deems accor any or desirable at his own expense affording coverage upon his personal property, the contents of his residence (including, but not limited to, all floor, ceiling and wall coverings and fixtures, betterments and improvement insualled by him) and his personal property stored elsewhere, and for his personal liability, but all such insurance shall contain the same provisions of waiver of subrogation as referred to in the foregoing provisions for the master casualty insurance polity to be obtained by the Corporation. Each Owner and/or occupant may obtain casualty insurance at his own expense on his home but such insurance shall provide that it shall be without contribution as against the casualty insurance purchased by the Corporation. If a casualty loss is sustained and there is a reduction in the amount of the proceeds which would otherwise be payable on the insurance purchase by the Corporation pursuant to this provision due to proration insurance purchased by an Owner or occupant under this pro sion, the Owner or occupant agrees to assign the proceeds of this latter insurance, to the extent of the amount of such aduction, to the Corporation to be distributed as a rein provided.

- (e) <u>Casualty and Restoration</u>. Damage to or destruction of the Community Are, Limited Community Area, or any Living Unit due to fire or any other casualty codisaster shall be promptly repaired, reconstructed and restored by the Corporation and the proceeds of insurance, if any, shall be applied for that purpose.
- (f) Insufficiency of Insurance Proceeds. If the insurance proceeds received by the Corporation as a result of any such fire or any other casualty or disaster are not adequate to cover the cost or repair and reconstruction, or in the event there are no insurance proceeds, the cost for restoring the damage and repairing and reconstructing the affected property so damaged or destroyed (or the costs thereof in excess of insurance proceeds received, if any) shall be paid by the Corporation which shall then have the right to levy a special assessment against all Lots and Living Units for such deficiency.

For purposes of Paragraph 23(e) above, repair, reconstruction and restoration shall mean construction or rebuilding of the affected property to as near as possible the same conditions as it existed immediately prior to the damage or destruction and with the same or similar type of architecture.

- (g) Surplus of Insurance Proceeds. In the event that there is any surplus of insurance proceeds after the reconstruction or repair of the damage has been fully completed and all costs paid, such sums may be retained by the Corporation as part of its replacement reserves or may be used in the maintenance and operation of The Timbers Section 4, or, in the discretion of the Board of Directors, may be distributed to the Owners of the Living Units affected and their mortgagees who are beneficial owners of the fund. The action of the Board of Directors is proceeding to repair or reconstruct damage shall not constitute a waiver of any rights against any Owner or occupant for committing willful or malicious damage.
- 16. <u>Definitions</u>. The definitions of terms defined in the Declaration, as used herein shall be applicable to these Amendments to said Declaration, unless otherwise expressly defined herein.
- 17. Acceptance and Ratification. The acceptance of a deed of conveyance or the act of occupancy of any Living Unit in The Timbers Section 4 shall constitute a ratification of these Amendments, together with the Declaration, the Corporation's By-Laws, the Corporation's Articles of Incorporation, and any Rules or Regulations adopted pursuant thereto, together with any amendments to any of the foregoing, and all such provisions shall

be covenants running with the land and shall bind any person having at any time any interest or estate in such a Living Unit or Lot or the Property as if such provisions were recited and stipulated at length in each and every deed, conveyance, mortgage or lease.

IN WITNESS WHEREOF, we, the undersigned Section 4 Owners, do hereby execute these AMENDMENTS TO THE SUPPLEMENTARY DECLARATION OF COVENANTS AND RESTRICTIONS--THE TIMBERS - SECTION 4, this Transport of Marca, 1995.

Murcha Establical (owner's signature)

MARTHUE White (printed)

(printed)

(printed)

(printed)

(street address)

(conner's signature)

(printed)

(printed)

(printed)

(Lot no.)

STATE OF INDIANA. COUNTY OF MAKEON

Before me, a Notary Public, in and for said County and State, personally appeared Mith E. White! and ______, who acknowledged the execution of the foregoing Amendments to the Supplamentary Declaration of Covenants and Restrictions for The Timbers - Section 4, and who, having been duly sworn, statud that the statements contained herein are true to the best of their knowledge and belief. Subscribed and sworn to before me this 13 day of February, 1995.

OREDGA, GUS I NOTARY PUBLICE IN SECRITORIANA SUSEBY COULDED MY COMMERCE DRY DOLL 18,1998

ORTHORY G. FOH
Printed

My Commission Expires: 12/20/98 Residence County: Shalby

timbers4.dec December 11, 1994
This instrument prepared by, and should be returned to, P. Thomas Murray, Jr., Attorney at Law, P.O. Box 501040, Indianapolis, IN 46250. (317) 842-8550.

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IDENTICAL AND CONTEMPORANEOUS AMENDMENTS 10. THE DECLARATIONS OF HORIZONTAL PROPERTY OWNERSHIP FOR THE TIMBERS I, II, and III HORIZONTAL PROPERTY REGIMES

There Identical and Contemporaneous Amendments to the Declarations of Horizontal Property Ownership for The Timbers I, II, and I) I horizontal property regimes were made as of the The day of MARCH. Horse 1995

WITNESSETH THAT:

WHEREAS, The Timbers I Horizonal Property Regime located in Marion County, Indiana (hereafter, "Timbers I") was originally created and formed pursuant to the Indiana Horizontal Property Act and a certain "Declaration of Horizontal Property Ownership" recorded in the Office of the Recorder of Marion County, Indiana, on March 26, 1974, as Instrument No. 74-15967 (hereafter, "Timbers I Declaration" or "Declaration for Timbers I"), as the same may have been amended from time to time; and

WHEREAS, The Timbers II Horizonal Property Regime located in Marion County, Indiana (hereafter, "Timbers II") was originally created and formed pursuant to the Indiana Horizontal Property Act and a certain "Declaration of Horizontal Property Ownership" recorded in the Office of the Recorder of Marion County, Indiana, on August 30, 1974, as Instrument No. 74-55300 (hereafter, "Timbers II Declaration" or "Declaration for Timbers II"), as the same may have been amended from time to time; and

WHEREAS, The Timbers III Horizonal Property Regime located in Marion County, Indiana (hereafter, "Timbers III") was originally created and formed pursuant to the Indiana Horizontal Property Act and a certain "Declaration of Horizontal Property Ownership" recorded in the Office of the Recorder of Marion County, Indiana, on August 15, 1975, as Instrument No. 75-43967 (hereafter, "Timbers III Declaration" or "Declaration for Timbers III"), as the same may have been amended from time to time; and

WHEREAS, Timbers I consists of thirty-eight (38) Condominium Apartments and the Common Areas and Facilities as described and set forth in the Timbers I Declaration; and

WHEREAS, Timbers II consists of forty-five (45) Condominium Apartments and the Common Areas and Facilities as described and set forth in the Timbers II Declaration; and

WHEREAS, Timbers III consists of thirty-five (35) Condominium Apartments and the Common Areas and Facilities to described and set forth in the Timbers III Declaration; and

WHEREAS, pursuant to the Indiana Horizontal Property Act, Ind. Code Sec. 32·1-6-8, the associations of co-owners for the Timbers I, II and III were established as unincorporated

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associations; and

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WHEREAS, the original developer of The mimbers 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, Office on March 26, 1974, as Instrument No. 74-16962 (hereafter, of the "Overall Declaration"), which contemplated the formation of the Toverall property regimes, which contemplation was partially realized by the creation of The Timbers I, II, and III horizontal property regimes; and

WHEREAS, the Overall Declaration provided for a not-forprofit corporation known as The Timbers, Inc. (now known as The Timbers of Indianapolis, Inc.) which was created upon the filing of Articles of Incorporation with the Indiana Secretary of State on January 31, 1974 (hereafter, *Corporation*); and

WHEREAS, by the terms of the Overall Declaration, the Corporation owns certain property, including but not limited to The Timbers clubhouse and other real and personal property; and

WHEREAS, by the terms of the Overall Declaration, all Owners of Condominium Apartments in Timbers I, II, and III are mandatory members of the Corporation and must pay lien-supported assessments to the Corporation for expenses pertaining to the clubhouse and other property owned by the Corporation; and

WHEREAS, by the terms of the Overall Declaration, the "Supplementary Declaration of Covenants and Restrictions - The Timbers - Section 4" recorded with the Marion County Recorder on September 30, 1977 as Instrument No. 77-64851 which established The Timbers - Section 4 planned unit development consisting of twenty-nine (29) homes (hereafter, "Section 4"), all owners of the homes within Section 4 are also mandatory members of the Corporation and must pay lien-supported assessments to the Corporation to the same extent as Owners of Condominium Apartments in Timbers I, II, and III; and

WHEREAS, Timbers I, Timbers II, Timbers III, and Section 4 are part of a community known as The Timbers; and

WHEREAS, a "Supplementary Declaration of Covenants and Restrictions - The Timbers - Section 5" recorded with the Marion County Recorder on May 11, 1982 as Instrument No. 82-24076 established The Timbers - Section 5 planned unit development consisting of ten (10) homes at present (hereafter, "Section 5"); however, the owners of homes within Section 5 have their own homeowners association which governs them such that although Section 5 is commonly thought of 9s being part of The Timbers community, Section 5 is an autonomous property at d is completely separate in function from Timbers 1, II, III, and Section 4; and

WHEREAS, since The Timbers I, II and III are so similar, are adjoining properties, and are horizontal property regimes governed by Indiana's Horizontal Property Act, the Owners of the Condominium Apartments within The Timbers I, II, and III desire to adopt contemporaneously the following amendments to each of the three Declarations; and

WHEREAS, said Owners further desire to amend certain provisions of their respective Declarations and to transfer to The Timbers of Indianapolis, Inc. the obligations for maintenance, repairs, and replacements of the Condominium Apartments and the Common Areas and Facilities within their respective regimes rather than having the three (3) separate, unincorporated associations of co-commers perform such functions; and

WHEREAS, the Owners further desire that the Board of Directors of The Timbers of Indianapolis, Inc. shall be composed of members elected in the manner set forth below such that The Timbers of Indianapolis, Inc. Board of Directors shall be responsible for the matters which were originally assigned separately to the Boards of Managers for each of the three (3) regimes; and

WHEREAS, Section 5.06 of each of the original By-Laws for Timbers I, II and III empower the Board of Managers for each of the three (3) regimes to delegate their duties to a Managing Agent; and

WHEREAS, the same Section 5.06 stated that The Timbers of Indianapolis, Inc. could serve as such Managing Agent; and

WHEREAS, Paragraph 21(d) of The Timbers I Declaration enables said declaration to be amended by a vote of not less than seventy-five percent (75%) of the Percentage Vote of the Co-Owners within The Timbers I in a duly constituted meeting called for such purpose; and

WHEREAS, Paragraph 22(d) of The Timbers II Declaration enables said declaration to be amended by a vote of not less than seventy-five percent (75%) of the Percentage Vote of the Co-Owners within The Timbers II in a duly constituted meeting called for such purpose; and

WHEREAS, Paragraph 23(d) of The Timbers III Declaration enables said declaration to be amended by a vote of not less than seventy-five percent (75%) of the Percentage Vote of the Co-Owners within The Timbers III in a duly constituted meeting called for such purpose; and

WHEREAS, the Co-Owners within The Timbers I, II, and III horizontal property regimes desire to adopt certain amendments to

their respective Declarations as set forth herein and to incorporate such amendments into this single instrument to avoid conflicting provisions among the three regimes; and

WHEREAS, after notice was duly given pursuant to the original By-Laws of each of the three (3) regimes, a Special Meeting of all Co-Owners was held on the 3rd day of November, 1994, for the purpose of considering and adopting this Identical and Contemporaneous Amendment to the Declarations of Horizontal-Property Ownership for The Timbers I, II, and III horizontal proparty regimes; and

WHEREAS, at said Special Meeting, the Owners holding more than seventy-five percent (75%) of the Percentage Vote of the Co-Owners within The Timbers I horizontal property regime voted to approve this Identical and Contemporaneous Amendment to the Declarations of Horizontal Property Ownership for The Timbers I, II, and III horizontal property regimes; and

WHEREAS, at said Special Meeting, the Owners holding more than seventy-five percent (75%) of the Percentage Vote of the Co-Owners within The Timbers II horizontal property regime voted to approve this Identical and Contemporaneous Amendment to the Declarations of Horizontal Property Ownership for The Timbers I, II, and III horizontal property regimes; and

WHEREAS, at said Special Meeting, the Owners holding more than seventy-five percent (75%) of the Percentage Vote of the Co-Owners within The Timbers III horizontal property regime voted to approve this Identical and Contemporaneous Amendment to the Declarations of Horizontal Property Ownership for The Timbers I, II, and III horizontal property regimes; and

WHEREAS, the provisions below were approved contemporaneously with the Amended & Restated Articles of Incorporation for The Timbers of Indianapolis, Inc., the Amended & Restated Code of By-Laws for The Timbers of Indianapolis, Inc., the Amended, Restated & Consolidated Code of By-Laws of The Timbers I, II, and III, and the Amendments to the Declaration for Section 4.

NOW, THEREFORE, the Declarations of Horizontal Property Ownership for The Timbers I, II, and III horizontal property regimes are amended as follows:

1. Paragraph 1(e) of each of the Declarations of Horizontal Property Ownership for The Timbers I, II, and III horizontal property regimes (hereafter referred to as the "HPR Declarations") is hereby deleted in its entirety and replaced with the following:

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- (e) "Board of Managers" means the body of the Association which, pursuant to the Declaration at the time it was prepared by the Declarant, was to elected by the Co-Owners. However, pursuant to amendments to this Declaration as well as the Consolidated By-Laws, the Owners shall not elect a Board of Managers, but shall instead elect the Board of Directors of The Timbers of Indianapolis, Inc. who shall serve all functions which were originally the responsibility of the Board of Managers.
- Paragraph 1(g) of each of the HPR Declarations is hereby deleted in its entirety and replaced with the following:
 - (g) "By-Laws" means the By-Laws of the Association and of this horizontal property regime providing for the administration of the Property as required by and in conformity with the provisions of the Act. The By-Laws for this regime have been consolidated through the amendment and restatement of the By-Laws for Timbers I, II, and III.

A true copy of the Amended, Restated and Consolidated Code of By-Laws of The Timbers I, II, and III Horizontal Property Regimes is being filed with the Marion County Recorder's Office contemporaneously with the filing of these amendments to the HPR Declarations (hereafter, the "Consolidated By-Laws").

- 3. Paragraph 1(1) of each of the HPR Declarations is hereby deleted in its entirety and replaced with the following:
 - (1) "Corporation" means The Timbers of Indianapolis, Inc., an Indiana nonprofit corporation. The Corporation was formerly known as The Timbers, Inc. However, through an amendment to the Corporation's Articles of Incorporation filed with the Indiana Secretary of State on April 19, 1994, the name was changed to The Timbers Of Indianapolis, Inc.
- 4. The reference to the "Board of Managers" in Paragraph 1(p) of each of the HPR Declarations is hereby deleted and replaced with the phrase "Board of Directors". All other provisions of Paragraph 1(p) shall be unchanged and shall remain in full force and effect.
 - . There shall be added a new Paragraph 1(dd) as follows: (dd) "Board of Directors" means the Board of Directors of the Corporation.

- 6. The reference to the "Board of Managers" in Paragraph 8 of each of the HPR Declarations is hereby deleted and replaced with the phrase "Board of Directors". Further, the reference to the "Association" in Paragraph 8 of each of the HPR Declarations is hereby deleted and replaced with the phrase "Corporation". All other provisions of Paragraph 8 shall be unchanged and shall remain in full force and effect.
- 7. Paragraph 11 of each of the HPR Declarations is hereby deleted in its entirety and replaced with the following:
 - 11. Association of Owners. In order to provide for the maintenance, repair, replacement, administration and operation of the Property, the original Declarant created an unincorporated Association of the Co-Owners of the Apartments in this regime. Each Owner was originally a member of such Association.

Rather than having three (3) separate Associations for Timber I, II, and III, the Owners of Apartments within those regimes now elect the Board of Directors of the Corporation in the manner as set forth in the Consolidated By-Laws. The Corporation, acting through the Board of Directors, is now obligated to maintain, repair, replace, administer and operate the Apartments and the Common Areas within Timbers I, II, and III to the same extent as the Board of Managers was originally. Thus, the Corporation, acting through the Board of Directors, shall be the governing body of this regime, representing all of the Co-Owners, in providing for the management, maintenance, repair, replacement and upkeep of the Property.

- 8. The reference to the "Board of Managers" in Paragraph 12(a) of each of the HPR Declarations is hereby deleted and replaced with the phrase "Board of Directors". Further, the reference to the "Association" in Paragraph 12(a) of each of the HPR Declarations is hereby deleted and replaced with the phrase "Corporation". All other provisions of Paragraph 12(a) shall be unchanged and shall remain in full force and effect.
- 9. The reference to the "Board of Managers" in Paragraph 13(d) of each of the HPR Declarations is hereby deleted and replaced with the phrase "Board of Directors". Further, the reference to the "Association" in Paragraph 13(d) of each of the HPR Declarations is hereby deleted and replaced with the phrase "Corporation". All other provisions of Paragraph 13(d) shall be unchanged and shall remain in full force and effect.
- 10. The reference to the "Board of Managers" in Paragraph 13(e) of each of the HPR Declarations is hereby deleted and replaced with the phrase "Board of Directors". All other

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provisions of Paragraph 13(e) shall be unchanged and shall remain in full force and effect.

- 11. The reference to "Article VII" in the third line of Paragraph 14 of each of the HPR Declarations is hereby amended to refer to "Article XI". All other provisions of Paragraph 14 shall be unchanged and shall remain in full force and effect.
- 12. Paragraph 16 of each of the HPR Declarations is hereby deleted in its entirety and replaced with the following:
 - 16. The Timbers of Indianapolis. Inc. Certain recreational and other community facilities, including, but not limited to The Timbers Clubhouse and Wilderness Trail, are located in the Development Area. The Community Area is not a part of this regime but is owned by the Corporation. The membership of the Corporation is comprised of, limited to and the obligation of all Owners of homes in The Timbers I, The Timbers III, and The Timbers Section 4. The purposes and powers of the Corporation are set forth generally in the Declaration of Covenants and Restrictions and more specifically in the Articles of Incorporation and By-Laws of the Corporation which are incorporated herein by reference. Members of the Corporation have the right to use, occupy and enjoy the Community Area pursuant to and in accordance with the provisions of the Declaration of Covenants and Restrictions and the Articles and By-Laws of the Corporation.
- 13. The references to the "Board of Managers" in Paragraphs 17 and 18 of each of the HPR Declarations is hereby deleted and replaced with the phrase "Board of Directors". All other provisions of Paragraphs 17 and 18 shall be unchanged and shall remain in full force and effect:
- 14. Paragraph 21(d) of The Timbers I Declaration, Paragraph 22(d) of The Timbers II Declaration, and Paragraph 23(d) of the Timbers III Declaration are hereby deleted and replaced with the following:
 - (d) Adoption. Any proposed amendment to this Declaration must be approved by a vote of not less than two-thirds (2/3) in the aggregate of the Percentage Vote. In the event any Apartment is subject to a first mortgage, the Mortgagee shall be notified of the meeting and the proposed Amendment in the manner provided in the By-Laws if the Mortgagee has given prior notice of its mortgage interest to the Board of Directors in accordance with the provisions of the By-Laws.

- 15. <u>Definitions</u>. The definitions of terms defined in the Timbers I Declaration, Timbers II Declaration, or Timbers III Declaration, as used herein shall be applicable to these Amendments to said Declarations, unless otherwise expressly defined herein.
- 16. Acceptance and Ratification. The acceptance of a deed of conveyance or the act of occupancy of any Condominium Apartment in Timbers I, II, or III, shall constitute a ratification of this Amendments, together with the Timbers I Declaration, Timbers II Declaration, and the Timbers III Declaration (including all amendments and supplements thereto), the Corporation's By-Laws, the Corporation's Articles of Incorporation, the Consolidated By-Laws, and any Rules or Regulations adopted pursuant thereto, together with any amendments to any of the foregoing, and all such provisions shall be covenants running with the land and shall bind any person having at any time any interest or estate in such a Condominium Apartment or the Property as if such provisions were recited and stipulated at length in each and every deed, conveyance, mortgage or lease.

IN WITNESS WHEREOF, I, the undersigned, do hereby execute these IDENTICAL AND CONTEMPORANEOUS AMENDMENTS TO THE DECLARATIONS OF HORIZONTAL PROPERTY OWNERSHIP FOR THE TIMBERS I, IX, and III HORIZONTAL PROPERTY REGIMES and certify the truth of the facts herein stated, this 2π day of Marcy , 1995.

THE TIMBERS OF INDIANAPOLIS, INC., by:

Signature

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AMENDED AND RESTATED CODE OF BY-LAMS OF THE TIMBERS OF INDIANAPOLIS, INC. An Indiana Nonprofit Corporation

This Amended and Restated Code of By-Laws of The Timbers of Indianapolis, Inc. was made as of the Timbers of Makey 1995.

WHEREAS, the original developer of The 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 and provided for the formation of several horizontal property regimes and other subdivisions; and

WHEREAS, the Overall Declaration provided for a not-forprofit corporation known as The Timbers, Inc. (now known as The Timbers of Indianapolis, Inc.) which was created upon the filing of Articles of Incorporation with the Indiana Secretary of State on January 31, 1974 (hereafter, "Corporation"); and

MEREAS, at, or shortly after, the time of the Corporation's incorporation, the original developer prepared a Code of By-Laws for the Corporation; and

WHEREAS, by the terms of the Overall Declaration, the Corporation owns certain property, including but not limited to The Timbers clubhouse and other real and personal property; and

WHEREAS, pursuant to the terms of the Overall Declaration, the "Declaration of Horizontal Property Ownership--The Timbers I Horizontal Property Regime" was recorded in the Office of the Recorder of Marion County, Indiana, on March 26, 1974, as Instrument No. 74-16967 which established the Timbers I horizontal property regime consisting of thirty-eight (38) homes (hereafter, "Timbers I"); and

WHEREAS, pursuant to the terms of the Overall Declaration, the "Declaration of Horizontal Property Ownership--The Timbers II Horizontal Property Regime" was recorded in the Office of the Recorder of Marion County, Indiana, on August 30, 1974, as Instrument No. 74-55100 which established the Timbers II horizontal property regime consisting of forty-five (45) homes (hereafter, "Timbers II"); and

WHEREAS, pursuant to the terms of the Overall Declaration, the "Declaration of Horizontal Property Ownership--The Timbers III Horizontal Property Regime" was recorded in the Office of the Recorder of Marion County, Indiana, on August 15, 1975, as Instrument No. 75-43967 which established the Timbers III hozizontal property regime consisting of thirty-five (35) homes (hereafter, "Timbers III"); and

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WHEREAS, pursuant to the terms of the Overall Declaration, the "Supplementary Declaration of Covenants and Restrictions"—The Timbers - Section 4" was recorded in the Office of the Recorder of Marion County, Indiana on September 30, 1977, as Instrument No. 77-64851 which established The Timbers - Section 4 planned unit development consisting of twenty—nine (29) Lots and the Community Area as described and set forth in said (hereafter, "Timbers Section 4") was originally created and formed pursuant to a certain (hereafter, "Section 4 Declaration"); and

WHEREAS, by the terms of the Overall Declaration, all Owners of homes in Timbers I, II, III, and Section 4 are mandatory members of the Corporation and must pay lien-supported assessments to the Corporation for expenses pertaining to the clubhouse and other property owned by the Corporation; and

WHEREAS, Timbers I, Timbers II, Timbers III and Timbers Section 4 are part of a community known as The Timbers; and

WHEREAS, a "Supplementary Declaration of Covenants and Restrictions - The Timbers - Section 5" recorded with the Marion County Recorder on May 11, 1982 as Instrument No. 82-24076 established The Timbers - Section 5 planned unit development consisting of ten (10) homes at present (hereafter, "Section 5"); however, the owners of homes within Section 5 have their own homeowners association which governs them such that although Section 5 is commonly thought of as being part of The Timbers community, Section 5 is an autonomous property and is completely separate in function from Timbers I, II, III, and Section 4; and

WHEREAS, the Corporation's Board of Directors and the Owners of homes within Timbers I, II, III, and Section 4 desire to amend certain provisions of the Corporation's Code of By-Laws; and

WHEREAS, Article 10 of the original Code of By-Laws states that they may be amended by a two-thirds (2/3) majority of the Directors then serving on the Corporation's Board of Directors;

WHEREAS, at the Corporation's Board of Directors meeting held on September 29, 1994, the Directors unanimously approved the following amendments to and restatement of the Corporation's By-Laws; and

WHEREAS, even though the following Amended & Restated Code of By-Laws were effective upon the Board of Directors' approval at the September 29, 1994 Board meeting, the Corporation's Board of Directors nevertheless resolved to submit the same to the Corporation's members for their approval; and

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WHEREAS, after notice was duly given, a Special Meeting of all Owners of homes in Timbers I, Timbers II, Timbers III, and Section 4 was held on the 3rd day of November, 1994, for the purpose of considering and discussing these Amendments; and

WHEREAS, at said Special Meeting, the Cwners representing more than seventy-five percent (75t) of the homes in Timbers I, Timbers III, and Timbers Section 4, voted to approve this Amended & Restated Code of By-Laws for The Timbers of Indianapolis, Inc.; and

WHEREAS, the provisions below were approved contemporaneously with the Amendments to the Declaration of Covenants and Restrictions for The Timbers Residential Community, the Amended & Restated Articles of Incorporation for The Timbers of Indianapolis, Inc., the Amended, Restated & Consolidated Code of By-Laws of The Timbers I, II, and III, the Identical and Contemporaneous Amendments to the Declarations of Horizontal Property Ownership for The Timbers I, II, and III Horizontal Property Regimes, and the Amendments to the Supplementary Declaration of Covenants and Restrictions for The Timbers -- Section 4.

NOW, THEREFORE, the Code of By-Laws of The Timbers of Indianapolis, Inc. is amended and restated as follows:

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AMENDED AND RESTATED CODE OF BY-LAMS OF THE TIMBERS OF INDIANAPOLIS, INC. An Indiana Nonprofit Corporation

ARTICLE I

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Section 1.1. Name. The name of this corporation is The Timbers of Indianapolis, 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 Community Area, The Timbers I horizontal property regime, The Timbers II horizontal property regime, the Timbers III horizontal property regime, and The Timbers Section 4 planned unit development in Marion County, Indiana 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 I horizontal property regime, The Timbers II horizontal property regime, and The Timbers Section 4 planned unit development in Marion County, Indiana shall automatically and mandatorily be Members in the Corporation and be entitled to all of tha privileges and subject to all of the obligations thereof. All Comers of Condominium Apartments in Timbers I, II, and III and all Owners of Lots in Timbers Section 4, by their acceptance of their respective deeds to their homes, covenant and agree to be bound by the conditions, restrictions and obligations contained in the Declaration of Covenants and Restrictions of The Timbers Residential Community, said Declaration being recorded on the 25th day of March, 1974, in the Marion County Recorder's Office as Instrument No. 74-16962 (hereafter, "Overall Declaration"), together with all amendments or supplements therato, the Corporation's 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 Condominium Apartment or Lot or any part of the Community Area shall be subject to the rules,

restrictions, terms, and conditions set forth in the Overall Daclaration, the Corporation's 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 Roard of Directors as herein provided. The Overall Daclaration is incorporated herein by reference. All of the covenants, rights, restrictions, and liabilities contained in the Overall Daclaration shall apply to and govern the interpretation of the Corporation's Amounded & Rostated Articles of Incorporation and these Code of By-Laws. The definitions and terms, as defined and used in the Overall Daclaration, shall have the same meaning in the Articles of Incorporation and these Code of By-Laws, and reference is specifically made to Paragraph 1 of the Daclaration containing definitions for terms, unless otherwise indicated herein. Further, the term "Condominium Apartment" shall have the same meaning as the term "Apartment" as used and defined in the Overall Declaration.

Section 2.3. Mambership. Every person or entity who owns one or more Condominium Apartments within either Timbers I, imbers II, or Timbers III, and every person or entity who owns one or more Lots in Timbers Section 4, including contract sellers, shall automatically upon becoming an Owner of such a Condominium Apartment or Lot be and become a member of the Corporation (hereafter, "Member"); provided, however, that any such person or entity who holds such interest merely as security for the performance of an obligation shall not be a Member. The Corporation shall have one class of membership, of which all Members shall be a part.

ARTICLE III

HISTINGS 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 (if necessary), and for such other purposes as may be required by the Overall Declaration, these By-L/vs, 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 April of each year with the specific date and time to be determined by the Board of Directors of the Corporation. (This meeting will also coincide with the annual meeting of Condominium Apartments in Timbers I, II, and III, and with the annual meeting of the owners of Lots located in Timbers Section 4.) 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.

Members of the Corporation may be called by the President, by resolution of the Board of Directors or upon a written petition of the Owners of not less than ten percent (10%) of the combined total number of Condominium Apartments in Timbers I, II, and III and Lots in Timbers Section 4. 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 Jalled. No business shall be transacted at a special meeting except as stated in the petition or resolution.

A special meeting may also be called by the owners of homes within Timbers I or II or III or Section 4 in the manner as set forth in the Amended, Restated and Consolidated Code of By-Laws of Timbers I, II, and III (hereafter, the "Consolidated By-Laws") and the applicable provisions of the Declaration for Timbers Section 4.

Section 3.4. Notice and Place of Meetings. All meetings of the Members of the Corporation shall be held at The Timbers clubhouse or at any suitable place in Marion or Johnson 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.

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(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 Condominium Apartment or Lot for which such Member is the Owner. The total number of votes for or against

any matter shall then be divided by the number of Condominium Apartments and Lots then in The Timbers I, III, and Section 4 (which currently is one hundred forty-seven (147), as the same shall have been finally platted from time to time. to determine the respective propertions of Owners supporting or opposing such matter, or by the number of Condominium Apartments or Lots the Owners of which are present or represented at such meeting, to determine the respective proportions of Owners present or represented at such meeting supporting or opposing such matter. 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 Indiana Nonprofit Corporation Act of 1991, as amended and except as otherwise provided in the Overall Declaration, the Corporation's 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 Condominium Apartment or Lot, 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 Condominium Apartment or Lot, 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 Condominium Apartment or Lot.
- (c) <u>Voting by Corporation or Trust.</u> 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) <u>Proxy.</u> An Owner may vote either in person or by his or her duly authorized and designated attorney-

in-fact. Where voting is he proxy, the Owner shall duly designate his attorned in-fact in writing, delivered to the Becretary 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 ten percent (10%) of the total combined number of Condominium Apartments and Lots 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, unless otherwise expressly indicated, more than fifty percent (50%) of the total number of Condominium Apartments and Lots, and the term "Majority of the Vote" shall mean a majority of the votes of the Owners present ox 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 the 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) <u>Budget</u>. The proposed budget for the current calendar year shall be presented to the Owners for approval or amendment, if necessary, as more fully described below and in the Overall Declaration.

- (4) Election of Board of Directors. Nominations for the Board of Directors ray be made by a Member from those persons eligible to serve. Nominations shall also be made by the Nominating Committee which shall consist of a Chairman who shall be a Director, and two (2) or more Owners. The Nominating Committee shall be appointed by the Board of Directors at least three (3) months prior to each annual meeting. Such nominations (whether from an Owner or the Nominating Committee) must be in writing and presented to the Secretary of the Corporation at least thirty (30) days prior to the annual meeting. Nominations for the Board of Directors shall NOT be accepted from the Owners 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 from such Owner's section (i.e., Timbers I, II, III, or Section 4, all as more fully described below in Article IV); 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) <u>Committee Reports</u>. 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, if necessary.

Notwithstanding the above, the annual meeting shall also be conducted so as to include all matters pertaining separately to the annual meetings of the Timbers I, II, III, and Section 4 in the manner as set forth in the Consolidated By-Laws and the applicable provisions of the Declaration for Timbers Section 4.

Section 1.7. 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. Special meetings applicable to fewer than all of Timbers I, II, III, and Section 4 shall be conducted in the manner as set forth in the Consolidated By-Laws and the applicable provisions of the Declaration for Timbers Section 4.

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 Acc.

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 five (5) persons who each own at least one (1) Condominium Apartment or Lot. Of these five (5), one Director shall be an Owner of a Condominium Apartment from Timbers I, one Director shall be an Owner of a Condominium Apartment from Timbers II, one Director shall be an Owner of a Condominium Apartment from Timbers III, one Director shall be an Owner of a Lot from the Section 4 planned unit development, and one Director shall serve "at large" (owning a home within Timbers I, II, or III or Section 4).

Rather than having a separate Board of Managers for each of the three unincorporated Associations of Co-Owners in Timbers I, II, and III, and a separate Advisory Committee for the Owners of Lots in Timbers Section 4, the Corporation's Board of Directors shall govern and manage such matters. The powers and duties which were originally assigned to the Board of Managers for each of the three unincorporated Associations pursuant to the provisions of the Declarations for Timbers I, II, and III and Codes of By-Laws for Timbers I, II, and III, are hereby delegated to, and accepted by, the Board of Directors of the Corporation. Similarly, the powers and duties which were originally assigned to the Advisory Committee for the Owners of Lots in Section 4 pursuant to the provisions of the Declaration for Timbers Section 4, are hereby delegated to, and accepted by, the Board of Directors of the Corporation. These duties and responsibilities pertaining to the individual business and affairs of Timbers I, III, and Section 4 are in addition to the duties and responsibilities of the Corporation and the Corporation's Board of Directors under the terms of the Overall Declaration.

Saction 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 Condominium Apartment or Lot may be except that no single Condominium apartment or than one person at a time.

Saction 4.3. Term of Office and Vacancy. Members of the Board of Directors shall be elected at each annual meeting of the Corporation. Except for the "at large" Director, each Director shall serve a term of two (2) years. The "at large" Director shall serve a term of one (1) year. In addition to the "at large" Director being elected annually, the terms of the large" Directors shall be staggared such that two (2) remaining Directors shall be elected at each annual meeting (not counting Directors shall be elected at each annual meeting or vacancies serving until the next annual meeting. Any vacancy or vacancies serving until the next annual meeting. Any vacancy or vacancies occurring in the Board caused by a death, resignation, or otherwise other than a vacancy created by removal, shall be otherwise other than a vacancy created by removal, shall be otherwise other than a vacancy created by removal, at the first vote of a majority of the remaining Directors. At the first annual meeting of the Members following any such vacancy, a nanual meeting of the Members following any such vacancy, a Director shall be elected by the applicable Owners to serve for Director shall be elected by the Director in respect to whom there thas 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.

In electing Directors, each Owner shall be entitled to vote only for the Director who owns a Condominium Apartment or Lot within the Owner's regime or section, as well as the "at large" birector. For example, an Owner of a Condominium Apartment within Timbers I will only vote for the Timbers I Director and the "at large" Director.

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 Community Area including, but not limited to, The Timbers clubhouse and Wilderness Trail; 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, painting, decorating, and furnishing of the Community Area;
- (d) Surfacing, paving, and maintaining private streets, parking areas, and sidewalks within the Community Area, 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, delivered, or made available to each Owner at the same time the notice of annual meeting is mailed or delivered;
- (g) Preparing annually a full accounting of all receipts and expenses incurred during each year, which accounting may be made available or delivered to each Owner simultaneously with delivery of the notice of the annual meeting of the Owners:
- (h) Keeping a current, accurate, and detailed record of receipts and expenditures affecting the Community Area, 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;
- (i) Procuring and maintaining in force all insurance coverage required by the Overall Declaration;
- (j) Performing such other duties as may be reasonably inferred from the provisions of the Overall Declaration,
- (k) Performing such duties set forth in Section 3.5 of the Consolidated By-Laws of Timbers I, II, and III;

(1) Performing such duties set forth in the applicable provisions of the Declaration for Timbers Section 4.

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 amploy 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 buildings and improvements on the 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 Overall 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 Community Area;
- (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

Community Area provided that the Board shall give advance written notice to the Owners of such rules and any revision, amendment, or alteration thereof;

- (i) To exercise all powers specified in Section 3.6 of the Consolidated By-Laws of Timbers I, II, and III;
- (j) To exercise all powers specified in the applicable provisions of the Declaration for Timbers Section 4.

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 Ten Thousand Dollars (\$10,000.00), 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 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 presented to the Owners at the annual meeting and, if necessary, approved by the Owners at such 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 Ten Thousand Dollar (\$10,000.00) maximum shall automatically be adjusted every five (5) years from the date of recording of these By-Laws to riflect 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 Sertion 3.5(e) hereof. The Managing Agert shall be entitled to reasonable compensation for its services, the cost of which shall be a Common Expense.

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 scheduled Board meetings of the Board to each Director personally 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 the President or any two (2) members of the Board. The person or 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 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.

Saction 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 any meeting of the Board, no notice shall be required and any business may be transacted at such meeting.

Section 4.11. Quorum. At all meetings of the Board, unless the Act or these By-Laws provide otherwise, a majority of the Directors shall constitute a quorum for the transaction of business and the votes of the majority of the Directors present at a meeting at which a quorum is present shall be the decision of the Board.

Sective 4.12. Bond. The Board of Directors may require the Managing Figent, Treasurer and such other officers as the Board deems necessary to provide surety bonds, indemnifying the Corporation against larceny, theft, embezzlement, forgery, misappropriation, wrongful abstraction, willful misapplication, and other acts of fraud or dishonesty, in such sums and with such sureties as may be approved by the Board of Directors and any such bond shall specifically include protection for any insurance proceeds received for any reason by the Board. The expense of any such bond shall be a Common Expense.

Section 4.13. Informal Action by Directors. Any action required or permitted to be taken at any meating of the Board of Directors may be taken without a meeting, if prior to such action a written consent to such action is signed by all members of the Board and such written consent is filed with the minutes of proceedings of the Board or committee.

Section 4.14. Scandards of Conduct and Liability of Directors and Officers. The standard and duty of conduct for and the standard or requirements for liability of the Directors and Officers of the Corporation shall be as set forth in the Act, as the same may be amended from time to time.

ARTICLE V

OFFICERS

Section 5.1. Officers of the Corporation. The principal officers of the Corporation shall be the President, Vice-President, Secretary and Treasurer, all of whom shall be elected by the Board. The Directors may appoint an Assistant Treasurer and an Assistant Secretary and such other officers as in their judgment may be necessary. Any two or more offices may be held by the same person, except that the duties of the President and Secretary shall not be performed by the same person.

Section 5.2. Election of Officers. The officers of the Corporation shall be elected annually by the Board at the first meeting of the Board following each election thereof. Each officer shall hold office for one (1) year or until his successor shall have been duly elected and qualified, unless earlier removed by the Board of Directors. Upon recommendation of a majority of all members of the Board or upon an affirmative vote of a Majority of Owners (as defined in Section 3.5(e) hereof), any officer may be removed either with or without cause and his or her successor elected at any regular meeting of the Board or at any special meeting of the Board called for such purpose.

Section 5.3. The President. The President shall be elected from among the Directors and shall be the chief executive officer of the Corporation. The President shall preside at all meetings of the Corporation and of the Board, shall have and discharge all the general powers and duties usually vested in the office of the president or chief executive officer of a nonprofit corporation organized under the laws of Indiana, including, but not limited to, the power to appoint committees from among the Owners as he or she may deem necessary to assist in the affairs of the Corporation and to perform such other duties as the Board may from time to time prescribe.

Section 5.4. The Vice-President. The Vice-President shall be elected from among the Directors and shall perform all duties

incumbent upon the President during the absence or disability of the President. The Vice-President shall also perform such other duties as these By-Laws may prescribe or as shall, from time to time, be imposed upon him or her by the Board or by the President.

Section 5.5. The Secretary. The Secretary shall be elected from among the Directors. The Secretary shall attend all meetings of the Corporation and of the Board and shall keep or cause to be kept a trur and complete record of proceedings of such meetings, shall authenticate the Corporation's records, shall perform all other duties incident to the office of the Secretary, and such other duties as from time to time may be prescribed by the Board. The Secretary shall specifically see that all notices of the Corporation or the Board are duly given, mailed or delivered, in accordance with the provisions of these By-Laws.

Section 5.6. The Treasurer. The Board shall elect from among the Directors a Treasurer who shall maintain a correct and complete record of account showing accurately at all times the financial condition of the Corporation and such other duties incident to the office of Treasurer. The Treasurer shall be incident to the office of the corporation, and other valuables which may from time to time come into possession of the Corporation. He or she shall immediately deposit all funds of the Corporation coming into his or her hands in some reliable bank or other depository to be designated by the Board and shall bank or other depository to be designated by the Board and shall keep such bank account in the name and for the exclusive benefit of the Corporation. The Treasurer may permit the Managing Agent, if any, to handle and account for monies and other assets of the Corporation to the extent appropriate as part of its duties.

Section 5.7. Assistant Officers. The Board of Directors may from time to time designate and elect from among the Owners an Assistant Secretary and Assistant Treasurer, who shall have such powers and duties as the Officers whom they are elected to assist shall delegate to them and such other powers and duties as these By-Laws or the Board of Directors may prescribe.

ARTICLE VI

INDEMNIFICATION

Section 6.1. Indemnification of Directors. To the extent not inconsistent with the laws of the State of Indiana, every person (and the heirs and personal representatives of such person) who is or was a director of the Corporation shall be indemnified by the Corporation as provided in the Indiana Nonprofit Corporation Act of 1991, as it now exists or as hereinafter amended.

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Section 6.2. Indemnification of Officers. To the extent not inconsistent with the laws of the State of Indiana, every person (and the heirs and personal representatives of such person) who is or was an officer of the Corporation shall be indemnified by the Corporation as provided in the Indiana Nonprofit Corporation Act of 1991, as it now exists or as hereinafter amended. In addition, every person (and the heirs and personal representatives of such person) who is or was an officer of the Corporation shall be indemnified by the Corporation to the same and fullest extent that directors are indemnified by the Corporation as provided for in the Indiana Nonprofit Corporation Act of 1991, as it now exists or is hereinafter amended.

ARTICLE VII

NISCELLANEOUS

Section 7.1. Fiscal Year. The fiscal year of the Corporation shall be the calendar year, unless otherwise fixed by resolution of the Board of Directors.

Saction 7.2. Personal Interests. Except as permitted under section 4.1 hereof, no Member of the Corporation shall have or receive any earnings from the Corporation; provided, however, that a Member who is an officer, director, employee, or agent of the Corporation may be reimbursed for expenses incurred on the Corporation's behalf.

Section 7.3. Contracts, Chacks, Notes, Etc. All contracts and agreements entered into by the Corporation and all checks, drafts and bills of exchange and orders for the payment of money shall, in the conduct of the ordinary course of business of the Corporation, unless otherwise directed by the Board of Directors, or unless otherwise required by law, be signed by the Treasurer, and at least one other officer of the Corporation.

Section 7.4. Commingling of Funds. In order to facilitate and encourage uniform and cooperative management of Timbers I, III, and Section 4, the Corporation's Board of Directors and/or the Managing Agent shall have the right and authority to commingle any funds of the Corporation (including any reserve funds) with the funds paid to the Corporation by Owners from Timbers I, II, and III, and Section 4, and the Board of Directors and/or the Managing Agent shall have the authority to make and/or to authorize disbursements from such funds for purposes related to the maintenance and operation of Timbers I, Timbers, II, Timbers III, and Section 4.

Section 7.5. Reserve for Replacements. The Board of Directors shall provide for the establishment and maintenance on an adequate replacement reserve fund for capital expenditures and

replacement and major repair of the buildings and improvements located on the Community Area and equipment of the Property, including, but not limited to. The Timbers clubhouse and resurfacing Wilderness Trail and any other streets within the Community Area, which replacement fund shall be used only for those purposes and not for usual and ordinary repair expenses. In determining the amount for replacement reserves, the Board of Directors shall consider the expected useful life of such improvements, projected increases in the cost of materials and labor, interest to be earned by such funds, and the advise of any consultants the Board may employ for such purpose. Such fund shall be conclusively deemed to be a Common Expense. Such fund shall be maintained by the Corporation in a separate interest bearing account or accounts with one or more banks or savings and loan associations authorized to conduct husiness in Marion County, Indiana, or deposited in a special account with a lending institution the accounts of which are insured by an agency of the United States of America or may, in the discretion of the Board, be invested in obligations of or fully guaranteed as to principal by, the United States of America. The Board of Directors shall annually review the adequacy of any reserve fund.

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The proportionate interest of any Owner in any such reserve for replacements shall be considered an appurtenance of his Condominium Apartment or Lot and shall not be separately withdrawn, assigned or transferred or otherwise separated from the Condominium Apartment or Lot to which it appertains and shall be deemed to be transferred with such Condominium Apartment or Lot.

ARTICLE VIII

AMENDMENT TO BY-LAWS

Section 8.1. Amendment. These By-Laws may be amended by a vote of two-thirds (2/3) of the total, combined number of Condominium Apartments and Lots in Timbers I, II, III, and Section 4 in a duly constituted meeting called for such purpose, except as prohibited by any provision of the Overall Declaration, the Act, or these By-Laws, as the same may be amended from time to time.

ARTICLE IX

ARCHITECTURAL REVIEW BOARD

Section 9.1. Composition. The Architectural Review Board shall be comprised of three (3) or more Members appointed by the Board of Directors.

Section 9.2. Organization. The Architectural Review Board shall elect from among its membership a chairman, secretary and such other officers as it deems appropriate.

Rection 9.3. Quorum. A quorum for action by the Architectural Review Board shall be a majority of its members, but in no event less than two (2) members thereof.

Section 9.4. Duties. It shall be the duty of the Architectural Review Board to regulate the external design, appearance, location and maintenance of the Tract and or improvements thereon and to regulate such uses of property, all as provided in the Overall Declaration.

Section 9.5. Proceduras. The Architectural Review Board shall formulate general guidelines, procedures and regulations and submic them for approval to the Board of Directors. Such guidelines, procedures and regulations shall be considered adopted policy of the Board of Directors unless rejected by a majority of the Directors then serving on the Board of Directors within thirty (30) days of the date of the submission. The adopted guidelines, procedures and regulations shall be incorporated in the Corporation's rules and regulations and the Architectural Review Board shall act in accordance therewith.

IN WITNESS WHEREOF, I, the undersigned, do hereby execute this Amended and Restated Code of By-Liws and certify the truth of the facts herein stated, this 9e day of Make, 1995.

The Timbers of Indianapolis, Inc., by:

signature

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Vice Present

STATE OF INDIANA)
COUNTY OF MARION)

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personally appeared by Tax Gorsonic, the Vict Plants of The Timbers of Indianapolis, Inc., who acknowledged execution

of the foregoing Amended & Restated Code of By-Laws of The Timbers of Indianapolis, Inc. for and on behalf of said corporation and who, having been duly sworn, stated that the representations contained herein are true.

Witness my hand and Notarial Seal this 97 day of MACK, 1995.

Notary Public Museay, JR.

Notary Public

Thomas Museay for Signature

My Commission Expires:

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12-20-97

Residence County: MARION

This instrument propared by, and should be returned to P. Thomas Murray, Jr., Attorney at Law, P.O. Box 501040, Indianapolis, IN 46250. (317) 842-8550. attimberov.byl October 17, 1994