**Declaration of Timber Ridge Homeowner's Association**

This Declaration, made this l4th day of July, 1989, by Matt Eck, Inc., Declarant herein, a Kansas corporation, for the purpose of submitting the following described real property to the terms hereof and for the purposes of creating and establishing a homeowner's association.

BE IT THEREFORE DECLARED AS FOLLOWS:

1. Description of Land.  The description of the land submitted to the terms of this Declaration in: All lots in Timber Ridge Addition, Sedgwick County, Kansas.

2. Description of Common Area.  Reserves A, B, C, D, E, F, G, & H, in Timber Ridge Addition to Sedgwick County, Kansas.

3. Association of Owner.

Declarant has formed a Kansas Non-Profit Corporation, known as "Timber Ridge Homeowner's Association", herein referred to as Association, the By-Laws of which are hereto attached as Exhibit "A".

Every owner of a lot in Timber Ridge Addition, Sedgwick County, Kansas, shall be a member of the Association and shall be entitled to one vote. No owner, whether one or more persons, shall have more than one membership per lot. Membership shall be appurtenant to and may not be separated from ownership of any lot.

The Association shall have one class of voting membership which shall consist of all lot owners. When more than one person owns a lot, the vote for such lot shall be exercised as they among themselves determine.

The Association shall exercise all of the powers and duties reasonably necessary to provide for the management, maintenance, preservation, and as insurance trustee for the benefit of each lot owner in accordance with the By-Laws and Articles of the Association and this Declaration.

The Association may adopt such reasonable rules and regulations as its directors may determine necessary or advisable to provide for the safety, preservation, maintenance and well being of the reserve.

4. Ownership of Common Area.

Each lot shall have attributed to it an undivided one-two hundred sixty-sixth (1/266) ownership in the common area. Such fractional ownership in the common area shall not be altered without the consent of all lot owners expressed on an amendment to this Declaration, duly recorded. The common area shall remain undivided and no lot owner, or any other person, shall bring any action for partition or division of any part thereof unless the property has been removed from this Declaration as hereinafter provided.

5. Use of Common Area.

Each lot owner may use the common area without hindering or encroaching upon the lawful rights of the other lot owners. The use of said common area may be regulated by the Association.

6. Maintenance and Repair of Common Area.

The necessary work of maintenance, repair and replacement of the common area and the making of any additions or improvements thereto shall be discharged by the Association pursuant to the terms of this Declaration, By-Laws of said Association, and any rules and regulations duly adopted by said Association. The Association shall have the irrevocable right to have access necessary for the maintenance, repair or replacement of the common area, or for making emergency repairs thereon necessary to prevent damage to the common area. Such right may be exercised by the authorized designee of the Association.

7. Common Expenses.

Common expenses means and includes the following:

A. Expenses incurred by the Association in the administration, management, maintenance, preservation, repair and replacement of the common area and facilities, including creation of reserves for replacement or for additional improvements.

B. Expenses incurred by the Association for the payment of insurance premiums as hereinafter provided

C. Expenses incurred by the Association for lighting of the common area.

D. Expenses incurred by the Association for water utility charges.

E. All other expenses agreed upon as common expenses by the Association at special or regular meetings.

F. Expenses declared common expenses by provisions of this Declaration or by the By-Laws of the Association.

8. Common Profits.

Common profits means the balance of all income, rents, profits and revenue from the common area and facilities after the deduction of common expenses.

9. Distribution of Common Profits.

The common profits, if any, shall be distributed equally to the lot owners, in such amounts and at such times as determined by the Directors of the Association, whose determination shall be binding and conclusive on all interested parties.

10. Assessment and Collection of Common Expenses: Liens: Foreclosure Sale. Effect of Conveyance.

The common expenses as herein defined shall be assessed by the Association against each of the lots on **an** equal basis. The Association is authorized to make annual estimates of the common expenses, including reserves for replacements, and to collect said expenses in advance pursuant to its By-Laws and Rules and Regulations.

All sums assessed by the Association, but unpaid, for the share of the common expenses chargeable to any lot shall constitute a lien on such lot prior to all other liens except (i) tax liens on the lot in favor of any assessing unit and special district, and (ii) all sums unpaid on a first mortgage of record. Such liens may be foreclosed by the Association in like manner as a mortgage on real property, and the plaintiff in such foreclosure shall be entitled to the appointment of a receiver to collect the same. The Association shall have power to bid on the lot at foreclosure sale and to acquire and hold, lease, mortgage and convey the same. A suit to recover a money judgment for unpaid common expenses shall be maintainable by the Association without foreclosing or waiving any liens securing the same. Where the mortgagee under a first mortgage of record or other purchase of a lot obtains title to the lot as a result of foreclosure of a first mortgage, such acquirer of title, his or her successors and assigns, shall not be liable for the share of the common expenses or assessment by the Association chargeable to such lot which became due prior to the acquisition of title to such lot by such buyer. Such unpaid share of common expenses or assessments shall, however, be deemed to be common expenses collectable from all of the lot owners, including such acquirer, his or her successors and assigns.

In a voluntary conveyance, the grantee of a lot shall be jointly and severally liable with the grantee for all unpaid assessments against the latter for his or her share of the common expenses up to the time of the grantor's conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefore However, any such grantee shall be entitled to a statement from the Board of Directors of the Association setting forth the amount of the unpaid assessments against the grantor, and such grantee shall not be liable for nor shall the lot conveyed be subject to a lien for any unpaid assessments against the grantor in excess of the amount therein set forth.

By acceptance of a deed, each lot owner covenants to pay his amount of common expenses levied and assessed by the Association.

11. Insurance

Insurance policies shall be purchased by the Board of Directors as hereinafter specified for the benefit of the Association, the lot owners and their mortgagees as their interests may appear, and provision shall be made for the issuance of certificates of mortgage endorsement to the mortgagees of lot owners. Such policies and endorsements thereon shall be deposited with the insurance trustee.

A. Coverage. The following types of coverage will be provided:

1. Public Liability - Public liability insurance in such amounts and with such coverage as shall be required by the Board of Directors of the Association, but in no event less than $500,000 for any one person injured in a single occurrence and no less than $100,000 property damage for a single occurrence, including, but not limited to, hired automobile and homeowner automobile coverage, and with cross liability automobile coverage, and with cross liability endorsements to cover liabilities of the Association to an individual lot owner.

2. Worker's Compensation - Worker's compensation insurance to meet the requirements of law.

3. Other Coverage - Such other insurance as the Board of Directors of the Association shall from time to time deem advisable.

B. Premiums. Premiums upon insurance policies purchased by the Association shall be paid by the Association as a common expense as hereinbefore provided.

C. Insurance Trustees. All insurance policies purchased by the Association shall be for the benefit of the Association and the lot owners and their mortgagees as their interests may appear, and shall provide that all proceeds covering losses shall be paid to the Board of Directors of the Association as insurance trustee. The duty of the insurance trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purposes hereinafter stated and for the benefits of the lot owners and their mortgagees in the following shares:

1. Lot Owners. Proceeds on account of damage to common area and facilities shall be held for the benefit of lot owners in the following undivided shares:

i. On damage to common area and facilities, an undivided share for each lot owner equal to his undivided share of ownership in said common area and facilities.

2. Mortgagees. In the event a mortgagee endorsement has been issued as to a lot, the undivided share of the lot owner shall be held for the benefit of the mortgagee and the lot owner as their interests may appear; provided, that no mortgagee shall have any right to determine or participate in the determination as to whether or not any damaged property shall be reconstructed or repaired as hereinafter provided.

D. Distribution of Proceeds. Proceeds of insurance policies received by the insurance trustee shall be distributed to or for the benefit of the beneficial owners of said proceeds in the following manner:

1. Reconstruction or Repair. If the damage for which the proceeds have been paid is to be repaired or reconstructed, the proceeds shall be paid to the cost thereof as elsewhere provided. Any proceeds remaining after defraying such costs shall be distributed to the beneficial owners, remittances to the owners and their mortgagees being payable jointly. This is a covenant running in favor of all mortgagees of any lots and may be enforced by any such mortgagee.

2. Failure to Reconstruct or Repair. If it is determined in the manner elsewhere provided that the damage for which the proceeds have been or will be paid shall not be repaired or reconstructed, the proceeds shall be held by the insurance trustee for distribution as hereinafter provided.

3. Record of Ownership. In making distribution to lot owners and their mortgagees, the insurance trustee may rely upon the names of the lot owners and their mortgagees as reflected by the records of the Association and the policy endorsements in its possession.

E. Association as Agent. The Association is hereby irrevocably appointed agent for each beneficial owner of the common area and facilities to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims.

12. Decision to Repair or Reconstruct.

If any part or all of the property subject to this Declaration, i.e., the common area described in paragraph 2., shall be damaged or destroyed by casualty, the same shall be reconstructed or repaired unless within sixty (60) days of the date of the occurrence of the casualty a written vote of the lot owners is submitted to the Board of Directors electing to remove the property from this Declaration. A three-fourths (3/4ths) majority of lot owners of record must favor removal to effect the same. In the event of removal pursuant to this paragraph, the following provisions will apply:

A. The entire property shall be deemed to be owned in common by the lot owners.

B. The undivided interest in the property owned in common which shall appertain to each lot owner shall be the percentage of undivided interest previously owned by such owner in the common area and facilities.

C. The property shall be subject to an action for partition at the suit of any lot owner, in which event the net proceeds of sale, together with the net proceeds of the insurance as held by the insurance trustee, shall be considered as one fund and shall be divided among all the lot owners in a percentage equal to the percentage of undivided interest owned by each owner in the property after first paying out of the respective shares of the lot owners, to the extent sufficient for the purpose, all hens of the undivided interest of the property owned by each lot owner.

13. Easements.

A. Enjoyment of Common Area and Facilities. Every owner shall have a right and easement of enjoyment in and to the common area and facilities and such easement shall be appurtenant to and shall pass with the title to every lot, subject to the right of the Association to limit the number of guests that may use the common area and facilities. Any owner may delegate his right of enjoyment to the common area and facilities to the members of his family or his lessees who reside on the property.

B. Encroachments and Support. The property included in common area and facilities shall be subject to an easement for encroachments created by construction, errors in survey, movement, settling and overhangs as designed or constructed by the Declaration. A valid easement for said encroachments and for the maintenance of same, so long as they stand, shall and does exist.

C. Utilities. Etc. There is hereby granted a blanket easement upon, across, over and under all of the common area for ingress, egress, installation, replacing, repairing, and maintaining of all utilities, including, but not limited to, water, sewer, gas, telephones, and electricity. By virtue of this easement, it shall be expressly permissible for the providing utility company to erect and maintain the necessary poles and other necessary equipment on said common area. Notwithstanding anything to the contrary contained in this paragraph, no sewers, electrical lines, water lines, or other utilities may be installed or relocated on said property except as initially programmed and approved by the Declarant or thereafter approved by the Declarant or the Association. Should any utility furnishing a service covered by the general easement herein provided request a specific easement by a separate recordable document, the Declarant, or the Association, shall have the right to grant such easement on said property without conflicting with the terms hereof. The easement provided for in this paragraph shall in no way affect any other recorded easement on said property.

D. Other. There is hereby granted a blanket easement to the Association, its directors, officers, agents and employees, to any Manager employed by or on behalf of the Association and to all policemen, firemen, ambulance personnel, and all similar persons to enter upon the common area or any part thereof in the proper performance of their respective duties.

14. Amendment.

This Declaration may be amended when approved by at least three fourths (3/4ths) of the members in the Association at a meeting of the members duly called and held for that purpose, and it shall become effective upon the filing with the office of the Register of Deeds of Sedgwick County, Kansas, of an instrument in writing setting forth such amendment; provided that no amendment shall discriminate against any lot or lot owner, nor shall any such amendment change any lot or the share of the common area and facilities appurtenant to it, or increase any owner's share of the common expenses unless such owner or owners shall have consented thereto in writing; and provided further, that no such amendment shall make any change in the requirements for insurance made herein or in any way affect the security interest of any mortgage holder unless the owners of all the recorded mortgages upon any part of the lots shall have consented thereto in writing.

15. Covenants Running with the Land.

All original and future owners, lessees, and occupants of the lots shall be subject to and shall comply with the provisions of this Declaration, the Articles and By-Laws of the Association, and all rules and regulations adopted pursuant to the By-Laws, as such instruments may be amended from time to time, which provisions shall constitute covenants running with the land and with every part thereof and every interest therein and shall be binding upon each and every person having at any time an interest \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ to exactly the same extent and with exactly the same effect as though all of said provisions were recited and stipulated in each deed or conveyance of any and every lot. Accepting any deed to or any conveyance or transfer of any lot, or entering into any agreement relating to any lot, or entering upon or occupying any lot shall constitute an irrevocable acceptance of this Declaration, the Articles and By-Laws, and all rules and regulations issued pursuant thereto, as from time to time amended.

16. Duration.

The covenants and restrictions hereof, as the same may from time to time be amended, shall inure to the benefit of and be enforceable by the Declarant, the Association, and the owner of any lot subject hereto, their respective legal representatives, heirs, successors, and assigns for a term of thirty-five (35) years from the date hereof, after which time said covenants shall be automatically extended for successive periods often (10) years unless an instrument signed by the then lot owners of two-thirds (2/3rds) or more of the lots have been recorded, agreeing to terminate said covenants and restrictions in whole or in part.

17. Enforcement.

Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the land to enforce any lien created by these covenants; and failure by the Association or any lot owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

18. Assignability.

Declarant shall be empowered to assign its rights hereunder to any successor including the Association and upon such assignment. Declarant shall thereafter be released of all obligations hereunder and the successor shall have all the rights and be subject to all the duties of Declarant hereunder and shall be deemed to have agreed to be bound by all provisions hereof, to the same extent as if the successor had been an original party instead of Declarant, and all references herein to Declarant shall refer to such successor. Any such assignment shall be accepted by the successor under a written agreement pursuant to which the successor expressly assumes all duties and obligations of Declarant.

19. Limitations of Liability: Indemnification.

Notwithstanding the duties herein imposed on the Association, the Association shall not be liable for injury or damage caused by any latent condition of the common area and facilities for injury caused by the elements, owners or other person, nor shall any officer or director of the Association be liable to any owner for injury or damage caused by such officer or director in the performance of his duties unless due to the willful misfeasance or malfeasance of such officer or director Each officer and director of the Association shall be indemnified by the owners against all expenses and liabilities, including attorneys' fees, reasonably incurred or imposed upon him in connection with any proceeding to which he may be a party or in which he may become involved by reason of his being or having been an officer or director of the Association, or any settlement, whether or not he is an officer or director of the Association at the time such expenses and liabilities are incurred, except in such cases where the officer or director is adjudged guilty of willful misfeasance or malfeasance in the performance of his duties; provided that in the event of a settlement, the indemnification shall apply only when the Board of Directors approves such settlement and reimbursement as being for the best interests of the Association.

20. Deeds.

Any conveyance of a lot shall include all appurtenances thereto, whether or not specifically described, including, but not limited to, the owner's membership in the Association and his percentage of undivided interests in the common area and facilities and in the fund and assets held by the Association.

21. Process.

The name of the person to receive service of process is Ed Dwire, 305 W. Central, Wichita, Kansas 67202.

IN WITNESS WHEREOF, Matt Eck, Inc., Declarant, herein, has caused this Declaration to be executed this 14th day of July, 1989.