

Requested By: patsy 05/11/2005

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HAMILTON COUNTY, INDIANA
MARY L CLARK
On 05-01-2000 At 01:38 pm.
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**DECLARATION OF COVENANTS,
CONDITIONS, AND RESTRICTIONS
OF MILL GROVE**

THIS DECLARATION (hereafter "Declaration"), made this 25th day of April, 2000, by PLATINUM PROPERTIES, LLC (hereafter "Declarant");

WITNESSETH:

WHEREAS, Declarant is the owner of certain real estate, located in Hamilton County, Indiana, which is more particularly described in what is attached hereto and incorporated herein by reference as Exhibit "A" (hereafter "Real Estate"), upon which a residential subdivision known as *Mill Grove* (hereafter "Development") will be developed;

WHEREAS, the real estate described in what is attached hereto and incorporated herein by reference as Exhibit "B" shall hereafter be referred to as the "Additional Real Estate".

WHEREAS, Declarant desires to subdivide and develop the Real Estate and Declarant may, in the future, desire to subdivide and develop such portions (or all) of the Additional Real Estate as may be made subject to the terms of this Declaration, as hereinafter provided;

WHEREAS, the term "Property" shall hereafter mean and refer to the Real Estate together with such portions of the Additional Real Estate as have from time to time been subjected to this Declaration.

NOW, THEREFORE, the Declarant hereby declares that all of the Lots (hereafter defined) in the Property, as they are held and shall be held, conveyed, hypothecated, or encumbered, leased, rented, used, occupied, and improved, are subject to the following restrictions, all of which are declared to be in furtherance of a plan of the improvement and sale of the Property and each Lot situated therein, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property as a whole and each of the Lots situated therein. This Declaration shall run with the Property and shall be binding upon the Declarant, its successors and assigns, and upon the parties having or acquiring any interest in the Property or any part or parts thereof subject to these restrictions. The restrictions shall inure to the benefit of the Declarant and its successors in title to the Property or any part or parts thereof.

As of the date of execution hereof, the Property consists solely of the Real Estate. The Owner of any Lots subject to these restrictions, by (i) acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from Declarant, a Builder, or a subsequent Owner of such Lot or (ii) the active occupancy of any Lot, shall accept such deed, execute such contract and/or actively occupy such Lot subject to each restriction and agreement herein contained.

Declarant shall have the right, and hereby reserves on to itself the right, at any time, and from time to time, at any time prior to the expiration of the Development Period, to add to the Property and subject to this declaration all or any part of the Additional Real Estate. Any portion of the Additional Real Estate shall be added to the Property, and therefore and thereby becomes a part of the Property and subject in all respects to this declaration and all rights, obligations, and privileges herein, when Declarant places of record in Hamilton County, Indiana an instrument so declaring the same to be part of the Property, which supplementary declaration (hereafter "Supplementary Declaration") may be as part of a subdivision plat for any portion of the Additional Real Estate, or by an amendment or supplement to this Declaration. Such Supplementary Declaration may contain modifications hereto and additional terms, conditions, restrictions, maintenance obligations, and assessments as may be necessary to reflect the different character, if any, of the Additional Real Estate.

Upon recording of any such instrument on or before the expiration of the Development Period, the real estate described therein shall, for all purposes, thereafter be deemed a part of the Property and the Owners of any Lots within such real estate shall be deemed for all purposes, to have and be subject to all of the rights, duties, privileges, and obligations of Owners of Lots within the Property. No single exercise of Declarant's right and option to add and expand the Property as to any part or parts of the Additional Real Estate, shall preclude Declarant from thereafter from time to time further expanding and adding to the Property to include other portions of the Additional Real Estate, and such right and option of expansion may be exercised by Declarant from time to time as to all or any portions of the Additional Real Estate so long as such expansion is accomplished on or before the expiration of the Development Period. Such expansion of the Property is entirely at the sole discretion of the Declarant and nothing contained in this Declaration or otherwise shall require Declarant to expand the Property beyond the Real Estate, or to any portions of the Additional Real Estate which Declarant may voluntarily and in its sole discretion from time to time subject to this Declaration.

ARTICLE I

DEFINITIONS

The following are the definitions of the terms as they are used in this Declaration:

Section 1.1 "Association" shall mean the *Mill Grove Homeowners Association, Inc.*, a not-for-profit corporation, the membership and power of which are more fully described in Article X of this Declaration.

Section 1.2 "Board" or "Board of Directors" shall mean the Board of Directors of the *Mill Grove Homeowners Association, Inc.*

Section 1.3 "Builder" means a person or entity engaged in and responsible for the original construction of a residence on a Lot.

- (c) Special Assessments (hereafter defined) for costs of enforcement of the Declaration, capital improvements and operation deficits, copies of Association documents if requested by a member, and such assessments to be established and collected as hereinafter provided or established by the Board; and
- (d) Violation Assessments (hereafter defined) levied for a violation of this Declaration.

Section 11.2 Annual Budget. By majority vote of the Board of Directors, the Board of Directors shall adopt an annual budget for the subsequent fiscal year, which shall provide for the allocation of expenses in such a manner that the obligations imposed by the Declaration and all Supplemental Declarations can effectively be met.

Section 11.3 Annual Assessment.

(A) **Amount.** The Annual Assessment provided for herein shall be per calendar year and shall commence for each Lot on the date of closing of the sale of a Lot to an Owner other than Declarant or a Builder. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner other than Declarant or a Builder, the maximum Annual Assessment shall be \$375.00 per Lot per year. The Annual Assessment for the calendar year shall be pro-rated to year-end. The Board of Directors shall fix any increase in the amount of the Annual Assessment at least thirty (30) days in advance of the effective date of such increase. The initial due date for annual assessments shall be January 1st, and such assessment shall be subject to collection and late charges beginning on January 31st.

(B) **Purpose of Assessments.** The annual assessment levied by the Association shall be used in the reasonable discretion of the Board of Directors to fulfill the duties and obligations of the Association specified in this Declaration.

(C) **Method of Assessment.** By a vote of a majority of the Board of Directors, the Board of Directors shall, on the basis specified in Section 11.7 below, fix the Annual Assessment for each assessment year at an amount sufficient to meet the obligations imposed by this Declaration upon the Association. The Board during any calendar year shall be entitled to increase the Annual Assessment for that year if it should determine that the estimate or current assessment is insufficient for that year, provided that the Board shall give at least thirty (30) days advance notice thereof to the Owners. The Board of Directors shall establish the date(s) the Annual Assessment shall become due, and the manner in which it shall be paid.

Section 11.4 One-time Assessment. Upon (i) the closing of the initial conveyance of each Lot by Declarant to an Owner other than a Builder, or (ii) the sale of each Lot by a Builder (either by deed or by installment sale, conditional sale or land-contract sale), the purchaser of such Lot shall pay to the Association, in addition to any other amounts then owed or due to the Association, as a contribution to its working capital and start-up fund, an amount of One Hundred Fifty Dollars

(\$150.00) against such Lot, which payment shall be non-refundable and shall not be considered as an advance payment of any assessment or other charge owed the Association with respect to such Lot. Such working capital and start-up fund shall be held and used by the Association for payment of, or reimbursement to Declarant for advances made to pay, expenses of the Association for its early period of operation of the Development, to enable the Association to have cash available to meet unforeseen expenditures, or to acquire additional equipment or services deemed necessary by the Board.

Section 11.5 Special Assessment. In addition to such other Special Assessments as may be authorized herein, the Board of Directors may levy in any year a Special Assessment(s) for the purpose of enforcing these covenants and restrictions, for legal expenses, for collection expenses, other activity that is the responsibility of an Owner hereunder but which such Owner has not undertaken as required hereunder, for defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any capital improvement which the Association is required to maintain and/or for operating deficits which the Association may from time to time incur, provided that any such assessment shall have the assent of a majority or the votes of the members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 11.6 Violation Assessment. In addition to all other assessments as be authorized herein, the Board of Directors may levy a Violation Assessment to an Owner, (i) for a violation against this Declaration or (ii) for damages if any portion of the Common Area that the Association is obligated to maintain, repair and/or replace is damaged due to the willful or negligent act or omission of such Owner or Owner's guest or invitee. In the event of such damage, the Board shall have the right to undertake the necessary maintenance, repair or replacement. The choice between repair or replacement is in the sole discretion of the Board.

Section 11.7 Basis for Assessment.

(A) **Lots Generally.** Each Lot owned by a person other than Declarant or a Builder shall be assessed at a uniform rate without regard to whether a Residence has been constructed upon the Lot.

(B) **Lots Owned by Declarant or Builder.** Declarant and any Builder shall pay only twenty-five percent (25%) of the Annual Assessment and Special Assessment so long as any Residence constructed upon a Lot by Declarant or a Builder has not been either conveyed to an Owner intending to occupy or rent said Residence as a residence or leased to an individual or an entity for use as a Residence.

Section 11.8 Deficit. The Class A Members shall be indebted to Declarant in an amount, measured and existing on the Effective Date, equal to the difference between (i) all amounts expended by Declarant as of the Effective Date in the performance of the Association's duties specified in this Declaration and (ii) the sum of all assessments paid by the Declarant as of the Effective Date. Such difference shall hereafter be referred to as the "Indebtedness". Prior to the

accounting status of assessments on a Lot showing the balance due the Association, if any.

Section 11.14 Subordination of the Lien to Mortgages. The lien of the assessments provided for herein against a Lot shall be subordinate to the lien or any recorded first mortgage covering such Lot and to any valid tax or special assessment lien on such Lot in favor of any governmental taxing or assessing authority. Sale or transfer of any Lot shall not affect the lien of assessments levied under this Article XI. The sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall, however, extinguish the lien of such assessments which became due or are attributable to the period of time prior to such sale or transfer. No sale transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE XII

REMEDIES

Section 12.1 Delay or Failure to Enforce. No delay or failure on the part of any aggrieved party to invoke any available remedy with respect to a violation of any one or more of covenants, conditions, and restrictions in this Declaration shall be held to be a waiver by that party or an estoppel of that party of any right available to such party upon the occurrence, reoccurrence or continuation of such violation or violations of this Declaration.

Section 12.2 Enforcement by the City or the City's Plan Commission. These Restrictions may be enforced by the City, the City's Plan Commission, or its successors or assigns, pursuant to whatever powers or procedures are statutorily available to it for such purposes.

Section 12.3 In General. The Association or any party to whose benefit this Declaration inures, including the Declarant and/or any Owner, may proceed at law or in equity to prevent the occurrence or continuation of any violation of these Restrictions, or to compel compliance with these Restrictions and Covenants, and shall be entitled to recover costs of collection and reasonable attorney's fees; however, neither the Declarant, nor the Association, shall be liable for damages of any kind to any person for failing either to abide by, enforce, or carry out any terms, conditions, or restrictions contained in this Declaration.

ARTICLE XIII

EFFECT ON BECOMING AN OWNER

The Owner(s) of any Lot subject to this Declaration, by acceptance of a deed conveying title thereto, or by virtue of the execution of a contract for the purchase thereof, whether from Declarant a Builder, or a subsequent Owner of such Lot, shall accept such deed and execute such contract subject to each and every covenant, condition, and restrictions contained in this Declaration. By

ARTICLE XVIII**HUD APPROVAL**

All other provisions of the Declaration, Association Articles of Incorporation, Association By-Laws or any other document governing the development and administration of the Property notwithstanding, so long as there is a Class B Membership, the following actions will require the prior approval of the Federal Housing Administration or Secretary of the Department of Housing and Urban Development:

- (a) Annexation of additional properties other than the Additional Real Estate;
- (b) Dedication or Mortgaging of Common Area; and
- (c) Amendment of this Declaration of Covenants, Conditions and Restrictions.

IN TESTIMONY WHEREOF, witness the signature of the Declarant of this Declaration as of the date first above written.

DECLARANT:

PLATINUM PROPERTIES, LLC

By: Paul F. Rioux, Jr.
Paul F. Rioux, Jr., President

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

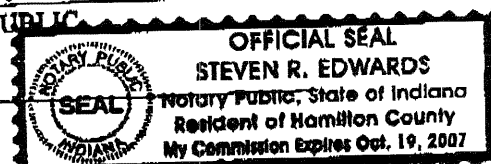
Before me, a Notary Public, in and for said County and State, personally appeared Paul F. Rioux, Jr., President of Platinum Properties, LLC, as the Declarant herein, and acknowledged the execution of the foregoing Declaration of Covenants, Conditions, and Restrictions of Mill Grove this 25th day of April, 2000.

My Commission Expires: _____

Resident of _____ County, Indiana

Steven R. Edwards
NOTARY PUBLIC

Printed: _____



This Instrument Prepared by: Charles D. Frankenberger, Nelson & Frankenberger, 3021 E. 98th Street, Suite 220, Indianapolis, IN 46280 - (317) 844-0106

Platinum Properties, LLC, Mill Grove, LLC, Inc.

EXHIBIT "A"

Part of the Southwest Quarter and a part of the Northwest Quarter of Section 27, Township 18 North, Range 4 East, Noblesville Township, Hamilton County, Indiana, being more particularly described as follows:

Beginning at the Northeast corner of said Southwest Quarter Section; thence South 00 degrees 13 minutes 34 seconds West (assumed bearing) along the East line of said Quarter Section 2655.29 feet to the Southeast corner thereof; thence South 89 degrees 24 minutes 18 seconds West along the South line of said Quarter Section 1320.09 feet to the Southwest corner of the East Half of said Quarter Section; thence North 00 degrees 05 minutes 37 seconds East parallel with the West line of said Quarter Section 75.00 feet; thence South 89 degrees 24 minutes 18 seconds West parallel with said South line 1320.09 feet to a point on the aforesaid West line; thence North 00 degrees 06 minutes 37 seconds East along said West line 2577.73 feet to the Northwest corner thereof, said point also being the Southwest corner of the aforesaid Northwest Quarter Section; thence North 00 degrees 05 minutes 54 seconds East along the West line of said Northwest Quarter Section 172.43 feet; thence South 89 degrees 53 minutes 25 seconds East 472.35 feet; thence North 82 degrees 15 minutes 54 seconds East 708.98 feet; thence North 29 degrees 07 minutes 09 seconds East 522.03 feet to a point on the centerline of State Road 38; thence South 60 degrees 53 minutes 11 seconds East along said centerline 1476.44 feet to a point on the East line of said Quarter Section; thence South 00 degrees 03 minutes 39 seconds West along said East line 209.21 feet to the place of beginning containing 188.465 acres, more or less, subject to all legal highways, rights-of-way, easements and other restrictions of record.

EXCEPT:

A part of the Northwest Quarter of Section 27, Township 18 North, Range 4 East, Noblesville Township, Hamilton County, Indiana, being more particularly described as follows:

Commencing at the Southeast corner of said Quarter Section; thence North 00 degrees 03 minutes 39 seconds East (assumed bearing) along the East line of said Quarter Section 99.89 feet; thence North 89 degrees 56 minutes 21 seconds West 16.50 feet to the POINT OF BEGINNING of this description; thence North 21 degrees 13 minutes 29 seconds West 78.07 feet; thence North 80 degrees 53 minutes 37 seconds West 426.51 feet; thence North 66 degrees 36 minutes 15 seconds West 131.89 feet; thence North 58 degrees 47 minutes 01 seconds West 623.78 feet; thence North 55 degrees 43 minutes 41 seconds West 85.89 feet; thence South 60 degrees 53 minutes 37 seconds East 1269.53 feet; thence South 00 degrees 03 minutes 39 seconds West parallel with the said East line 73.59 feet to the place of beginning containing 0.502 acres, more or less.

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EXHIBIT "B"

Part of the Southwest Quarter of Section 27, and a part of the West Half of the Northwest Quarter of Section 34 all in Township 19 North, Range 4 East, Noblesville Township, Hamilton County, Indiana, being more particularly described as follows:

Beginning at the Southwest corner of said Southwest Quarter Section; thence North 00 degrees 08 minutes 37 seconds East (assumed bearing) along the West line of said Quarter Section 75.00 feet; thence North 89 degrees 24 minutes 18 seconds East parallel with the South line of said Quarter Section 1320.09 feet; thence South 00 degrees 08 minutes 37 seconds West parallel with the aforesaid West line 75.00 feet to the Southwest corner of the East Half of said Quarter Section, said point also being the Northeast corner of the West Half of said Northwest Quarter Section; thence South 00 degrees 10 minutes 58 seconds West along the East line of said Half Quarter Section 300.00 feet; thence South 89 degrees 24 minutes 18 seconds West parallel with the North line of said Half Quarter Section 1320.33 feet to a point on the West line thereof; thence North 00 degrees 13 minutes 40 seconds East along said West line 300.00 feet to the place of beginning, containing 11.364 acres, more or less, subject to all legal highways, right-of-way, easements and other restrictions of record.