

STATE OF KANSAS
POTTAWATOMIE CO.

DECLARATION OF PROTECTIVE COVENANTS
FOR TIMBER CREEK II PLAT

This instrument was filed for record

POTTAWATOMIE COUNTY, KANSAS

Aug. 7, 1978 at 11:40 O'clock A.M.

and duly recorded in Book 176

on page 154

ARTICLE I

Erwin Scott

Register of Deeds

PROPERTY SUBJECT TO THIS DECLARATION
OF PROTECTIVE COVENANTS

By

Suburban Developers, Inc. (known as the "Declarant") is the owner or has under contract all of that property within the subdivision named Timber Creek II located in the County of Pottawatomie, State of Kansas and is more particularly described as follows:

A tract of land situated in the Southeast Quarter of Section 3, Township 10 South, Range 8 East of the Sixth PM; Blue Township; County of Pottawatomie; State of Kansas, delineated on the plat Timber Creek II, Phase I as recorded at the Office of the Register of Deeds of Pottawatomie County, Kansas dated May 25, 1978; and to apply to subsequent Phases II, III, and IV, a total area of 118 acres, more or less, as such parcels are recorded and developed.

The real property (and each lot contained therein), heretofore described, is and shall be held, sold, and conveyed subject to the conditions, covenants, restrictions, reservations, and easements as set forth within this declaration--and which shall run with the real property and be binding on all parties having any right, title, or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

This Declaration of Protective Covenants, its restrictions, terms and conditions are assumed, adopted, and agreed upon by the purchaser of any building lot situated in the registered plat of which these covenants are a part of and shall be effective at the time a lot is purchased.

ARTICLE II

GENERAL PURPOSES AND OBJECTIVES

The real property and the purchaser of each lot contained therein described in Article I hereof is subject to the conditions, covenants, restrictions, reservations, and easements hereby declared. The objectives of these covenants are to ensure the best use and the most appropriate development and improvement of each building site thereof; to protect the owners of building sites against such improper use of surrounding building sites as will depreciate the value of their property; to preserve, so far as practical, the natural condition and qualities of such property; to prevent the construction of substandard, or unsuitable improvements; to encourage and secure the erection of attractive dwellings thereon; and in general to create and maintain the subdivision in a visually attractive manner and appearance for the mutual benefit and protection of all the owners of lots in the subdivision.

ARTICLE III

DEFINITIONS

As used herein the following words and terms shall have the following meanings:

"Declarant" shall mean and refer to Suburban Developers, Inc., its successors or assigns; Suburban Developers, Inc. being owner and developer of the land parcel described heretofore as Timber Creek II Subdivision and the grantor of building lots contained within the Subdivision.

"Subdivision" or "Properties" shall mean and refer to the land parcel described heretofore as Timber Creek II Subdivision in total or in part.

"Lot" shall mean and refer to each parcel of land delineated and numbered on the heretofore described and recorded plat within the Timber Creek II Subdivision, Phase I and encompassing subsequent Phases II, III, and IV respectively excepting the commons area. Each "lot" is held and sold by the Declarant for the exclusive purpose of constructing single family residential dwellings (one dwelling residence per lot) excepting lot 57 designated general office use and so designated on the recorded plat of Timber Creek II Subdivision, Phase I in compliance with the covenants, conditions, restrictions, and easements set forth in this Declaration.

The "Owner" shall mean and refer to the "owner of record," his successors or assigns, whether one or more persons or entities, of the simple fee title to any Lot which is part of the Timber Creek II Subdivision. Owners include contract sellers, but exclude those having such interest merely as security for the performance of an obligation.

The "Common Area" shall mean and refer to that plat of land delineated and so designated on the heretofore described and recorded plat within the Timber Creek II Subdivision, Phase I and encompassing subsequent Phases II, III, and IV respectively to be owned and maintained by the Timber Creek II Home Owners Association for the common use and enjoyment of all property owners. The "Common Area" is to be owned by the Association at the conveyance of the last lot in each respective Phase.

The "Association" shall mean and refer to the Timber Creek II Home Owners Association, its successors or assigns. The Association shall be a nonprofit corporation organized under the laws of the State of Kansas and governed by the Bylaws hereinafter defined, whose major purpose is to manage and maintain collective common areas; common facilities; community services; streets and utilities, if so designated by Pottawatomie County and/or Blue Township; and enforce the covenants, conditions, restrictions and easements set forth in this Declaration. Any Owner of property within the Subdivision shall become a member automatically and immediately upon receiving title to any Lot.

The "Architectural Control Committee" shall mean and refer to a standing committee established by the Association per the Bylaws to review and approve improvement plans to be undertaken on any Lot within the Subdivision.

The "Utilities District" shall mean and refer to Timber Creek II Sewer and Water District, a nonprofit utilities district, initiated by and under the authority of the Pottawatomie County Board of Commissioners, established to provide the Subdivision with water and sewer services. The Pottawatomie County Board of Commissioners have the authority to designate operation and maintenance of the Utilities District and to set and revise rates as necessary.

The "Board of Directors" shall mean and refer to the elected

board established by the Association under its Bylaws to execute policies and decisions of the membership, prosecute the Association's objectives and exercise the supervision, control and direction of the Association, and to carry out those other duties and responsibilities as provided for in the Bylaws.

The "Bylaws" of the Association shall mean and refer to the Bylaws duly adopted by the Association which shall govern such affairs of the Association such as membership, fees and dues, assessments, meetings, officers, elections, committees, mail vote, amendments, liabilities, funds and dissolution which are hereby incorporated in these protective covenants by reference and adopted and made as part hereof.

ARTICLE IV

RIGHTS OF USAGE

Owners' Easements of Enjoyment. Every Owner shall have a right of use and an easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) The Association shall have the right to charge reasonable admission and other fees for the use of any recreational facility located within the Common Area;

(b) The Association shall have the right to suspend the voting rights and right to use by the Owner such Common Area and facilities for any period during which any assessment against his Lot remains unpaid, and for a period not to exceed sixty days for any infraction of its published rules and regulations;

(c) The Association shall have the right to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for scenic or recreational purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument authorized, signed by three-quarters (75%) of all members agreeing to such dedication or transfer, has been recorded.

Delegation of Use. Any Owner may delegate, in accordance with the Bylaws, the right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

ARTICLE V

CREATION OF ASSOCIATION OF HOMEOWNERS

An association of homeowners shall be created as a corporate body and an association NOT FOR PROFIT under the laws of Kansas and named, "The Timber Creek II Homeowners Association". The Association shall adopt Bylaws which are hereby made a part of these protective covenants by reference and are hereby incorporated herein.

ARTICLE VI

ASSOCIATION MEMBERSHIP

Every Owner of a Lot shall be a member of the Association. Membership shall be mandatory and irrevocable and may not be separated from ownership of any Lot.

Membership in the Association shall provide protective rights and privileges for the Owner but shall also carry corresponding responsibilities, duties, and liabilities as outlined in these covenants and as shall otherwise be lawfully imposed by the Association.

The Association shall have two classes of voting membership:

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

Class B. The Class B member(s) shall be the Declarant and shall be entitled to four (4) votes for each Lot owned both recorded and proposed per the Timber Creek II Master Plan. The Class B membership shall cease and be converted to Class A membership upon the sale of all 227 Lots owned by the Declarant, contained in Phases I, II, III, and IV on file with Planning and Zoning Administrator, Pottawatomie County, Kansas.

ARTICLE VII

ASSOCIATION RESPONSIBILITIES

The Association will assume, but not be limited to, the following basic responsibilities and provide the following common services required within the Subdivision for the general use and benefit of all Lot Owners:

(1) General lawn and plant material maintenance in all Common Areas, necessary to insure a good visual appearance throughout the Subdivision.

(2) General maintenance and upkeep of common community facilities including recreation facilities, structures, lighting, play areas, path systems, etc., if the membership so elects to construct such facilities.

(3) Retain services of a qualified and certified agent to operate, maintain, keep records, and collect usage fees due within the Utilities District encompassing, but not limited to, water, sewage, and trash removal services as, when, and if so designated by and in accordance with policy determined by the Pottawatomie County Board of Commissioners.

(4) General street maintenance, repair, snow removal, and traffic control supplemental to street maintenance provided by Blue Township and/or Pottawatomie County.

(5) Enforcement of conditions, covenants, restrictions, reservations, and easements as set forth within this declaration and Association directives and procedures as may be determined by the membership and/or the Board of Directors.

(6) Review and approval of all construction plans, including but not limited to structural considerations, architectural treatment, and major landscape improvements as set forth within this declaration by the Architectural Control Committee.

(7) Keep Association records, policies, financial records, collect and disperse funds, notify membership as necessary, employ staff, and other managerial responsibilities incidental and necessary to Association operations.

(8) The Association shall establish reasonable directives, rules, and regulations as are determined to be necessary and appropriate to carry out and enforce the objectives of the Association and the protective covenants contained herein which shall become a part of these protective covenants by reference and are hereby incorporated herein.

ARTICLE VIII

ASSOCIATION ASSESSMENTS

Purposes. Assessments levied by the Association shall be used exclusively for the improvement and maintenance of the Common Areas and facilities within the Subdivision and to promote the general recreation, health and safety, and welfare of the Owners.

Obligations and Lien. The Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is obligated and agrees to pay to the Association (a) annual assessments or charges, and (b) special assessments under such terms and conditions as are herein provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the Owner's land and shall be a continuing lien upon the property against which each such assessment is made until paid. Each assessment, associated expense, and obligation shall pass with the land to successor Owner in title. Further, no sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof. The Association shall, upon request, and for a reasonable charge, furnish a certificate signed by the treasurer of the Association setting forth the assessments owed to date on a specified Lot.

Delinquent Obligations. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of ten (10%) per cent per annum. The Association may bring an action at law against the Owner personally obligated to pay the assessment, or foreclose the lien against the property. No Owner may waive or otherwise avoid liability for the assessments provided for herein by non use of the Common Area or abandonment of his Lot.

Collections. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis. Annual assessments shall commence on all Lots sold for occupancy on the first day of the month following such sale and shall be due the first day of every month thereafter. The annual assessment period shall run from January 1 to December 31. The treasurer shall immediately notify each Owner in writing of any increase in the annual assessments. Unsold Lots owned by the Declarant shall not be subject to annual assessments; however, the Declarant shall maintain all unsold Lots in such a manner as not to detract from the visual appearance of the Subdivision. It is further understood the Declarant shall maintain Common Areas until such time as the Association can financially assume such responsibilities.

Maximum Assessments. The maximum annual assessment of an Owner until January 1, 1980, shall not be in excess of Ninety Dollars (\$90.00) per Lot, or Seven Dollars and Fifty Cents (\$7.50) per month, for such ordinary expenditures as maintenance of Common Areas and facilities,

supplemental street maintenance and snow removal, supervision and management, and similar expenses and services as authorized by the membership and/or the Board of Directors. After January 1, 1980, the annual assessment (dues) shall not be increased by more than seven per cent (7%) of the previous year's assessment for any calendar year except by a two-thirds (66%) vote of concurrence and approval of those members present at the annual membership meeting of the Association.

Special Assessments. Special annual assessments may be authorized and levied as special dues for the purpose of defraying, in whole or in part, the cost of any new construction, reconstruction, repair, maintenance, or the replacement of a capital improvement. Special assessments shall only be authorized by a two-thirds (66%) vote of concurrence and approval of those members present at the annual membership meeting of the Association.

Increases. The Board of Directors shall give written notice to all Owners and members of any meeting called for the purpose of considering or acting upon a proposal to increase the annual assessment in excess of seven per cent (7%), or to consider or act upon a proposal for a special assessment. The notice shall be mailed to all members not less than ten days in advance of the meeting, and shall specify the time, date, and place of the meeting, the nature of the increase in the assessment, and the reason(s) therefore. The Board of Directors is authorized to increase an annual assessment after January 1, 1980, by seven per cent (7%) (or less) per annum; but, shall first give reasonable notice of its intentions to do so to all members and shall hold a hearing to provide Owners and members an opportunity to express themselves on the subject. Increase in the annual assessment in excess of seven per cent (7%) or of a special assessment may be approved by mail ballot when affirmative votes are received and signed by sixty-six per cent (66%) of all members of the Association after such ballot has been completed. The mail ballot is to authorize such an assessment in lieu of those procedures to be followed at a meeting of the membership. No assessment shall be levied or authorized before the calendar year in which the assessment is authorized. Two thirds (2/3) of the Board of Directors shall concur with any proposal for a special assessment or to increase the annual assessment in excess of seven per cent (7%) before the proposal is submitted to the Association membership for its action.

ARTICLE IX

UTILITY DISTRICT FORMATION AND RATES

The Pottawatomie County Board of Commissioners has formed a utility district to provide the Subdivision with water and sewer service; and, under County authority will retain a qualified and certified agent to operate and maintain the utility facilities. The Pottawatomie County Board of Commissioners may, at its discretion, delegate authority to the Association to retain a certified agent to operate and maintain the utility facilities at a future date. Pottawatomie County will retain ownership of all sewer and water facilities.

Utility fees for sewer service, water service, and trash removal service shall be billed regularly on a usage basis separate and distinct from Association dues.

ARTICLE X

ARCHITECTURAL CONTROL COMMITTEE

Architectural consideration and preservation of natural amenities are major planning objectives in the development of Timber Creek II Subdivision. The items outlined herein are not intended to be unduly restrictive or inflexible, but rather to be used as minimum standards to attain and maintain a desirable level of consistency and quality in community appearance and generally maintain property values throughout the Subdivision.

The Association shall have a standing committee to be named The Architectural Control Committee to be appointed by Association Board of Directors to review and implement the requirements of this section.

Plans Approval. No building, structure, or improvement including, but not limited to excavation, grading, walls, fences, landscaping, etc., shall be commenced, constructed, or maintained on any Lot, nor shall any exterior addition, change, or alteration thereto be made until proposed improvement plans have been submitted and approved in writing by the Architectural Control Committee. Generally, improvement plans will include, but not be limited to:

- (1) A site plan indicating property lines, location of proposed structure and/or site improvements.
- (2) A floor plan(s) indicating wall lines, room use, window and door locations, and overall structure dimensions.
- (3) Exterior, street facing elevation indicating architectural treatment, roof line, window and door openings, exterior materials and colors, and proposed ground line.

All improvements shall be constructed and maintained in accordance with approved plans. The Architectural Control Committee shall use its discretion and reasonable judgment in evaluating and passing upon all such plans, and shall not be liable to any person for its actions in connection with submitted plans and specifications.

The Architectural Control Committee shall act upon the plans and specifications submitted within three (3) working days after receipt of all first time construction and within thirty (30) days for homeowner revisions and additions. If no action is taken by the Committee within the specified periods, the plans shall be deemed approved. Should the Committee reject a plan or request for changes and the plans are resubmitted, the Committee shall have ten (10) days upon which to act on the resubmitted plans.

The Architectural Control Committee will make every effort to decrease the time limitations prescribed herein if requested. Approval of plans require two-thirds (66%) affirmative vote of the membership of the Architectural Control Committee.

Other Requirements. Approval of plans by the Association in no way abates or deletes compliance with or securement of any approvals, permits, codes, or ordinances which may be required by Pottawatomie County, now or in the future.

ARTICLE XI

BUILDING RESTRICTIONS

Land Use and Building Type. No Lot shall be used nor building erected for purposes other than as a single family residential dwelling. No modular or mobile home shall be permitted. No Lot shall be used for

commercial or business purposes whatsoever except as delineated on the filed plat. The foregoing covenant shall not apply to General Office Land Use Lot 57 nor activities in connection with real estate sales.

Approval of Construction Plans. No structure or major improvement shall be commenced or maintained until: (1) approved compliance with provisions specified herein under "Architectural Control Committee," (2) compliance with all Pottawatomie County ordinances and regulations, and (3) necessary permits have been issued by Pottawatomie County.

All Electric Subdivision Requirements. All dwelling structures within the Subdivision shall be powered and primarily heated by (1) electric, or (2) solar means per Kansas Power and Light Company requirements for all-electric subdivision. Fuel oil, LP gas, or natural gas heating sources shall not be allowed.

Exterior Materials and Colors. Exterior surfaces should be of natural appearing materials and colors that blend and are compatible with the natural landscape and adjacent homes. Earth tone colors are recommended. Metal exterior surfaces shall be disallowed. Lap board siding over the entire exterior surface of the dwelling structure is generally discouraged and may be discretionally rejected.

Set Back Requirements. All structures shall maintain a minimum front set back distance of twenty (20) feet to the eave line from the street ROW/ property line and a minimum of eight (8) feet to the eave line from all other property lines. A variety in set back distances and first floor elevation from Lot to Lot is encouraged.

Minimum Floor Area/Building Height. All dwelling structures within the Subdivision shall have 1,050 square feet minimum first floor area, irrespective of whether the dwelling is one (1), one and one-half ($1\frac{1}{2}$), or two (2) stories in height, exclusive of garage, basement, porches, and decks. The maximum height of any dwelling structure shall be two (2) stories.

Garage and On-site Parking Requirements. Each dwelling structure shall include at minimum a one car, attached garage and two (2) exterior on-site parking spaces of 200 square feet per space included within the driveways. All on-site parking space shall be located entirely within Lot property boundaries.

Outside Antenna. Television and radio antennas shall be allowed until such time as a TV cable system may be placed into service after which time all antennas shall be removed within twelve (12) months. Applications for outside antennas thereafter shall be considered on a case by case basis by the Association. The foregoing covenant shall not apply to (1) a "community antenna" necessary for the implementation of a cable TV system to serve the Subdivision and surrounding areas and (2) the General Office Land Use Lot 57.

Construction Time Limitations. The major intent in the conveyance and selling of Lots within the Subdivision is to encourage the construction of single-family dwelling units thereon. No Lot shall be purchased and held in a vacant condition beyond two (2) years without approval of the Board of Directors in writing on an annual basis. All construction, improvements, alterations, et cetera, commenced shall be pursued diligently to completion within nine (9) months of the starting date. A vacant Lot will in no way exempt the Lot Owner from Association assessments or minimum utility charges beyond the first year of ownership, or maintenance obligations to insure visual quality of the Subdivision from the date of conveyance. The Board of Directors may assess and levy a reasonable charge against an Owner for failure to comply with the

requirements of this paragraph with the concurrence of all members of the Board.

Landscaping. All ground surfaces disturbed by construction activities shall be promptly graded and seeded to insure positive drainage, to conform and blend with the existing ground surface, and limit soil erosion. All Lots shall be professionally landscaped, including lawn seeding and plant materials installation, within twelve (12) months of dwelling occupancy. All initial lawn seeding and plant material installation shall be completed in season by experienced, qualified nurserymen.

Underground Utilities. All utilities shall be underground including, but not limited to electric, telephone, and cable TV conductor lines. No overhead wiring or supporting poles of any kind shall be allowed.

Yard Light/Mail Boxes/Street Trees. In order to establish a degree of visual continuity throughout the Subdivision, Suburban Developers, Inc. will (1) furnish an exterior, photo-cell controlled globe light, to be mounted on the street front facade of the dwelling or on a post at the Owner's option to serve as street lighting, (2) furnish and install a mailbox of like design and color per United States Postal Service Regulations, and (3) furnish and plant one street tree per the master planting plan, the cost to be included in the purchase price of the Lot. The Association shall have the right to replace defective or burned-out light bulbs of the exterior street light fixture if such responsibility is not undertaken by the Owner--the expense of such replacement billed directly to the Owner.

Construction Quality. All construction shall meet current standards set forth in (1) the national uniform building code by International Conference of Building Officials with modifications as determined by the Architectural Control Committee and (2) building codes and regulations set forth by Pottawatomie County, Kansas.

Construction Activities. Construction operation, the storage of materials and the use of construction equipment should be confined to the Owner's Lot. Owners and/or contractors will not disturb, damage, or trespass on other Lots or Common Areas without written approval. Any damage which might occur due to construction operations shall be restored and repaired at the offender's expense.

Trash and debris shall be removed from each construction site on a weekly basis. Lightweight material, packaging, and other items shall be weighted down to prevent wind from blowing such materials off the construction site. Mud and debris resulting from activity on the construction site shall be promptly removed from adjoining Lots, public roads, and common open space. Every effort shall be made to preserve topsoil during construction activities and redistribute topsoil over disturbed ground surface areas at the conclusion of grading activities. Topsoil shall not be removed from any Lot or Common Area without written approval of the Association.

Waiver of Building Restrictions. The intent of the foregoing building restrictions are set forth as standards to encourage quality construction and quality visual appearance throughout the Subdivision. Upon application, any of the included restrictions or conditions may be waived on a case by case basis by the Architectural Control Committee or the Board of Directors if such revisions or variances are determined to be with good cause and/or in the best interests of the Subdivision.

ARTICLE XII

GENERAL COVENANTS AND RESTRICTIONS

Driveway Parking. No wrecked, decrepit, unserviceable or unused vehicles shall be parked on driveways or lawn areas; nor shall said driveway or lawn area be used to make major repairs on automobiles or other vehicles. The parking of trucks above the one-ton category or construction equipment in driveways or on streets on a continuing basis shall be prohibited.

Street Parking. Temporary parking shall be allowed on public streets for visitors and guests only. Permanent parking on streets shall be prohibited. No temporary street parking shall be allowed during and twenty-four (24) hours after snowfall in excess of one (1) inch.

Household Pets. Owners may keep normal household pets provided they do not constitute a nuisance, a danger, or visual distraction to adjoining Lot Owners or the Subdivision as a whole. Unattended pets shall not be allowed beyond the Owner's property. Outside pens, kennels, or structures for the keeping of pets shall be architecturally compatible and immediately attached to the dwelling structure, shall have a non-permeable floor surface such as concrete or asphalt, and completely screened from the view of adjacent neighbors. All construction of outside enclosures for household pets shall be approved by the Architectural Control Committee. Household pets, in terms of noise, odor, and view should be the problem of the Owner rather than adjacent neighbors.

Clothes Drying. Outside clothes drying shall be allowed on a temporary basis only with all lines and drying devices removed when not in use.

Gardens. Garden plots are allowed and encouraged; however, garden plots shall not be permitted in front lawn areas. Garden plots are defined generally as plots for the raising of vegetables and do not include flower borders, landscape planting beds, or minor landscape improvements.

Trash Storage. Trash shall be stored in metal or plastic, leak-proof, air-tight containers. Trash containers shall be stored within the garage or an enclosed, screened area immediately attached to the dwelling structure and available for removal on designated pickup days. Burning of trash, grass, weeds, et cetera, is prohibited.

Easements. Owners grant agents and employees of the Association, the Sewer and Water Utility District Authority, and various utility companies serving the Subdivision, including, but not limited to Kansas Power and Light Company, Southwestern Bell Telephone Company, and any future named cable television company an easement and access across their entire Lot, exclusive of dwelling area, for the installation, repair, and maintenance of utilities, drainage, reading of meters, trash pickup, and exterior upkeep of dilapidated, unkempt properties and improvements thereon. The Owner also grants the Sewer and Water Utility District Authority access, on an annual basis, to the water meter located within the dwelling structure to verify the exterior remote readout meter reading.

Air Conditioning Units. Only central air conditioner systems shall be permitted. Window or wall-mounted air conditioners will not be allowed without approval of the Architectural Control Committee.

Signs. No signs of any kind shall be displayed on any Lot or Common Area except temporary signs, five (5) feet or less in area advertising property for sale or rent. The foregoing covenants shall not apply to the General Office Land Use Lot 57.

Existing Trees. No living tree, two and one-half (2½) inches or more in diameter existing on a Lot shall be cut, trimmed, removed or otherwise damaged without written approval by the Association. No tree or plant material whatsoever existing in the Common Area shall be cut, trimmed, removed, or otherwise damaged without written approval by the Association.

Nuisance Activities/Fire Arms. No noxious or offensive activity shall be carried on within the Subdivision which will constitute a public nuisance. No property shall be used as a dumping ground for refuse, trash, garbage, debris or other waste, with all properties to be maintained in a sanitary condition. Outdoor burning of any kind shall be prohibited within the Subdivision unless approved by the Association. No firearms shall be discharged within the Subdivision.

ARTICLE XIII

GENERAL PROVISIONS

Violation of Covenants. Whenever an act or omission, an improvement or condition is determined to be in violation of the covenants or restrictions herein by the Board of Directors, the Board of Directors shall give written notice of the violation of these protective covenants or of any rule, regulation, or directive enforceable under these covenants to the Owner who is in violation specifying the nature of the violation and the remedy necessary to correct the violation. If corrective action is not taken and completed by the Owner within a reasonable time, the Board of Directors or its agent may enter upon the Owner's property and do whatever is necessary and proper to correct the violation at the Owner's expense. Costs and expenses necessary to correct violations shall become a debt of the Owner to the Association and may become a lien (in accordance with K.S.A. 60-1101) upon the Lot of the Owner, enforceable as a lien upon recordation of the debt and lien in accordance with Kansas lien law. The Board of Directors may promulgate rules and procedures to fairly and reasonably process and handle violators and violations.

Enforcement. The Board of Directors shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this 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.

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

Term of Covenants. The covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty-five (25) years from the date this Declaration is recorded after which time the covenants and restrictions shall be automatically extended for successive periods of ten (10) years unless otherwise amended as provided herein.

Amendment. The Declaration may be changed or amended by the Declarant until the last Lot of the 227 Lots for sale is conveyed or by an instrument signed by not less than seventy-five per cent (75%) of the Lot Owners including the total aggregate of both Class A and Class B membership. An amendment must be filed and recorded at the Office of the Register of Deeds, Pottawatomie County, Kansas, to be in force.

Annexation. Additional property and Common Area may be annexed

to the Subdivision beyond that described heretofore with the consent and approval of sixty-six per cent (66%) of the Lot Owners, including the total aggregate of both Class A and Class B membership. Any annexation must be filed and recorded at the Office of the Register of Deeds, Pottawatomie County, Kansas, to be in force. It is understood the Declarant shall be allowed to include Phases I, II, III, and IV, Timber Creek II Subdivision without the consent of the membership.

Township, County, or State Regulations. Where township, county, or state regulations, codes, ordinances, or laws are applicable and more restrictive than these covenants and restrictions, they shall supersede the provisions herein.

IN WITNESS WHEREOF, Suburban Developers, Inc., the Declarant herein, has caused its corporate seal to be hereto affixed, and attested by its secretary and these presents to be signed by its president, this 7th day of AUGUST, 1978.

SUBURBAN DEVELOPERS, INC.

By Lawrence A. Schmid
Lawrence A. Schmid, President

ATTEST:

Dennis J. Day
Dennis J. Day, Secretary

ACKNOWLEDGEMENT

STATE OF KANSAS, COUNTY OF POTTAWATOMIE, ss:

BE IT REMEMBERED that on this 7th day of AUGUST, 1978, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Lawrence A. Schmid, president of Suburban Developers, Inc., and Dennis J. Day, secretary of said corporation, who are personally known to me to be the same persons who executed the foregoing instrument of writing as such officers, and said Lawrence A. Schmid, as president of said corporation, duly acknowledged the execution of the same to be the act of the corporation; and Dennis J. Day secretary of said corporation duly acknowledged the attestation of the same for and on behalf of said corporation, and he affixed thereto the seal of the corporation.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal, the day and year last above written.

Larry Pitterger
Notary Public

My Appointment Expires: August 10, 1979

CERTIFICATE OF APPROVAL OF THE POTTAWATOMIE COUNTY COMMISSION

The foregoing Declaration of Protective Covenants for Timber Creek II, Pottawatomie County, Kansas which shall be duly recorded with the Register of Deeds, Pottawatomie County, Kansas, and shall become a part of

the original plat of Timber Creek II, Phases I, II, III, and IV (consisting of 12 pages of covenants and restrictions) is hereby approved by the County Commission this 7th day of AUGUST, 1978.

Gerald Pincus
Chairman, Pottawatomie County Commission

Le Roy Miller
Member, Pottawatomie County Commission

Member, Pottawatomie County Commission

AMENDMENTS TO THE PROTECTIVE COVENANTS
FOR TIMBER CREEK II PLAT
POTTAWATOMIE COUNTY, KANSAS

THE TIMBERCREEK II HOMEOWNERS ASSOCIATION MET IN ITS ANNUAL MEETING OF THE MEMBERS TUESDAY, OCTOBER 30, 1990 AT THE GREEN VALLEY COMMUNITY CENTER AT WHICH TIME THE FOLLOWING COVENANTS WERE PROPOSED FOR AMENDMENT. THESE AMENDMENTS WERE RATIFIED BY VOTE OF TWO-THIRDS OF HOMEOWNERS. THE AMENDMENTS ARE AS FOLLOWS:

ARTICLE X - ARCHITECTURAL CONTROL COMMITTEE

AMENDED: THE ARCHITECTURAL CONTROL COMMITTEE SHALL ACT UPON THE PLANS AND SPECIFICATIONS SUBMITTED WITHIN SEVEN (7) WORKING DAYS AFTER RECEIPT OF ALL FIRST TIME CONSTRUCTION AND WITHIN THIRTY (30) DAYS FOR HOMEOWNER REVISIONS AND ADDITIONS. IF NO ACTION IS TAKEN BY THE COMMITTEE WITHIN THE SPECIFIED PERIODS, THE PLANS SHALL BE DEEMED APPROVED. SHOULD THE COMMITTEE REJECT A PLAN OR REQUEST FOR CHANGES AND THE PLANS ARE RESUBMITTED, THE COMMITTEE SHALL HAVE TEN (10) DAYS UPON WHICH TO ACT ON THE RESUBMITTED PLANS.

ARTICLE XI - BUILDING RESTRICTIONS

AMENDED: MINIMUM FLOOR AREA/BUILDING HEIGHT. ALL DWELLING STRUCTURES WITHIN THE SUBDIVISION SHALL HAVE THE MINIMUM SQUARE FEET - ALL ONE LEVEL RANCH HOMES WILL HAVE A MINIMUM OF 1300 SQUARE FEET. ALL ONE AND ONE-HALF (1-1/2) OR TWO (2) STORIES IN HEIGHT MUST HAVE A MINIMUM OF 1050 SQUARE FEET ON

ON THE MAIN FLOOR, EXCLUSIVE OF GARAGE, BASEMENT, PORCHES,
AND DECKS. THE MAXIMUM HEIGHT OF ANY DWELLING STRUCTURE
SHALL BE TWO (2) STORIES.

ARTICLE XI - BUILDING RESTRICTIONS

AMENDED: OUTSIDE ANTENNA. TELEVISION, RADIO ANTENNAS OR
SATELLITE DISHES SHALL NOT BE ALLOWED. THE FOREGOING COVENANT
SHALL NOT APPLY TO (1) A "COMMUNITY ANTENNA" NECESSARY FOR
THE IMPLEMENTATION FOR A CABLE TV SYSTEM TO SERVE THE
SUBDIVISION AND THE SURROUNDING AREAS AND (2) THE GENERAL
OFFICE LAND USE LOT 57.

RESPECTFULLY SUBMITTED BY THE TIMBERCREEK II HOMEOWNERS
ASSOCIATION AND SIGNED BY THE PRESIDENT, THIS 7th DAY OF
May, 1991.

TIMBERCREEK II HOMEOWNERS ASSOCIATION

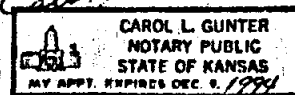
BY Marcie Wood

MARCIE WOOD, PRESIDENT



ACKNOWLEDGEMENT

*Subscribed on this 15th day
of May 1991
Carol L. Gunter*



BOOK 251 PA 8E 317

AMENDMENT TO THE PROTECTIVE COVENANTS
FOR TIMBER CREEK II PLAT
POTTAWATOMIE COUNTY, KANSAS

Suburban Developers as the initial "Declarant" per ARTICLE XIII may change or amend the covenants until the last lot of the 227 lots for sale is conveyed. As of the date of this amendment, 167 lots remain unsold. Suburban Developers also retains 668 votes as Class B membership to the existing 60 votes of Class A Membership or 92%. Per the restrictive covenants each membership class carries the same rights.

In action taken by the Suburban Developers Board of Directors on March 11, 1994, The Board directed that the restrictive covenants be removed from the undeveloped land of approximately 80 acres known as Timber Creek II, Phase II, III, and IV of the original master plan.

The amendments are as follows:

ARTICLE I PROPERTY SUBJECT TO THIS DECLARATION OF PROTECTIVE COVENANTS

From the legal description the following shall be deleted: ~~"and to apply to subsequent Phases II, III, and IV, a total area of 118 acres, more or less, as such parcels are recorded and developed."~~

ARTICLE VI ASSOCIATION MEMBERSHIP

Delete reference to Class B membership as it will cease with the removal of the property above. Delete:

~~"Class B. The Class B member (s) shall be the Declarant and shall be entitled to four (4) votes for each Lot owned both recorded and proposed per the Timber Creek II Master Plan. The Class B membership shall cease and be converted to Class A membership upon the sale of all 227 Lots owned by the Declarant, contained in Phases I, II, III, and IV on file with Planning and Zoning Administrator, Pottawatomie County, Kansas."~~

ARTICLE XIII GENERAL PROVISIONS

Delete the following crossed out sections:

Amendment. The Declaration may be changed or amended ~~by the Declarant until the last Lot of the 227 Lots for sale is conveyed or~~ by an instrument signed by not less than seventy-five per cent (75%) of the Lot Owners ~~including the total aggregate of both Class A and Class B membership.~~ An amendment must be filed and recorded at the Office of the Register of Deeds, Pottawatomie County, Kansas, to be in force.

IN WITNESS WHEREOF, Suburban Developers, Inc., the Declarant herein, has caused its corporate seal to be hereto affixed, and attested by its secretary and these presents to be signed by its president, this 14th day of March, 1994.



Dennis J. Day
Dennis J. Day Secretary

SUBURBAN DEVELOPERS INC.

By: Lawrence A. Schmid
Lawrence A. Schmid, President

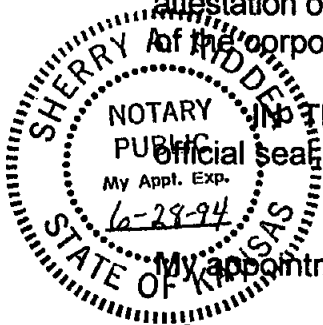
STATE OF KANSAS
POTTAWATOMIE COUNTY 89
This instrument was filed for record
on the 14th day of March
AD 1994 at 3:00 o'clock PM
and duly recorded in book 276
page 18 fee \$ 8.00
Diana Siegle
Register of Deeds
Betty P. Hutz Deputy

ACKNOWLEDGEMENT

STATE OF KANSAS, COUNTY OF POTTAWATOMIE

BE IT REMEMBERED that on this 14 day of March 1994, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Lawrence A. Schmid, President of Suburban Developers Inc., and Dennis J. Day, Secretary of said corporation, who are personally known to me to be the same persons who executed the foregoing instrument of writing as such officers, and said Lawrence A. Schmid, as president of said corporation, duly acknowledged the execution of the same to be the act of the corporation; and Dennis J. Day Secretary of said corporation duly acknowledged the attestation of the same for and on behalf of said corporation, and he affixed thereto the seal of the corporation.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed by official seal the day and year last above written



My appointment expires: June 28, 1994

Sherry A. Ridder
Notary Public

CERTIFICATE OF APPROVAL OF THE POTTAWATOMIE COUNTY COMMISSION

The foregoing Declaration of Protective Covenants for Timber Creek II, Pottawatomie County, Kansas which shall be duly recorded with the Register of Deeds, Pottawatomie County, Kansas and shall become a part of the original plant of Timber Creek II, Phase I and Phase II, is hereby approved by the County Commission this 14 day of March, 1994.

[Signature]
Chairman, Pottawatomie County Commission
[Signature]
Member

[Signature]
Member

**AMENDMENTS TO THE PROTECTIVE COVENENTS
FOR TIMBERCREEK II PLAT
POTTAWATOMIE COUNTY, KANSAS**

THE TIMBERCREEK II HOMEOWNERS ASSOCIATION AS THE "DECLARANT" PER ARTICLE XIII, "GENERAL PROVISIONS" MAY CHANGE OR AMEND THE COVENENTS BY A WRITTEN DOCUMENT SIGNED BY NOT LESS THAN 75% OF THE LOT OWNERS. THE FOLLOWING CHANGES TO THE COVENENTS & BYLAWS HAVE BEEN RATIFIED BY SIGNATURE BALLOT BY 46 OUT OF 58 LOT OWNERS (79%):

**DECLARATION OF PROTECTIVE COVENENTS
FOR TIMBERCREEK II, PHASE I AND PHASE II PLATS,
POTTAWATOMIE COUNTY, KANSAS.**

THROUGHOUT THE DOCUMENT: REFERENCES TO THE TIMBERCREEK II SUBDIVISION NOW SPECIFICALLY STATE TIMBERCREEK II PHASE I AND PHASE II PLATS.

ARTICLE III - DEFINITIONS

"COMMON AREA": THE COMMON AREA SHALL MEAN AND REFER TO THAT PLAT OF LAND DELINEATED AND SO DESIGNATED ON THE HERETOFORE DESCRIBED AND RECORDED PLAT WITHIN THE TIMBERCREEK II SUBDIVISION, PHASE I AND ~~ENCOMPASSING SUBSEQUENT PHASES II, III, AND IV~~ RESPECTIVELY TO BE OWNED AND MAINTAINED BY THE TIMBERCREEK II HOMEOWNERS ASSOCIATION FOR THE COMMON USE AND ENJOYMENT OF ALL PROPERTY OWNERS. THE "COMMON AREA " IS ~~TO BE OWNED BY THE ASSOCIATION AT THE CONVEYANCE OF THE LAST LOT IN EACH RESPECTIVE PHASE.~~

ARTICLE XI - BUILDING RESTRICTIONS

EXTERIOR MATERIALS AND COLORS: EXTERIOR SURFACES SHOULD BE OF NATURAL APPEARING MATERIALS AND COLORS THAT BLEND AND ARE COMPATIBLE WITH THE NATURAL LANDSCAPE AND ADJACENT HOMES. EARTH TONE COLORS ARE RECOMMENDED. ~~METAL EXTERIOR SURFACES SHALL BE DISALLOWED.~~ LAP BOARD SIDING OVER THE ENTIRE EXTERIOR

SURFACE OF THE DWELLING. STRUCTURE IS GENERALLY DISCOURAGED AND MAY BE DISCRETIONALLY REJECTED.

**BYLAWS
OF
TIMBERCREEK II HOMEOWNERS ASSOCIATION, INC.**

THROUGHOUT THE DOCUMENT: REFERENCES TO THE TIMBERCREEK II SUBDIVISION NOW SPECIFICALLY STATE TIMBERCREEK II PHASE I AND PHASE II PLATS.

ARTICLE III DEFINITIONS

AMEND ITEM (b) TO READ:

(b) "DECLARANT" SHALL MEAN AND REFER TO ~~SUBURBAN DEVELOPERS, INC. ITS SUCCESSORS OR ASSIGNS, SUBURBAN DEVELOPERS, INC. BEING OWNER AND DEVELOPER OF THE LAND~~ PARCEL DESCRIBED IN THE DECLARATION OF PROTECTIVE COVENANTS, TIMBERCREEK II DATED AND RECORDED MAY 25, 1978 AT THE OFFICE OF REGISTER OF DEEDS POTTAWATOMIE COUNTY, KANSAS, BOOK NO. 176, PAGE NO. 164. THE TIMBERCREEK II HOMEOWNERS ASSOCIATION CREATED IN THE DECLARATION OF PROTECTIVE COVENANTS, ARTICLE V, TIMBERCREEK II DATED AND RECORDED MAY 25, 1978 AT THE OFFICE OF THE REGISTER OF DEEDS, POTTAWATOMIE COUNTY, KANSAS, *Book No. 176, Page No. 164.*

AMEND ITEM (e) TO READ:

(e) "LOT" SHALL MEAN AND REFER TO EACH PARCEL OF LAND DELINEATED AND NUMBERED FOR OWNERSHIP AS DESCRIBED AND RECORDED WITHIN THE TIMBERCREEK II SUBDIVISION PLAT, PHASE I AND ~~ENCOMPASSING SUBSEQUENT PHASES II, III, AND IV RESPECTIVELY~~ EXCEPTING THE COMMONS AREA. EACH "LOT" IS HELD AND SOLD BY THE DECLARANT FOR THE EXCLUSIVE PURPOSE OF CONSTRUCTING SINGLE FAMILY RESIDENTIAL DWELLINGS (ONE DWELLING RESIDENCE PER LOT) EXCEPTING LOT 57 DESIGNATED GENERAL OFFICE USE.

(g) "COMMON AREA" SHALL MEAN AND REFER TO THAT PLAT OF LAND DELINEATED AND SO DESIGNATED AS DESCRIBED AND RECORDED WITHIN THE TIMBERCREEK II SUBDIVISION PLAT, PHASE I AND ~~ENCOMPASSING SUBSEQUENT PHASES II, III, AND IV RESPECTIVELY~~. THE "COMMON AREA" IS TO BE OWNED AND MAINTAINED BY THE TIMBERCREEK II HOMEOWNERS

ASSOCIATION FOR THE COMMON USE AND ENJOYMENT OF ALL PROPERTY OWNERS. THE
"COMMON AREA" IS TO BE OWNED BY THE CONVEYANCE OF THE LAST LOT IN EACH
RESPECTIVE PHASE.

ARTICLE IV ASSOCIATION MEMBERSHIP

~~DELETE REFERENCE TO CLASS B MEMBERSHIP.~~

SECTION 3. THE ASSOCIATION SHALL HAVE TWO CLASSES OF VOTING MEMBERSHIP.

~~(b) CLASS B. THE CLASS B MEMBER(S) SHALL BE THE DECLARANT AND SHALL BE ENTITLED TO
FOUR(4) VOTES FOR EACH LOT OWNED BOTH RECORDED AND PROPOSED PER TIMBERCREEK II
MASTER PLAN. THE CLASS B MEMBERSHIP SHALL CEASE AND BE CONVERTED TO CLASS A
MEMBERSHIP UPON THE SALE OF ALL 226 LOTS OWNED BY THE DECLARANT CONTAINED IN
PHASES I, II, III, AND IV ON FILE WITH THE PLANNING AND ZONING ADMINISTRATOR,
POTTAWATOMIE COUNTY, KANSAS.~~

ARTICLE V MEETING OF MEMBERS

~~DELETE REFERENCE TO CLASS B MEMBERSHIP.~~

SECTION 2. SPECIAL MEETINGS. SPECIAL MEETINGS OF THE MEMBERS MAY BE CALLED AT ANY
TIME BY THE BOARD OF DIRECTORS OR UPON WRITTEN REQUEST OF ONE-FOURTH (1/4) OF THE
VOTING MEMBERSHIP, BOTH CLASS A OR CLASS B MEMBERSHIP.

ARTICLE X SPECIFIC POWERS AND DUTIES OF THE BOARD OF DIRECTORS.

~~DELETE PARAGRAPH (k) REQUIRING BONDING.~~

~~(k) CAUSE ALL OFFICERS OR EMPLOYEES HAVING FISCAL RESPONSIBILITIES TO BE BONDED, AS
IT MAY DEEM APPROPRIATE;~~

ARTICLE XVI AMENDMENTS

~~DELETE REFERENCE TO THE VETERANS ADMINISTRATION AND CLASS B MEMBERSHIP.~~

~~THESE BYLAWS MAY BE AMENDED, AT A REGULAR OR SPECIAL MEETING OF THE MEMBERSHIP,
BY A TWO THIRDS (2/3) VOTE OF THE MEMBERS WHO ARE PRESENT IN PERSON, VOTE BY PROXY,
OR HAVE SIGNED A MAIL BALLOT, EXCEPT THAT THE VETERANS ADMINISTRATION SHALL HAVE
THE RIGHT TO VETO AMENDMENTS WHILE THERE IS CLASS B MEMBERSHIP.~~

RESPECTFULLY SUBMITTED BY THE TIMBERCREEK II HOMEOWNERS ASSOCIATION,
WHOSE CORPORATE SEAL IS HERETO AFFIXED, ATTESTED BY ITS SECRETARY AND SIGNED BY
THE BOARD PRESIDENT, THIS 26 DAY OF July, 1998.

TIMBERCREEK II HOMEOWNERS ASSOCIATION

BY Jamia I. Nelson
JAMIA I. NELSON, PRESIDENT

ATTEST

Marilyn Werring
MARYLIN WERRING, SECRETARY

ACKNOWLEDGEMENT

STATE OF KANSAS, COUNTY OF POTTAWATOMIE

BE IT REMEMBERED, that on this 26 day of July, 1998, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Jamia I. Nelson, President of Timbercreek II Homeowners Association, Inc., and Marilyn Werring, Secretary of said corporation, who are personally known to me to be the same persons who executed the forgoing instrument of writing as such officers, and said Jamia I. Nelson, President of said corporation, duly acknowledged the execution the same to be the act of the corporation; and Marilyn Werring, Secretary of said corporation duly acknowledged the attestation of the same for and on behalf of said corporation, and she affixed thereto the seal of the corporation.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed by official seal the day and year last above written.

Maureen A. Wells
Notary Public

My appointment expires: 12-2-99

NOTARY PUBLIC - State of Kansas
MAUREEN A. WELLS
My Appt. Expires 12-2-99

STATE OF KANSAS
POTTAWATOMIE COUNTY SS
This instrument was filed for record
on the 27th day of July
A D 1998 at 7:35 o'clock AM
and duly recorded in book 319
page 213 fee \$ 12.00
Duane Siegel
Register of Deeds
Betty Spitz Deputy