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STATE OF INDIANA  
LAKE COUNTY  
FILED FOR RECORD

2002 DEC 18 PM 12:40

MORRIS W. CARTER  
RECORDER

RETURN TO: GLENN R. PATTERSON, ESQ.  
TAUBER & WESTLAND, P.C.  
9211 BROADWAY  
MERRILLVILLE, IN 46410

**DECLARATION ESTABLISHING PARTY WALL  
AND CREATING PROTECTIVE AND  
RESTRICTIVE COVENANTS AND EASEMENTS  
(Lot F, Resubdivision of Lots 2 and 3,  
Oak Park Addition, Hammond)**

WITNESSETH THIS DECLARATION, made this day by **REGAL DEVELOPMENT COMPANY, an Indiana general partnership** (herein the "Declarant").

**WHEREAS**, Declarant is the owner of the real estate commonly known as 6849 Hohman Avenue, Hammond, Indiana, which real estate is legally described as follows:

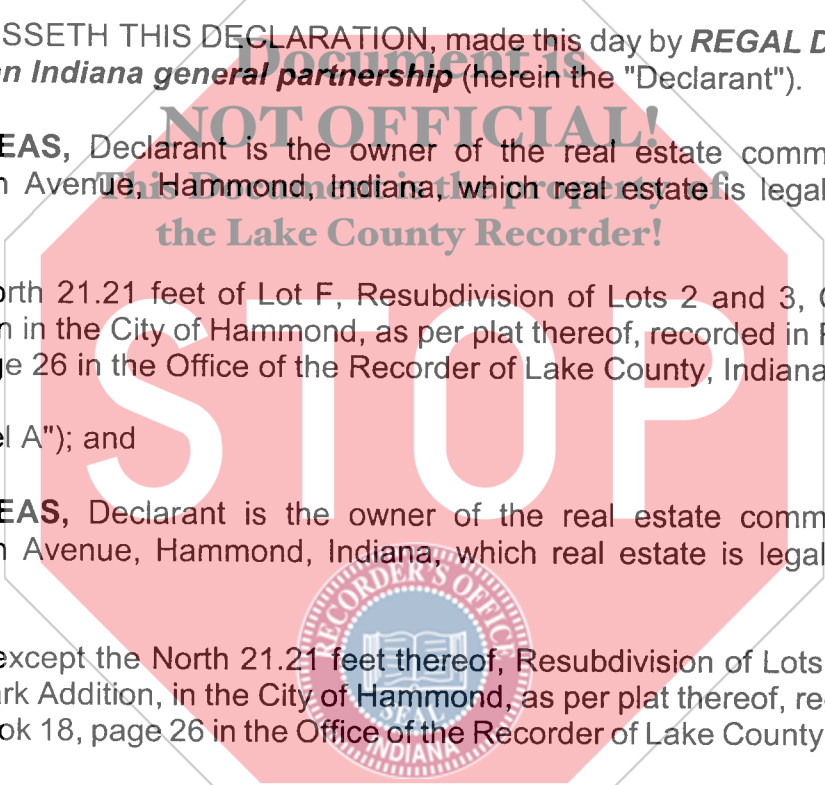
The North 21.21 feet of Lot F, Resubdivision of Lots 2 and 3, Oak Park Addition in the City of Hammond, as per plat thereof, recorded in Plat Book 18, page 26 in the Office of the Recorder of Lake County, Indiana.

(herein "Parcel A"); and

**WHEREAS**, Declarant is the owner of the real estate commonly known as 6851 Hohman Avenue, Hammond, Indiana, which real estate is legally described as follows:

Lot F, except the North 21.21 feet thereof, Resubdivision of Lots 2 and 3, Oak Park Addition, in the City of Hammond, as per plat thereof, recorded in Plat Book 18, page 26 in the Office of the Recorder of Lake County, Indiana.

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



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**WHEREAS**, the Declarant desires 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 property.

**NOW, THEREFORE**, the undersigned hereby declares 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 are hereby declared to be imposed as mutual equitable servitudes in favor of each Parcel, and which Restrictions are set forth in the following Articles:

**ARTICLE ONE**  
**DURATION AND EFFECTIVE DATE**

The Restrictions shall run with the land of the Real Estate and bind the Real Estate for a period of twenty (20) years from the date of recording hereof, after which time the Restrictions shall automatically continue for successive ten (10) year periods, unless, prior to the expiration of any such ten (10) year term, this Declaration is terminated, pursuant to Article Eleven hereof.

The provisions of this Declaration shall first become effective upon that date that the fee simple title to the first of Parcel A or Parcel B is separately conveyed by Declarant to any third party, and this Declaration and the easements created herein and the Restrictions shall not merge with the fee simple title to the Real Estate now or at any time hereafter as a result of common ownership of Parcel A and Parcel B, and accordingly, this Declaration, the easements created hereby, and the Restrictions, shall be terminated only in accordance with the provisions of Article Eleven hereof.

**ARTICLE TWO**  
**RESTRICTIONS AS TO USE**

The Real Estate is presently improved with a townhome building (herein the "Building") with two (2) separate dwellings (herein the "Residential Unit(s)"), having a common party wall. The Building shall be protected, preserved and maintained by the owners in accordance with these Restrictions, and the use of the Real Estate shall be solely and exclusively limited to that of single family residential.

No nuisance shall be allowed upon any Parcel nor shall any use or practice be allowed which would annoy residents or interfere with the peaceful possession and proper use of the Parcels by its residents, or which will obstruct or interfere with the rights of other owners. This provision shall not be construed to prohibit or limit the enforcement of any provision of the Declaration which does not constitute a nuisance.

No immoral, improper, offensive or unlawful use shall be made of any Parcel nor any part thereof and all laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed.

An owner shall not permit or suffer anything to be done or kept on a Parcel which will increase the insurance rates on the other Parcel.

No owner shall display any sign (except for temporary but tasteful "for sale" or "for rent" signs), advertisement or notice of any type on a Parcel or on the exterior of a Residential Unit and no owner shall erect any exterior antennae, satellite dish, aerials or awnings upon any Residential Unit or Parcel, except for a satellite dish not exceeding twenty-four (24) inches in diameter. No clothesline or other similar device shall be allowed on any portion of any Parcel.

An owner may not keep, raise or breed any animals, livestock or poultry in or on a Parcel, provided, however, that two (2) common house pets only shall be allowed to be kept in or on a Parcel.

No motor homes, campers, trailers, boats of any kind, or commercial trucks in excess of 3/4 ton capacity, shall be parked at any time on any Parcel.

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

Each Parcel shall be occupied by not more than four (4) persons, without the prior written consent of all of the owners of the other Parcel.

Any utility facility which is designed for common use, and which is separately metered, shall be used only in a manner which would benefit in common, all owners of each Parcel.

**ARTICLE THREE**  
**PARTY WALLS AND EASEMENTS**

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

The Declarant desires to settle all questions relating to the ownership and use of said common wall and the Declarant does declare said wall to be a party wall and the owner of each Parcel shall have the right to use it jointly. The Declarant does 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 maintain, repair or replace the whole or any part of the party wall, the expense thereof shall be borne equally between the owners of each Parcel, 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 maintenance, repair or replacement 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 mutual reciprocal easements over or through the other Parcel for the benefit of the other Parcel for the following purposes:

- A. For any and all utility services facilities now or hereafter in the future existing, including, but not limited to, utility facilities for gas, electricity, water, sanitary sewer, storm sewer, telephone, cable television, communications and security to the extent that any of the 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 encroachment 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.
- D. For the use by one Parcel owner of any storm water sump pump and drainage system located on another Parcel in the event of the failure for any reason of such Parcel owner's own storm water sump pump and drainage system, without any claim for the cost of operation, maintenance or repair thereof by the owner of the other Parcel.

Declarant hereby reserves for itself and its designees (including, without limitation, the City of Hammond and any utility company) easements upon, across, over and under the Real Estate and each Residential Unit for ingress, egress, installation, replacing, repairing and maintaining cable television systems, master television antenna systems, and similar systems, and all utilities, including, but not limited to, water, sanitary sewers, storm water sewers and drainage facilities, meter boxes, telephones, gas and electricity. Without limiting the generality of the foregoing, there are hereby reserved for the City of Hammond, Indiana, easements across all Residential Units for ingress, egress, installation, reading, replacing, repairing and maintaining water meter boxes and storm water drainage facilities.

The easements provided for in this Article shall in no way adversely affect any other easement on the Real Estate, whether recorded before or after the recording of this Declaration, unless otherwise specifically provided therein.

#### **ARTICLE FOUR**

#### **EXTERIOR BUILDING AND GROUNDS MAINTENANCE AND PRESERVATION**

The owner of each Parcel shall, at his sole cost and expense, maintain, repair and replace his Residential Unit, keeping the same in a condition comparable to the condition of such Residential Unit at the time of its initial construction, except for the party wall which shall be maintained, repaired and replaced in accordance with Article Three. Each owner shall, as to the exterior of the Residential Unit (including but not limited to, windows, doors, siding, roofing and driveway and sidewalk pavement), maintain and preserve the design, color scheme and concept of the original construction. Further, the owners shall, as to the exterior portions of the building that require painting or staining, repaint or restain the same at least every five (5) years, unless otherwise agreed upon by all Parcel owners. The exterior color scheme shall be maintained in its original state unless all Parcel owners agree upon a different scheme. No additional buildings, structures or improvements (temporary or permanent) shall be erected or constructed on any Parcel, other than those existing as of the date of this Declaration, and no modifications, additions or alterations shall be made to the exterior of the building or any Residential Unit, without the prior written approval of all Parcel owners. Any Parcel owner desiring to erect or construct an additional building, structure or improvement (temporary or permanent), or desiring to modify, add to or alter the exterior of a Residential Unit or the Building, shall submit plans and specifications showing the nature, kind, shape, color, size, materials and location of such additional building, structure or improvement, or such modification, addition or alteration to each of the other Parcel owners for their consideration. The other Parcel owners shall be obligated to give their written consent and approval, or disapproval, of such plans and specifications within one hundred eighty (180) days after submission. In the event that such other Parcel owners fail to approve or to disapprove such plans and specifications within one hundred eighty (180) days after submission, the plans shall be deemed to have been disapproved. No approval shall be required to repaint in accordance with the original color scheme, or to rebuild the Building or any Residential Unit in accordance with the



original plans and specifications, and nothing herein shall be construed to limit the right of any Parcel owner to remodel the interior of his Residential Unit, or to paint the interior of his Residential Unit any color desired.

The owners of each Parcel shall be responsible for one-half (1/2) of the cost of the maintenance, repair and replacement of all lawns, landscaping, sidewalks, curbs, driveways, parking areas, and the roof of the building containing the Residential Units and utility facilities located on the Real Estate, including, but not limited to, the cost of lawn and landscape care, and snow and ice removal, the replacement of said roof, and one-half (1/2) of the cost of all commonly metered utilities. The owners of each Parcel shall take successive terms, on an annual tenure, undertaking the responsibility for such maintenance, repair and replacement, unless all Parcel owners agree otherwise in writing. Said responsibility may be discharged by the hiring of a contractor(s) to perform such maintenance, repair and replacement. Nothing herein shall require any Parcel owner to personally perform the work required for such maintenance, repair and replacement, unless such Parcel owner is satisfied that the other Parcel owners will pay compensation equal to one-half (1/2) of the reasonable value of such work, and will reimburse one-half (1/2) of such Parcel owners costs for supplies and materials incurred in personally discharging such responsibilities. The owners of a Parcel, when entitled to reimbursement under this Article Four, shall submit a written request for reimbursement, along with supporting documentation consistent herewith, and the owners of the other Parcel shall have thirty (30) days after the receipt thereof to make the required reimbursement payment. In the event that such reimbursement obligation is not timely paid in accordance with the foregoing, the owners of the Parcel entitled to reimbursement shall be entitled to a lien thereof on the other Parcel, in the amount thereof plus costs and attorney's fees, which lien may be foreclosed at the election of the holder thereof, in the same manner as required for the foreclosure of mortgage liens under the laws of the State of Indiana. The prevailing party in any dispute with respect to such reimbursement obligations and the foreclosure of any lien arising therefrom, shall be entitled to recover all costs and expenses (including expert witness and attorney's fees), from the other party.

**ARTICLE FIVE**  
**OWNER'S OBLIGATION TO REBUILD**

If all or any portion of the improvements on a Parcel 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 sixty (60) days after the damage occurred and such reconstruction shall be diligently pursued until completed. The proceeds of any casualty insurance payable to the Parcel owner or its mortgagee is hereby pledged to be held in trust for the sole purpose of meeting such Parcel owner's obligations under this Article, and shall be used solely for such purpose.

**ARTICLE SIX  
INSURANCE**

Each Parcel owner shall maintain all risk insurance for the full replacement cost of his Residential Unit. Evidence of such insurance in the form of a Certificate of Insurance shall be furnished to the other Parcel owners upon written request.

**ARTICLE SEVEN  
NO PARTITION**

There shall be no physical partition, division or subdivision of any Parcel or of any Residential Unit or any part thereof, nor shall any person acquiring any interest in any Parcel or Residential Unit or any part thereof seek any such partition, division or subdivision unless the Real Estate has been removed from the provisions of this Declaration.

**ARTICLE EIGHT  
ARBITRATION**

Except as provided in Article Four and in Article Nine, 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, any one or all of the 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, 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 Parcel owners unless the arbitrator shall specifically find that the conduct of the losing Parcel owner was arbitrary and unreasonable in which event the entire cost of the arbitration may be assessed against such Parcel owner. The prevailing party in any such arbitration shall be entitled to recover all other costs and expenses (including expert witness and attorney's fees), from the other party; provided however, that the arbitrator's decision as to the identity of the prevailing party shall prevail.

**ARTICLE NINE**  
**EQUITABLE RELIEF**

In the event of any violation or threatened violation by any person of this Declaration or of any of the Restrictions the result of which would be to cause irreparable damage and are of an emergency nature, such Parcel owner shall have, in addition to the enforcement rights provided in Article Four and the right of arbitration provided in Article Eight, 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 to the owner allegedly responsible for such violation or threatened violation. The prevailing party in any such injunction proceeding shall be entitled to recover all costs and expenses (including expert witness and attorney's fees), from the other party.

**ARTICLE TEN**  
**AMENDMENT**

The Declaration shall be amended only by the unanimous written consent and approval of all owners of each Parcel in recordable form, which amendment shall be effective only upon its proper recording in the Office of the Lake County Recorder.

Notwithstanding any other provision of the Declaration, the Declarant alone may amend this Declaration without the consent of any Parcel owner or of any mortgagee, or any other person, (1) to correct scrivener's errors, minor defects or omissions, or (2) to comply with the requirements of Indiana law, or (3) to comply with the requirements of any governmental agency, public authority, or title insurance company, or (4) to comply with the requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the Federal Housing Association, the Veterans Administration, or any other government 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 each such entity. This paragraph shall constitute an irrevocable special power of attorney to Declarant on behalf of all Parcel owners, mortgagees, and any and all other persons having an interest of any kind in the Real Estate, for so long as Declarant owns any Parcel. The amendment shall be signed by the Declarant and it shall become effective upon the proper recording thereof in the Office of the Recorder of Lake County, Indiana.



**ARTICLE ELEVEN**  
**TERMINATION**

This Declaration and the Restrictions contained hereby may be terminated only with the unanimous written consent of all persons owning an interest in the fee simple title to the Real Estate and all mortgagees of record on the title to the Real Estate. No termination will be effective until a written instrument setting forth its terms has been executed, acknowledged and properly recorded in the Office of the Recorder of Lake County, Indiana.

**ARTICLE TWELVE**  
**DECLARANT'S RIGHTS**

Notwithstanding any provision contained in this Declaration to the contrary so long as Declarant is the owner of a Parcel, it shall be expressly permissible for Declarant to maintain and carry on such activities as, in the sole opinion of Declarant, may be reasonably required, convenient or incidental to the construction or sale of the Residential Units, including, but not limited to, business offices, signs, model units and sales offices, and the Declarant shall have an easement for access to such facilities. The right to maintain and carry on such activities shall include specifically the right to use Residential Units owned by the Declarant as models and sales offices. This provision may not be amended without the express written consent of the Declarant; provided, however, that notwithstanding the provisions of Article Eleven, the rights contained in this provision shall terminate upon the Declarant's recording a written statement that all sales activity has ceased.

The Declarant specifically disclaims any warranty or representation in connection with the Real Estate or this Declaration except as specifically set forth herein or elsewhere in writing subsequent to the date hereof; and no person shall rely upon any warranty or representation not specifically set forth therein.

The Declarant shall have the right to amend this Declaration in accordance with Article Ten.

Any or all of the rights and obligations of the Declarant may be transferred to other persons or entities, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that contained herein, and provided further, no such transfer shall be effective unless it is in a written instrument signed by the Declarant and properly recorded in the Office of the Recorder of Lake County, Indiana.

**ARTICLE THIRTEEN**  
**NOTICES**

All notices, statements, demands, approvals or other communication to be given under or pursuant to this Declaration will be in writing, addressed to the respective Parcel owner(s) addresses at the Residential Unit address, and shall be delivered in person, or by certified mail, return receipt requested, postage prepaid.

**ARTICLE FOURTEEN**  
**RELEASE OF AGREEMENT AND EASEMENT**

That certain Party Wall and Carport Agreement dated February 29, 1972, and recorded June 23, 1972, as Document No. 153977, and re-recorded July 21, 1972, as Document No. 158993, and that certain easement reserved in Warranty Deed dated February 29, 1972, and recorded June 23, 1972, as Document No. 153976, are both hereby **FULLY RELEASED**.

**ARTICLE FIFTEEN**  
**EFFECTIVE DATE**

This Declaration and the easements and covenants created hereby shall first become effective upon that date that either Parcel is first separately conveyed by Declarant to any third party, and said easements and covenants shall not merge with the fee simple title now or at any time hereafter as a result of the common ownership of the two Parcels, and accordingly, the easements and covenants shall be terminated only upon the written consent and approval of all of the owners of each of the Parcels.

**IN WITNESS WHEREOF**, the Declarant has executed this Declaration on the \_\_\_\_\_ day of December, 2002.

**DECLARANT:**

REGAL DEVELOPMENT COMPANY



By: \_\_\_\_\_

Jeffrey R. Nagel, a Partner

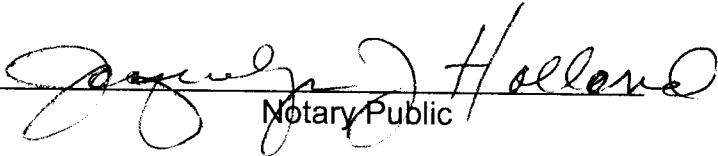
By: \_\_\_\_\_

John S. Hudec, a Partner

STATE OF INDIANA     )  
                                  ) SS:  
COUNTY OF LAKE     )

The undersigned, a Notary Public in and for said County in the State aforesaid, does hereby certify that JEFFREY R. NAGEL and JOHN S. HUDEC, 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 (1) they are all of the partners of Regal Development Company, and (2) they signed and delivered the said instrument for the uses and purposes therein set forth.

Given under my hand and notarial seal this 13<sup>TH</sup> day of December, 2002.

  
Notary Public

Printed Name: \_\_\_\_\_

Commission Expires: 4/29/09

County of Residence: LAKE

JACQUELYN J. HOLLAND  
Notary Public, State of Indiana  
County of Lake  
My Commission Expires Apr. 29, 2009



*This Instrument prepared by Glenn R. Patterson, Esq.  
Tauber & Westland, PC, 9211 Broadway, Merrillville, Indiana 46410*