

1663150

NOTTINGHAM DOWNS-DUPLEX  
HOMES ASSOCIATION DECLARATION

THIS DECLARATION, made as of the 19th day of November, 1986 by HANOVER DEVELOPMENT COMPANY, II, a Kansas general partnership:

WITNESSETH:

WHEREAS, Hanover Development Company II has executed and filed with the Register of deeds of Johnson County, Kansas, a Third Plat of the subdivision known as "Nottingham Downs" and

WHEREAS, such plat adds certain duplex lots to the subdivision of Nottingham Downs, including the following described lots, to wits

Lots 1 through 6 of Block 5 of Nottingham Downs,  
Third Plat, a subdivision in the City of Overland Park, Johnson  
County, Kansas, according to the recorded plat thereof;

and

WHEREAS Hanover Development Company II, as the owner of the above-described lots, desires to create and maintain a residential neighborhood and a homes association for the purpose of enhancing and protecting the value, desirability, attractiveness and maintenance of the property within the subdivision;

NOW, THEREFORE, in consideration of the premises, Hanover Development Company II, for itself and for its successors and assigns; and for its future grantees, hereby subjects all of the above-described lots to the covenants, charges, assessments and easements hereinafter set forth.

ARTICLE I DEFINITION OF TERMS.

For purposes of this Declaration, the following definitions shall apply;

(a) The term "Lot" shall mean any lot as shown as a separate lot on any recorded plat of all or part of the District.

(b) The term "Duplex Unit" shall mean, collectively, (i) one of the two separate residential units contained in a duplex that have been constructed on any Lot and (ii) the portion of the Lot that is allocated to such unit.

(c) The term "District" shall mean all of the above-described lots in Nottingham Downs, Third Plat, all Common Areas, and all additional property which hereafter may be made subject hereto in the manner provided herein.

(d) The term "Developer"- shall mean and refer to Hanover Development Company II, a Kansas general partnership, and its successor and assigns.

(e) The term "Owner" shall mean the record owner is fee simple of any Duplex Unit, including the Developer.

(f) The term "Common Areas" shall mean (i) street right-of-ways, (ii) streets and street islands, (iii) gateways, entrances, monuments and other similar ornamental areas and related utilities and landscaping constructed or installed by the Developer at or near the entrance of any street adjacent to a Lot, (iv) the Private Park, and (v) all other areas and places within the District, together with all improvements thereon and thereto, the use, benefit or enjoyment thereof is intended for all of the Owners whether or not any "Common Area" is located on any Lot.

(g) The term "Private Park" shall mean all of the Tract A of Nottingham Downs Private Park, a subdivision in Overland Park, Johnson County, Kansas, according to the recorded plat thereof.

(h) The term "Homes Association" shall mean Nottingham Downs-Duplex Homes Association, Inc., a Kansas not-for-profit corporation to be formed by the Developer,

(i) The term "Certificate of Substantial Completion" shall mean a certificate executed, acknowledged and recorded by the Developer stating that all of the Lots in the District (as then composed or contemplated by the Developer) have been sold by the Developer and the duplexes to be constructed thereon are substantially completed.

## ARTICLE II HOMES ASSOCIATION MEMBERSHIP, VOTING AND MANAGEMENT

Membership in the Homes Association shall be limited to the Owners of Duplex Units within the District and all such Owners shall be a member. The Homes Association shall have only one

class of membership. Each member shall have one vote for each Duplex Unit for which he is the owner and upon which he shall not be delinquent in the payment of any assessment; provided, however, that when more than one person is an owner of any particular Duplex Unit, all such persons shall be members and the vote for such Duplex unit shall be exercised as they, among themselves, shall determine, but in no event shall more than one vote be cast with respect to such Duplex unit.

ARTICLE III. POWERS AND DUTIES OF THE HOMES  
ASSOCIATION; RESPONSIBILITY FOR PRIVATE PARK

1. In addition to the powers granted by other portions of this Declaration or by law, the Homes Association shall have the power and authority to do and perform all such acts as may be deemed necessary or appropriate by its Board of Directors to carry out and effectuate the purposes of this Declaration, including, without limitation:

(a) To enforce, in its own name, any and all building or use restrictions which have been or hereafter may be imposed upon any of the Lots; provided, however, that this right of enforcement shall not serve to prevent changes, releases or modifications of restrictions or reservations from being made by the parties having the right to make such changes, releases or modifications under the terms of the deeds, declarations or modifications contracts or plats in which such restrictions and reservations are set forth. The expense and cost of any such enforcement proceedings by the Homes Association shall be paid out of the general fund of the Homes Association, as herein provided. Nothing herein contained shall be deemed or construed to prevent any Owner from enforcing any building or use restrictions in his own name.

(b) To exercise control over all Common areas;

(c) To maintain public liability, worker's compensation, fidelity, fire and extended coverage, director and officer liability and other insurance with respect to the activities of the Homes Association and the property within the District.

(d) To levy and collect the assessments which are provided for in this Declaration.

(e) To enter into agreements from time to time with the Developer and other parties regarding the performance of service and matters benefiting both the Developer and the Homes association and its members and the sharing of the expenses associated therewith.

(f) To engage the services of a management company or other- person or entity to carry out and perform the functions and powers of the Homes Association, including, without limitation, keeping of books and records and maintenance of Common Areas.

(g) To provide for the collection and disposal of rubbish and garbage; to pick up and remove loose material, trash and rubbish of all kinds in the District; and to do any other things necessary or desirable in the judgment of the officers of the Homes Association to keep any property in the District neat in appearance and in good order.

(h) To exercise any architectural and aesthetic control and authority given and assigned to it in this Declaration or in any other deed, declaration, contract or plat relating to all or any part of the District.

(i) To make such reasonable rules and regulations and to provide means to enforce such rules and regulations as will enable it to adequately and properly carry out the provisions and purposes of this Declaration.

(j) To exercise such other powers as may be set forth in the Articles of Incorporation or Bylaws of the Homes Association.

2. In addition to the duties required by other portions of this Declaration or by law, the Homes Association shall have the following duties and obligations:

(a) The Homes Association shall be responsible for the proper maintenance of the Private Park, including, without limitations, maintaining landscaping and any improvements erected in the Private Park and correcting the effects of material detrimental erosion or other damage caused by the flow of water throughout the Private Park.

(b) The Homes Association shall enter into an agreement(s) with the Developer and with the Homes Associations of any other subdivision where the owners of lots therein are entitled to use the Private Park as a common area regarding the sharing on a

reasonable basis of the expenses of properly maintaining the Private Park.

(c) The Homes Association shall defend, indemnify and hold harmless the City of Overland Park, Kansas its Mayor, members of the City Council and the employees and agents of the City from and against any loss, liability, damages, costs or expenses (including reasonable attorneys' fees) that may be incurred or suffered by any of them in the connection with any claims that may be asserted against any of them as a result of or in connection with the private Park. The Homes Association shall promptly reimburse the City of Overland Park, Kansas for any public funds that the City may expend with respect to maintenance or improvement of the Private Park in the event the Homes Association fails to maintain the Private Park in accordance with this Declaration.

(d) The Homes Association shall provide for the collection and disposal of rubbish and garbage for each residence one day per week (which day shall be the same for all residences).

(e) The Homes Association shall provide for the plowing and removal of snow (but not ice) from driveways and sidewalks after any accumulation of four inches or more.

(f) The Homes Association shall spray, chemically treat, trim, mow and clip (but not plant, remove, replant, reseed or replace) all trees, shrubbery and grass located on all Lots on which a duplex has been constructed.

#### ARTICLE IV METHOD OF PROVISIONING GENERAL FUNDS

1. For the purpose of providing a general fund to enable the Homes Association to exercise the powers, maintain the improvements and render the services provided for herein including, without limitation the Private Park all Duplex units in the District shall be subject to a monthly assessment to be paid to the Homes Association by the respective owners thereof. The amount of such monthly assessment shall be fixed periodically by the Homes Association and, until further action of the Homes Association, shall be at the rate of \$40.00 per month per Duplex unit. A portion of such monthly assessment shall be placed in a reserve for the performance of the Homes Association's duties relating to the Private Park, as specified in subsection 2 of Article III and in Article XIV.

2. The monthly assessment upon each Duplex unit in the District may be Increased or decreased (i) by the Board of Directors of the Homes

Association from time to time in an amount not to exceed 110% of the monthly assessment in effect on the preceding January 1st, or (ii) at a meeting of the members specially called for that purpose and of which advance notice is given and if a majority of the members present at such meeting authorize such increase or decrease by an affirmative vote therefor; provided, however, that the monthly assessment may not be less than an amount that is necessary to permit the Homes Association to perform its duties as specified in subsection 2 of Article III And In Article XIV.

3. The monthly assessments provided for herein shall be due and payable on the first day of each month; provided, however, that the first assessment for each Duplex Unit shall be due and payable at the time of initial occupancy and shall be prorated as of the date thereof. If the effective date of any increase in the monthly assessment is other than the first day of a month, the prorated portion of the amount of such increase for the remainder of such calendar month shall be due and payable on such effective date.

#### ARTICLE V LIEN ON REAL ESTATE

1. The monthly assessment shall become a lien on the Duplex unit against which it is levied as soon as it due and payable as set forth above, in the event of the failure of any Owner to pay any assessment within 15 days of the due date thereof, then such assessment shall bear interest at the rate of 10% per annum from the due date until paid. Should it become necessary to engage the services of an attorney to collect any assessment hereunder, all costs of collecting such assessment, including court costs and reasonable attorneys' fees, shall be added to the amount of the assessment being collected and the lien on the Duplex Unit.

2. All liens on any Duplex Unit for assessments provided for herein shall be inferior and subordinate to the lien of any valid purchase money first mortgage now existing or which may hereafter be placed upon such Duplex Unit.

3. Nonpayment of any assessment provided for herein within 60 days from the due date thereof shall cause such assessment to become delinquent. Payment of both principal and interest of a delinquent assessment may be enforced as a mortgage lien on such Duplex Unit through proceedings in any court in Johnson County, Kansas having jurisdiction of suits for the enforcement of such liens. The Homes Association may file certificates of nonpayment of assessments in the office of the Register of Deeds of Johnson County, Kansas whenever any assessment is delinquent. For each certificate so

filed, the Homes Association shall be entitled to collect from the Owner of the Duplex Unit described therein a fee of \$25.00, which fee shall be added to the amount of the delinquent assessment and the lien on the Duplex Unit.

4. Such liens shall continue for a period of five years from the date of delinquency and no longer, unless within such period suit shall have been instituted for collection of the assessment, in which case the lien shall continue until payment is full or termination of the suit and sale of the property under the execution of judgment establishing the same.

#### ARTICLE VI SPECIAL ASSESSMENTS

In addition to the monthly assessments provided for herein, the Board of Directors of the Homes Association shall have the authority to levy from time to time a special assessment against any Duplex Unit and its owner to the extent the Homes Association expends any money to correct, eliminate or enforce any breach by such Owner of any agreement, reservation, or restriction contained in any deed, declaration, contract or plat covering such Duplex Unit or to maintain or repair any Duplex Unit or improvement thereon because of the willful or negligent act of the Owner of the Duplex Unit or his family, guests or invitees, and shall levy from time to time special assessments against each and every Duplex Unit in an equal amount that is sufficient, when aggregated, to enable the Homes Association to perform its duties as specified in subsection 2 of Article III and in Article XIV, that require any expenditure during any year is an amount in excess of the reserve created therefor. Such special assessment shall be due and payable, and become due and payable and become a lien on such Duplex Unit, upon notice to such Owner of the assessment. Interest at the rate of 10% per annum shall pursue from this date due until paid and shall also be part of the lien against such Duplex Unit. Such lien shall be enforced and terminated in accordance with the provision of Article V above.

#### ARTICLE VII LIMITATION ON EXPENDITURES

Except with respect to its duties with respect to the Private Park, the Homes Association shall at no time expend more money within any one year that the total amount of the assessments for that particular year, plus any surplus which it may have on hand from prior years, plus any reserves it may have created and maintained for a given purpose; nor shall the Homes Association have the power to enter into any contract which binds the Homes Association to

pay for any obligation out of the assessments for any future year, except for contracts for utilities, maintenance or similar services or matters to be performed for or received by the Homes Association or its member in subsequent years.

#### ARTICLE VIII COMMON AREAS

1. The Developer covenants and agrees to convey title to or its interest in the Common Areas (except any part thereof that is within any Lot except the Private Park, that is provided below) to the Homes Association, without cost to the Homes Association, not later than one month after the Developer had recorded the Certificate of substantial completion.

2. Prior to such conveyance, the expenses of maintenance of the Common Areas shall be divided between the Developer and the Homes Association as they may agree from time to time. After such conveyance, all expenses of maintenance of the Common Areas and any and all liabilities in connection therewith shall be borne by the Homes Association, and the Developer shall be relieved of any responsibility, liability or expense in connection therewith.

3. The Developer shall retain title of the Private Park until Certificates of Substantial Completion have been filed for all subdivisions for which the Private Park is or is to be a common area. Prior to such date, Developer shall cause the various affected homes associations to enter into an agreement among themselves and Developer establishing a cost sharing arrangement for the proper maintenance of the Private Park, including, without limitation, maintaining landscaping and any improvements erected in the Private Park and correcting the effects of material detrimental erosion or other damage caused by the flow of water through the Private Park. Within one month after the filing of Certificates of Substantial Completion for all affected subdivisions, Developer shall transfer title to the Private Park to the various homes associations as tenants in common, and at such time Developer's obligation pursuant to the maintenance agreement will terminate.

4. With regard to the provisions contained in this Declaration relating to the Private Park, Developer and the city of Overland Park, Kansas shall be deemed third party beneficiaries with a continuing right to enforce all agreements, restrictions, obligations, assessments, and other provisions regarding the Private Park. Such right shall survive the transfer of title to the private Park from the Developer to the homes associations.

5. Upon the written request of the City of Overland Park, Kansas, the Homes Association shall dedicate its interest in the Private Park

to the City of Overland Park, Kansas for use as a public park. Such dedication shall be effected without charge to the City other than the market value of any improvements transferred.

#### ARTICLE IX NOTICES

1. At least seven days prior to any meeting of the Homes Association, it shall give written notice to all members of the place, time and purpose of the regular or special meeting of the Homes Association.

2. The Homes Association shall designate from time to time the place where payment of assessments shall be made and other business in connection with the Homes Association may be transacted.

3. All notices required or permitted under this Declaration shall be deemed given if deposited in the United States mail, postage prepaid, and addressed to the person entitled to such notice at the last address listed with the Homes Association for such person.

#### ARTICLE X EXTENSION OF DISTRICT.

The Developer shall have, and expressly reserves, the right, from time to time, to add to the existing District and to the operation of the provisions of this Declaration such other adjacent (without reference to streets and right-of-ways) lands as it may now own or hereafter acquire by executing, acknowledging and recording an appropriate written declaration or agreement subjecting such land to all of the provisions hereof as though such land had been originally described herein and subjected to the provisions hereof provided, however, that each declaration or agreement may contain such deletions, additions and modifications of the provisions of this Declaration applicable solely to such additional property as may be necessary or desirable as solely determined by the Developer in good faith.

#### ARTICLE XI OBSERVANCE OF ALL LAWS

The Homes Association shall at all times observe all applicable state, county, city or other laws or regulations and, if at any time any of the provisions of this Declaration, shall be found to be in

conflict with such laws; such provisions shall become null and void, but no other parts of this Declaration not in conflict therewith shall be affected thereby.

ARTICLE XII AMENDMENT AND TERMINATION

This Declaration may be amended or modified, In whole or in part, at any time by a duly acknowledged and recorded written agreement (is one or more counterparts) signed by both (a) the owners of two-thirds of the Duplex Units within the District as then constituted and (b) if prior to the recording of Certificate of Substantial Completion, by the Developer provided, however, that the termination of this Declaration in its entirety or any amendment, modification or termination of any provision hereof regarding the Private Park shall require the prior written consent of the City of Overland Park, Kansas.

ARTICLE XIII ASSIGNMENT OF DEVELOPER'S RIGHTS

The Developer shall have the right and authority, by appropriate agreement made expressly for that purpose, to assign, convey, transfer and set over to any person or entity, all or any part of th rights, benefits, powers, reservations, privileges, duties and responsibilities herein reserved by or granted to the Developer, and upon such assignment the assignee shall then for any or all such purposes be the Developer hereunder with respect to the rights, benefits, powers, reservations, privileges, duties and responsibilities so assigned, Such assignee and its successors and assigns shall have the right and authority to further assign, convey, transfer and set over the rights, benefits, powers, reservations, privileges, duties, and responsibilities hereunder.

Article XIV. RELEASE OF THE CITY OF OVERLAND PARK.

The City of overland Park, Kansas is hereby released from any and all past, present or future liability for any damage that may be caused at any time to any real or personal property, including, without limitation, any Lot, Duplex Unit or other Improvement, or the Private Park or any other Common Area, resulting from or related to, directly or indirectly, the grant by the City to the Developer of a variance from Chapter 15.08 of the Overland Park Municipal Code relating to the creek in the Private Park or otherwise acting or failing to act with respect to the maintenance of the Private Pack or with respect to permitting public storm water to enter the Private Park. The City of Overland Park is hereby further released from any and all past, present or future obligations to expend any public funds or take any other action to maintain or improve the Private Park.

ARTICLE XV COVENANTS RUNNING WITH THE LAND

All provisions of this Declaration shall be deemed to be covenants running with the land and into whosoever hands any of the property in the District shall come.

IN WITNESS WHEREOF, the undersigned have caused this Declaration to be duly executed the day and year first written above.

Hanover Development Company II,  
a Kansas general partnership