

Timbers

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION, made on the date hereinafter set forth by James A. Fasel and Frances H. Fasel, his wife, hereinafter referred to as "Declarant".

WITNESSETH

WHEREAS, Declarant is the owner of certain property in East Brandywine Township, Chester County, Pennsylvania, which is more particularly described as: EXHIBIT "A" and other lands as and when finally approved and made subject to this Declaration amendment filed.

RECORDER OF DEEDS
CHESTER COUNTY, PA.
1985 JUN 10 AM 8:53

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

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ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean and refer to The Timbers Residents Association, its successors and assigns.

Section 2. "Owner" shall mean and refer to the record owner whether one or more persons or entities of any unit which is a part of the properties, excluding those having such interest merely as security for the performance of an obligation. Provided, however, a mortgagee in possession shall be deemed an owner during the time of possession.

Section 3. "Properties" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. "Common Area" shall mean all real property (including the improvements thereto) owned by the Association for the common use and enjoyment of the owners, excluding areas dedicated to any governmental entity and excluding any areas dedicated to a public utility corporation for rendering of service to the Association, but only after such dedication or conveyance in fact occurs. The Common Area to be owned by the Association at the time of the conveyance of the first lot is described as follows: EXHIBIT "B"

Section 5. "Unit" shall mean any building or part thereof designated for one family residence and containing a kitchen.

Section 6. "Party Wall" shall mean any wall or floor built originally as part of a building upon the properties and place in a dividing line or plan between two units, without regard to any surveyor's error, shifting, settling or error in construction repair or reconstruction which would cause the described property line to deviate from the center line of a wall or floor.

Section 7. "Lot" shall mean and refer to a plot of land or space shown upon any recorded final plan of the properties with the exception of the common or dedicated area.

Section 8. "Recorded Final Plan". A final subdivision will be recorded with the declaration. However, at the completion of construction, an "as built" plan will be recorded which will be the prevailing plan.

Section 9. "Townhouse" shall mean any single-family attached dwelling unit.

Section 10. "Detached Dwelling" shall mean any single-family detached dwelling, excluding townhouses and apartments.

Section 11. "Apartment Building" shall mean a building designed for and occupied as a residence to three or more families living independently of one another, and the term "Apartment" shall mean any dwelling unit within an apartment building.

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Section 12. "Declarant" shall mean and refer to James A. Fasel and Frances H. Fasel, their heirs and assigns, if such heirs and assigns should acquire more than one undeveloped lot from James A. Fasel and Frances H. Fasel or any successor in interest for the purpose of development.

Section 13. "Federal Agencies" shall mean Federal Housing Administration, Veterans Administration, Federal Home Loan Mortgage Corporation, Federal National Mortgage Association or other similar entities involved in mortgages.

ARTICLE II

PROPERTY RIGHTS AND RESPONSIBILITIES

Section 1. Open Space Maintenance and Preservation.

The common area shall remain in perpetuity reserved and restricted to open space, recreational facilities, parking and accessways utility and other easements and servitudes and such other uses consistent with final plan approvals by the Township for each phase now or hereafter approved, as the Association may from time to time determine.

(a) The Association shall maintain all common area in a manner which preserves, keeps functional, complies with all applicable Township, County, State or Federal laws and retains the functional condition thereof. This maintenance shall include, but not be limited to:

- (1) Open space lawn, trees and shrubs.

- (2) Parking areas.
 - (3) Walkways.
 - (4) Retention basins.
 - (5) Active and passive recreation area as approved by East Brandywine Township.
 - (6) Tot lots.
 - (7) Farm and garden areas.
 - (8) Water supply equipment facilities, wells, lines and appurtenances until conveyed to a public utility corporation or otherwise disposed of.
 - (9) Sewage beds, pumps and other facilities for the collection, treatment and disposal of sanitary sewage until such facilities are conveyed to a public utility corporation or otherwise disposed of.
- (b) In the event the Association fails to maintain the common area, East Brandywine Township may, but shall not be obligated to, upon thirty (30) days notice and right to cure, enter upon the common area, perform any required maintenance, assessing and recovering the cost thereof so provided in Article IV. Section 3(e) hereof.
- (c) Funds shall be secured for common area as provided for in Article IV.

Section 2. Owners' Easements of Enjoyment. Every owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the

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title to and be unalterable from every lot or unit, subject to the following provisions.

(a) The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situate upon the Common Area.

(b) The right of the Association to suspend the voting rights and right of use of the recreational facilities by an owner for any period during which any assessment against his lot remains unpaid, and for a period not to exceed sixty (60) days from any infraction of its published rules and regulations.

(c) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Declarant. Except for dedication or transfer of water or sewer facilities, no such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by two-thirds (2/3) of all classes of members voting as a single class has been recorded or unless such dedication is required or authorized herein or in any approved final or preliminary plan or any order approving such final or preliminary plan.

(d) Area designated as common area or open space shall remain open and used for recreational purposes consistent with plans as finally approved by East Brandywine Township.

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(e) The right of the Association to charge a penalty assessment for rule infractions.

Section 3. Delegation of Use. Any owner may delegate, in accordance with the Articles of Incorporation, the Declaration and the By-Laws, his right of enjoyment of the Common Area and facilities to the member of his family, his guests, or his tenants who reside in the said owner's unit.

Section 4. Parking Rights. Ownership of each lot shall entitle the owner or owners thereof to the use of not more than two automobile parking spaces, which shall be as near and convenient to said lot as reasonably possible, together with the right of ingress and egress in and upon said parking area, such spaces not to be permanently assigned without express approval of the Board of Directors.

Section 5. Grant of Cross Rights, Easements, Restrictions and Covenants. Each townhouse shall be, and it hereby is, made subject to the following rights, easements, restrictions and covenants in favor of each adjoining townhouse whether such juncture is horizontal or vertical.

(a) An easement within the party walls and party ceiling/floors for the installation, maintenance, use, repair, removal and replacement of any lighting fixtures, electrical receptacles, and like fixtures which are located in any portion of any party wall or party ceiling/floor; provided that any such installation, maintenance, use, repair, removal or replacement of

any such fixtures not unreasonably interfere with the townhouse burdened hereunder, or with the use thereof, or impair or structurally weaken any load-bearing walls or ceiling/floors.

(b) An easement within the party walls and party ceiling/floors for driving and removing nails, screws, bolts, staples and other similar fastenings from the surface of a party wall or party ceiling/floors into the common portion of such party wall or party ceiling/floor; provided that such action will not unreasonably interfere with the adjoining townhouse or the use thereof, or impair or structurally weaken any load-bearing walls or ceiling/floors.

(c) An easement for the installation, maintenance, use, repair, removal and replacement of utility equipment or meters appertaining to and serving or benefiting any unit and required to pass across, through, or on any other unit or any party wall or party ceiling/floor, provided that no unit owner shall enter an adjoining unit for any such purpose except at reasonable hours, upon reasonable notice to the Owner thereof, and in the presence of a person designated by such other Owner; provided, however, that, in an emergency or if the consent of such other Owner be unreasonably withheld or delayed, the Association, on behalf of the Owner requiring entry, shall cause entry to be made into such other unit for the sole purpose of making necessary installation, maintenance, repair, removal or replacement of utility equipment. All damage caused by such

installation, maintenance, use, repair, removal and replacement shall be repaired at the expense of the unit Owners benefiting therefrom. Utilities include, but are not limited to, sewer, water, telephone, Cable TV, electric, storm water traversing lots either horizontally or vertically (as from an upper unit to the ground of a lower unit).

(d) Each unit Owner shall maintain all portions of his townhouse in such condition as to insure structural support of the adjoining units, and no unit Owner shall so fail to maintain or repair his unit whether after damage by fire or otherwise, as to materially impair the value of any other unit. In the event that a unit is damaged by fire or other peril, the proceeds from any insurance policy covering the destruction or damage of any exterior, party wall and items affecting other units will be assigned to Association as Trustee. Association will then be liable to repair, rebuild or replace with new materials of like size, kind and quality such exterior, party wall or items affecting other units which were damaged or destroyed by fire or other peril. Any excess of proceeds above and beyond the amount used to repair, rebuild or replace will be distributed to the individual owner or owners directly affected by the damage in proportion to the amount of damage suffered. Where no insurance was carried or where the insurance proceeds are insufficient to cover cost of repair, rebuilding or replacing, then the cost or additional cost shall be assessed and

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paid by all owners directly affected by the damage, in proportion to the value of the actual loss suffered. This provision and all insurance procured hereunder shall only apply to the buildings and shall not apply to the contents of the buildings. The contents of any dwelling and any insurance covering such contents remains the sole responsibility and liability of the unit owner.

(e) Portions of certain lots shall be subject to public access and utility easement. Such areas shall be designated on a recorded final plan. Owners of these easements shall be responsible for removing snow and repairing walkways. Utilities including, but not limited to, electric, water, Cable TV, and sewer, for any or all units may be located within this area. The general public, including any person or groups not banned for just cause by the Association may use walkways in this area for access. Owners shall maintain in good repair public sidewalks with their lot, including, but not limited to, snow removal.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

Section 1. Every Owner of a unit shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any unit.

Section 2. The Association shall have two classes of voting membership:

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Class A. Class A members shall be all owners, with the exception of the Declarant, and shall be entitled to one vote for each unit owned. When more than one person holds an interest in any unit, all such persons shall be members. The vote for such unit shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any unit.

Class B. The Class B member/members shall be the Declarant and shall be entitled to three (3) votes for each lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(a) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or

(b) On December 31, 1995.

ARTICLE IV

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal

Obligation of Assessments.

(a) Each Class A member, for each unit owned and occupied within the properties, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital

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improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs and reasonable 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. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them, but nothing herein contained shall be deemed to discharge the lien of the assessment upon the land, the subject thereof.

(b) Notification. The contract seller of a lot or unit shall notify the Board of Directors as to his intent to sell the lot or unit so that an Estoppel Certificate may be prepared.

(c) Estoppel Certificate. Within ten (10) days of the receipt of such notification, the Board shall prepare an Estoppel Certificate which shall set forth any assessments and charges due upon such lot or unit at the date of issuance and certify as to whether or not there are violations of the governing documents remaining on the lot known to the Association as of the date of the preparation of such certificate. This certificate shall be mailed to the place designated by Seller.

No conveyance shall discharge the personal liability of the Grantor for unpaid assessments or charges whether or not shown on such certificate. A reasonable fee shall be established from time to time for the cost of preparation of such certificate and shall be paid at the time of request for such certificate. The certificate shall be signed by an officer of the Association and shall set forth whether the assessments on the specified unit have been paid. A properly executed certificate of the Association as to the status of assessments on a unit is binding upon the Association as to any purchaser or mortgagee relying therein in good faith as of the date of its issuance, but shall not relieve the Owner of personal liability.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents in the properties and for the improvement and maintenance of the Common Areas and facilities and the performance of the obligations of the Association, including the cost of operation of water and sewer facilities until dedicated or conveyed to a public utility or otherwise disposed of, and including the cost of operation of the Association. In addition, the assessments shall be used for the creation, maintenance and enhancement of reserves, the maintenance of appropriate policies of insurance, and the maintenance and operation of water and sewer facilities, and the payment of water and sewer rents after conveyance to any

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public utility or other operating entity, unless the water and sewer are by decision of the Board separately metered and for the payment of all obligations as set forth in any tentative or final Township approval.

Section 3. Annual Assessment.

(a) Annually, at least sixty (60) days prior to its adoption, the Home Owners Association shall submit to the Board of Supervisors of East Brandywine Township and to the Township Engineer, its proposed budget for its next succeeding fiscal year. Appended to that budget shall be certification of all reserve and escrow and reserve balances and the operating account balance as of the end of the month immediately preceding the month in which the proposed budget is submitted to the Supervisors, an accounting of receipts and dispersals made during the then current fiscal year and an estimate of receipts and dispersals for the balance of the then current fiscal year and a statement of all accounts receivable and payable applicable thereto. The proposed budget and additional schedules shall be prepared and submitted in accordance with generally accepted accounting principles and certified by the officers of the Association. The Board of Supervisors of East Brandywine Township shall review the proposed budget together with all supporting data to assure itself that adequate assessments are made and that the Association is utilizing its funds to maintain satisfactorily the water system, sewage system, dam, and other

community facilities and to keep in force adequate liability and casualty insurance for the dam, sewage facilities, and water facilities in particular and all other community facilities in general. In the event the Board of Supervisors of East Brandywine Township determines that there are inadequate assessments or inadequate performance, the Board of Supervisors of East Brandywine Township may, but shall not be obligated to, increase the budget and the assessments to an amount sufficient to adequately fund the Association's obligation and may, but shall not be obligated to, enforce payment and collection of all assessments on municipal liens, including all costs and attorney's fees attendant thereto.

(b) The Association is to constantly maintain casualty and liability insurance with respect to all risk areas by virtue of the maintenance, ownership and operation of the dam, the water and sewage facilities and all other community facilities and shall submit evidence of insurance and evidence of payment of premiums to the Board of Supervisors of East Brandywine Township. Further, the Township shall be named as co-insureds on all liability insurance policies and as loss co-payees on casualty policies to assure the reconstruction of any facilities damaged or destroyed by casualty.

(c) The Home Owners Association shall establish and maintain adequate reserves designed and utilized for and only for the repair and replacement of community facilities and for no

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other purposes. No expenditure from reserve shall be made without the approval of the Board of Supervisors of East Brandywine Township being first had and obtained. Such approval shall not be unreasonably withheld.

(d) Monies for the day-to-day operation of the physical plant, which include expendable supplies such as chemicals, energy, salaries of operating personnel, etc., shall be maintained separately from the escrow fund established for the maintenance, repair and construction of the physical plant.

(e) In addition to the monies necessary to complete the required public improvements and the monies necessary to implement the force main extension, there shall be created an escrow fund into which shall be deposited the sum of \$200.00 at final settlement as each dwelling unit is sold. This escrow fund shall be maintained solely for the purpose of maintenance, repair, replacement, reconstruction and construction of the open space, dam, parking lots and private access roads, recreational facilities and other installed facilities that will be privately held by the Home Owners Association.

(f) Upon final plan approval, the applicant shall, prior to start of construction, establish a useful life for the installed facilities that will be owned by the Home Owners Association. The installed facilities, such as tennis courts, sewage treatment system, etc. shall be identified together with their initial cost, life expectancy and replacement

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cost. Annually, the home owners shall make an incremental contribution to the fund based on a replacement at the end of the useful life for the subject facility.

(g) The Board of Directors may fix the annual assessment at an amount deemed appropriate for all of the foregoing.

(h) In the event the Association fails to maintain the Common Area, East Brandywine Township may, upon thirty (30) days notice and right to cure, enter upon the Common Area, perform any required maintenance, and assess and collect the cost thereof from the individual properties and/or Owners thereof, pro rata, and/or may assess and collect the full amount against the Association for said maintenance, provided such maintenance is required by Township ordinances. This provision also specifically includes any and all retention basins.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy in any assessment year a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of all classes of members voting as a single class in person or by proxy at a meeting duly called for this purpose.

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Section 5. Notice and Quorum for any Action Authorized

Under Sections 3 & 4. Written notice of any meeting called for the purposes of taking any action authorized under Section 3 and 4 shall be sent to all members not less than ten (10) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty (60%) percent of all of the votes of each class of membership shall constitute a quorum. If the required quorum is not present, the meeting may be adjourned from day to day certain until a quorum is present. At any such adjourned date, a quorum shall consist of not less than fifty-one (51%) percent of the total number of votes that may be cast by all classes combined in person or by proxy.

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all units. The Board may authorize, in its discretion, a special assessment to be paid on a monthly basis.

Section 7. Date of Commencement of Annual Assessments:
Due Dates. The annual assessments provided for herein shall commence as to any unit or the later of (1) the first day of the month following the conveyance of Common Area; or (2) granting of any occupancy permit for that unit. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each lot at least thirty (30)

days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. Unless objection to the assessment is made by fifty-one (51%) percent of each class of members within fifteen (15) days after the date of mailing of such notice, the same shall be deemed adopted and shall be binding on all members as provided. Nothing herein shall be deemed to relieve the Association or the members thereof from properly creating and maintaining such assessments, deposits and reserves as required as conditions of tentative approval of the Township.

Section 8. Effect of Nonpayment of Assessments:

Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of twelve (12%) percent per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the unit. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his unit.

(a) Each Owner on becoming an owner of any unit shall be deemed to covenant and agree to the enforcement of all assessments in the manner specified in this Declaration. Each Owner agrees to pay reasonable attorneys' fees as established from time to time by the Board and costs incurred in the collection of any assessment against such Owner and/or his unit,

whether by suit or otherwise, or in enforcing compliance with or specific performance of the terms and conditions of this Declaration or other governing documents as against such Owner and/or his unit.

(b) Any assessment installment not paid with fifteen (15) days after the due date shall be delinquent. Thereupon, the Association shall provide notice of such delinquency and may (a) declare the entire balance of such annual or special assessment due and payable in full; or (b) charge a late fee in an amount to be set by the Board and entered in the Book of Resolutions; or (c) upon registered or certified mail notice to the Owner, suspend the right of such Owner to vote and/or to use the recreational and other facilities until the assessment and accrued charges are paid in full; or (d) employ other remedies available at law or equity or without limitation of the foregoing, including either of the following procedures:

(1) Enforcement by Suit. The Association may commence and maintain a suit by law against any Owner or Owners for such delinquent assessments as to which they are personally obligated. Any judgment rendered in any such action shall include the amount of the delinquency, together with interest thereon at the rate of twelve (12%) percent per annum from the date of delinquency, costs of collection, court costs and reasonable attorneys' fees in such amount as the Board has by Resolution established from time to time. Suit to recover a

money judgment for unpaid assessments shall be maintainable without foreclosing or waiving the lien hereinafter provided for.

(a) There is hereby created a claim of lien, with power of sale, on each and every unit to secure payment to the Association of any and all assessments levied against any and all Owners of such units pursuant to this Declaration, together with interest thereon as provided for by this Section and all costs of collection which may be paid or incurred by the Association in connection therewith, including reasonable attorneys' fees, as may from time to time be established by Resolution of the Board. At any time after the occurrence of any delinquency in the payment of any such assessment, the Association, or an authorized representative thereof, may make a written demand for payment to the delinquent Owner. Said demand shall state the date and amount of the delinquency. Each delinquency shall constitute a separate basis for a demand or claim of lien or a lien, but any number of defaults may be included within a single demand or claim of lien or lien, and any demand or claim of lien or lien on account of prior delinquencies shall be deemed to include subsequent delinquencies and amounts due on account thereof. If such delinquency is not paid within ten (10) days after delivery of such demand, the Association, or its duly authorized representative, may thereafter elect to file and record a claim of lien on behalf of the Association against the unit of the

defaulting Owner in the Office of the Recorder of Deeds or with the Prothonotary of the County, or both. Such claim of lien shall be executed and acknowledged by any officer of the Association and shall contain substantially the following information:

(i) The name of the delinquent Owner;

(ii) The legal description and/or street address and/or unit number of the unit against which the claim of lien is made;

(iii) The total amount claimed to be due and owing for the amount of the delinquency, interest thereon, collection costs, and attorneys' fees (with any proper offset allowed) as well as the cost of recording and releasing the lien;

(iv) That the claim of lien is made by the Association pursuant to this Declaration;

(v) That a lien is claimed against said unit in an amount equal to the amount stated, together with all other amounts becoming due from time to time in accordance with this Declaration; and

(vi) The date of issuance of the claim.

(b) Upon such recordation of a duly executed original or copy of such a claim of lien, the lien

claimed therein shall immediately attach and become effective in favor of the Association as a lien upon the unit against which such assessment was levied. Such a lien shall have the priority over all liens or claims created subsequent to the recordation of the claim of lien thereof, except for tax liens for real property taxes and assessments on any unit in favor of any municipal or other governmental assessing unit, and first mortgagees.

(c) Any such lien may be foreclosed by appropriate action in court or in the manner provided by law for foreclosure of mortgages or sale by a judgment creditor or in any other manner permitted by law. The Board is hereby authorized to appoint any attorney or any officer or director of the Association for the purpose of conducting such proceeding.

(d) All remedies provided herein are cumulative.

(e) Enforcement of Township

Assessments:

(i) In the event that the Association, or any successor organization, shall at any time after establishment of The Timbers fail to maintain the common open space in reasonable order and condition in accordance with the development plan, East Brandywine Township may serve written notice upon the Association or upon the residents of The Timbers setting forth the manner in which the Association has failed to maintain the common open space in reasonable condition, and said

notice shall include a demand that such deficiencies of maintenance be corrected within thirty (30) days thereof, and shall state the date and place of a hearing thereon, which shall be held within fourteen (14) days of the notice. At such hearing, East Brandywine Township may modify the terms of the original notice as to the deficiencies and may give an extension of time within which they shall be corrected. If the deficiencies set forth in the original notice or in the modifications thereof shall not be corrected within thirty (30) days or any extension thereof, East Brandywine Township, in order to preserve the taxable values of the units within The Timbers and to prevent the common open space from becoming a public nuisance, may enter upon said common open space and maintain the same for a period of one (1) year. Said maintenance by East Brandywine Township shall not constitute a taking of said common open space, nor vest in the public any rights to use the same. Before the expiration of said year, East Brandywine Township shall, upon its initiative or upon the request of the Association, call a public hearing upon notice to such Association, or to the residents of The Timbers, to be held by the Board of Supervisors or its designated agency, at which hearing the Association or the residents of The Timbers shall show cause why such maintenance by East Brandywine Township shall not, at the option of said Township, continue for a succeeding year. If the Board of Supervisors, or its designated agency,

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shall determine that such Association is ready and able to maintain said common open space in reasonable conditions, East Brandywine Township shall cease to maintain the common open space at the end of said year. If the Board of Supervisors, or its designated agency, shall determine that the Association is not ready and able to maintain said common open space in a reasonable condition, East Brandywine Township may, in its discretion, continue to maintain said common open space during the next succeeding year and, subject to a similar hearing and determination, in each year thereafter. The decision of the Board of Supervisors, or its designated agency, shall be subject to appeal to court in the same manner and within the same time limitation as is provided for zoning appeals.

(ii) The cost of such maintenance and the hearing and enforcement procedure referred to above, including reasonable attorney, engineering and like fees and costs, shall be assessed ratably against the units within The Timbers that have a right of enjoyment of the common open space and shall become a lien on said units. East Brandywine Township, at the time of entering upon said common open space for the purpose of maintenance, shall file a notice of lien in the Office of the Prothonotary of Chester County upon the units affected by the lien within The Timbers.

Section 9. Subordination of the Lien to Mortgages.

The lien of the assessments provided for herein shall be

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subordinate to the lien of any bona fide first mortgage. Sale or transfer of any lot shall not affect the assessment lien.

However, the sale or transfer of any unit, pursuant to mortgage foreclosure or any similar judicial proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such unit from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE V

ARCHITECTURAL CONTROL

Except for construction by developer, no building, fence, wall or other structure shall be commenced, erected or maintained upon the properties, nor shall any exterior addition to or change or alternation therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by any architectural committee composed of three (3) or more representatives appointed by the Board and operating under standards and guidelines approved with the Board. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within forty-five (45) days after said plans and specifications have been submitted to

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it, approval will not be required and this Article will be deemed to have been fully complied with. Nothing herein contained shall be construed to require any developer to obtain approvals of the Board or committee for construction undertaken in pursuance of development of The Timbers.

ARTICLE VI

GENERAL PROVISIONS

Section 1. Enforcement. The Association, the developer or any Owner shall have the right to enforce, by any proceedings at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of the Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provision which shall remain in full force and effect.

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land in perpetuity. This Declaration may be amended by an instrument signed by not less than seventy-five (75%) percent of the votes entitled to be cast. Any amendment must be recorded. Provided, however, no section granting authority to East Brandywine

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Township to repair, assess or collect shall be amended without the consent of East Brandywine Township first being had and obtained.

Section 4. Annexation.

(a) Additional residential property and/or common areas may be annexed to the properties with the consent of two-thirds (2/3) of all classes of members voting as a single class, except:

(1) Additional land within the area described in Deed Book *A-38*, Page *85*, of the records of Chester County, Pennsylvania, may be annexed by the Declarant without the consent of members.

(2) The Declarant hereby reserves the right to amend the development plan for lands which have yet not been made subject to this Declaration without the consent of the Association or any Class A members, in response to changes in technological, economic, environmental or social conditions related to the development. Such amendments shall be effected by securing the approval of East Brandywine Township and/or federal agencies and/or any other governmental bodies which have an interest in the properties or relevant jurisdiction thereover.

Section 5. Rights of Institutional Lenders. In order to induce institutional lenders to make loans secured by liens upon units or lands within The Timbers, the Association shall not without prior written consent of at least whatever percent of

First mortgagees of individual units as required by federal agencies and two-thirds (2/3) of Owners other than the Declarant:

(a) By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the common property owned directly or indirectly. Public utility easements or public purpose easements consistent with common property use are excepted;

(b) Change the method of determining the obligations, assessments, dues or other charges which may be levied against an Owner;

(c) By act or omission, change, waive or abandon regulations or enforcement pertaining to the architectural design or the exterior appearance of units, the exterior maintenance of units, the maintenance of the common property party walks, or common driveways, or the upkeep of lawns and plantings;

(d) Fail to maintain fire and extended coverage on insurable common property on a basis as required by federal agencies having an interest in the properties; and

(e) Use hazard insurance proceeds for losses to common property for other than the repair, replacement or reconstruction of such common property.

Also, as part of the aforementioned inducement to institutional lenders, the Association shall:

(a) Not make liable any first mortgagee who obtains title to a unit pursuant to the remedies provided in the

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mortgage or foreclosure for such unit's unpaid dues or charges which accrue prior to the acquisition of title to such unit by the mortgagee.

(b) Allow first mortgagees of units to, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against common property and pay overdue premiums on hazard insurance policies, or secure new hazard insurance policies on the lapse of a policy for such common property and first mortgagees making such payments shall be owed immediately reimbursement therefor from the Association.

(c) Give written notification, upon written request, to any first mortgagee at the address designated in the request of any default in the performance by any individual unit mortgagor.

(d) Limit any agreement for professional management or any contract providing for services from or by the Developer to that required by any federal agencies and provide for termination in accord with standards of federal agencies. Any management agreement shall remain consistent with the constituent documents of the properties.

Section 6. Construction Easements and Rights.

Notwithstanding any provision of this Declaration or of any supplementary declaration, so long as the developer is engaged in developing or improving any portion of the properties, such persons shall have an easement of ingress, egress and use over

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any lands not conveyed to an Owner for occupancy 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, including maintenance of model units. 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. Nor shall developer be subject to architectural review requirements of Article V hereof.

Section 7. Conflict. In the event of conflict among the governing documents, the approval plan and order of approval shall control, then this Declaration, then supplementary declarations, then the Articles of Incorporation of the Association, then the By-Laws, then the Book of Resolutions; except that in all cases where the governing documents may be found to be in conflict with statute, the statute shall control.

Section 8. Interpretation. Unless the context otherwise requires the use herein, the singular shall include the plural and vice versa; the use of one gender shall include all genders; and the use of the term "including" shall mean "including, without limitation." The headings used herein are for indexing purposes only and shall not be used as a means of interpreting or construing the substantive provisions hereof.

Section 9. FHA/VA Approval. As long as there is a Class B membership, the following actions will require the prior

approval of the Federal Housing Administration or the Veterans Administration: Annexation of additional properties other than pursuant to Article VI, Section 4(b), dedication of common area, except as provided in preliminary or final approval, and amendment of this Declaration of Covenants, Conditions and Restrictions.

Section 10. In the event any reasonable portion of any unit encroaches upon the common areas as a result of construction, reconstruction, repair, shifting, settlement or movement, a valid easement shall exist so long as the encroachment exists.

Section 11. As-built plans shall be prepared and recorded in the Office for the Recording of Deeds in Chester County at the expense of Declarant. These as-built plans shall prevail over all other plans.

Section 12. No abandoned or disabled vehicles, nor extended or oversized vehicles, shall remain in the parking area. The Association may remove them after three (3) days posting at Owner's expense.

Section 13. Nothing herein contained to the contrary notwithstanding, Declarant shall have the right and power to amend unilaterally any provision herein and any provision of the plans, applications or related documents necessary in the opinion of the Declarant to conform to the requirements of the Federal Emergency Management Agency, the Federal Environmental Protection

Agency, the Soil Conservation Service of the United States Department of Agriculture, the Pennsylvania Department of Environmental Resources, the Pennsylvania Department of Community Affairs, the Chester County Department of Health, East Brandywine Township and any and every other federal, state, county or local board or body having jurisdiction over the lands, the subject of this Declaration, and the development and land use contemplated therein.

IN WITNESS WHEREOF, the undersigned, being the Declarants herein, have hereunto set their hands and seals this 21st day of JANUARY 1985

WITNESS

[Signature]

[Signature]
JAMES H. FASEL

[Signature]
FRANCES H. FASEL

COMMONWEALTH OF PENNSYLVANIA:

COUNTY OF CHESTER

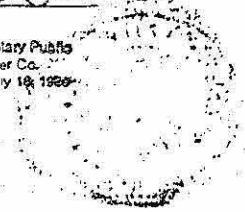
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BE IT REMEMBERED, that on the *21st* day of *JANUARY*, 1985
personally appeared before me, a Notary Public, JAMES A.
FASEL and FRANCES H. FASEL, known to me (or satisfactorily proven)
to be the Declarants in the foregoing document, and that they
executed the same for the purposes therein contained as and for
their own free act and deed and desired the same might be recorded
as such.



Notary Public

LAWRENCE F. WALSH, Notary Public
Tredyffrin Twp., Chester Co.
My Commission Expires July 19, 1988



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ADDENDUM TO DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS

The Declaration of Covenants, Conditions and Restrictions shall be and hereby is amended by adding to Article IV a new Section 2.5 to provide as follows:

2.5 Maintenance, Operation and Monitoring of Community Sewage System. While the Developer is in possession, he shall, and when conveyed to the Association, it shall perform the following duties:

(a) The Developer shall install and the Developer and the Association, respectively, shall continually maintain, during their respective periods of ownership, two (2) monitoring wells and two (2) stream monitoring stations, as shown on a set of plans designated as Sheet No. 4 of 12 of the final plans of subdivision for Phase I, which said monitoring wells and stream monitoring stations shall be maintained so long as the sewage facilities shown thereon are operated.

(b) So long as there exists and is operated a separate community sewage system for the thirty-four (34) dwelling units within Phase I of The Timbers Development, the Association shall contract for and maintain the services of a licensed sewer plantoperator, who shall perform the following duties:

(1) He shall inspect regularly the entire system, including the aerobic treatment system, pump station,

dosing siphon and seepage bed area, and shall assure the proper operations thereof and proper repair and maintenance, including preventive maintenance.

(2) He shall procure such supplies or materials as are necessary for the continued proper operation and maintenance of said system.

(3) He shall prepare and maintain periodic records of all activities and observations with respect to the said system.

(4) He shall not less frequently than quarterly examine the monitoring wells for the water level and maintain records thereof.

(5) He shall not less frequently than annually analyze the monitoring wells for nitrates and maintain records thereof.

(6) He shall consult with the President of the Home Owners' Association and its Executive Board keeping them at all times apprised of the present condition of the sewage system, the results of inspection of monitoring wells and advise them of the need for repairs and any indications of system failure.

(7) He shall respond promptly to all alarms or indications of malfunctioning of the sewage system and shall promptly make such necessary repairs as may be required to assure the continued operation thereof.

(8) Copies of all reports and records maintained by him shall be filed with the Association and by them maintained as permanent records.

(c) The Association shall annually appropriate as part of their budget sufficient funds, including reserves, to assure payment for all of the obligations undertaken in subparagraph (b) above.

LAW OFFICES
GAWTHROP, GREENWOOD & HALSTED
112 NORTH HIGH STREET
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WEST CHESTER, PENNSYLVANIA 19380
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ROBERT S. SAWYER, JR.
JOHN S. HALSTED
ROBERT F. ADAMS
STEVE WOLLENBAM
PAULA PRITCHETT OTT
SCOTT C. ZUNDANO

DOUGLAS
D. THOMAS GREENBERG

August 3, 1984

Supervisors of East Brandywine Township
1214 Horseshoe Pike
Downingtown, PA 19335

Re: The Timbers

Dear Supervisors:

I have reviewed the Amended Timbers Declaration provided me by Ron Agulnick under cover of July 30, 1984 and find that the suggested changes contained in my letter of July 19 have been incorporated. I therefore find such Amended Declaration to be in acceptable form.

Very truly yours,

John S. Halsted

JSH:bb
cc: Ronald M. Agulnick, Esq.

C
O
P
Y

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PITT, AGULNICK, SUPPLEE, JOHNSON & SLADE

ATTORNEYS AT LAW
213 WEST MINER STREET
P. O. BOX 487
WEST CHESTER, PA. 19381-0487

(610) 692-4882

THOMAS A. PITT, JR.
RONALD M. AGULNICK
ROBERT S. SUPPLEE
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EDDORA K. SLADE
JOSEPH G. ROPER
CATHY WILSON HUIZARD

July 30, 1984

John S. Halsted, Esquire
Gawthrop, Greenwood & Halsted
119 North High Street
P. O. Box 562
West Chester, PA 19380

Re: The Timbers/Declaration of Covenants,
Conditions and Restrictions

Dear John:

Enclosed herewith is a copy of the revised Declaration with reference to the above-captioned matter. The revisions were made in accordance with your letter of July 19, 1984 and I trust this is satisfactory to you.

If there are any problems, please let me know.

Very sincerely yours,

Ronald M. Agulnick

RMA/lb
Enclosure

Rec. in Chester Co. Pa.
in Miss. Box 671
Pc 478
Recorder of Deeds



Block 671 478