

**DECLARATION ESTABLISHING PARTY WALL  
AND CREATING PROTECTIVE AND  
RESTRICTIVE COVENANTS AND EASEMENTS**

WITNESSETH THIS DECLARATION, made this 26th day of October, 1995 by MARY L. NOVOTNY (hereinafter referred to as "Novotny") and MARIE A. SIMKO (hereinafter referred to as "Simko").

WHEREAS, Novotny is the owner of the following described parcel of real estate, legally described as follows:

Lot 1, Scherland Park 1st Addition to the Town of Schererville, as per plat thereof, recorded in Plat Book 44, page 76, in the Office of the Recorder of Lake County, Indiana, excepting therefrom the following-described parcel:

Commencing at the Northeast Corner of said Lot 1, said point being the point of beginning; thence South, along the East line of said Lot 1, a distance of 77.00 feet; thence North 89 degrees 05 minutes 00 seconds West, along the South line of said Lot 1, a distance of 86.57 feet; thence North 01 degrees 06 minutes 10 seconds East, a distance of 76.99 feet, to a point on the North line of said Lot 1; thence South 89 degrees 05 minutes 00 seconds East, along the North line of said Lot 1, a distance of 85.09 feet, to the point of beginning. (HEREINAFTER REFERRED TO AS PARCEL (A))

WHEREAS, Simko is the owner of Parcel "A", purchasing from Novotny, the following described parcel of real estate:

That part of Lot 1, Scherland Park 1st Addition to the Town of Schererville, as per plat thereof, recorded in Plat Book 44, page 76, in the Office of the Recorder of Lake County, Indiana, more particularly described as follows:

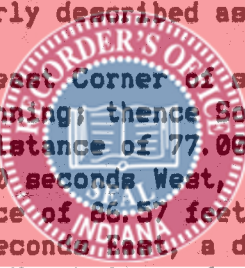
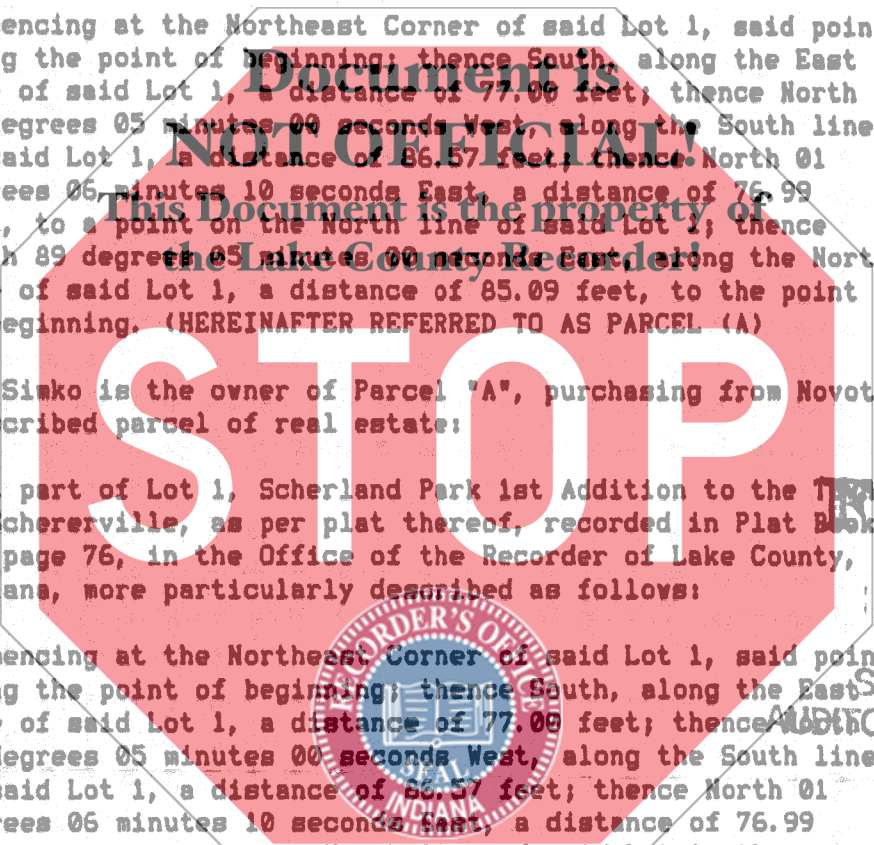
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(hereinafter referred to as "Parcel B"); which Parcel A and Parcel B are hereinafter together referred to as the "Parcel(s)" or the "Real Estate"; and

WHEREAS, the Declarants desire to establish a party wall and create protective and restrictive covenants and easements (hereinafter the "Restrictions") on the Real Estate, for the purpose of maintaining a fair and adequate value of the Real Estate, and to insure that Parcel A and Parcel B will each continue as desirable residential parcels.

NORTHWEST INDIANA TITLE SERVICES, INC.  
162 Washington Street  
Lowell, Indiana 46356

95066428



STATE OF INDIANA  
LAKE COUNTY  
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MARC RETTESBACH  
RECORDER  
SAM ORLICH  
AUDITOR LAKE COUNTY

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NOW, THEREFORE, the undersigned hereby declare that the Real Estate shall be improved, held, used, occupied, leased, sold or conveyed subject to the Restrictions, which Restrictions shall run with the land and inure to and pass with the Real Estate, and will apply to and bind the heirs and successors in interest of the Declarant, and which Restrictions, as applicable to Parcel A and Parcel B are hereby declared to be imposed as mutual equitable servitudes in favor of the other parcel, and which Restrictions are set forth in the following Articles:

ARTICLE ONE  
DURATION

The restrictions shall be perpetual and shall run with the land. Termination of the Restrictions may occur prior to said time only by the unanimous consent of all of the owners of the Real Estate herein described and the mortgagees thereof.

ARTICLE TWO  
GENERAL RESTRICTION AS TO USE

The Real Estate is presently improved with a duplex dwelling having a common party wall. Such existing dwelling shall be protected, preserved and maintained by the owners and no additional buildings, with the exception of one (1) small accessory shed, no additions or alterations shall be erected or added to the existing structure. Further, the use of Parcel A and the use of Parcel B shall be solely and exclusively limited to that of single family residential use. No trailers, tents, shacks, boats or recreational vehicles shall be stored on the Real Estate, unless the same are stored wholly within the confines of the existing garages.

ARTICLE THREE  
EXTERIOR BUILDING  
MAINTENANCE AND PRESERVATION

The owner of each parcel shall, at his sole cost and expense, repair his residence, keeping the same in a condition comparable to the condition of such residence at the time of its initial construction, excepting only normal wear and tear. Said owners shall, as to the exterior of the residence, maintain and preserve the design, color scheme and concept of the original construction. Further, the owners shall, as to the exterior repaint or restain the same at least every five (5) years, unless otherwise agreed upon by such owners. The exterior color scheme shall be maintained in its original state unless the owners agree upon a different scheme.

ARTICLE FOUR  
OWNER'S OBLIGATION TO REBUILD

If all or any portion of the improvements on the Real Estate are damaged or destroyed by fire or other casualty, it shall be the duty of the owner thereof, with all due diligence, to rebuild, repair or reconstruct in a manner which will substantially restore it to its appearance and condition immediately prior to the casualty. Reconstruction shall be undertaken within two (2) months after the damage occurred and such reconstruction shall be diligently pursued until completed. The proceeds of any casualty insurance payable to the owner or its mortgagee is hereby pledged to be held in trust for the sole purpose of reconstructing the building and shall be used solely for such purpose.

ARTICLE FIVE  
USE RESTRICTIONS

No sign of any kind shall be displayed to public view except signs advertising the property for sale or rent.

No animals, livestock or poultry of any kind shall be raised, bred, or kept on on the premises, except for ordinary house pets.

No rubbish, trash or garbage, or other waste materials shall be kept or permitted on the property except in sanitary containers located in appropriate areas concealed from public view.

Radios, stereos, recorders and televisions shall be played after 10:30 P.M. and before 6:00 A.M. only at a subdued audio level that cannot disturb the other Party.

Each residence shall be occupied by not more than four (4) persons.

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The cost of replacing the following portions of the building shall be equally shared:

- A. The roof and gutters.
- B. The party wall.

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**the Lake County Recorder!**

**STOP**

ARTICLE SEVEN  
RIGHT OF FIRST REFUSAL

In the event that the owner of either Parcel shall receive from any third party a bona fide offer to purchase the Parcel owned by such owner and described herein at a price and on terms acceptable to such owner, such owner shall give written notice of such price and terms to the other owner and such other owner shall have ten (10) days thereafter in which to execute a written agreement for the purchase of such Parcel at such price and on such terms as contained in said bona fide offer. If the owner after notification shall fail to execute such agreement within such ten (10) day period, the selling owner shall thereafter be free to sell such Parcel to the third party making the offer on the same terms and conditions set forth in such offer and if such Parcel is so sold to such third party then all rights of the other owner under this article shall forthwith terminate. If such Parcel is not sold to the third party making the offer, then the right of first refusal shall revive and shall be effective as to any subsequent bona fide offer from any third party.

ARTICLE EIGHT  
ARBITRATION

Except as provided in Article Ten, any dispute, controversy or disagreement arising out of or related to this Declaration shall be resolved by the submission of same to arbitration under the rules and regulations of the American Arbitration Association. Any owner of a Parcel may notify the other of its desire to arbitrate, and if within ten (10) days after written notice of such desire to arbitrate is

served upon the other owner, the owners have not agreed upon an impartial arbitrator, either or both owners may ask the American Arbitration Association to submit a list of five (5) persons eligible to serve as arbitrators. If within ten (10) days from the receipt of such list, the owners have not agreed on a single arbitrator from such list, such arbitrator shall be appointed by the American Arbitration Association. The arbitrator's decision shall be final and binding upon all owners of such arbitration, and there shall be no appeal of said decision except as may be allowed by Indiana law. The costs of such arbitration shall be shared equally by the owners unless the arbitrator shall specifically find that the conduct of the losing owner was arbitrary and unreasonable in which event the entire cost of the arbitration may be assessed against such owner.

ARTICLE NINE  
EQUITABLE RELIEF

In the event of any violation or threatened violation by any person of any of the Restrictions the result of which would be to cause irreparable damage and are of an emergency nature, the owners of either Parcel, or their respective successors or assigns will have in addition to the right of arbitration provided in Article Nine the right to enjoin such violation or threatened violation in a court of competent jurisdiction. Prior to the commencement of any such action, written notice of the alleged violation will be given twenty-four (24) hours prior to commencing action of the owner allegedly responsible for such violation, or threatened violation.

ARTICLE TEN  
PARTY WALL AND EASEMENTS

A portion of the improvements erected on the Real Estate constitute a common wall and boundary between the Parcels.

The Declarants desire to settle all questions relating to the ownership and use of said common wall and the Declarants do declare said wall to be a party wall and the owner of each Parcel shall have the right to use it jointly. The Declarants do further declare as to said party wall as follows:

- A. No parcel owner without the prior written consent of the other Parcel owner, shall extend the party wall or use the same in any manner that would impair the use of the same by the other Parcel owner.
- B. In the event it becomes necessary or desirable to repair or rebuild the whole or any part of the party wall, the expense thereof shall be borne equally by the Parcel owners, unless same shall be necessitated by the negligent or willful acts or omissions of one owner, in which event all of the expense thereof shall be borne by such owner.
- C. Any repair or rebuilding of the party wall shall be upon the same location, of the same dimensions, of the same or similar materials of equal quality as that used in the original party wall.

Each Parcel is hereby imposed with a mutual reciprocal easement over or through each Parcel for the benefit of the other Parcel for the following purposes:

- A. Any and all utility services facilities now or hereafter in the future existing, including, but not limited to, utility services for gas, electricity, water, sewer, telephone, communications and security to the extent that any of same are presently located on one Parcel and service the other Parcel.
- B. For the structural support of that portion of the building located on each Parcel.
- C. For the encroachments of more than one-half (1/2) of the party wall over and upon each Parcel, either presently or in the future for any reason, including, but not limited to, any such encroachment arising out of the reconstruction, repair or replacement of the party wall.

ARTICLE ELEVEN  
MODIFICATION

This Declaration and the Restrictions contained herein may be terminated, extended, modified or amended only with the unanimous consent of all person owning an interest in the fee simple title to the Real Estate and all mortgages of record on the title to the Real Estate.

No termination, extension, modification or amendment will be effective until a written instrument setting forth the same has been executed, acknowledged and recorded in the office of the Recorder of Lake County, Indiana, by the foregoing described persons.

ARTICLE TWELVE  
NOTICES

All notices, statements, demands, approval or other communication to be given under or pursuant to this Declaration will be in writing, addressed to the respective Parcel addresses set forth above, and will be delivered in person, or by certified mail, return receipt requested, postage prepaid or by telegram or cable, charges prepaid.

ARTICLE THIRTEEN  
TOWNHOME ASSOCIATION

The parties hereby form an unincorporated association that will be known as the 406 Spivak Street Townhome Association for the purpose of maintaining the premises. The parties agree to open a joint checking account that will require signatures of both owners under the name of the 406 Spivak Street Townhome Association and shall pay the sum of Seventy-Three and 60/100 Dollars (\$73.60) per month to begin November 1, 1995 and on the first day of each month thereafter. Said sum shall be used for the common maintenance for roof repair, staining and any other repairs or maintenance that is necessary for the unit that would not be the sole obligation of either owner of the units.

In the event one of the parties does not pay their monthly assessment, the other party shall be entitled to file a lien against the other unit for the amount of the assessment not paid. In the event repair or maintenance is necessary for the unit and there is not sufficient sums within

which to pay out of the then collected assessments, each party shall pay 1/2 of the additional amounts. If either party does not pay their 1/2, then the party that has paid the full amount shall be entitled to file a lien against the other unit for one-half of the amount of said repairs or maintenance paid. Said sums shall remain a lien against the property, however, the party who files the lien bring legal action against the other party in a court of competent jurisdiction to collect on said lien and shall be entitled reasonable attorney fees for the prosecution of said action.

The amount of the initial assessment shall be as follows: The East unit shall pay the sum of \$40.00 per month and the West unit shall pay the sum of \$33.60 per month. Upon the parties collecting the amount of \$3,000.00 dollars, there shall be no further assessments paid until said sum falls below the \$3,000.00 level at which time the parties shall then again begin making payments in order to keep the fund at approximately \$3,000.00 dollars.

IN WITNESS WHEREOF, the Declarants have executed this agreement on the 26th day of October, 1995.

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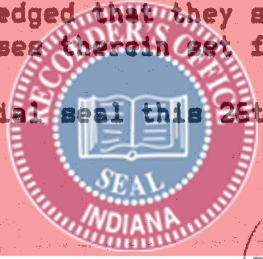
*Mary L. Novotny*  
MARY L. NOVOTNY  
*Marie A. Simko*  
MARIE A. SIMKO

STATE OF INDIANA )  
                                  )SS:  
COUNTY OF LAKE )

I, Linda S. Wood, a Notary Public in and for said County and State do hereby certify, that MARY L. NOVOTNY and MARIE A. SIMKO personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed and delivered the said instrument for the uses and purposes therein set forth.

Given under my hand and notarial seal this 26th day of October, 1995.

My Commission Expires:  
October 17, 1998



*Linda S. Wood*  
LINDA S. WOOD, Notary Public

County of residence:  
Lake County

Novotnycm#6

This instrument prepared by Richard A. Zunica, Attorney at Law  
162 Washington Street, Lovell, IN 46356