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**DECLARATION OF COVENANTS  
CONDITIONS AND RESTRICTIONS OF  
NOTTINGHILL, HOA, INC.**

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HENDRICKS COUNTY IN  
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COVENANTS 105.00  
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by ARK Developers, Inc.

This Declaration made this 15<sup>th</sup> day of May, 2001

**WITNESSETH**

**WHEREAS,** Declarant is the owner of certain real estate in Hendricks County, State of Indiana, more particularly described in Exhibit "A" attached hereto and by this reference made a part hereof ("Real Estate.")

**WHEREAS,** Declarant desires and intends to create on the Real Estate a residential community with parking spaces, open spaced, and other common facilities and amenities for the benefit of such residential community, to be known as Nottinghill HOA, Inc. and

**WHEREAS,** Declarant desires to provide for the preservation and enhancement of the values and amenities in such community and the common facilities herein contained, and, to this end, Declarant desires to subject the Real Estate to certain rights, privileges, covenants, conditions, restrictions, easements, assessments, charges and liens, each and all to the extent herein provided, for the benefit of the Real Estate and each owner of all or part thereof: and

**WHEREAS,** Declarant deems it advisable, for the efficient preservation of the values and amenities of said community, to create an agency to which shall be delegated and assigned the powers of owning, maintaining and administering any common facilities located on the Real Estate, administering and enforcing the covenants and restrictions contained in this Declaration, collection and disbursing the assessments and charges imposed and created hereby and

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hereunder, and promoting the health, safety and welfare of the owners of the Dwelling Unit and all parts thereof: and

**WHEREAS**, Declaration has caused to be incorporated under the laws of the State of Indiana a not-for-profit corporation under the name of NOTTINGHILL HOA. INC., for the purposes of exercising such functions.

**NOW, THEREFORE**, Declarant hereby declares that the Real Estate if and shall be held, transferred, sold, conveyed, hypothecated, encumbered, leased, rented, used, improved, and occupied subject to the provisions, agreements, conditions, covenants, restrictions, easements, assessments, charges, and liens hereinafter set forth, all of which are declared to be in furtherance of a plan for preservation and enhancement of the Real Estate, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability, and attractiveness of the Real Estate as a whole and of each of the dwelling units situated therein.

## ARTICLE I

### Definitions

Section 1. The following words and terms, when used herein or in any supplement or amendment hereto, unless the context clearly requires otherwise, shall have the following meanings:

- (a) "**Act**" shall mean and refer to the Indiana Not-for-Profit Corporation Act of 1991, as amended.
- (b) "**Applicable Date**" shall mean and refer to the date determined pursuant to Article IV < Section 2(b) of this Declaration.

- (c) **"Architectural Review Board"** shall mean and refer to that committee or entity established pursuant to Article VIII, Section, of this Declaration for the purposes herein stated.
- (d) **"Articles"** shall mean and refer to the Articles of Incorporation of the Corporation, as the same may be amended from time to time.
- (e) **"Board" or "Board of Directors"** shall mean and refer to the governing body of the Corporation elected, selected or appointed as provided for in the Articles, By-Laws and the Declaration.
- (f) **"Building"** shall mean and refer to the structure consisting of the "Dwelling Units."
- (g) **"By-Laws"** shall mean and refer to the Code of By-Laws of the Corporation as the same may be amended from time to time.
- (h) **"Common Expenses"** shall mean and refer to the expenses of administration of the Corporation, and expenses for the upkeep, maintenance, repair and replacement of the Common Properties, all sums lawfully assessed against the Owners of the Corporation, and all sums, costs, and expenses declared by this Declaration to be Common Expenses.
- (i) **"Common Properties"** shall mean and refer to (a) all portions of the Real Estate shown on any recorded subdivision plat of the Real Estate which are not Dwelling Units; (2) to the extent herein established, such portions of the Real Estate as are herein declared to be Common Properties even though located on or constituting part of one or more Dwelling Units; (3) to the extent herein established, such improvements located, installed or established in, to, on, under, across, or through the Real Estate as are herein declared to be Common Properties whether located, installed, or established entirely or partially in Dwelling Units or portions of the Real Estate which are not Dwelling Units, or both; and (4) items deemed Common Properties for purposes of maintenance.
- (j) **"Corporation"** shall mean and refer to as "Nottingham HOA, Inc. an Indiana not-for-profit corporation which Declarant has caused to be incorporated under such name or a similar name, its successors and assigns.
- (k) **"Declarant"** shall mean and refer to Nottingham HOA, Inc. and any successors or assigns whom it designates in one or more written recorded instruments to have the rights of Declarant hereunder, including, but not limited to, any mortgagee acquiring title to any portion of the Real Estate pursuant to the exercise of rights under, or foreclosure of, a mortgage executed by Declarant.
- (l) **"Dwelling Unit"**, shall mean and refer to any building, structure, or portion thereof situated on the Real Estate designed and intended for use and occupancy as a residence by one (1) single family, whether such dwelling is detached or

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attached to another Dwelling Unit.

(m) **"Lot"** shall mean and refer to any and each portion of the Real Estate (excluding any part of the Common Properties) designed and intended or use as a building site for, or developed and improved for use as, a Dwelling Unit, as designed by Declarant by its deed of the same to another person.

(n) **"Mortgagee"** shall mean and refer to the holder of a recorded first mortgage lien on a Lot or Dwelling Unit.

(o) **"Owner"** shall mean and refer to the record owner, whether one or more persons, of the fee simple title to any Dwelling Unit, but in any event shall not include or mean to refer to a mortgagee or tenant unless and unit such mortgagee or tenant has acquired title to any Dwelling Unit, but upon so acquiring title to any Dwelling Unit a mortgagee or tenant shall be an owner.

(p) **"Person"** shall mean and refer to an individual, firm, corporation, partnership, association, trust, or other legal entity, or combination thereof.

(q) **"Plat"** shall mean and refer to the subdivision plat or plats of the Real Estate (and any additional real estate annexed to the Real Estate) recorded in the office of the Recorder of Hendricks County, Indiana, as the same may be hereafter amended or supplemented.

(r) **"Real Estate"** shall mean and refer to the parcel of the Real Estate in Hendricks County, Indiana, described in the first recital clause of this Declaration, and defined therein as the "Real Estate" or to any parcel of real estate which may become subject to this Declaration by annexation.

(s) **"Restrictions"** shall mean and refer to the agreements, covenants, conditions restrictions, easements, assessments, charges, liens and all other provisions set forth in this Declaration, as the same may be amended from time to time.\

Section 2. Other terms and words defined elsewhere in this Declaration shall have the meanings attributed to them.

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## ARTICLE II

*Declaration, Common Property and Rights of Tenants Therein: Easements*

**Section 1. Declaration.** Declarant hereby expressly declares that the Real Estate shall be held, transferred, and occupied subject to the restrictions, and that there shall be no material changes to the restrictions (including, without limitation, changes to the covenants, or to the organization or governance of the community established hereby) without the prior approval of the **Nottinghill HOA, Inc.** Subsequent owners or contract purchasers of any Dwelling Unit, (a) by acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from Declarant or a subsequent owner of such Dwelling Unit, or (b) by the act of occupancy of any Dwelling Unit, shall accept such deed or execute such contract subject to the restriction and agreement herein contained. By acceptance of such deed or execution of such contract, each owner or contract purchaser acknowledges the rights and powers of Declarant and of the Corporation with respect to these restrictions, and also for itself, its heirs, personal representative, successors and assigns, covenants, agrees and consents to and with Declarant, the Corporation, and the owners and subsequent owner of each of the Dwelling Units affected by these restrictions to keep, observe, comply with and perform such restrictions and agreement.

**Section 2. Easement to Owner.** Declarant hereby grants a non-exclusive easement in favor of each owner for the use, enjoyments and benefit of the Common Properties, subject to all of the restriction of this Declaration, and such easement shall be an easement running with and appurtenant to each Dwelling Unit.

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**Section 3. Easement to Corporation.** Declarant hereby grants a non-exclusive easement in favor of the Corporation for the maintenance of the Common Properties (including items deemed Common Properties for maintenance, including but not limited to Lawns.) Such easement shall permit the Corporation or its agents to enter onto any Dwelling Unit to make emergency repairs or to do other work reasonable necessary for the property maintenance or operation of the development and to enter onto any Dwelling Unit for the purpose of reconstruction and restoration in the event of casualty. Maintenance shall include, but not be limited to, maintenance of utilities which serve more than one Dwelling Unit and utilities owned and utilized by the Corporation.

**Section 4. Encroachment Easements.** If any portion of the Common Properties encroaches on any Dwelling Building or any Dwelling Building encroaches upon the Common Properties or another Dwelling Building as a result of construction, reconstruction, repair, shifting, settlement, or movement of any portion of the improvements, a valid easement shall be deemed to exist and run to the Corporation or to the owner of the encroaching Dwelling Building or improvement for the encroachment and for the maintenance thereof so long as such encroachment exists.

### ARTICLE III

#### Obligations of Declarant as to Common Properties: Dedication

**Section 1. Agreement to Construct and Convey other Common Properties.** Declarant has constructed, or provided for, or will construct, or provide for Common Properties consisting of the following items:

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(a) installation of utility equipment, facilities and systems to serve the Dwelling Units and the Common Properties:

(b) perimeter treatment of the Real Estate, including landscaping and mounding.

(c) club house.

Upon final construction or provision of the Common Properties described in Nottingham in Section 2 this Article and prior to the closing of the sale of a Dwelling Unit subject to this declaration, Declarant covenants to convey all of its right, title, and interest in and to such Common Properties to the Corporation and all such right, title, and interest in and to such items (whether owned in fee, by leasehold, or in the nature of an easement or license) shall then be the property of the Corporation. As to any of such items of and constituting the Common Properties the owners of Dwelling Units shall have only a non-exclusive easement right therein, as described in Article II, Section 2, of this Declaration.

#### ARTICLE IV

##### Corporation: Membership: Voting: Functions

**Section 1. Membership in Corporation.** Declarant and each owner of a Dwelling Unit shall, automatically upon becoming an owner, be and become a member of the Corporation and shall remain a member until such time as his ownership of a Dwelling Unit ceases, but membership shall terminate when such owner ceases to be an owner, and will be transferred to the new owner in a Dwelling Unit merely as security for the performance of an obligation shall not be a member until and unless he realizes upon his security, at which time he shall automatically be and become an owner and member of the Corporation.

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**Section 2. Voting Rights.** The Corporation shall have two (2) classes of membership, with the following voting rights:

(1) **Class "A" Members.** Class "A" members shall be all owners except Class "B" members. Each Class "A" member shall be entitled to one (1) vote for each Dwelling Unit of which such member is the owner with respect to each matter submitted to a vote of members upon which the Class "A" members are entitled to vote. When more than one (1) person constitutes the owner of a particular Dwelling Unit, all such persons shall have only one (1) vote for such Dwelling Unit, which vote shall be exercised as they, among themselves, determine, but in no event shall more than one (1) vote be cast with respect to any such Dwelling Unit.

(2) **Class "B" Members.** Class "B" members shall be Declarant and all successors and assigns of Declarant designated by Declarant as Class "B" members in a written notice mailed or delivered to the resident agent of the Corporation. Each Class "B" member shall be entitled to five (5) votes for each Dwelling Unit of which it is the owner on all matters requiring a vote of the members of the Corporation. The Class "B" membership shall cease and terminate upon the first to occur: (1) the total votes outstanding in the Class "A" membership equals the total votes outstanding in the Class "B" membership, or (3) May 25, 2011.

**Section 3. Functions.** The Corporation has been formed for the purpose of providing for the maintenance, repair, replacement, administration, operation and ownership of the Common Properties, to pay taxes assessed against and payable with respect to the Common Properties, and to perform such other functions as may be designated for it to perform under this Declaration.



## ARTICLE V

Board of Directors

**Section 1. Management.** The business and affairs of the Corporation shall be governed and managed by the Board of Directors. No person shall be eligible to serve as a member of the Board of Directors unless he is, or is deemed, in accordance with the Declaration to be, and owner, including a person appointed by Declarant as provided in Section of Article V of this Declaration.

**Section 2. Initial Board of Directors.** The initial Board of Directors shall be composed of the persons designated in the Articles, ("Initial Board"), all of whom have been or shall be appointed by Declarant. Notwithstanding anything to the contrary contained in or any other provision of this Declaration, the Articles, the By-Laws, or the Act (a) the Initial Board shall hold office until the Applicable Date, and (b) in the event of any vacancy or vacancies occurring in the Initial Board for any reason or cause whatsoever, prior to the Applicable Date determined as provided herein, every such vacancy shall be filled by a person appointed by Declarant, who shall thereafter be deemed a member of the Initial Board. Each person serving on the Initial Board, whether as an original member thereof or as a member thereof appointed by Declarant to fill a vacancy, shall be deemed a member of the Corporation and an owner solely for the purpose of qualifying to act as a member of the Board of Directors and for no other purpose. No such person serving on the Initial Board shall be deemed or considered a member of the Corporation nor an owner of a Dwelling Unit for any other purpose (unless he is actually the owner of a Dwelling Unit and thereby a member of the Corporation.)

**Section 3. Additional Qualifications.** Where an owner consists of more than one (1) person or is a partnership, corporation, trust, or other legal entity, then one of the persons constituting the multiple owner, or a partner, or an officer, or trustee shall be eligible to serve on the Board of Directors, except that no single Dwelling Unit may be represented on the Board of Directors by more than one (1) person at a time.

**Section 4. Terms of Office and Vacancy.** Subject to Section 2 of Article V of this Declaration, The Board of Directors shall be elected at each annual meeting of the Corporation. The Initial Board shall be deemed to be elected and re-elected as the Board of Directors at each annual meeting until the Applicable Date provided herein. The Board of Directors shall be elected for a term of three (3) years. Each Director shall hold office throughout the term of his election and until his successor is elected and qualified, subject to the provisions of Section 2 of Article V of this Declaration as to the Initial Board, any vacancy or vacancies occurring in the Board shall be filled by a vote of a majority of the remaining members of the Board or by a vote of the owners if a Director is removed in accordance with Section 5 of Article V of this Declaration. The Director so filling a vacancy shall serve until the next annual meeting of the members and until his successor is elected and qualified. At the first annual meeting following such vacancy, a Director shall be elected for the balance of the term of the Director so removed or in respect to whom there has otherwise been a vacancy.

**Section 5. Removal of Directors.** A Director or Directors, except the members of the Initial Board, may be removed with or without cause by vote of a majority of the votes entitled to be cast a special meeting of the owners duly called and constituted for such purpose. In such case, his successor shall be elected at the same meeting from eligible

owners nominated at the meeting. If no eligible owner is available, the Directors may choose to operate as a Board despite the vacancy, until a new owner becomes eligible. A Director so elected shall serve until the next annual meeting of the owners and until his successor is duly elected and qualified.

**Section 6. Duties of the Board of Directors.** The Board of Directors shall be the governing body of the Corporation representing all of the owners and being responsible for the functions and duties of the Corporation, including but not limited to, providing for the administration of the Real Estate, the management, maintenance, repair, upkeep, and replacement of the Common Properties (unless the same are otherwise the responsibility or duty of owners), and the collection and disbursement of the Common Expenses. After the Applicable Date, the Board may, on behalf of the Corporation, employ a reputable property management agent ("Managing Agent") upon such terms as the Board shall find, in its discretion, reasonable and customary. The Managing Agent, if one is employed, shall assist the Board in carrying out its duties, which include, but are not limited to:

- (a) maintenance, repair, replacement, and upkeep of the Common Properties (or items deemed Common Properties for the purposes of maintenance;)
- (b) protection, surveillance, and replacement of the Common Properties, unless the same are otherwise the responsibility or duty of owners of Dwelling Units; provided, however that this duty shall not include or be deemed or interpreted as a requirement that the Corporation, the Board of any Managing Agent must provide any on-site or roving guards, security service, or security system for protection or surveillance, and the same may, but need not be, furnished;
- (c) maintenance of utilities used in connection with the Dwelling Units;
- (d) snow removal from the Common Properties;
- (e) assessment and collection from the owners of the owner's respective share of the Common Expenses;

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- (f) preparation of the proposed annual budget, a copy of which will be mailed delivered to each owner at the same time as the notice of annual meeting is mailed or delivered;
- (g) preparing and delivering annually to the owners a full accounting of all receipts and expenses incurred in the prior year; such accounting shall be delivered to each owner simultaneously with delivery of the proposed annual budget for the current year.
- (h) keeping a current, accurate and detailed record of receipts and expenditures affecting the Common Properties and the business and affairs of the Corporation, specifying and itemizing the Common Expenses; all records and vouchers shall be available for examination by an owner upon a two (2) weeks' notice at any time during normal business hours.
- (i) procuring and maintaining for the benefit of the Corporation and the Board the insurance coverage required under this Declaration and such other insurance coverage as the Board, in its sole discretion, may deem necessary or advisable;
- (j) paying taxes assessed against and payable with respect to the Common Properties and paying any other necessary expenses and costs in connection with the Common Properties;
- (k) making available to owners and mortgagees, and to holders, insurers, or guarantors of any first mortgage, current copies of this Declaration, the By-Laws, or other rules concerning the subdivision and the books, records, and financial statements of the Corporation. "Available" means available for inspection, upon request, during normal business hours or under other reasonable circumstances; and
- (l) making available to any mortgagee or any holder, insurer or guarantor of a first mortgage, upon request, a copy of the Corporation's audited financial statement for the immediately preceding fiscal year to the party making such request.

**Section 7. Powers of the Board of Directors.** The Board of Directors shall have such powers as are reasonable and necessary to accomplish the performance of their duties. These powers include, but are not limited to, the power:

- (a) to employ a Managing Agent to assist the Board of Directors in performing its duties; provided that no employment agreement with the Declarant (or any

entity affiliated with the Declarant) as Managing Agent or for any other service shall be for more than three (3) years after the Applicable Date and further provided that after the Applicable Date any such agreement shall be subject to termination by either party without cause and without payment of termination fee upon thirty (30) days' written notice to the other party;

(b) to purchase, lease, or otherwise obtain for the Corporation to enable it to perform its functions and duties, such equipment, materials, labor and services as may be necessary in the judgment of the Board of Directors;

(c) to employ legal counsel, architects, contractors, accountants, and others as in the judgment of the Board of Directors which may be necessary or desirable in connection with the business and affairs of the Corporation;

(d) to employ, designate, discharge, and remove such personnel as in the judgment of the Board of Directors as may be necessary for the maintenance, upkeep, repair, and replacement of the Common Properties;

(e) to include the cost of all of the above and foregoing as Common Expenses and to pay all of such costs therefrom;

(f) to operate and maintain a bank account or accounts in the name of the Corporation;

(g) to promulgate, adopt, revise, amend, and alter, from time to time, such additional rules and regulations with respect to use, occupancy, operation, and enjoyment of the Real Estate and the Common Properties (in addition to those set forth in this Declaration) as the Board, in its discretion, deems necessary or advisable; provided, however, that copies of any such additional rules and regulations so adopted by the Board shall be promptly delivered to all owners.

**Section 8. Limitation on Board Action.** The Board's powers are subject to the following limitations:

(a) after the Applicable Date, the authority of the Board of Directors to enter into contracts shall be limited to contracts involving a total expenditure of less than Ten Thousand Dollars (\$10,000.00) without obtaining the prior approval of a majority of the owners, except that in the following cases such approval shall not be necessary:

(1) contracts for replacing or restoring portions of the Common Properties damaged or destroyed by fire or other casualty where the cost thereof is payable out of insurance proceeds actually received;

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(2) proposed contracts and proposed expenditures expressly set forth in the proposed annual budget as approved by the owners at the annual meeting; and

(3) expenditures necessary to deal with emergency conditions in which the Board of Directors reasonably believe there is insufficient time to call a meeting of the owners.

(b) The Board shall not, without prior written approval of a least sixty-seven percent (67%) of the owners (other than Declarant) and mortgagees (whose mortgage interests have been made known to the Board of Directors) holding mortgages on Dwelling Units which have at least sixty-seven percent (67%) of the votes of Dwelling Units subject to mortgages:

(1) by act or omission abandon, partition, subdivide, encumber, sell or transfer the Common Properties owned by the Corporation (provided, the granting of easement for public utilities or for other public purposes shall not be deemed a transfer within the meaning of this clause;)

(2) by act or omission change, waive, or abandon any scheme or regulation or enforcement thereof, pertaining to the architectural design or the exterior appearance of Dwellings, the exterior maintenance of Dwellings, the maintenance of side walls of the Common Properties or common fences, or the upkeep of lawns;

(3) fail to maintain fire and extended coverage insurance on Common Properties on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value based on current replacement costs; and

(4) use hazard insurance proceeds for losses to any of the Common Properties for other than the repair, replacement, or reconstruction of Common Properties.

**Section 9. Compensation.** No Director shall receive any compensation for his services as such except to such extent as may be expressly authorized by a majority vote of the owners.

The Managing Agent, if one is employed, shall be entitled to reasonable compensation for its services, the cost of which shall be a Common Expense.

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**Section 10. Non-Liability of Directors.** The Directors shall not be liable to the owners or any other persons for any error or mistake of judgment exercised in carrying out their duties and responsibilities as Directors, except for their own individual willful misconduct, bad faith or gross negligence. The Corporation shall indemnify and hold harmless and defend each of the Directors against any and all liability to any person, firm, or corporation arising out of contracts made by the Board on behalf of the Corporation, unless any such contract shall have been made in bad faith. Directors shall not have personal liability with respect to any contracts made by them on behalf of the Corporation.

**Section 11. Additional Indemnity of Directors.** The Corporation shall indemnify, hold harmless, and defend any person, his heirs, assigns, and legal representatives, made a part to any action, suit or proceeding by reason of the fact that such person is or was a Director of the Corporation, against the reasonable expenses, including attorney's fees, actually and necessarily incurred by him in connection with the defense of such action, suit or proceeding, or in connection with any appeal thereof, except as otherwise specifically provided herein. The Corporation shall also reimburse to any such Director the reasonable costs of settlement of or judgment rendered in any action, suit, or proceeding, if it shall be found by a majority vote of the owners that such Director was not guilty of gross negligence or misconduct. In making such findings and notwithstanding the adjudication in any action, suit, or proceeding against the Director, no Director shall be considered guilty of or liable for negligence or misconduct in the performance of his duties where, acting in good faith, such Director relied on the books and records of the Corporation or statements or advice made by or prepared by the Managing Agent (if any) or any officer or employee thereof, or any accountant, attorney or other person, firm

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or corporation employed by the Corporation to render advice or service unless such Director actual knowledge of the falsity or incorrectness thereof; nor shall a Director be deemed guilty of or liable for negligence or misconduct by virtue of the fact that he failed or neglected to attend a meeting or meetings of the Board of Directors.

**Section 12. Bond.** The Board of Directors shall provide surety bonds and shall require the Managing Agency (if any), the treasurer of the Corporation and such other officers as the Board deems necessary to provide surety bonds indemnifying the Corporation against larceny, theft, embezzlement, forgery, misappropriation, wrongful abstraction, willful misapplication, and other acts of fraud or dishonesty, in such sums and with such sureties as may be approved by the Board of Directors and any such bond shall specifically include protection for any insurance proceeds received for any reason by the Board. The expense of any such bonds shall be a Common Expense. The amount of the bonds shall be based upon the judgment of the Board of Directors and shall not be less than the estimated maximum of funds, including reserve funds, in the custody of the Corporation or its management agent at any given time during the term of the bond. In no event shall the aggregate amount of such bonds be given time during the term of the bond. In no event shall the aggregate amount of such bonds be less than a sum equal to three (3) month aggregate assessments on all units plus reserve funds.

**Section 13. Initial Management.** The Initial Board has or will enter into a Management Agreement with Declarant (or with an entity affiliated with Declarant (or an affiliate of Declarant, as appropriate) will provide supervision, fiscal and general management and maintenance of the Common Properties and, in general, perform all of the duties and obligations of the Corporation ("Management Agent.") Notwithstanding anything to the



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contrary contained in this Declaration, so long as such Management Agreement remains in effect. Declarant (or its affiliate) shall have, and Declarant hereby reserves to itself or its affiliate, the exclusive right to manage the Real Estate and Common Properties and to perform all the functions of the Corporation.

**ARTICLE VI**

**Real Estate Taxes; Utilities**

**Section 1. Real Estate Taxes.** Real Estate taxes on each Dwelling Unit shall be paid by the owner thereof. Any real estate taxes or other assessments against the common Properties shall be paid by the Corporation and treated as a Common Expense.

**Section 2. Utilities.** Each owner shall pay for his own utilities which, to the extent possible, shall be separately metered to each Dwelling Unit. Utilities which are not separately metered to an owner's Dwelling Unit shall be treated as and paid as part of the Common Expense, unless otherwise determined by the Corporation.

**ARTICLE VII**

**Maintenance, Repairs, and Replacements**

**Section 1. By Owners.** Except as provided in Section 2(b) of this Article, each owner shall, at his expense, be responsible for and shall promptly perform as the need therefor arises, all interior maintenance, repairs, decoration and replacement of his own Dwelling Unit and all fixtures and equipment installed within or as part of a Dwelling Unit, commencing at the points where the utility lines, pipes, wires, conduits, or systems enter the Dwelling Lot. Each owner shall promptly perform all maintenance and repair of his Dwelling Unit which, if neglected, might adversely affect any other Dwelling Unit or any part of the Common Properties. Such maintenance and repairs include, but are not limited to,

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internal and external waterlines, plumbing, electric lines, gas lines, appliances, and all other fixtures, equipment and accessories belonging to the owner and a part of or appurtenant to his Dwelling Unit.

**Section 2. Common Properties.**

(a) Maintenance, repairs and replacements and upkeep of the Common Properties shall be furnished by *Nottingham HOA, Inc.*, as a part of its duties, and the cost thereof shall constitute a part of the Common Expense.

(b) In addition to maintenance of Common Properties, *Nottingham HOA, Inc.*, as part of its duties, and as part of the Common Expenses, shall provide for:

(1) maintenance, repairs, replacement, and upkeep of the exteriors of each Dwelling Unit, including, but not limited to, roofs, gutters, doors, windows (excluding glass which shall be considered a part of the interior maintenance), and exterior walls shall be considered part of the Common Properties for purposes of maintenance only.

(2) maintenance of the lawns shall be considered part of the Common Properties for purposes of maintenance only. Maintenance of lawns shall include but shall not be limited to the mowing and replanting when necessary of the grass; and the care, trimming, removal, and replacement of trees planted by the Declarant. It shall not include the care and maintenance of shrubs, trees, which were not planted by Declarant, flowers or other plants.

The Board of Directors may adopt such other rules and regulations concerning maintenance, repair, use, and enjoyment of the Common Properties (or items deemed Common Properties for purposes of maintenance only) as it deems necessary.

(c) Notwithstanding any obligation or duty of the Corporation to repair or maintain any of the Common Properties (or items deemed Common Properties for purposes of maintenance), if, due to the willful, intentional, or negligent acts or omissions of invitee or other occupant or visitor of such owner, damage shall be caused to the Common Properties (or items deemed as such or purposes of maintenance), or if maintenance, repairs, or replacements shall be required thereby which would otherwise be at the Common Expense, then such owner shall pay for such damage and such maintenance, repairs, and replacements, as *Nottingham HOA, Inc.* If not paid by such owner upon demand by the Corporation, the cost of repairing such damage shall be added to and become a part of the assessment to which such owner's Dwelling Unit is subject.

(d) The authorized representatives of the Corporation, the Board and the Managing Agent for the Corporation (if any) shall be entitled to reasonable access to any Dwelling Unit as may be required in connection with maintenance, repairs, or replacements of or to the Common Properties and items deemed as Common Properties for purposes of maintenance, including, but not limited to, access to any easements reserved by any subdivision plat of any portion of the Real Estate for such purposes.

## ARTICLE VIII

### Maintenance, Repairs, and Replacements

**Section 1. The Architectural Review Board.** As a standing committee of the Corporation, there shall be, and hereby is established an Architectural Review board consisting of three (3) or more persons as may, from time to time, be provided in the By-Laws or by resolution of the Board of Directors. Until the Applicable Date, Declarant shall appoint the members of the Architectural Review Board. After the Applicable Date, the Architectural Review Board shall be appointed by the Board of Directors.

**Section 2. Purposes.** The Architectural Review Board shall regulate the external design, appearance, use, location, and maintenance of the Real Estate and of improvements thereon in such manner as to preserve and enhance values and to maintain a harmonious relationship among structures, improvements and the natural vegetation and topography.

**Section 3. Conditions.** No improvements, alterations, repairs, change of colors, excavation changes in grade or other work, which in any way alters the exterior of any Dwelling Unit or the improvements located thereon from its natural or improved state existing on the date such Dwelling Unit was first conveyed in fee by the Declarant to an Owner shall be made or done without the prior approval of the Architectural Review Board, except as otherwise expressly provided in this

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Declaration. No building, fence, wall, Dwelling Unit, or other structure shall be commenced, erected, maintained, improved, altered, made or done, without the prior written approval of the Architectural Review Board; provided this restriction shall not be applicable to the original construction of a Dwelling Unit.

**Section 4. Procedures.** In the event the Architectural Review Board fails to approve, modify or disapprove in writing an application with thirty (30) days after such application (together with all plans, drawings, specifications, and other items required to be submitted to in accordance with such rules as it may adopt) has been given to it, approval will be deemed denied by the Architectural Review Board. A decision of the Architectural Review Board may be appealed to the Board of Directors which may reverse or modify such decision by a three-fourth (3/4) vote of the Directors then serving.

**ARTICLE IX**

**Development Standards**

**AREA 'A' - Lots 3 through 60**

1. **Minimum Lot Area** - 6,600 square feet  
Town of Plainfield public water and sanitary sewer facilities shall be mandatory for this development.
2. **Minimum Lot Width** - 60 feet
3. **Minimum Lot Frontage** - 25 feet on a Public Street and gain direct Access from said Public Street.
4. **Maximum Lot Coverage** - 45 Percent
5. **Minimum Yards and Building Setbacks**
  - a. **Front** - a minimum *Front Yard* and *Building Setback* measured from the *Proposed Right-of-Way* shall be provided as follows:

Primary Arterial Street	60 feet
Secondary Arterial Street	40 feet

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Collector Street: 20 feet  
 Local Street/Cul-de-Sac Street: 20 feet

- b. Side-a minimum *Side Yard* of 6 feet shall be provided along all *Side Lot Lines*.
  - c. Aggregate Side-a minimum *Aggregate Side Yard* of 12 feet shall be provided on all Lots.
  - d. Rear-a minimum *Rear Yard* shall be provided along all *Rear Lot Lines* as follows:
    - (1) *Primary Building* – 20 feet
    - (2) *Accessory Building* – not allowed
6. **Maximum Building Height** –
- a. *Primary Building* – 35 feet
  - b. *Accessory Building* – not allowed
7. **Minimum Main Floor Area** – The minimum *Main Floor Area* of the *Primary Building*, exclusive of *Garage, Carport, Deck, patio and open Porches*:
- a. *One-Story Building* – 1,700 square feet
  - b. *Two or More Story Building* – 1,700 square feet
8. **Off-Street Parking** – each *Dwelling Unit* shall be provided with at least two (2) *Off-Street Parking Spaces*.
9. **Signs** – will be as presented with these detailed development standards

**AREA 'B' – LOTS ONE (1) AND TWO (2)**

- 1. **Minimum Lot Area** – 60,000 square feet  
 Town of Plainfield public water and sanitary sewer facilities shall be mandatory for this Development.
- 2. **Minimum Lot Width** – 90 feet
- 3. **Minimum Lot Frontage** – 90 feet on a *Public Street* and gain direct Access from said *Public Street*.
- 4. **Maximum Lot Coverage** – 25 percent
- 5. **Minimum Yards and Buildings Setbacks**
  - a. **Front** – a minimum *Front Yard and Building Setback* measured from the

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*Proposed Right-of-Way shall be provided as follows:*

<i>Primary Arterial Street:</i>	<i>60 feet</i>
<i>Secondary Arterial Street:</i>	<i>40 feet</i>
<i>Collector Street:</i>	<i>30 feet</i>
<i>Local Street/Cul-de-Sac Street:</i>	<i>30 feet</i>

- b. *Side*-a minimum *Side Yard* of 30 feet shall be provided along all *Side Lot Lines*.
  - c. *Aggregate Side*- a minimum *Aggregate Side Yard* of 70 feet shall be provided on all Lots.
  - d. *Rear*-a minimum *Rear Yard* shall be provided along all *Real Lot Lines* as follows:
    - (1) *Primary Building* – 35 feet
    - (2) *Accessory Building* – 20 feet
6. *Maximum Building Height*
- a. *Primary Building* – 35 feet
  - b. *Accessory Building* – 25 feet
7. *Minimum Main Floor Area* – The minimum *Main Floor Area* of the *Primary Building*, exclusive of *Garage, Carport, Deck, Patio, and open Porches*:
- a. *One-story Building* – 3,000 square feet
  - b. *Two or more story Building* – 2,000 square feet provided, that the total *Finished Floor Area* shall be a least 3,000 square feet.
8. *Off-Street Parking* – each *Dwelling Unit* shall be provided with at least two (2) *Off-Street Parking Spaces*.
9. *Signs* – will be as presented with these detailed development standards.

**ADDITIONAL AREA 'A' AND 'B' COMMITMENTS**

- 1. The main street off of County Road 350 South (Hanna Road) will consist of a 36 foot wide pavement section, with an 80-foot wide right-of-way. No parking will be allowed on either side of the street. This road will become a part of the Town of Plainfield Perimeter Parkway. A six (6)-foot wide asphalt path will be constructed along both sides of the parkway.

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2. A Six (6)-foot wide concrete public walkway will be provided throughout the development as labeled and shown on the submitted plan.
3. Attached with this document is the single family product that will be substantially constructed within Area "A" of this subdivision.
4. All houses shall have a landscaping package as submitted with this detailed development standard. See attached per lot landscaping list.
5. All the homes shall have an attached garage capable of storing a least two (2) vehicles.
6. All homes shall have a hard surfaced driveway.
7. Satellite disks of no more than two (2') feet in diameter shall be the only antennae permitted.
8. A community clubhouse with a gravel access drive will be provided no later than at the completion of the final lot sale in section one (1). At the completion of the final lot sale for section two (2), there will be the addition of a swimming pool and tennis court to this facility.
9. No outside storage of unlicensed vehicles, RV's, trailers, boats or boat trailers shall be permitted.
10. No above ground pools shall be permitted.
11. All homes shall have uniform mailboxes for aesthetics as well as uniform street numbers.
12. A Home Owners Association shall be established for the development.
13. Outbuildings in Area "B" will be constructed of same or similar materials as the houses themselves.

**ARTICLE X**

**Assessments**

**Section 1. Annual Accounting.** Annually, after the close of each fiscal year of the *NOTTINGHILL HOA, INC.* and prior to the date of the annual meeting of the Corporation next following the end of such fiscal year, the Board shall cause to be prepared and furnished to each

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Owner a financial statement prepared by a certified public accountant or firm of certified public accountants then serving the Corporation, which statement shall show all receipts and expenses received, incurred, and paid during the preceding fiscal year.

**Section 2. Proposed Annual Budget.** Annually, on or before the date of the annual meeting of the Corporation, the Board of Directors shall cause to be prepared a proposed annual budget for the current fiscal year and shall furnish a copy of such proposed budget to each Owner at or prior to the time the notice of such annual meeting is mailed or delivered to such Owners. The proposed Budget shall be presented at the annual meeting of the Corporation for adoption and, if so adopted, shall be the basis for the Regular Assessments (herein defined) for the current fiscal year. At the annual meeting of the Owners, the budget may be approved in whole or in part and may be amended in whole or in part by a majority vote of the Owners; provided that any increase of more than ten percent (10%) must be Approved by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy; provided further, however, that in no event shall the annual meeting of the Owners be adjourned until an annual budget is approved and adopted at such meeting, either the proposed annual budget or the proposed annual budget, as amended. The annual budget, the regular assessments, and all other sums assessed by the Corporation shall be established by using generally accepted accounting principles applied on a consistent basis. The annual budget and the Regular Assessments shall be drawn to include the establishment and maintenance of two replacement reserve funds for capital expenditures and replacement and repair of the Common Properties (one replacement reserve fund shall be for capital expenditures and replacement and repair of Common Properties owned by the Corporation and not deed Common Properties for purposes of maintenance only and the other replacement reserved fund shall be for capital expenditures and replacement and



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repair of those items deemed Common Properties for purposes of maintenance only as defined in Article VII, Section 2(b), which replacement reserve funds shall be used for those purposes and not for usual and ordinary repair expenses of the Common Properties. Such replacement reserve funds for capital expenditures and replacement and repair of the Common Properties shall be maintained by the Corporation in separate interest bearing accounts with one or more banks, savings and loan associations, or other financial institution or brokerage house as may be selected from time to time by the Board. Failure or delay of the Board of Directors to prepare a proposed annual budget and to furnish a copy thereof to the Owners shall not constitute a waiver or release in any manner of the obligations of the Owners to pay the Common Expenses as provided, whenever determined. Whenever, before or after the annual meeting of the Corporation, there is no annual budget approved by the Owners as herein provided for such current fiscal year, the Owners shall continue to pay Regular Assessments based upon the last approved budget or, at the option of the Board, based upon one hundred and ten percent (110%) of such last approved budget, as a temporary budget.

**Section 3. Regular Assessments.** The annual budget adopted by the Owners shall contain a proposed assessment against each Dwelling Unit, which shall be computed as follows: all estimated Common Expenses; except (a) the estimated cost of the master casualty insurance policy provided for in Article XI, Section I and (b) the estimated cost of maintenance to be performed by the Corporation pursuant to Article VII, Section 2 (b), shall be divided by the total number of Dwelling Units to determine quotient A. The estimated cost of the master casualty insurance policy and the estimated cost of maintenance pursuant to Article VII, Section 2(b) shall each be divided on a pro-rata basis for each Dwelling Unit, to determine quotients B and C, quotients A,B and C shall be added together and the sum shall be the Regular Assessment for

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each Dwelling Unit. The portions of the Regular Assessment attributable to the replacement reserve funds shall be computed as a part of the estimated Common Expenses. Lots 1 and 2 shall be responsible for quotient A only. Lots 3 through 62 shall be responsible for quotients A, B and C.

Immediately following the adoption of the annual budget, the Owner shall be given written notice of the assessment against his respective Dwelling Unit (herein called the "Regular Assessment"). In the event the Regular Assessment for a particular fiscal year is initially based upon a temporary budget, such Regular Assessment shall be revised, within fifteen (15) days following adoption of the final annual budget by the Owners, to reflect the assessment against each Dwelling Unit based upon the annual budget finally adopted. The Regular Assessment against each Dwelling Unit shall be paid in advance in equal monthly installments commencing on the first day of the first month of each fiscal year; and monthly thereafter, through and including the first day of the last month of such fiscal year. Payment of the Regular Assessment shall be made to the Board of Directors; provided, however, Owners may elect to pay their assessments semi-annually or annually, in advance. In the event the Regular Assessment for a particular fiscal year of the Corporation was initially based upon a temporary budget.

(1) if the Regular Assessment based upon the final annual budget adopted by the Owners exceeds the amount of the Regular Assessment based upon the temporary budget, that portion of such excess applicable to the period from the first day of the current fiscal year to the date of the next payment, and all payments thereafter during such fiscal year, shall be increased so that the Regular Assessment as finally determined shall be paid in full by the remaining payments due in such fiscal year; or,

(2) if the Regular Assessment based upon the temporary budget exceeds the Regular Assessment based upon the final annual budget adopted by the Owners, such excess shall be credited against the next payment or payments of the Regular Assessment coming due until the entire amount of such excess has been credited; provided, however, that if an Owner paid his Regular Assessment either semi-annually or annually in advance, then the adjustments set forth under (1) or (2) above shall be made by a cash payment by, or refund to, the Owner on the first day of the second month following the determination of the Regular Assessment based upon the annual budget finally adopted by the Owners.

The Regular Assessment for the current fiscal year of the Corporation shall become a lien

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on each separate Dwelling Unit as of the first day of each fiscal year of the Corporation, even though the final determination of the amount of such Regular Assessment may not have been made by that date. The fact that an Owner has paid his Regular Assessment for the current fiscal year in whole or in part based upon a temporary budget and thereafter, before the annual budget and Regular Assessment are finally determined, approved and adjusted as herein provided, sells, conveys or transfers his Dwelling Unit or any interest therein, shall not relieve or release such Owner or his successor as owner of such Dwelling Unit from payment of the Regular Assessment for such Dwelling Unit, as finally determined, and such Owner and his successor as owner of such Dwelling Unit shall be jointly and severally liable for the Regular Assessment as finally determined. Any statement of unpaid assessments furnished by the Corporation pursuant to Section 2 of Article XI hereof prior to the final determination and adoption of the annual budget and Regular Assessment for the year in which such statement is made shall state that the matters set forth therein are subject to adjustment upon determination and adoption of the final budget and Regular Assessment for such year, and all parties to whom any such statement may be delivered or who may rely thereon shall be bound by such final determinations. Monthly installments of Regular Assessments shall be due and payable automatically on their respective dates without any notice from the Board or the Corporation, and neither the Board nor the Corporation shall be responsible for providing any notice or statements to Owners for the same.

Each Owner of a Dwelling Unit shall prepay to the Corporation at the time his Dwelling Unit is conveyed to such Owner an amount equal to thirteen (13) monthly installments of the amount required to pay for the Dwelling Unit Owner's pro-rata portion of the master casualty insurance policy based upon the budget for the current fiscal year and the Owner shall maintain

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such prepayment account at all times. The Corporation shall hold such pre-paid funds in a separate escrow account for the purchase of insurance as provided in Article XII, Section 1.

**Section 4. Special Assessments.** From time to time Common Expenses of an unusual or extraordinary nature or not otherwise anticipated may arise. At such time, unless otherwise provided in this Declaration, the Articles, the By-Laws or the Act, the Board of Directors shall have the full right, power and authority to make special assessments which, upon resolution of the Board, shall become a lien on each Dwelling Unit, pro-rated in equal shares ("Special Assessment"); provided, that any such assessment shall have the assent of sixty-seven percent (67%) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose. Without limiting the generality of the foregoing, Special Assessments may be made by the Board of Directors from time to time to pay for capital expenditures and to pay for the cost of any repair or reconstruction of damage caused by fire or other casualty or disaster to the extent insurance proceeds are insufficient therefor under the circumstances described in this Declaration.

**Section 5. Failure of Owner to Pay Assessment.**

(a) No Owner may exempt himself from paying Regular Assessments or Special Assessments, or from contributing toward the expenses of administration and of maintenance and repair of the Common Properties for the purposes of maintenance, and toward any other expense lawfully agreed upon, by waiver of the use or enjoyment of the Common Properties or by abandonment of the Dwelling Unit belonging to him. Each Owner of each condominium Dwelling unit shall be personally liable for the payment of all Regular Assessments and Special Assessments. Where the Owner constitutes more than Person, the Liability of such Persons shall be joint and several. If any Owner shall fail, refuse or neglect to make any payment of any Regular or Special Assessments when due, the lien for such Assessment on the Owner's Dwelling Unit may be filed and foreclosed by the Board for and on behalf of the Corporation as a mortgage on real property or as otherwise provided by law. Upon the failure of an Owner to make timely payments of any Regular Assessments or Special Assessments when due, the Board may, in its discretion, accelerate the entire balance of the unpaid Assessments and declare

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the same immediately due and payable, notwithstanding any other provisions hereof to the contrary. In any action to foreclosure the lien for any Assessments, the Owner and any occupant of the Dwelling Unit shall be jointly and severally liable for the payment to the Corporation of reasonable rental for such Dwelling Unit, and the Board shall be entitled to the appointment of a receiver for the purpose of preserving the Dwelling Unit and to collect the rents and any other profits therefrom for the benefit of the Corporation to be applied to the unpaid Regular and Special Assessments. The Board may, at its option, bring a suit to recover a money judgment for any unpaid Regular Assessment or Special Assessment without foreclosing or waiving the lien securing the same. In any action to recover a Regular or Special Assessment, whether by foreclosure or otherwise, the Board, for and on behalf of the Corporation, shall be entitled to recover from the Owner of the respective Dwelling Unit costs and expenses of such action incurred (including but not limited to reasonable attorneys' fees) and interest from the date of such Assessments were due until paid, at a rate equal to the "prime interest rate" then being charged by Indiana banks to its largest and best corporate customers. Such rate charged by another bank in Indiana selected by the Board.

(b) The lien provided for herein shall be subordinate to the lien of any first mortgage. Notwithstanding anything contained in this Section or elsewhere in this Declaration, the Articles or the By-Laws, any sale or transfer of a Dwelling Unit to a Mortgage pursuant to a foreclosure on its mortgage or conveyance in lieu thereof, or a conveyance to any person at a public sale in the manner provided by law with respect to mortgage foreclosures, shall extinguish the lien of any unpaid installment prior to such sale, transfer or conveyance; provided, however, that the extinguishment of such lien shall not relieve the prior owner from personal liability therefor. No such sale, transfer or conveyance shall relieve the Dwelling Unit or the purchaser at such foreclosure sale, or grantee in the event of conveyance in lieu thereof, from liability for any installments of Regular or Special Assessments thereafter becoming due or from the lien therefor. Such unpaid share, the lien for which has been divested as provided above, shall be deemed to be a Common Expense, collectible from all Owners (including the party acquiring the subject Dwelling Unit from which it arose).

**Section 6. Initial Budgets and Assessments.** Notwithstanding anything to the contrary contained herein, in the Articles, in the By-Laws, in the Act or other wise, until the Applicable Date, the annual budget and all Regular Assessments and Special Assessments shall be established by the Initial Board without meeting of or concurrence of the Owners. The agency, power of attorney and proxy granted to the Declarant by each Owner pursuant to Section 2 of Article V hereof shall be deemed to cover and include each Owner's right to vote and and

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approved the annual budget and any Regular Assessments and Special Assessments until the Applicable Date.

Further, until the Applicable Date, the Regular Assessments are and shall be established as follows:

From the date of the first conveyance of a Dwelling Unit by Declarant to any other Person until the Applicable Date:

(a) the Regular Assessment shall be pro-rated on a daily basis for any period of time less than a month (the amount required to fund the insurance escrow shall be in addition to the Regular Assessment), and

(b) the Regular Assessment shall be one-half (50%) of the amount of the Regular Assessment set forth in subparagraph (a) for each Dwelling Unit owned by Declarant.

(c) the Regular Assessment or any other Assessment shall not be assessed on any vacant lot owned by Declarant nor on any lot while under construction.

## ARTICLE XI

### Mortgages

**Section 1. Notice to Corporation.** Any Owner who places a first mortgage lien upon his Dwelling Unit, or the Mortgagee, shall notify the Secretary of the Corporation thereof and provide the name and address of the Mortgagee. A record of such Mortgagee's name and address shall be maintained by the Secretary and any notice required to be given to the Mortgagee pursuant to the terms of this Declaration, the By-Laws or otherwise, shall be deemed effectively given if mailed to such Mortgagee at the address shown in such record. Unless notification of any such mortgage and the name and address of the Mortgagee are furnished to the Secretary, either by the Owner or the Mortgagee, no notice to which such Mortgagee as may be otherwise required by this Declaration, the By-Laws or otherwise shall be required and the Mortgagee shall not be entitled by virtue of this Declaration, or the By-Laws, to a proxy granted

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to such Mortgagee in connection with the mortgage, any notice to the Mortgagee pursuant to the terms of this Declaration, the By-Laws or otherwise shall be deemed effectively given if mailed to such Mortgagee at the address shown in such corporate record at the time provided. Unless notification of any such mortgage and the name and address of Mortgagee are furnished to the Secretary, either by the Owner or the Mortgagee, no notice to which such Mortgagee may otherwise be entitled shall be required.

**Section 2. Notice of Certain Actions or Conditions.** The Corporation shall, upon request of a Mortgagee (or insurer or guarantor) who has furnished the Corporation with its name and address as hereinabove provided, furnish such Mortgage (or insurer or guarantor) with written notice of:

- (a) any condemnation loss or any casualty loss which affects a material portion of the subdivision or any Dwelling Unit on which there is a first mortgage;
- (b) any default in the performance by its borrower of any obligations of such borrower under this Declaration or the By-Laws which is not cured within sixty (60) days;
- (c) any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Corporation; and
- (d) any proposed action which would require the consent or approval of Mortgagees under the term of this Declaration or the regulations of either FNMA or FNMLC.

**Section 3. Notice of Unpaid Assessments.** The Corporation shall, upon request of a Mortgagee, a proposed mortgagee, or a proposed purchaser who has a contractual right to purchase a Dwelling Unit, furnish to such Mortgagee or purchaser a statement setting forth the amount of the unpaid Regular Assessments or Special Assessments or other charges against the Dwelling Unit, which statement shall be binding upon the Corporation and the Owners, and any Mortgagee or grantee of the Dwelling Unit shall not be liable for nor shall the Dwelling Unit conveyed be subject to a lien for any unpaid assessments or charges in excess of the amounts

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set forth in such Statement or as such assessments may be adjusted upon adoption of the final annual budget, as referred to in Section 3 of Article X hereof.

**Section 4. Unpaid Taxes and Insurance.** Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which have or may become a lien against any Common Properties (excluding items deemed Common Properties for maintenance) and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for any Common Properties (including items deemed Common Properties for purposes of maintenance).

## ARTICLE XII

### Insurance

#### **Section 1. Casualty Insurance.**

- (a) The Corporation shall purchase a master casualty insurance policy with an "Agreed amount and inflation guard endorsement" and a "blanket building Endorsement" affording fire and extended coverage insurance insuring each Dwelling Unit on Lots 3 through 62 in an amount consonant with the replacement value of the improvements which, in whole or in part, comprise the Dwelling Units, excluding all floor, ceiling and wall coverings and fixtures, betterment and improvements installed by any Owner and excluding any personal property owned by any Owner. If the Board of Directors can obtain such coverage for reasonable amount, it shall also obtain "all risks" coverage. The Board of Directors shall be responsible for reviewing at least annually the amount and type of such insurance and shall purchase such additional insurance as is necessary to provide the insurance required above. If deemed necessary or advisable by the Board, The Board may cause such full replacement value to be determined by a qualified appraiser. Such insurance coverage shall be for the benefit of each Owner and, if applicable, the Mortgagee of each such Owner.
- (b) The Corporation shall purchase a casualty insurance policy with an "agreed amount and inflation guard endorsement" affording fire and extended coverage insurance insuring all Common Properties owned by the Corporation including, but not limited to utilities and recreational equipment in an amount consonant with the full replacement value of the improvements. If the Board of Directors can obtain such coverage for reasonable amount, it shall also obtain "all risk" coverage for such improvements. The Board of Directors shall be responsible for reviewing at least annually the amount and type of such insurance and shall purchase such additional insurance as is necessary to provide the insurance required above. If deemed advisable by the Board, the Board may cause such



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full replacement value to be determined by a qualified appraiser. The cost of any such appraisal shall be a Common Expense of all Owners. Such insurance coverage shall be for the benefit of each Owner and, if applicable, the Mortgagee of each Owner.

- (c) All proceeds payable as a result of casualty losses sustained which are covered by insurance purchased by the Corporation, as herein set forth shall be paid to it or to the Board of Directors. In the event that members of the Board of Directors have not posted surety bonds for the faithful performance of their duties or if such bonds do not equal or exceed the funds which will come into their hands, and there is damage to a part or all of the Common Properties resulting in a loss, the Board of Directors shall obtain and post a bond for the faithful performance of its duties in an amount to be determined by the Board, but not less than 150% of the loss, before the Board shall be entitled to receive the proceeds of the insurance payable as a result of such loss. The sole duty of the Board in connection with any such insurance proceeds shall be to receive such proceeds as are paid and to hold the same for the purposes elsewhere stated herein, and for the benefit of the Owners of the Corporation. The proceeds shall be used or disbursed by the Corporation or the Board, as appropriate, only in accordance with the provisions of this Declaration.

Such casualty insurance policies, and "all risk" coverage, if obtained, shall (to the extent the same are obtainable) contain provisions that the insurer (1) waives its right to subrogation as to any claim against the Corporation, the Board of Directors, its agents and employees, Owners, their respective agents and guests, and (2) waives any defense based on invalidity arising from the acts of the insured, and providing further, if the Board of Directors is able to obtain such insurance upon reasonable terms (a) that the insurer shall not be entitled to contribution against casualty insurance which may be purchased by individual Owners, and (b) that notwithstanding any provision thereof giving the insurer an election to restore damage in lieu of cash settlement, such option shall not be exercisable in the event the Corporation does not elect to restore.

**Section 2. Public Liability Insurance.** The Corporation shall also purchase a master comprehensive public liability insurance policy in such amount or amounts as the Board of Directors shall deem appropriate from time to time; provided that such coverage shall be for at least one million dollars (\$1,000,000.00) for bodily injury, including deaths of persons and property damage arising out of a single occurrence. Such comprehensive public liability insurance policy shall cover all of the Common Properties and shall insure the Corporation, the Board of Directors, any committee of the Corporation or Board, and Managing Agent appointed or employed by the Corporation, all persons acting or who may act as agents or employees of any of the foregoing with

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respect to the Real Estate, all Owners of Dwelling Units and all other persons entitled to occupy any Dwelling Unit. Such public liability insurance policy shall contain a "severability of interest" clause or endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Corporation or other Owners.

**Section 3. Other Insurance.** The Corporation shall also obtain any other insurance required by law to be maintained, including but not limited to workmen's compensation and occupational disease insurance, and such other insurance as the Board of Directors shall from time to time deem necessary, advisable or appropriate, including but not limited to liability insurance on vehicles owned or leased by the Corporation and officers' and directors' liability policies. Such insurance shall inure to the benefit of each Owner, the Corporation, the Board of Directors and any Managing Agent acting on behalf of the Corporation. Each Owner shall be deemed to have delegated to the Board of Directors his right to adjust with the insurance companies all losses under the policies purchased by the Board of Directors the proceeds of which are payable to the Board or the Corporation.

**Section 4. General Provisions.** The premiums for all insurance herein above described shall be paid by the Corporation as part of the Common Expenses. When any such policy of insurance herein above described has been obtained by or on behalf of the Corporation, written notice of the obtainment thereof and of any subsequent changes therein or termination thereof shall promptly be furnished to each Owner or Mortgagee whose interest may be affected thereby, which notice shall be furnished by the officer of the Corporation who is required to send notices of meetings of the Corporation. All policies shall also contain an endorsement to the effect that such policy shall not be terminated for non-payment of premiums without at least thirty- (30) day's prior written notice to the Mortgagee of each Dwelling Unit.

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In no event shall any distribution of insurance proceeds be made by the Board of Directors directly to an Owner where there is a mortgagee endorsement on the certificate of insurance or insurance policy or the Board has notice of a Mortgagee as it applies to such Owner's share of such proceeds. In such event all remittances shall be to the Owner and his Mortgagee jointly. The same restriction on distribution shall apply to the distribution of any condemnation awards in connection with any taking of any of the Common Properties. Notwithstanding the foregoing, under no circumstances shall any distribution of insurance proceeds in excess of amounts needed to repair damage or pay off any first mortgage or any condemnation awards be made by the Corporation to any Owners or Mortgagees if to do so would be in violation of the Act or if the same would constitute a distribution of earnings, profits or pecuniary gain to the members of the Corporation; in any event, any such insurance proceeds or condemnation awards shall be retained by the Corporation for use in the payment of its expenses of operation.

**Section 5. Insurance by Owners.** Each Owner shall be solely responsible for any and may obtain such additional insurance as he deems necessary or desirable, at his own expense, affording coverage upon his personal property, his Dwelling Unit, the contents of his dwelling Unit, his personal property stored anywhere on the Real Estate, and/or his personal liability, but all such insurance shall contain the same provisions for waiver of subrogation as referred to in the foregoing provisions of the master casualty insurance policy to be obtained by the Corporation.

### ARTICLE XIII

#### Casualty and Restoration; Condemnation; Termination

**Section 1. Casualty and Restoration.** In the event of damage to or destruction of the structure or exterior of any Building or Dwelling Unit or in the event of damage to or destruction of any of the Common Properties due to fire or any other casualty or disaster, the Corporation shall promptly

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cause the same to be repaired and reconstructed. The proceeds of insurance carried by the Corporation, if any, shall be applied to the cost of such repair and reconstruction. —

If the insurance proceeds, if any, received by the Corporation as a result of any such fire or any other casualty or disaster are not adequate to cover the cost of repair and reconstruction, or in the event there are no insurance proceeds, (a) the cost for restoring the damage and repairing and reconstructing a Building or Dwelling Unit so damaged or destroyed (or the costs thereof in excess of insurance proceeds received, if any) shall be assessed by the Corporation against all of the Owners in equal shares and (or the cost for restoring the damage and repairing and reconstructing any Common Properties (excluding items deemed Common Properties for maintenance only) so damaged or destroyed (or the cost thereof in excess of insurance proceeds received, if any) shall be assessed by the Corporation against all of the Owners in equal shares. Any such amounts assessed against the Owners shall be assessed as part of the Common Expenses and shall constitute a lien from the time of assessment as provided herein. For the purposes of this Article, repair, reconstruction and restoration shall mean construction or rebuilding the Building so damaged or destroyed to as near as possible the same condition as it existed immediately prior to the damage or destruction and with the same type of architecture.

Immediately after a fire or other casualty or disaster causing damage to any property for which the Board of Directors or corporation has the responsibility of maintenance and repair hereunder, the Board shall obtain reliable and detailed estimates of the cost to place the damaged property in a condition as good as that before the casualty. Such costs may include professional fees and premiums for such bonds as the Board of Directors desires or deems necessary.

Encroachments upon any Dwelling Unit which may be created as a result of such reconstruction or repair of any Building shall not constitute a claim or basis of a proceeding or action for the

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Owner upon whose Dwelling Unit such encroachment exists, provided that such reconstruction was either substantially in accordance with the original plans and specifications or as the Building was originally constructed.

**Section 2. Total or Partial Condemnation.**

- (a) In the event of the condemnation of all or any part of the Common Properties or all or any part of a Building, Dwelling Unit, the Board is hereby authorized to negotiate with the condemning authority and/or to contest an award made for the appropriation of such common Properties, Building or Dwelling Units, for the purpose of such negotiation and/or of contest of such award to the Board as to Building and Dwelling Units, the Board is hereby declared to be the agent and attorney-in-fact of any Owner affected by the condemnation. This appointment of the Board shall be deemed coupled with an interest and shall be irrevocable. Nothing contained herein, however, shall preclude any Owner from asserting any rights or claims to compensation, which cannot be legally asserted by the Board.
- (b) Awards for the taking of all or part of a Building or Dwelling Unit shall be collected by the Board and distributed to the affected Owners. To the extent possible, negotiated awards or awards resulting from a contest shall specify the allocation of the award among Owners affected. In the event that an Owner does not agree with the distribution of an award, such Owner shall be entitled to have the dispute settled by arbitration. The protesting Owner shall appoint one arbitrator, the Board acting as agent for all other affected Owners shall appoint one arbitrator and the two appointed arbitrators shall be binding on all Owners and shall be enforceable.

**Section 3. Termination.** In the event of condemnation of three-fourths (3/4) or more of the Dwelling Units, the remaining Owners may terminate this Declaration and dissolve the Corporation, provided, however, that the restrictions set forth in the Plat and in Article XIV shall remain in full force and effect in accordance with the terms of the Plat and Article XVIII of this Declaration.

**ARTICLE XIV**

**Restrictions, Covenants and Regulations**

**Section 1. Restrictions on Use.** The following covenants and restrictions on use and enjoyment of the Dwelling Units and Common Properties shall be in addition to any other covenants or restrictions contained herein or in any plat of any part of the Real Estate heretofore or hereafter

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recorded, and all such covenants and restrictions are for, the mutual benefit and protection of the present and future Owners and shall run with the land and inure to the benefit and protection of the present and future Owners and shall run with the land and inure to the benefit of and be enforceable by a Owner, or by the Corporation. Present or future Owners or the Corporation shall be entitled to injunctive relief against any violations thereof, but there shall be no right of reversion or forfeiture resulting from such violation. These covenants and restrictions are as follows:

- (a) All Dwelling Units shall be used exclusively for residential purposes.
- (b) Nothing shall be done or kept in any Dwelling Unit, or on any Real Estate, or any Dwelling Unit or the contents thereof or on any Common Properties. No Owner shall permit anything to be done or kept in his Dwelling Unit or on any Real Estate or on any of the Common Properties which will result in a cancellation of insurance on any Dwelling Unit or any part of the Common Properties, or which would be in violation of any law or ordinance or the requirements of any insurance underwriting or rating bureau.
- (c) No nuisance shall be permitted and no waste shall be committed in any Dwelling Unit
- (d) No Owner shall cause or permit anything to be hung or displayed on the outside of the windows of his Dwelling Unit or placed on the outside walls of any building, and no sign, awning, canopy, shutter or radio or television antenna or other attachment or thing shall be affixed to or placed upon the exterior walls or roofs or any other parts of the Dwelling Unit without the prior consent of the Architectural Review Board.
- (e) No animals, livestock or poultry of any kind shall be raised, bred or kept in any Dwelling Unit or any of the Common Properties, except that pet dogs, cats or customary household pets may be kept in a Dwelling Unit, provided that such pet is not kept, bred or maintained for any commercial purpose and does not create a nuisance. Pets shall be taken outdoors only under leash or other restraint and while attended by its owner or an Owner shall be fully liable for any injury or damage to persons or property, including the Common Properties, caused by his pet. The tethering of pets in any area does not constitute "attended." The Board may adopt such other rules and regulations regarding pets as it may deem necessary from time to time including, but not limited to, a requirement that an Owner desiring to bring or maintain a pet on the Real Estate shall deposit with the Board a security deposit in an amount to be determined by the Board to cover any damage that may be caused by such pet to the Common Properties. Any such security deposit shall be returned to the Owner when the pet is permanently removed from the Real Estate, except to the extent said deposit has been used or is needed to repair damaged caused by such

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pet. Any requirement for the depositing of such security deposit shall not be deemed to relieve or in any way limit an Owner's responsibility and liability for injury or damage caused by his pets. Any pet which, in the judgment of the Board, is causing or creating a nuisance or unreasonable disturbance of noise, shall be permanently removed from the Real Estate within ten (10) days after written notice from the Board to the respective Owner to do so.

(f) Nothing shall be done or permitted in any Dwelling Unit which will impair the structural integrity of any of the Common Properties or which would structurally change any of the Common Properties. No Dwelling Unit or Lot shall be used in any unlawful manner or in any manner which might cause injury to the reputation of the condominiums developed on the Real Estate, or which might be a nuisance, annoyance, inconvenience or damage to other Owners and occupants of Dwelling Units or neighboring property, including without limiting the generality of the foregoing, noise by the use of any musical instruments, radio, television, loud speakers, electrical equipment, amplifiers or other equipment or machines or loud persons.

(g) No clothes, sheets, blankets, rugs, laundry or other things shall be hung out or exposed on, or so as to be visible from any part of the Common Properties or any public street. The Common Properties shall be kept free and clear of rubbish, debris and other unsightly materials.

(h) No industry, trade or other commercial or religious activity, educational or otherwise, designed for profit, altruism or otherwise, shall be conducted, practiced or permitted on the Real Estate

(i) No "for sale," "rent," or "for lease" sign, or other sign, or other window advertising display shall be maintained or permitted on any part of the Real Estate, and Dwelling Unit without the prior consent of the Board; provided, however, that the right is reserved by the Declarant and the Board to place or allow to be placed "for sale" or "for lease" signs on or about the Real Estate in connection with any unsold or unoccupied Dwelling Units and nothing contained herein shall be construed or interpreted to affect or restrict the activities of Declarant in the marketing, advertising or sale of Dwelling Units as a part of the development of this condominium Community.

(j) All Owners and members of their families, their guests, or invitees, and all occupants right to use and enjoy the Common Properties or any part thereof, shall observe and be governed by such rules and regulations as may from time to time be promulgated and issued by the Board governing the operation, use and enjoyment of the Common Properties.

(k) No boats, campers, trailers of any kind, buses, mobile homes, trucks, motorcycles, mini bikes, mopeds, or any other vehicles of any description other than normal passenger automobiles shall be permitted, parked or stored anywhere within

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the Real Estate; provided, however, that nothing herein shall prevent the parking or storage of such vehicles completely enclosed within a garage. No repair work shall be done on the Real Estate on any vehicles, including passenger vehicles.

(l) No Owner shall be allowed to plant trees, landscape or do any gardening in any of the Common Properties (including lawns which are deemed Common Properties for maintenance only), except with express permission from the Board.

(m) No Owner shall remove any tree without the written approval of the Board.

(n) Each Owner shall keep his Dwelling Unit in good order, condition and repair and free of debris, all in a manner and with such frequency as is consistent with good property management. In the event an Owner shall fail to so maintain his Dwelling Unit, the Corporation, after notice to the Owner and approval by a majority vote of all Owners, shall have the right to enter upon said Dwelling Unit to correct, repair, maintain and restore the Dwelling Unit. All costs incurred by the Corporation related to such correction, repair, maintenance or restoration shall be and constitute a Special Assessment against such Dwelling Unit, payable by the Owner upon demand by the Corporation.

(o) All garbage, trash and refuse shall be stored in appropriate containers inside the Dwelling Units (including garages) and shall be kept therein until not earlier than sundown of the evening before scheduled trash collection. Garbage, trash and refuse shall be placed in sealed disposable plastic bags or other containers approved by the Board for scheduled trash collection and shall be placed at such locations for trash collections as are designated by the Board or the Department of Public Works.

(p) Common Properties shall be used and enjoyed only for the purposes for which they are designed and intended, and shall be used subject to the rules and regulations from time to time adopted by the Board.

Notwithstanding anything to the contrary contained herein or in the Articles or By-Laws, including but not limited to any covenants and restrictions set forth herein or otherwise, Declarant shall have, until the Applicable Date, the right to use and maintain the Common Properties and any Dwelling Units owned by Declarant and other portions of the Real Estate (other than individual Dwelling Units owned by Persons other than Declarant), all of such number and size and at such locations as Declarant in its sole discretion may determine, as Declarant may deem advisable or necessary in its sole discretion to aid in the construction and sale of Dwelling Units or for the conducting of any business or activity attendant thereto,



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including, but not limited to, model Dwelling Units, storage areas, construction yards, signs, construction offices, sales offices, management offices and business offices. Declarant shall have the right to relocate any or all of the same from time to time as it desires. At no time shall any of such facilities so used or maintained by Declarant be or become part of the Common Properties, unless so designated by Declarant, and Declarant shall have the right to remove the same from the Real Estate at any time.

## ARTICLE XV

### Amendment of Declaration

**Section 1. Generally.** Except as otherwise provided in this Declaration, amendments to this Declaration shall be proposed and adopted in the following manner:

- (a) **Notice.** Notice of the subject matter of any proposed amendment shall be included in the notice of the meeting at which the proposed amendment is to be considered.
- (b) **Resolution.** A resolution to adopt a proposed amendment may be proposed by the Board of Directors or Owners having in the aggregate at least a majority of the votes on all Owners.
- (c) **Adoption.** Any proposed amendment to this Declaration must be approved by seventy-five percent (75%) of all Owners. The instrument of amendment must be signed by such Owners and recorded. In the event any Dwelling Unit is subject to a first mortgage, the Mortgagee shall be notified of the meeting and the proposed amendment in the same manner as an Owner if the Mortgagee has given prior notice of its mortgage interest to the Board of Directors in accordance with provisions hereof.
- (d) **Special Amendments – Sixty-Seven percent (67%) of Mortgage on Required.** No amendment to this Declaration shall be adopted which changes the provision hereof which establish, provide for, govern or regulate (1) the applicable share of an Owner's liability for the Common Expenses, or the method of determining the same, (2) Article XII of this Declaration with respect to casualty insurance to be maintained by the Corporation, (3) Article XIII of this Declaration with respect to reconstruction or repair of the Common Properties or Dwelling Units in the event of fire or any other casualty or disaster, (4) establishment of the Architectural Review Board and its functions, (5) voting

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rights, (6) assessments, assessment liens or subordination of such insurance and fidelity bonds, (9) rights to the use of the Common Properties and Dwelling Units, (10) boundaries of the Common Properties, (11) the leasing of Dwelling Units, (12) imposition of any right of first refusal or similar restriction on the right of an Owner to sell, transfer or otherwise convey; or (13) the rights of mortgagees or insurers or guarantors of first mortgages on Dwelling Units; without, in each and any of such circumstances, the approval of mortgagees (which mortgage interests have been known to the Board of Directors) holding mortgages on Dwelling Units which have at least sixty-seven (67%) of the votes of Dwelling Units which are subject to mortgages, provided that a Mortgagee who receives written notice of a proposed amendment and does not deliver or mail a negative response to the Secretary of the Board of Directors within thirty (30) days of said notice shall be deemed to have approved the proposed amendment.

- (e) **Recording.** Each amendment to the Declaration shall be executed by the President and Secretary of the Corporation and shall be recorded in the office of the Recorder of Hendricks County, Indiana, and such amendment shall not become effective until so recorded.

**Section 2. Amendments by Declarant Only.** Notwithstanding the foregoing or anything elsewhere contained herein, the Declarant shall have and hereby reserves the right and power acting alone and without the consent or approval of the Owners, the Corporation, the Board of Directors, any Mortgagees or any other Person to amend or supplement this Declaration at any time and from time to time if such amendment or supplement is made (a) to comply with requirements of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, or any other governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities (b) to induce any of such agencies or entities to make, purchase, sell, insure or guarantee first mortgages covering Dwelling Units, (c) to bring this Declaration into compliance with any statutory requirements, (d) or to correct clerical or typographical errors.

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ARTICLE XVI

Acceptance and Ratification

This Declaration of the By-Laws shall have been provided to each Owner on or before the closing of the sale of such Owner's Dwelling Unit, and all present and future Owners, mortgagees, tenants, and occupants of the Dwelling Units, and other Persons claiming by, through or under them, shall be subject to and shall Comply with the provisions of this Declaration, the Articles, the By-Laws, and the rules and regulations adopted by the Board of Directors, as each may be amended or supplemented from time to time. The acceptance of a deed of conveyance or the act of occupancy of any Dwelling Unit shall constitute an agreement that the provision of this Declaration, the Articles, the By-Laws, and rules and regulations, as each may be amended or supplemented from time to time, are accepted and ratified by such owner, tenant, occupant, and all such provisions shall be covenants running with the land and shall bind any person having at any time any interest or estate in a Dwelling Unit or the Real Estate, all as though such provisions were recited and stipulated at length in each and every deed, conveyance, mortgage or lease thereof. All Persons who may own, occupy, use, enjoy or control a Dwelling Unit or any part of the Real Estate in any manner shall be subject to this Declaration, the Articles, the By-Laws, and the rules and regulations applicable thereto as each may be amended or supplemented from time to time.

ARTICLE XVII

Negligence

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Each Owner shall be liable for the expense of any maintenance, repair or replacement rendered necessary by his negligence or by that of any members of his family or their guest, employees, agents, invitees or lessees, to the extent that such expense is not covered by the proceeds of insurance carried by the Corporation. An Owner shall pay the amount of any increase in insurance premiums occasioned by his use, misuse, occupancy or abandonment of his Dwelling Unit or its appurtenances or of the Common Properties.

### ARTICLE XVIII

#### Benefit and Enforcement

The Declaration and the Restrictions shall run with and bind the Real Estate for a term commencing on the date this Declaration is recorded in the office of the Recorder of Hendricks County, Indiana, and expiring December 31, 2040, after which time they shall be automatically extended for successive periods of ten (10) years each unless by vote of a majority of the then Owners it is agreed to change this Declaration or the Restrictions in whole or in part, or to terminate the same.

In the event of a violation, or threatened violation, of any of the covenants, conditions or restrictions set forth in this Declaration (so long as Declarant remains an owner of any Dwelling Unit,) the Board, or any owner, shall have the right to enforce the covenants, conditions and restrictions contained herein and to pursue any and all remedies, at law or in equity, available under applicable Indiana law, with or without proving any actual damages, including the right to secure injunctive relief or secure removal by due process of any item not in compliance with the covenants, conditions and restrictions contained herein, and shall be entitled to recover reasonable attorneys' fees and the costs and

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expenses incurred as a result thereof. The failure or delay at any time of Declarant, the Corporation, the Owners, or any other Person entitled to enforce this Declaration and the Restrictions, to enforce any of the same shall in no event be deemed a waiver of the right to enforce the same at any time or from time to time thereafter, or an estoppel against the enforcement thereof.

**ARTICLE XIX**

**FHA and VA Approval**

If Mortgages on the Dwelling Units are insured by any agency of the federal government, so long as there is a Class "B" membership in the Corporation, amendments of this Declaration pursuant to Article XI, and conveyance of Common Properties pursuant to Article III, the owners of Dwelling Units must provide the Corporation prior written notice to the name and address of the federal agency.

**ARTICLE XX**

**Miscellaneous**

**Section 1. Costs and Attorneys' Fees.** In any proceeding arising because of failure of an Owner to make any payments required by this Declaration, the Articles, or the By-Laws, or the comply with any provision of this Declaration, the Articles, the By-Laws, or the rules and regulations adopted pursuant thereto, as each may be amended from time to time, the Corporation shall be entitled to recover its costs and reasonable attorneys' fees incurred in connection with such default or failure.

**Section 2. Severability Clause.** The invalidity of any covenant, restriction, condition, limitation or other provisions of this Declaration, the Articles or the By-Laws shall not impair or affect in any manner the validity, enforceability or effect of the rest of

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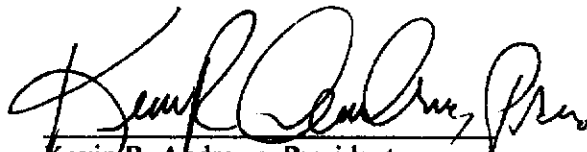
this Declaration, the Articles or the By-Laws and each shall be enforceable to the greatest extent permitted by law.

**Section 3. Pronouns.** Any reference to the masculine, feminine, or neuter gender herein shall, unless the context clearly requires the contrary, be deemed to refer to and include all genders. Words in the singular shall refer to and include all genders. Words in the singular shall include and refer to the plural and vice versa, as appropriate.

**Section 4. Interpretation.** The captions and titles of the various articles, sections, subsections, paragraphs and subparagraphs of the Declaration are inserted herein for ease and convenience of reference only and shall not be used as an aid in interpreting or construing this Declaration of any provision hereof.

**IN WITNESS WHEREOF,** ARK Developers, Inc., Declarant, has executed this Declaration on the day and year first herein above set forth.

ARK Developers, Inc.

  
Kevin R. Andrews, President

Attest:

  
Lisa C. Andrews, Vice President

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Now known as NottingHill, Section 1, as per plat thereof, recorded in the office of the Hendricks County Recorders Office.

STATE OF INDIANA )  
 ) SS:  
COUNTY OF HENDRICKS )



Before me, a Notary Public, in and for said County and State, personally appeared ARK Developers, Inc., by Kevin R. Andrews, its President, and Lisa C. Andrews, its Vice President, who acknowledged the execution of the foregoing Declaration of Covenants, Conditions, and Restrictions of Nottinghill and who, having been duly sworn, stated that the representations therein contained are true.

WITNESS my hand seal this 15<sup>th</sup> day of May 2001.

My Commission Expires:

01/26/2008

County of Residence:

Hendricks

Rachel M. Andrews

Signature

RACHEL M. ANDREWS

Printed

This instrument prepared by Kevin R. Andrews - 1660 E.  
Main Street Plainfield, IN. 46168

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## EXHIBIT "A"

A part of the East Half of the Northwest Quarter of Section 28, Township 15 North, Range 1 East, of the Second Principal Meridian, Town of Plainfield, Hendricks County, Indiana, described as follows:

BEGINNING at a railroad spike found at the southwest corner of said East Half; thence North 00 degrees 00 minutes 00 seconds East along the West line of said East Half 1258.34 feet to a 5/8 inch rebar with cap stamped "BANNING ENG LS29800001" (herein referred to as "rebar") set; thence North 89 degrees 56 minutes 45 seconds East 163.81 feet to a rebar set; thence South 00 degrees 03 minutes 15 seconds East 20.88 feet to a rebar set; thence South 89 degrees 58 minutes 21 seconds East 275.20 feet to a rebar set; thence South 00 degrees 00 minutes 15 seconds West 7.22 feet to a rebar set; thence South 89 degrees 59 minutes 45 seconds East 117.16 feet to a rebar set on the west line of the land of Charles F. Lieske as described in Instrument No. 1999-31372, Book 148, Pages 1079-1085 in the Office of the Recorder of said county; thence South 00 degrees 02 minutes 06 seconds East along said west line 968.43 feet to a rebar found at the northwest corner of Blanton Meadows, Section One as per plat thereof recorded in Plat Book 8, Page 3 in said county records; thence South 00 degrees 02 minutes 24 seconds West along the west line thereof 255.19 feet to a MAG nail with "LS29800001" tag set on the South line of said East Half; thence South 89 degrees 19 minutes 01 seconds West along said South line 556.63 feet to the POINT OF BEGINNING. Containing 15.827 acres, more or less.



20050004238  
Filed for Record in  
HENDRICKS COUNTY IN  
THERESA D LYNCH  
02-15-2005 At 01:49 PM.  
AMEND COVEN 41.00

**AMENDMENT TO DECLARATION OF COVENANTS  
CONDITIONS AND RESTRICTIONS OF  
NOTTINGHILL HOA, INC.**

THIS Amendment to Declaration of Covenants Conditions and Restrictions of Nottinghill, HOA, Inc. (this "Amendment") is executed this \_\_\_\_ day of December 2004.

WITNESSETH:

WHEREAS, the DECLARATION OF COVENANTS CONDITIONS AND RESTRICTIONS OF NOTTINGHILL, HOA, INC. (the "Declaration") was recorded on June 19, 2001, in Public Record Volume 250, page 1583, as Instrument Number 2001-17208, in the Office of the Recorder of Hendricks County, Indiana; and

WHEREAS, the Declaration was executed by Kevin R. Andrews and Lisa C. Andrews, as President and Vice-President, respectively, of ARK Developers, Inc.; and

WHEREAS, Kevin R. Andrews and Lisa C. Andrews, husband and wife, as the actual owners of the real estate encumbered by the Declaration on the date of its recordation, executed that certain RATIFICATION OF COVENANTS (the "Ratification"), recorded October 17, 2001, in Public Record Volume 283, page 899, as Instrument Number 2001-31110, in the office of the Recorder of Hendricks County, Indiana, in an attempt to ratify the Declaration and to perfect its encumbrance on the real estate referenced in Exhibit A attached thereto; and

WHEREAS, the Ratification referenced the incorrect recording information for the Declaration, as the Declaration was in fact recorded in Public Record Volume 250, pages 1583-1630, and not in Public Record Volume 250, pages 583-630, as erroneously indicated in the Ratification; and

WHEREAS, the Declaration, as executed and initially recorded, encumbers only the real estate referred to in Exhibit A, attached to the Declaration, which real estate is known as "Nottinghill - Section One," as per plat thereof recorded June 19, 2001, in Plat Cabinet 4, Slide 60, pages 1A and 1B; Certificate of Correction recorded July 8, 2002, in Public Record Volume 343, page 2619, as Instrument Number 2002-22193, in the office of the Recorder of Hendricks County, Indiana; and

WHEREAS, "Nottinghill - Section Two" was created pursuant to the plat thereof recorded December 13, 2001, in Plat Cabinet 4, Slide 161, pages 2A and 2B, in the office of the Recorder of Hendricks County, Indiana; and

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**WHEREAS**, the owners of Nottingham - Section One, desire to amend the Declaration as herein provided, in accordance with the terms and provisions of the Declaration pertaining to amendments thereto; and

**WHEREAS**, the owners of Nottingham - Section Two, in order to provide for the preservation and enhancement of property values within Nottingham - Section Two, desire to ratify the Declaration, including this Amendment, and to encumber all areas within Nottingham - Section Two by the terms and conditions of the Declaration, including this Amendment.

**NOW THEREFORE**, the undersigned, being all of the owners of Nottingham - Section One and Nottingham - Section Two, do hereby amend and ratify the Declaration, as applicable, in the manner set forth below.

1. The above recitals are hereby incorporated as if fully set forth herein.
2. The title of the Declaration is hereby amended, and shall hereinafter read as follows:

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF NOTTINGHILL, SECTIONS ONE AND TWO**

3. Any reference, in this Amendment or in the Declaration, to "Nottingham," the "Development," the "Subdivision," the "Addition," or any other similar term or phrase shall, unless otherwise specified herein, refer to the entire development consisting of Nottingham, Sections One and Two. It is the intent of the undersigned owners that the Declaration and this Amendment shall equally encumber both Sections One and Two of Nottingham.
4. Exhibit A, attached to the Declaration, is hereby deleted in its entirety and replaced with Exhibit A attached to this Amendment.
5. Article I ("Definitions"), Section 1, is hereby amended as follows (each of the following subparagraphs shall replace entirely the corresponding subparagraph of the same letter within the Declaration):
  - (b) "Applicable Date" shall mean and refer to the first to occur of the following dates: (1) the date on which eighty percent (80%) of the total number of Dwelling Units proposed for the development known as Nottingham (which proposed number shall be the number of Dwelling Units approved for the development of Nottingham by the Town of Plainfield, Indiana) have been conveyed to Owners other than Declarant; and (2) May 25, 2011.

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(j) "Corporation" shall mean and refer to NOTTINGHILL OWNERS ASSOCIATION, INC., an Indiana not-for-profit corporation, its successors and assigns. Any reference in the Declaration to "Nottingham HOA, Inc." or the "Corporation" shall mean and refer to NOTTINGHILL OWNERS ASSOCIATION, INC., its successors and assigns.

(k) "Declarant" shall mean and refer to Kevin R. Andrews and Lisa C. Andrews, husband and wife, or their successors and/or assigns with regard to the development of Nottingham Sections One and Two and the appurtenant ownership of lots and/or Dwelling Units within the overall development.

6. Article III, Section 1, subparagraph (c), is hereby amended to read as follows:

(c) club house (existing barn to be used as such).

7. The following items are hereby added to Article III, Section 1, immediately following subparagraph (c), as amended above:

(d) area previously approved by the Town of Plainfield for a swimming pool and tennis courts within Nottingham. Such swimming pool and tennis courts will not be constructed by Declarant, and the areas previously approved for such uses will be reserved as grassy Common Properties.

(e) area previously approved by the Town of Plainfield for a parking lot located on the south side of Nottingham Circle. Such parking lot will not be constructed by Declarant, and the area previously approved for such use will be maintained as a grassy Common Property.

8. The final paragraph of Article III, Section 1 is hereby deleted in its entirety and replaced with the following:

"Upon final construction or provision of the Common Properties described above, and prior to the closing on the sale by the Declarant of the thirty-second (32<sup>nd</sup>) Dwelling Unit subject to this Declaration, Declarant shall convey all of its right, title and interest in and to the Common Properties to the Corporation. Thereafter, all such right, title and interest in and to such Common Properties shall be held solely by the Corporation, and the Corporation shall be responsible for all maintenance, repair and upkeep of all such areas, at its sole cost and expense. Until such time that the Declarant conveys the Common Properties, or any portion thereof, to the Corporation, Declarant shall be responsible for the maintenance and upkeep, including mowing of grassy areas and maintenance of the ponds, of all portions of the Common Properties not yet transferred. As to the Common Properties and all portions thereof, the

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Owners of Dwelling Units shall retain only a non-exclusive easement right therein, as described in Article II, Section 2 of this Declaration."

9. The "Development Standards" indicated in Article IX, under the heading "Area 'A' - Lots 3 through 60," shall apply equally to all lots within Nottinghill Sections One and Two, with the exception of Lots One (1) and Two (2) in Nottinghill, Section One, which two lots shall comply with the development standards indicated in Article IX, under the heading "Area 'B' - Lots One (1) and Two (2)." In connection with this provision, the heading "Area 'A' - Lots 3 through 60" in Article IX is hereby replaced with the heading "Area 'A' - Lots Three (3) through Sixty-two (62)."
10. Article IX, "Area 'A' - Lots 3 through 60" (to be renamed hereinafter as set forth above), paragraph 7 is hereby amended as follows:  

Minimum Main Floor Area - The minimum main floor area of the primary building, exclusive of garages, carports, decks, patios and open porches:

  - a. One-story building - 1,500 square feet
  - b. Two or more story building - 1,700 square feet

11. The following paragraphs are hereby added to Article IX, "Area 'A' - Lots 3 through 60" (to be renamed hereinafter as set forth above):

(10) Roof pitch on all primary buildings shall be a minimum of 8/12 pitch

(11) Exterior colors of brick, roof and trim shall remain consistent with those originally approved for Nottinghill by the Town of Plainfield, Indiana, and/or those existing at the time of execution of this Amendment

(12) All homes are to be custom built and shall consist of 100% masonry exterior, utilizing the same brick originally approved for Nottinghill by the Town of Plainfield, Indiana, and/or that currently being used for Dwelling Units existing at the time of execution of this Amendment. Stone accents shall not be required; however, they shall remain an optional feature for owners of newly constructed Dwelling Units

(13) All mailboxes shall be consistent with those existing at the time of execution of this Amendment

(14) Carriage-house style garage doors and cupolas shall not be required; however, they shall remain an optional feature for owners of newly constructed Dwelling Units

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(15) The style of front door on Dwelling Units that exists at the time of execution of this Amendment shall not be required; however, such style shall remain an optional feature for owners of newly constructed Dwelling Units

12. Article IX, "Additional Area 'A' and 'B' Commitments", paragraph 8 is hereby deleted in its entirety and replaced with the following:

(8) A community clubhouse with a gravel access drive will be provided no later than at the completion of the final lot sale in Nottingham - Section One.

13. The Declarant agrees to clean up trash and refuse on the vacant lots and, until taken over by the Corporation in accordance with the terms and conditions of the Declaration and this Amendment, the Common Properties.

All other terms, conditions, covenants and restrictions of the Declaration shall remain in full force and effect as written. In the event of a conflict between any term or terms in the Declaration and any term or terms in this Amendment, the provisions of this Amendment shall prevail. It is the intent of the undersigned that the provisions of the Declaration shall be interpreted so as to harmonize as closely as possible with the provisions of this Amendment.

So AMENDED and RATIFIED, as applicable, the day and year first above written.

Kevin R. Andrews  
Kevin R. Andrews, Declarant

Lisa C. Andrews  
Lisa C. Andrews, Declarant

Jerry V. West  
Jerry V. West, Owner

Lisa R. West  
Lisa R. West, Owner

Robert D. Wallenbrock  
Robert D. Wallenbrock, Owner

Sharene L. Wallenbrock  
Sharene L. Wallenbrock, Owner

Thomas J. Allison  
Thomas J. Allison, Owner

Vicky L. Allison  
Vicky L. Allison, Owner

John W. Bauer  
John W. Bauer, Owner

Jeanna A. Bauer  
Jeanna A. Bauer, Owner

Jerry Whitis  
Jerry Whitis, Owner

Kathy Whitis  
Kathy Whitis, Owner

Charles E. Bell  
CHARLES E. BELL

Diane L. Bell  
DIANE L. BELL

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Harry E. Walls  
Harry Walls, Owner

Catherine Walls  
Catherine Walls, Owner

Nancy C. Hamblen  
Nancy C. Hamblen, Owner

Linda F. Knob  
Linda F. Knob, Owner

Ralph Locke  
Ralph Locke, Owner

Phyllis Locke  
Phyllis Locke, Owner

Steven S. Cagle  
Steven S. Cagle, Trustee of the Steven S. Cagle Revocable Trust Dated May 14, 1999, Owner

David W. Shaw  
David W. Shaw, Co-Trustee of the David W. Shaw and Shirley A. Shaw Revocable Living Trust, Dated 3-21-2000, Owner

Shirley A. Shaw  
Shirley A. Shaw, Co-Trustee of the David W. Shaw and Shirley A. Shaw Revocable Living Trust, Dated 3-21-2000, Owner

William E. Furman  
William Furman, Owner

Barbara Furman  
Barbara Furman, Owner

~~This Amendment has been reviewed in connection with the Declaration, and is hereby approved by the Town of Plainfield, Indiana.~~

~~J. Higbee, Director of Planning and Zoning~~

~~\_\_\_\_\_, President  
Town of Plainfield Planning Commission~~

~~\_\_\_\_\_, Secretary  
Town of Plainfield Planning Commission~~

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STATE OF INDIANA )  
 ) SS:  
COUNTY OF HENDRICKS )

Before me, a Notary Public in and for said County and State, personally appeared Kevin R. Andrews and Lisa C. Andrews, husband and wife, who acknowledged the execution of the foregoing Amendment, and who, having been duly sworn, stated that any representations therein contained are true.

Witness my hand and Notarial Seal this 5<sup>th</sup> day of ~~December~~ <sup>January</sup> 2004.

My Commission Expires:  
11-26-07

County of Residence:  
Hendricks

[Signature]  
Signature of Notary Public

Lisa R. West  
Printed Name of Notary Public



STATE OF INDIANA )  
 ) SS:  
COUNTY OF HENDRICKS )

Before me, a Notary Public in and for said County and State, personally appeared Jerry V. West and Lisa R. West, husband and wife, who acknowledged the execution of the foregoing Amendment, and who, having been duly sworn, stated that any representations therein contained are true.

Witness my hand and Notarial Seal this 5<sup>th</sup> day of ~~December~~ <sup>January</sup> 2005.

My Commission Expires:  
01/26/08

County of Residence:  
Hendricks

[Signature]  
Signature of Notary Public

JERRY M. ANDREWS  
Printed Name of Notary Public

CB

STATE OF INDIANA )  
 ) SS:  
COUNTY OF HENDRICKS )

Before me, a Notary Public in and for said County and State, personally appeared Robert D. Wallenbrock and Sharene L. Wallenbrock, husband and wife, who acknowledged the execution of the foregoing Amendment, and who, having been duly sworn, stated that any representations therein contained are true.

Witness my hand and Notarial Seal this 31st day of December 2004.

My Commission Expires:  
May 23, 2010

County of Residence:  
Hendricks

Patricia C. Kwoll  
Signature of Notary Public

PATRICIA C. KWOLL  
Printed Name of Notary Public

STATE OF INDIANA )  
 ) SS:  
COUNTY OF HENDRICKS )

Before me, a Notary Public in and for said County and State, personally appeared Thomas J. Allison and Vicky L. Allison, husband and wife, who acknowledged the execution of the foregoing Amendment, and who, having been duly sworn, stated that any representations therein contained are true.

Witness my hand and Notarial Seal this 31st day of December 2004.

My Commission Expires:  
May 23, 2010

County of Residence:  
Hendricks

Patricia C. Kwoll  
Signature of Notary Public

PATRICIA C. KWOLL  
Printed Name of Notary Public



STATE OF INDIANA )  
 ) SS:  
COUNTY OF HENDRICKS )

Before me, a Notary Public in and for said County and State, personally appeared John W. Bauer and Jeanna A. Bauer, husband and wife, who acknowledged the execution of the foregoing Amendment, and who, having been duly sworn, stated that any representations therein contained are true.

Witness my hand and Notarial Seal this 30 day of December 2004.

My Commission Expires:  
3-8-2009

County of Residence:  
Hendricks

[Signature]  
Signature of Notary Public

Kelly D Bassler  
Printed Name of Notary Public

STATE OF INDIANA )  
 ) SS:  
COUNTY OF HENDRICKS )

Before me, a Notary Public in and for said County and State, personally appeared Jerry Whitis and Kathy Whitis, husband and wife, who acknowledged the execution of the foregoing Amendment, and who, having been duly sworn, stated that any representations therein contained are true.

Witness my hand and Notarial Seal this 31st day of December 2004.

My Commission Expires:  
May 23, 2010

County of Residence:  
Hendricks

[Signature]  
Signature of Notary Public

PATRICIA C. KNOLL  
Printed Name of Notary Public

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STATE OF INDIANA )  
 ) SS:  
COUNTY OF HENDRICKS )

Before me, a Notary Public in and for said County and State, personally appeared Harry Walls and Catherine Walls, husband and wife, who acknowledged the execution of the foregoing Amendment, and who, having been duly sworn, stated that any representations therein contained are true.

Witness my hand and Notarial Seal this 30 day of December 2004.

My Commission Expires:

3-8-2009

County of Residence:

Hendricks

Kelly D. Bassler  
Signature of Notary Public

Kelly D. Bassler  
Printed Name of Notary Public

STATE OF INDIANA )  
 ) SS:  
COUNTY OF HENDRICKS )

Before me, a Notary Public in and for said County and State, personally appeared Nancy C. Hamblen, who acknowledged the execution of the foregoing Amendment, and who, having been duly sworn, stated that any representations therein contained are true.

Witness my hand and Notarial Seal this 30 day of December 2004.

My Commission Expires:

3-8-2009

County of Residence:

Hendricks

Kelly D. Bassler  
Signature of Notary Public

Kelly D. Bassler  
Printed Name of Notary Public

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STATE OF INDIANA )  
 ) SS:  
COUNTY OF HENDRICKS )

Before me, a Notary Public in and for said County and State, personally appeared Linda F. Knob, who acknowledged the execution of the foregoing Amendment, and who, having been duly sworn, stated that any representations therein contained are true.

Witness my hand and Notarial Seal this 30 day of December 2004.

My Commission Expires:  
10-14-2007

County of Residence:  
Morgan

Diana G DeFur  
Signature of Notary Public

DIANA G DeFUR  
Printed Name of Notary Public

STATE OF INDIANA )  
 ) SS:  
COUNTY OF HENDRICKS )

Before me, a Notary Public in and for said County and State, personally appeared Ralph Locke and Phyllis Locke, husband and wife, who acknowledged the execution of the foregoing Amendment, and who, having been duly sworn, stated that any representations therein contained are true.

Witness my hand and Notarial Seal this 30 day of December 2004.

My Commission Expires:  
3-8-2009

County of Residence:  
Hendricks

Kelly D. Bassler  
Signature of Notary Public

Kelly D. Bassler  
Printed Name of Notary Public

17

STATE OF INDIANA )  
 ) SS:  
COUNTY OF HENDRICKS )

Before me, a Notary Public in and for said County and State, personally appeared Steven S. Cagle, Trustee of the Steven S. Cagle Revocable Trust Dated May 14, 1999, who acknowledged the execution of the foregoing Amendment, and who, having been duly sworn, stated that any representations therein contained are true.

Witness my hand and Notarial Seal this 30 day of December 2004.

My Commission Expires:  
10-14-2009

County of Residence:  
Morgan

Diana G DeFur  
Signature of Notary Public

DIANA G DEFUR  
Printed Name of Notary Public

STATE OF INDIANA )  
 ) SS:  
COUNTY OF HENDRICKS )

Before me, a Notary Public in and for said County and State, personally appeared David W. Shaw and Shirley A. Shaw, Co-Trustees of the David W. Shaw and Shirley A. Shaw Revocable Living Trust, Dated 3-21-2000, who acknowledged the execution of the foregoing Amendment, and who, having been duly sworn, stated that any representations therein contained are true.

Witness my hand and Notarial Seal this 30 day of December 2004.

My Commission Expires:  
3-8-2009

County of Residence:  
Hendricks  
Printed Name of Notary Public

Kelly D. Passler  
Signature of Notary Public

Kelly D. Passler

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STATE OF INDIANA )  
 ) SS:  
COUNTY OF HENDRICKS )

CHARLES E. BELL

~~DIANE L. BELL~~ Before me, a Notary Public in and for said County and State, personally appeared ~~Robert D. Wallenbrook and Sheroc L. Wallenbrook~~, husband and wife, who acknowledged the execution of the foregoing Amendment, and who, having been duly sworn, stated that any representations therein contained are true.

Witness my hand and Notarial Seal this 30 day of December 2004.

My Commission Expires:  
3-8-2009

County of Residence:  
Hendricks

Kelly D. Bassler  
Signature of Notary Public

Kelly D. Bassler  
Printed Name of Notary Public

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STATE OF INDIANA )  
 ) SS:  
COUNTY OF HENDRICKS )

Before me, a Notary Public in and for said County and State, personally appeared William Furman and Barbara Furman, husband and wife, who acknowledged the execution of the foregoing Amendment, and who, having been duly sworn, stated that any representations therein contained are true.

Witness my hand and Notarial Seal this 30 day of December 2004.

My Commission Expires:  
3-8-2009

Kelly D. Boster  
Signature of Notary Public

County of Residence:  
Hendricks

Kelly D. Boster  
Printed Name of Notary Public

~~STATE OF INDIANA )  
 ) SS:  
COUNTY OF HENDRICKS )~~

~~Before me, a Notary Public in and for said County and State, personally appeared J. Higbee, Director of Planning and Zoning for the Town of Plainfield, Indiana, who acknowledged the execution of the foregoing Amendment, and who, having been duly sworn, stated that any representations therein contained are true.~~

~~Witness my hand and Notarial Seal this \_\_\_ day of December 2004.~~

~~My Commission Expires:  
\_\_\_\_\_~~

~~\_\_\_\_\_  
Signature of Notary Public~~

~~County of Residence:  
\_\_\_\_\_~~

~~\_\_\_\_\_  
Printed Name of Notary Public~~

15

STATE OF INDIANA )  
 ) SS:  
COUNTY OF HENDRICKS )

Before me, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_, President of the Town of Plainfield, Indiana, Planning Commission, who acknowledged the execution of the foregoing Amendment, and who, having been duly sworn, stated that any representations therein contained are true.

Witness my hand and Notarial Seal this \_\_\_\_\_ day of December 2004.

My Commission Expires:

\_\_\_\_\_

County of Residence:

\_\_\_\_\_

\_\_\_\_\_  
Signature of Notary Public

\_\_\_\_\_  
Printed Name of Notary Public

STATE OF INDIANA )  
 ) SS:  
COUNTY OF HENDRICKS )

Before me, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_, Secretary of the Town of Plainfield, Indiana, Planning Commission, who acknowledged the execution of the foregoing Amendment, and who, having been duly sworn, stated that any representations therein contained are true.

Witness my hand and Notarial Seal this \_\_\_\_\_ day of December 2004.

My Commission Expires:

\_\_\_\_\_

County of Residence:

\_\_\_\_\_

\_\_\_\_\_  
Signature of Notary Public

\_\_\_\_\_  
Printed Name of Notary Public

This instrument was prepared by Andrew P. Kuit, Attorney-at-Law, COMER LAW OFFICE, P.O. Box 207, Danville, IN 46122.

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**EXHIBIT A**

(Legal description of the real estate subject to the Declaration, including this Amendment)

Nottingham, Section One, an addition to the Town of Plainfield, Hendricks County, Indiana, as per plat thereof recorded June 19, 2001, in Plat Cabinet 4, Slide 60, pages 1A and 1B; Certificate of Correction recorded July 8, 2002, in Public Record Volume 343, page 2619, as Instrument Number 2002-22193, in the office of the Recorder of Hendricks County, Indiana.

ALSO:

Nottingham, Section Two, an addition to the Town of Plainfield, Hendricks County, Indiana, as per plat thereof recorded December 13, 2001, in Plat Cabinet 4, Slide 161, pages 2A and 2B, in the office of the Recorder of Hendricks County, Indiana.



*originals*

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**SECOND AMENDMENT TO DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS OF  
NOTTINGHILL, SECTIONS ONE AND TWO**

200600005412  
Filed for Record in  
HENDRICKS COUNTY IN  
THERESA D LYNCH  
03-02-2006 At 02:12 pm.  
COVENANTS 52.00

**Cross-reference**

This instrument encumbers that certain real estate identified in Exhibit A attached hereto and made a part hereof.

Instrument PG 1 OF 21  
200600005412

THIS Second Amendment to Declaration of Covenants, Conditions and Restrictions of Nottinghill, Sections One and Two (this "Second Amendment"), executed by the undersigned Owners within the residential subdivision located in the Town of Plainfield, Hendricks County, Indiana, and commonly known as Nottinghill, Sections One and Two,

**WITNESSETH:**

**WHEREAS**, the original DECLARATION OF COVENANTS CONDITIONS AND RESTRICTIONS OF NOTTINGHILL, HOA, INC. (the "Declaration") was recorded on June 19, 2001, in Public Record Volume 250, page 1583, as Instrument Number 2001-17208, in the office of the Recorder of Hendricks County, Indiana; and

**WHEREAS**, the Declaration was amended with the execution and recording of that certain AMENDMENT TO DECLARATION OF COVENANTS CONDITIONS AND RESTRICTIONS OF NOTTINGHILL, HOA, INC. (the "First Amendment"), recorded the 15<sup>th</sup> day of February 2005, as Instrument Number 200500004238, in the office of the Recorder of Hendricks County, Indiana; and

**WHEREAS**, pursuant to the First Amendment, the title of the Declaration was changed to DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF NOTTINGHILL, SECTIONS ONE AND TWO; and

**WHEREAS**, the undersigned Owners within Nottinghill Sections One and Two wish to further amend the Declaration.

**NOW THEREFORE**, the undersigned Owners within Nottinghill Sections One and Two, do hereby further amend the Declaration in the manner set forth below.

**AMENDMENT**

1. The above recitals are hereby incorporated as if fully set forth herein.

*21+3*

originals (2)

**THIRD AMENDMENT TO DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS OF  
NOTTINGHILL, SECTIONS ONE AND TWO**

200600005413  
Filed for Record in  
HENDRICKS COUNTY IN  
THERESA D LYNCH  
03-02-2006 At 02:12 pm.  
COVENANTS 51.00

**Cross-reference**

This instrument encumbers that certain real estate identified in Exhibit A attached hereto and made a part hereof.

Instrument PG 1 OF 20  
200600005413

THIS Third Amendment to Declaration of Covenants, Conditions and Restrictions of Nottinghill, Sections One and Two (this "Third Amendment"), executed by the undersigned Owners within the residential subdivision located in the Town of Plainfield, Hendricks County, Indiana, and commonly known as Nottinghill, Sections One and Two,

**WITNESSETH:**

**WHEREAS**, the original DECLARATION OF COVENANTS CONDITIONS AND RESTRICTIONS OF NOTTINGHILL, HOA, INC. (the "Declaration") was recorded on June 19, 2001, in Public Record Volume 250, page 1583, as Instrument Number 2001-17208, in the office of the Recorder of Hendricks County, Indiana; and

**WHEREAS**, the Declaration was amended with the execution and recording of that certain AMENDMENT TO DECLARATION OF COVENANTS CONDITIONS AND RESTRICTIONS OF NOTTINGHILL, HOA, INC. (the "First Amendment"), recorded the 15<sup>th</sup> day of February 2005, as Instrument Number 200500004238, in the office of the Recorder of Hendricks County, Indiana; and

**WHEREAS**, pursuant to the First Amendment, the title of the Declaration was changed to DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF NOTTINGHILL, SECTIONS ONE AND TWO; and

**WHEREAS**, the Declaration was amended a second time with the execution and recording of that certain SECOND AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF NOTTINGHILL, SECTIONS ONE AND TWO ("Second Amendment"), recorded the 2 day of March, 2006, as Instrument Number 2006-5412, in the office of the Recorder of Hendricks County, Indiana; and

**WHEREAS**, the undersigned Owners within Nottinghill Sections One and Two wish to further amend the Declaration.

**NOW THEREFORE**, the undersigned Owners within Nottinghill Sections One and Two, do hereby further amend the Declaration in the manner set forth below.

1044



200903485

PAUL T HARDIN  
HENDRICKS COUNTY RECORDER  
02/17/2009 08:45:05AM

**Cross References:** 2001-17208  
2001-31110  
2005-4238  
2006-5412  
2006-5413

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**AMENDED AND RESTATED DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS OF NOTTINGHILL  
SECTIONS ONE AND TWO**

---

This Amended and Restated Declaration is made as of the date below by Nottinghill Development Corp., LLC and the homeowners within Nottinghill, Sections One and Two.

**WITNESSETH**

The Nottinghill subdivision located in Hendricks County, Indiana was established by a certain "Declaration of Covenants, Conditions and Restrictions of Nottinghill, HOA, Inc." which was recorded on June 19, 2001, as **Instrument No. 2001-17208 in Public Record Book 250, Pages 1583-1630** in the Office of the Recorder of Hendricks County, Indiana, said Declaration together with all amendments thereto being hereafter referred to as the "Original Declaration"; and

Article XV, Section 1 of the Original Declaration states that its covenants, conditions and restrictions may be amended upon approval by seventy-five percent (75%) of all Owners; and

No Mortgagees requested notice of such action; and

The developer and the Owners of thirty-six (36) of the forty-three (43) homes, constituting eighty-four percent (84%), have given their written approval to this Amended and Restated Declaration pursuant to the terms below; and

At the same time, the said developer and Owners also approved the By-Laws of the Nottinghill Owners Association, Inc., a copy of which is attached hereto;

The developer and Owners of said homes desire to amend certain provisions of the Original Declaration and to restate the same for the convenience of the Owners such that this Amended and Restated Declaration of Covenants, Conditions and Restrictions for Nottinghill in no way nullifies or changes the Original Declaration or the effective date of the Original Declaration. However, upon the date of recording of this Amended and Restated Declaration with the Hendricks County Recorder's Office, the Original Declaration shall no longer be in effect and shall be replaced by the following.

31+7  
18-