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MARY ANN LAMM  
SANGAMON COUNTY RECORDER

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PREPARED BY:

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Springfield, IL 62707

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR TIMBERLANE EAST SUBDIVISION**

This Declaration of Covenants, Conditions and Restrictions for Timberlane East Subdivision is made this 17th day of DECEMBER, 1999, by BCM Developers, L.L.C., hereinafter referred to as "Declarant."

Declarant is the owner of the following described real property located in the City of Springfield, Sangamon County, Illinois:

**TIMBERLANE EAST SUBDIVISION, PLAT II**

and desires to create thereon a subdivision with permanent common areas for the benefit of said subdivision; and

Declarant desires to provide for the preservation of the values in the community, and for the maintenance of the common areas and facilities, and desires to subject the real property described in Article II to the covenant restrictions, easements, charges and liens hereinafter set forth, each of which is for the benefit of the property and the subsequent owners thereof; and

Declarant has deemed it desirable to create an agency to which should be delegated and assigned the powers of maintaining, administering and enforcing the covenants and restrictions, and collecting and disbursing the assessments and charges hereinafter created; and

Declarant has incorporated under the laws of the State of Illinois, as a not-for-profit corporation, the Timberlane East Homeowners Association, Inc., for the purpose of exercising this function;

THEREFORE, the real property described in Article II of this Declaration is and shall be held, sold, conveyed, encumbered, leased, rented, used, occupied and improved subject to the covenants,

restrictions, easements, charges, and liens (sometimes referred to as "covenants and restrictions") hereinafter set forth.

## **ARTICLE I DEFINITIONS**

- 1.1 "Association" means Timberlane East Homeowners Association, Inc., an Illinois not-for-profit corporation, its successors and assigns.
- 1.2 "Properties" means the real property described in Article II.
- 1.3 "Common Areas" means all real and personal property, facilities and improvements now or hereinafter owned by the Association for the common use and enjoyment of the Owners.
- 1.4 "Lot" means a portion of the property intended for independent ownership and use as may be set out in this declaration and as shall be shown on the Plat of Subdivision filed with this Declaration.
- 1.5 "Owner" means the record owner, whether one or more persons or entities, of a fee simple title to any lot which is part of the properties, including contract sellers, but excluding those having interest merely as security for the performance of an obligation unless and until such person acquires title pursuant to foreclosure or any proceeding or conveyance in lieu of foreclosure.
- 1.6 "Member" means every Owner who therefore is a member of the Association.
- 1.7 "Developer" means the Declarant and its assigns, if such assigns should acquire a portion of the land described in Article II from the Declarant for the purpose of resale to an Owner or for the purpose of constructing improvements thereon for resale to an Owner.
- 1.8 "Area of Common Responsibility" means the Common Areas together with those areas, if any, upon a Lot the maintenance, repair or replacement of which is made the responsibility of the Association by this Declaration.
- 1.9 "Board" means the Board of Directors of the Association.

## **ARTICLE II PROPERTY SUBJECT TO THIS DECLARATION**

- 2.1 The real property which is, and shall be held, sold, conveyed, hypothecated, encumbered, leased, rented, used, occupied, and improved subject to this Declaration is located in the City of Springfield, Sangamon County, Illinois, known as Timberlane East Subdivision, Plat II, and is more particularly described on Exhibit A attached hereto, together with the Easements. Developer may subject additional property to the terms of this Declaration from time to time at Developer's discretion by written instrument referring hereto.
- 2.2 The Common Areas to be owned by the Association at the time of conveyance of the tenth Lot is that tract or parcel of land shown in Exhibit A, inclusive of any changes required for final platting, less and except the individual Lots and streets shown thereon. Prior to said conveyance the Common Areas shall be graded and seeded, and the retention pond area shall be approved and accepted by the City Engineer. Notwithstanding any other provisions of this Section, the Common Areas shall include any park areas, retention ponds, and landscaped portions of boulevard streets not dedicated to any public authority.

## **ARTICLE III ADMINISTRATION AND OPERATION OF THE ASSOCIATION**

The directors named in the Association's Articles of Incorporation constitute the Association's first Board which shall hold office and which shall hold and exercise all of the rights, duties, powers and functions of the Board set forth in this Declaration, until the first election of Directors by the members of the Association at the first annual membership meeting. The Board shall have all powers for the conduct of the affairs of the Association which are enabled by law, or this Declaration, which are not specifically reserved to Members or the Developer. The Board shall have the power and obligation to perform the following duties, including:

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- 3.1 To acquire, own, hold, improve, maintain, manage, lease, insure, pledge, convey, transfer or dedicate real or personal property for the benefit of the Members in connection with the affairs of the Association, except the acquisition, mortgaging or disposal of Common Area and/or improvements shall be subject to the provisions of these covenants and restrictions;
- 3.2 To establish, modify and enforce rules and regulations for the use of the properties as provided herein, and to review, modify and approve architectural standards as recommended by the Architectural Standards Committee;
- 3.3 To fix, levy and collect assessments;
- 3.4 To grant and convey easements to the Common Area as may become;
- 3.5 To employ, contract with, delegate authority to and supervise such persons or entities as may be appropriate to manage, conduct and perform the business obligations and duties of the Association;
- 3.6 To perform acts, as may be reasonably necessary or appropriate, including bringing suit, causing a lien to be foreclosed or suspending membership rights, and to enforce or effectuate any of the provisions of the Governing Documents; and
- 3.7 To call the first annual meeting of the Members of the Association, within 180 days after two-thirds of all Lots (from all three plats of Timberlane East) have been transferred from Declarant to Class "A" Members, written notice of which shall be sent to the Members at least ten (10) days prior to the meeting. Notwithstanding anything to the contrary in this Declaration, until the date of said first annual membership meeting, no Class A Member shall have any voting rights. Each annual meeting of the Members following the initial annual membership meeting shall be held at the time and place so designated at the initial annual membership meeting.
- 3.8 To operate, keep and maintain any and all retention ponds in good condition, order and repair in accordance with all applicable laws and regulations.

#### **ARTICLE IV PROPERTY RIGHTS**

Every Owner shall have a right and easement of enjoyment in and to the Common Areas, which shall be appurtenant to and shall pass with the title to every Lot, subject to the following:

- 4.1 The right of the Association to charge reasonable fees for the use of any facility now or hereafter situated or constructed upon the Common Area and to impose reasonable limits on the use of the facilities;
- 4.2 The right of the Association to suspend the voting rights and right to use the Common Areas and facilities by any Owner for any period during which any assessment of the Association against said Owner's Lot remains unpaid, and for any infraction by an Owner of the Association's published rules and regulations for the duration of the infraction, and for an additional period thereafter not to exceed sixty (60) days;
- 4.3 The right of the Declarant with regard to the Properties which may be owned for the purpose of development, to grant easements in and to the Common Area contained with the Properties to any public agency, authority or utility for such purposes as benefit the Properties and Owners of Lots contained therein;
- 4.4 The right of the Association, by a majority vote of the Members of the Board, to borrow money for the purpose of improving the Common Area, or any portion thereof, for acquiring additional Common Area, or for constructing, repairing or improving any facilities located or to be located thereon, and to give as security for the payment of any such loan a mortgage covering all or any portion of the Common Area; provided, however, that the lien and encumbrance of any such mortgage given by the Association shall be subject and subordinate to any and all rights, interests, options, easements and privileges herein reserved or established for the benefit of Declarant or any Owner, or the holder of any mortgage, irrespective of when executed, given by Declarant or any Owner encumbering any Lot or other property located within the properties.
- 4.5 The right of the Association to dedicate or transfer all or any portion of the Common Area to any public agency, authority or utility for such purpose and subject to such conditions as may be agreed to by the Members of the Association. No such dedication or transfer shall be effective unless such dedication or transfer has been approved by at least 66-2/3 percent of the votes which the total

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- membership, including both the Class "A" and Class "B" Members, present or represented by proxy, are entitled to cast at a meeting duly called for such purpose.
- 4.6 The right of the Association, with regard to the Properties which it may own, to grant easements to Declarant, any public agency, authority or utility for such purposes as benefit the properties or portions thereof and Owners or Lots contained therein.

**ARTICLE V  
ASSOCIATION MEMBERSHIP AND VOTING RIGHTS**

- 5.1 Every person or entity who is the record owner of a free or undivided fee interest in any Lot that is subject to this Declaration shall be deemed to have membership in the Association. The foregoing is not intended to include persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate the Owner's membership. No Owner, whether one or more persons, shall have more than one membership per Lot. In the event of multiple Owners of a Lot, voting and rights of use and enjoyment shall be as provided herein. Membership shall be appurtenant to and may not be separated from ownership of any Lot. Ownership of a Lot shall be the sole qualification for membership. The rights and privileges of membership, including the right to vote and to hold office, may be exercised by a Member or the Member's spouse, but in no event shall more than one vote be cast nor office held for each Lot.
- 5.2 The Association shall have two classes of voting membership, Class "A" and Class "B", as follows:
- 5.2.1 Class "A" Members shall be all Owners with the exception of the Declarant, any successor of Declarant who takes title for the purpose of development and sale, and anyone holding one or more Lots for the purpose of development or sale. Class "A" Members shall be entitled to one vote for each Lot in which they hold the interest required for membership. When more than one person holds such interest in any Lot, the vote for such Lot shall be exercised as those Owners themselves determine and advise in writing the Secretary prior to any meeting. In the absence of such advice, the Lot's vote shall be suspended in the event more than one person seeks to exercise it. If a Lot is owned by a corporation, partnership or trust, such entity shall designate in writing the person authorized to vote in behalf of such entity.
- 5.2.2 The Class "B" Member shall be the Declarant. The Class "B" Member shall be entitled to four votes for each Lot in which it holds the interest required for membership, provided that the Class "B" membership shall cease and become converted to Class "A" membership on the happening of either of the following events, whichever occurs earlier:
- a. When the total vote outstanding of the Class "A" membership equal the total votes outstanding of the Class "B" membership; or
  - b. At such time as Developer voluntarily relinquishes its Class "B" membership rights.

**ARTICLE VI  
COVENANT FOR MEMBERSHIP FEES AND ASSESSMENTS**

- 6.1 The assessments levied by the Association are for the purpose of promoting the recreation, scenic enjoyment, health, welfare and safety of the residents and for protecting, advancing and promoting the environment of the properties for the common benefit and enjoyment of the Owners and occupants of residences, improvement and maintenance of the Common Area and other common facilities and areas of common responsibilities, including but not limited to repair, replacement and additions thereto, and for the cost of labor, equipment, and materials, management and supervision thereof, all as may be authorized from time to time by the Board of Directors.
- 6.2 Each Owner of a Lot by acceptance of a deed or other conveyance therefore, whether or not it shall be so expressed in such deed or other conveyance, shall be deemed to covenant and agree to pay the Association:
- 6.2.1 An entering membership fee of \$100,
  - 6.2.2 annual assessments, and
  - 6.2.3 special assessments and/or individual assessments against any particular lot.
- 6.3 These fees and assessments shall be established and collected pursuant to the terms of this Declaration, including but not limited to reasonable fines. All such assessments, together with interest, late charges and costs of collection, including reasonable attorney's fees, (a) shall be a charge

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and a continuing lien upon the Lot against which any such fee or assessment is made, and (b) shall also be the joint and several personal obligation of each person who was an Owner of said Lot at the time when any such fee or assessment made against said Lot fell due.

- 6.4 No Owner shall be entitled to a refund of any portion of the entering membership fee, any annual or special assessment, or installment of a special assessment, paid by him, even though said Owner's membership in the Association terminates prior to the expiration of the period covered by any such assessment or installment theretofore paid by him. No Owner may avoid or escape liability for the entering membership fee, or any annual or special assessment, or individual assessment of his property or attempted waiver as non-user of the benefits of membership in the Association, or of Common Areas and facilities.
- 6.5 Each person or entity who holds an ownership interest in a Lot, by acceptance of a deed, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association within ten (10) days after first becoming a Member of the Association, an entering membership fee of One hundred dollars (\$100.00) to be used by the Association for the same purposes for which annual and special assessments may be levied, provided, however, that an entering membership fee shall be paid on a particular Lot only once, without regard to the number of times the Lot might be sold. The entering membership fee shall not be used for initial improvements.
- 6.6 It shall be the duty of the Board at least thirty (30) days prior to the Association's annual meeting to prepare a budget covering the estimated costs of operating the Association during the coming year which may include a capital contribution or reserve in accordance with a capital budget separately prepared. The Board shall cause the proposed budget and the assessments to be levied against each Lot for the following year to be delivered to the last known residence address of each Member at least thirty (30) days prior to the meeting. The budget and the assessment shall become effective unless disapproved at the annual meeting by a vote of at least fifty-one percent (51%) of the total Association membership votes, including those votes of the Class "B" Member(s). Notwithstanding the foregoing, however, in the event the members disapprove the proposed budget or the Board fails for any reason so to determine the budget for the succeeding year, then and until such time as a budget shall have been determined as provided herein, the budget in effect for the then current year shall continue for the succeeding year. Notwithstanding the other provisions of this Article VI, the annual assessment will be \$35.00 per Lot until such time as the first Annual Association meeting is held.
- 6.7 In addition to the annual assessments, the Association may levy in any calendar year a special assessment for the purpose of defraying the cost of any construction or reconstruction, unexpected repair, replacement or maintenance of a capital improvement upon the Common Area, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of the total membership, including Class "B" Member(s), who are voting in person or by proxy at a meeting duly called for this purpose. Written notice of such a meeting shall be sent to all Members not less than thirty (30) days in advance of the meeting, setting forth the purpose of the meeting. The Board of Directors may make such special assessments payable in installments over a period which may, in the Board's discretion, extend in excess of the fiscal year in which adopted.
- 6.8 In the event that the need for maintenance or repairs of the Common Area is caused through the willful or negligent act of an Owner, his family, guests or invitees, or in the event that an Owner of any Lot shall fail or refuse to maintain such lot, or repair or replace the improvements situated thereon in a satisfactory manner to the Board, or the Architectural Standards Committee, then the Association, after approval by vote of seventy-five percent (75%) of all members of the Board, shall give such written notice of the Association's intent to provide the required maintenance, repair or replacement, at such Owner's sole cost and expense. The Owner shall have fifteen (15) days within which to complete said maintenance, repair or replacement, or if such work cannot be accomplished within said fifteen day period, to commence said maintenance, repair or replacement. If such Owner fails or refuses to discharge properly this obligation, the Association shall have the right, through its duly authorized agents or employees, to enter upon such Lot at reasonable hours of a day to perform such work. The Association may levy an individual assessment upon any Lot, except as provided in Section 6.9 of this Article, to cover the cost and expense incurred by the Association in fulfilling the provisions of this section.
- 6.9 The following property subject to this Declaration shall be exempt from all assessments, charges and liens created in this Article:

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- 6.9.1 All properties to the extent of any easement or other interest therein dedicated and accepted by any public authority and devoted to public use.
- 6.9.2 All Common Area as defined in Article I hereof.
- 6.9.3 Any vacant land or Lots owned by a Class "B" Member unless a Lot is occupied as a residence. Any such land or Lots owned by a Class "B" Member shall be maintained by such Class "B" Member at such member's sole cost and expense.
- 6.10 The annual assessment installments for each Lot shall be due on the first day of the month following the transfer of ownership of the Lot from Declarant to the Owner, and shall become due and payable on the first day of each fiscal year thereafter. The method of payment and due dates for special assessments shall be established by the Association in accordance with Section 5 of this Article VI. The method of payment and due dates for individual assessments shall be as determined by the Board in accordance with Section 6 of Article VI. The Association shall prepare a roster of Lots and assessments applicable thereto, which shall be open to inspection by any Member upon reasonable notice to the Board.
- 6.11 Annual and special assessments shall be charged equally against each Lot.
- 6.12 Any assessments which are not paid when due are delinquent. Any assessment or assessment installment delinquent for a period of more than ten (10) days may incur a late charge in an amount as the Board may determine from time to time. The Association will send a notice of delinquency to any Member who has not paid within the ten (10) days following the due date. If the assessment or assessment installment is not paid within thirty (30) days, the Association may declare the entire balance of such assessment for the remainder of the annual period due and payable in full, and a lien as herein provided shall attach, and in addition the lien shall include the late charge, interest on the principal amount due at the maximum allowable rate from the date first due and payable, all costs of collection, reasonable attorney's fees, and any other amounts provided or permitted by law. In the event that the assessment remains unpaid after sixty (60) days, the Association may as the Board shall determine, institute suit to collect such amounts or to foreclose its lien. Each Owner, by acceptance of a deed or other conveyance to a Lot, vests in the Association or its agents the right and power to bring all actions against such Owner or Owners personally for the collection of such charges as a debt and/or to foreclose the aforesaid lien in the manner as other liens for the improvement of real property. The lien shall be in favor of the Association and shall be for the benefit of all other Owners. The Association, acting on behalf of the Owners, shall have the power to bid on the Lot at any foreclosure sale or to acquire, hold, lease, mortgage and convey the same. No Owner may waive or otherwise escape liability for the assessments provided for herein, including by way of illustration but not limitation, abandonment of the Lot.
- 6.13 The lien shall be subordinate to the lien of any first mortgage now or hereafter placed upon the Lot subject to assessment, provided that such subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of such lot pursuant to a decree of foreclosure, or any other proceeding in lieu of liability for any assessments thereafter becoming due, nor from the lien of any subsequent assessment.
- 6.14 The Association shall, upon request of a Member, at any reasonable time, furnish an estoppel certificate signed by an officer or other authorized agent of the Association, setting forth the amount of unpaid assessments and/or other charges, if any, against said Member's Lot, up to a given date or time of conveyance. The Association shall also certify whether there are violations of the governing documents on the Lot as of the date of preparation of the certificate. Said certificate shall be delivered to the place of closing, and all outstanding assessments and other charges, if any, and a reasonable charge, as determined by the Board, to cover the cost of providing such certificate shall be deducted from the Seller's account at the closing and transmitted directly to the Association.

#### **ARTICLE VII MAINTENANCE BY AND SERVICES OF THE ASSOCIATION**

- 7.1 The Association, subject to the provisions of this Declaration shall maintain in perpetuity and keep in good repair the area of common responsibility, which shall be deemed to include by example and not by limitation: (a) maintenance and repair of all common areas and facilities including park areas, landscaping, utility lines, pipes, wires and conduits, not dedicated to any public authority, if any, (b) furnish and provide the necessary maintenance and repair services for the utility systems, and for any

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controlled discharge drainage collection facility serving the properties and the improvements situated thereon, (c) furnish and provide the necessary maintenance and repair services for the paved portions of any storm drainage ditches.

- 7.2 The Association is hereby granted an easement of use and right-of-way on, over, in, under and through all lots in order to comply with the terms of this Article VII, and entry on any Lot for such purpose shall not be trespass.

#### **ARTICLE VIII EASEMENTS**

- 8.1 There is hereby created an easement upon, across, over, through, and under the properties for ingress, egress, installation, replacement, repair and maintenance of all utility and service lines and systems including but not limited to water, sewers, gas, telephones, electricity, television, cable or communication lines and systems. By virtue of this easement, it shall be expressly permissible for the Developer or the providing utility or service company to install and maintain facilities and equipment on the property, to excavate for such purposes, and to affix and maintain wires, circuits and conduits on, in and under the land, providing such company restores disturbed areas to the condition in which they were found.
- 8.2 For a period of two years from the date of conveyance of each Lot, the Developer reserves an easement and right on, over and under the ground within that Lot to correct drainage of surface water in order to maintain reasonable standards of health, safety and appearance. Such right expressly includes the right to cut any trees, bushes or shrubbery, make any gradings of the soil, or to take any other similar action reasonably necessary, following which the Developer shall restore the affected property to its original condition as near as practicable. The Developer shall give reasonable notice of intent to take such action to all affected Owners, unless in the opinion of the Developer an emergency exists which precludes such notice.
- 8.3 Notwithstanding any provision of this Declaration, so long as the Developer or Participating Builders are engaged in developing or improving any portion of the properties, such persons shall have an easement of ingress, egress and use over any lands not occupied by an Owner for (1) movement and storage of building materials and equipment, (2) erection and maintenance of directional and promotional signs, and (3) conduct of sales activities. Such easement shall be subject to such rules as may be established by the Developer to maintain reasonable standards of safety, cleanliness, and general appearance of the properties.
- 8.4 There is hereby reserved to the Developer, for so long as it retains its rights as Developer, a non-exclusive easement over all Lots and Common Areas (whether public or private) for the purpose of erecting and maintaining street intersection signs, directional signs, temporary promotional signs, plantings, street lights, entrance features and/or "theme areas", lighting, stone, wood, or masonry wall features and/or related landscaping. The Developer shall, at its own discretion, provide and perform landscaping for the general benefit of current and future lot owners. Such landscaping shall not be disturbed unless such action is approved by two-thirds (2/3) of the votes of the total membership including the Class "B" members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than thirty (30) days in advance of the meeting and which shall set forth the purpose of the meeting.

#### **ARTICLE IX RESTRICTIVE COVENANTS**

- 9.1 The properties committed to this Declaration as described in Article II shall be used for residential purposes only, and no trade or business of any kind may be carried on therein.
- 9.2 No nuisance or offensive activity shall be permitted upon the properties so as to jeopardize property values or be detrimental to the enjoyment, comfort, and well-being of the members. Each Owner shall refrain and prohibit any act or use of a Lot which could reasonably cause embarrassment or annoyance to other Owners or occupants, and the Board shall have the power to make and to enforce reasonable rules and regulations in furtherance of this provision.
- 9.3 No construction or erection of any nature shall be commenced or maintained upon any part of the properties except as is installed or approved by the Declarant in connection with the initial

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construction of buildings on the properties, unless and until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved as to harmony of external design and location in relation to surrounding structures and topography in writing by the Architectural Standards Committee, which shall be composed of two or more representatives appointed by the Board. No alteration, repair, excavation, fence, awning, patio cover, swimming pool, or other work which alters the exterior or any Lot or Common Area, or the improvements located thereon, shall be commenced, made, or done on such property without the prior written approval of the Architectural Standards Committee. In the event the Architectural Standards Committee, fails to approve or to disapprove such construction, additions, or alterations within forty-five (45) days after the plans and specifications have been submitted to it, approval will not be required.

- 9.4 Only one single-family dwelling and private garage shall be erected on each Lot. No use shall be made of each Lot except such as is incidental to the occupation thereof for residential purpose by one private family residing in a detached single-family dwelling. No building shall be erected, altered, placed or permitted to remain on any Lot or Lots, or part or parts thereof, exceeding two stories in height.
- 9.5 The minimum floor area of each dwelling constructed in such subdivision, exclusive of basement, open porches, terraces and garages, shall be 1500 square feet, more or less, at the discretion of the Architectural Standards Committee. Each garage shall be attached to the dwelling and must be architecturally related to the dwelling. No garage shall provide space for less than two automobiles. No carport may be erected and maintained on any lot in the subdivision.
- 9.6 No building, exclusive of eaves and steps, shall be located on any Lot nearer to the front lot line or sidelot line than the minimum building line as shown on the recorded plat of said subdivision.
- 9.7 No Lot shall be re-subdivided, nor shall a fractional part of any Lot be sold.
- 9.8 All construction must be diligently pursued to completion within a reasonable period.
- 9.9 No building shall be occupied for living purposes which is not functionally complete in detail as to the exterior, nor shall any building materials, paint or building equipment be exposed to the public view if such building is occupied as a dwelling. No structure of a temporary character, trailer, mobile home, basement, tent, shack, garage, barn or other building shall be used on any Lot at any time as a residence, either temporarily or permanently.
- 9.10 No outside television or radio aerial or antenna, satellite dish, or other device for the reception or transmission of communications signals, shall be maintained on the exterior of any Lot, living unit, or the Common Area without the prior written consent of the Board or the Architectural Standards Committee.
- 9.11 No Member or resident shall keep or maintain upon a Lot, within a living unit, or upon the Common Area any animals, birds, or pets of any kind, except for generally recognized domestic household pets. Such pets shall not be bred, kept or maintained for commercial purposes. Any such domestic pet shall not be permitted to cause or create a nuisance, disturbance, or unreasonable amount of noise which may affect any Member or person on the properties. Any such pet must be kept within the confines of the Owner's Lot or must be on a leash held by a person when allowed upon the Common Area. All droppings produced by a pet on the Common Area must be removed immediately. Notwithstanding any other provision to the contrary, the Board shall have the absolute power to adopt rules and regulations from time to time pertaining to the keeping of any and all pets upon the properties. This power shall include, but not be limited to, the right to remove or cause to be removed from the properties any such pet or pets when the Board determines such action to be in the best interest of, or for the well-being and enjoyment of, members of the Homeowners Association.
- 9.12 No sign shall be erected, posted, or displayed to the public view upon any Lot, living unit or any other portion of the properties, without the prior written consent of the Architectural Standards Committee, except street signs and other identification signs authorized or installed by the Association, the Declarant, or the City of Springfield. The Architectural Standards Committee shall approve all builders' signs.
- 9.13 An Owner or tenant may park his or her privately owned, non-commercial vehicles in such Owner or tenant's garage or on the driveway. No vehicles of any kind may be parked in the streets for more than 24 hours, except those kept upon the premises during construction or repairs of roads, sewers, and other community infrastructure. No Owner, tenant or other person shall repair or restore any vehicle of any kind upon any Lot or Common Area, except for emergency repairs, and then only to the



extent necessary to enable movement thereof to a proper repair facility. Notwithstanding any provision in this Section, the Board shall have the power and authority from time to time to adopt additional rules regarding the parking and storage of vehicles.

- 9.14 No Owner, occupant or tenant of any Lots or living unit shall store, keep, deposit, or leave any garbage or rubbish, or any other junk or waste materials on any Lot or on any other part of the properties, except such garbage and rubbish which shall necessarily accumulate from the last garbage and rubbish collection, provided any such garbage shall be kept in sanitary containers which shall be of the type and size designated by the Association, and provided further that such containers and rubbish shall not be permitted to remain in public view except on days of collection.
- 9.15 All utilities, including telephone, electric and television cables, other than for temporary service during construction, shall be underground. Transformers and distribution pedestals for main lines and houseleaders shall be located only as approved by the Architectural Standards Committee.
- 9.16 An Owner of any vacant Lot shall cut the weeds and maintain the same in a clean and sanitary condition.
- 9.17 During clearing and construction, until all exposed dirt from excavation has been removed from the Lot or brought to an approved final grade surrounding the dwelling unit, and until the Lot is permanently landscaped with vegetation or landscaping material, the Lot Owner shall take such steps as are necessary to prevent the erosion and washing of soil from the Lot.
- 9.18 Soils, mud and landscape waste carried from the Lot onto other properties and Common Areas such as easements, rights of way and roadways, by erosive forces or by vehicles leaving a construction site, shall be cleaned up daily or as necessary at the expense of the Lot Owner, and shall not be placed in drainage swales.
- 9.19 Following the completion of the construction of a residence on a Lot in the subdivision, the Owner shall have the Lot landscaped. The front yard shall be sodded, and one hardwood shade tree, at least one and a half inches (1 ½) in diameter shall be planted.
- 9.20 After the construction of the sidewalk in front of a Lot, which shall be done at the Owner's expense, and acceptance by the City Engineer or his representative, the Lot Owner shall be responsible for replacing at his own expense, any broken or cracked section of said sidewalk adjacent to his Lot.
- 9.21 All compressors and cooling towers used in conjunction with central air conditioning shall be installed in such a manner as to contribute to the exterior beauty and planning of the dwelling and not to become an annoyance and nuisance to the neighborhood or adjacent property owners.
- 9.22 Each dwelling shall be connected to the public sanitary and storm sewers.
- 9.23 Utility and other Easements are reserved as shown on the plat recorded for said Subdivision. Within these easements, no structure shall be placed or permitted to remain that may damage or interfere with the installation and maintenance of utilities and easements. The easement area of each Lot and all improvements in it shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority or utility by virtue of the plat of said subdivision has assumed that responsibility.
- 9.24 Mail boxes must be located at curbside and must meet the design specifications of the United States Postal Service or its successors or assigns.
- 9.25 The finished grade elevations of each Lot and homesite must be consistent with the grade line and elevation of the other homesites in the subdivision. No Owner of any Lot shall change, or permit to be changed, the contours of such Lot without the express consent of the Architectural Standards Committee. All finished grades at each residence perimeter shall be within 18 inches to 24 inches above the street curb and sloping to the street and rear yard grade for drainage, except as otherwise specifically approved by reference to this sub-section by the Architectural Standards Committee. Water discharge from sump pumps shall be on a splash block located within 5 feet of the house in the front or rear yard; no discharge shall be in a side yard.
- 9.26 Driveways shall be a minimum of eighteen (18) feet wide, and shall be paved with concrete.
- 9.27 Stationary outside clotheslines will not be permitted, and temporary clothes hanging devices as lines, poles, frames, etc. shall be stored out of sight when not in use.
- 9.28 Exposed above-ground tanks will not be permitted for the storage of fuel, water or other substance.
- 9.29 No above-ground swimming pools will be allowed on any Lot. Any in-ground pool installed shall not be nearer than ten (10) feet to any lot line, must be located to the rear of a dwelling, and must be appropriately fenced for safety.

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- 9.30 No outside building shall be constructed or placed upon the property without the prior written consent of the Architectural Standards Committee.
- 9.31 Any fencing constructed on any Lot shall conform to City of Springfield ordinances; however, no fencing shall be permitted in front yards except for decorative fencing. All fencing must be approved by the Architectural Standards Committee.
- 9.32 From time to time the Board shall adopt additional rules and amend existing rules, including but not limited to rules to regulate potential problems relating to the use of the properties and the well-being of the Members, tenants, guests and invitees. Such additional rules may only be adopted or amended by a two-thirds vote of the Board, following a hearing for which due notice has been provided to all Members. All such additional rules and any subsequent amendment thereto shall be placed in the Book of Resolutions and furnished in writing to all Members prior to such rules effective date, and shall be binding on all Members, except where expressly provided otherwise in such rule.
- 9.33 The Board may issue temporary permits to except any prohibitions expressed or implied by this Article IX, provided the Board can show good cause and acts in accordance with adopted guidelines and procedures which are in keeping with the purposes and intent of this Declaration. Notwithstanding any provisions contained in this Declaration to the contrary, it shall be expressly permissible for Declarant and the builder or builders (if other than Declarant) of residences to maintain and carry on all activities pertaining to such construction, during the period of construction and sale of the Lots or residences, upon such portion of the Common Area as the Declarant may deem necessary. So long as the Developer or participating builders are engaged in developing or improving any portion of the properties, such persons shall be exempted from rules affecting movement, dispositions and storage of building materials and equipment, erection and maintenance of directional and promotional signs and conduct of sales activities, including maintenance of model living units. Such exemption shall be subject to such rules as may be established by the Developer to maintain reasonable standards of safety, cleanliness and general appearance of the properties.
- 9.34 The Architectural Standards Committee shall be entitled to stop any construction in violation of these restrictions, or in the event of a violation of the terms of this Article affecting drainage, grade, or elevation, whenever occurring, then the Association shall have the right and obligation to correct the violation and issue an individual assessment as provided in Article VI. In the event drainage in any portion of any Lot designated as "Easement" is blocked or impaired in violation of this Article, the Owner of any Lot or part thereof or the Architectural Standards Committee shall have the right to remove any obstruction blocking or impeding such drainage, in which case an individual assessment may issue against the Lot or Lots of the Owner or Owners whose willful or negligent act or omission has caused the violation as provided in Article VI

#### ARTICLE X INSURANCE AND INDEMNIFICATION

- 10.1 The Board shall have the authority to and shall obtain insurance for the Common Areas and all improvements situated thereon, and for any other real or personal property of the Association, against loss or damage by fire and such other hazards as the Board may deem desirable to insure against, for the full insurable replacement cost of said Common Areas, improvements situated thereon, and other real or personal property of the Association. The Board shall also have the authority to and shall obtain comprehensive public liability insurance, including liability for injuries to and death of persons, and property damage, in such limits as the Board shall deem desirable, and worker's compensation insurance and such other liability insurance as it may deem desirable, insuring the Association, its directors, officers, committee members, employees, and agents from liability in connection with the Common Areas, improvements located thereon, and other real and personal property of the Association, and insuring the Directors, officers and committee members of the Association from liability for good faith acts or omissions beyond the scope of their respective authorities. Such insurance coverage shall include cross liability claims of one (1) or more insured parties against other insured parties. Premiums for all such insurance shall be common expenses of the Association.
- 10.2 The directors, officers and committee members of the Association shall not be liable to any Owner or Member, or any person claiming by or through any Owner or Member, for any act or omission in the performance of their duties, and the Association shall have the power to indemnify all such directors,

officers and committee members from all claims, demands, actions and proceedings, and any expense in connection therewith, except if such director, officer, or committee member shall be adjudged in any such action or proceeding to be liable for willful misconduct in the performance of his duties.

## **ARTICLE XI ENFORCEMENT AUTHORITY AND PROCEDURE**

- 11.1 The Board shall be authorized and empowered to (i) make and enforce reasonable rules and regulations governing the conduct, use and enjoyment of the properties; (ii) impose reasonable fines, which shall constitute a lien upon the Lot of a Member; (iii) suspend such Member's right to use the common areas and the right to vote for not more than sixty (60) days after the violation of this Declaration or any rules and regulations that have been duly adopted by the Association has ended; (iv) begin any action in any court on behalf of the Association and all Owners to abate any nuisance, or otherwise to protect the values and integrity of the community.
- 11.2 The Board shall not impose a fine, suspend voting, begin court action or infringe upon any other rights of a Member or any other occupant for a violation of rules unless and until:
- 11.2.1 Demand: A written demand to cease and desist from an alleged violation shall be served upon the alleged violator specifying:
- a. The alleged violation;
  - b. The action required to abate the violation within a specified period; and
  - c. A time period not less than ten (10) days during which the violation is continuing, or if the violation is not continuing, a statement that any further violation of the same rule may result in the imposition of a sanction after notice and a hearing.
- 11.2.2 Notice: Within twelve (12) months of the demand, if the violation continues past the period allowed in the demand for abatement without penalty, or if the same rule is subsequently violated, the Board shall serve the violator with written notice of a hearing to be held by the Board in executive session. The notice shall contain:
- a. The alleged violation;
  - b. The time and place of the hearing, which shall be not less than ten (10) days from giving notice;
  - c. An invitation to attend the hearing and produce any evidence; and
  - d. The proposed sanction to be imposed.
- 11.2.3 Hearing: The hearing shall be held in executive session pursuant to the notice, and shall afford the Member an opportunity to be heard and present evidence. Prior to the effectiveness of any sanction, proof of notice and the invitation to be heard shall be placed in the minutes of the meeting. This proof shall be deemed adequate if a copy of the notice together with a statement of the manner of delivery is entered by the officer or director or other person who delivered the notice. The notice requirement shall also be deemed satisfied if the violator appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the any sanction imposed.

## **ARTICLE XII GENERAL PROVISIONS**

- 12.1 The Articles of Incorporation have been appended hereto and by this reference are incorporated in and made a part of this Declaration.
- 12.2 If any provision of this Declaration is held invalid by a court of general jurisdiction, the validity of the remainder of this Declaration shall not be affected. Further, if a provision of this is held invalid only as applied in a particular circumstance, that provision shall still be valid in any other circumstance.
- 12.3 In the event title to any Parcel is conveyed to a title-holding trust, under the terms of which the powers of management, operation and construction of said Parcel remain vested in the trust beneficiary or beneficiaries thereunder, the beneficiaries shall be deemed the Owner or Owners of the parcel and subject to all of the terms and provisions of this Declaration. No claims shall be assessed against any such title-holding trustee personally for payment of any entering membership fee, assessment, lien or other charge created by this Declaration, and the trustee shall not be obligated to

sequester funds or trust property to apply in whole or in part against such entering membership fee, assessment, lien or other charge, provided, however, the amount of such entering membership fee, assessment, lien or other charge shall continue to be a charge and lien upon such Parcel conveyed to said title-holding trust, and the joint and several obligation of the beneficiaries of said trust at the time any entering membership fee, assessment, lien or other charge with respect to any Parcel became due and payable, notwithstanding any transfers of the beneficial interest of said trust, or any transfers of title to any such Parcel.

- 12.4 In the event an Owner sells, leases, mortgages, or executes a contract for deed of the Owner's property, the Owner will be required to give to the Association in writing the name of the purchaser, lessee, mortgagee or person contracting for the deed to the property.
- 12.5 For such time as the Declarant or assigns shall hold Class B votes, or has an interest in any portion of the property described in Article II, Section 2, the Association shall not oppose the development activities thereon, and the Association shall indemnify Declarant against any and all expenses, including reasonable legal fees, imposed upon the Declarant in connection with any legal action or other proceeding, including settlement of any such legal action or other proceeding, to which Declarant may be made a party, if such action or proceeding is brought by any Member or group of Members or the Association.
- 12.6 The covenants and restrictions of this Declaration may be amended by an instrument signed by not less than seventy-five (75) percent of the Class A and Class B votes. Any amendment must be properly recorded in the public records of Sangamon County, Illinois.
- 12.7 The covenants and restrictions of this Declaration shall run and bind the land for a term of twenty-five (25) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless at the expiration of any such period the covenants and restrictions are expressly terminated by an instrument signed by Owners of not less than seventy-five (75) percent of the Lots. A termination must be approved by a Resolution of the City Council of the City of Springfield, Illinois, and be duly recorded in the public records of Sangamon County, Illinois to become effective.

IN WITNESS WHEREOF, the undersigned Declarant and Owner has caused this instrument to be executed this 17<sup>th</sup> day of December, 1999.

BCM Developers, L.L.C.

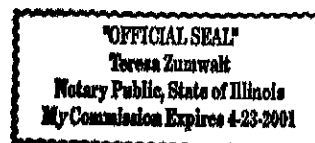
BY: Gloria A. Morris

AND: Penny R. Cowan-Bale

I, the undersigned, a Notary Public in and for Sangamon County, State of Illinois, do hereby certify that Penny R. Cowan-Bale and Gloria A. Morris, personally known to me to be the managers of BCM Developers, L.L.C., and whose names are subscribed under the foregoing instrument, appeared before me this day in person and severally acknowledged that as such officers they signed, sealed and delivered the foregoing instrument as their free and voluntary act for the uses and purposes therein set forth.

Given under my hand and notarial seal this 17<sup>th</sup> day of December, 1999

Teresa Zumwalt  
Notary Public



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## Exhibit A

Timberlane East, Plat 2, being part of the East Half of the Southeast Quarter of Section 7, Township 15 North, Range 4 West of the Third Principal Meridian, Sangamon County, Illinois, further described as follows:

Beginning at an iron pin over a stone marking the Northwest corner of said East Half, Southeast Quarter, Section 7; thence N 89°55'27" E, 859.91 feet along the north line of said Southeast Quarter, Section 7; thence S 13°23'24" W, 149.66 feet; thence South 07°39'37" W, 559.57 feet to the northeast corner of Timberlane East, Plat 1; thence N 89°39'58" W, 514.72 feet along the north line of said Timberlane East, Plat 1; thence N 00°20'02" E, 20.00 feet along said north line; thence N 89°39'58" W, 240.00 feet along said north line to the northwest corner of said Timberlane East, Plat 1, said point being on the west line of said East Half, Southeast Quarter, Section 7; thence N 00°20'02" E, 674.64 feet along said west line to the Point of Beginning. Containing 12.721 acres, more or less.

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