

JEFFERSON County
Random Judge Assignment Report

Court:

Requestor: **Reference/Case Number:**

This Case has been Assigned to: **Division**

Control Date/Time:

2201001971

NO. _____

JEFFERSON CIRCUIT COURT
DIVISION _____
JUDGE _____

NOTTING HILL HOMEOWNERS ASSOCIATION, INC.
3944 BARDSTOWN ROAD
LOUISVILLE, KENTUCKY 40218

PLAINTIFF

JEFFERSON CIRCUIT COURT
DIVISION TWO (2)

**VERIFIED COMPLAINT AND PETITION FOR
RESTRAINING ORDER**

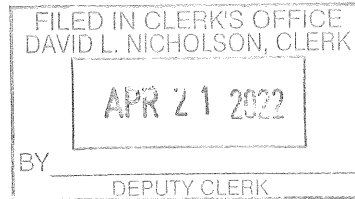
V.

JAMES E. FEGER
18701 FOXBOUGH GLEN PLACE
LOUISVILLE, KENTUCKY 40245
(SHERIFF)

DEFENDANTS

AND

ELISHA FEGER
18701 FOXBOUGH GLEN PLACE
LOUISVILLE, KENTUCKY 40245
(SHERIFF)



The Plaintiff, Notting Hill Homeowners Association Inc., a Kentucky non-profit corporation, by counsel, for its Complaint against the Defendants, James E. Feger and Elisha Feger, states as follows:

1. The Plaintiff is a duly organized and non-profit Corporation with the capacity to bring this action, as the representative of the body of property owners of real property located in a real property subdivision, known as Notting Hills.
2. The Defendants, James E. Feger and Elisha Feger, are the fee simple owners of a certain piece of real property situated in Jefferson County, Kentucky within Notting Hills, commonly referred to as 18701 Foxbough Glen Place, Louisville, Kentucky 40245, and more particularly described as follows:

Being Lot 17 of Notting Hills Sudvision, Section 1A, as shown on plat of record in Plat and Subdivision Book 51, Page 7, in the Office of the Clerk of Jefferson County, Kentucky.

Being the same property conveyed to James E. Feger and Elisha Feger, husband and wife, by General Warranty Deed dated November 16, 2018, of record in Deed Book 11310, Page 582, in the office of the Clerk of Jefferson County, Kentucky.

3. The Defendants, James E. Feger and Elisha Feger, took title to the real property referenced in Paragraph 2, above, subject to the Declaration of Covenants, Conditions and Restrictions for Notting Hill, of record in Deed Book 8686, Page 325, in the Office of the Clerk of Jefferson County, Kentucky, as amended from time to time. A copy of the Declaration of Covenants, Conditions and Restrictions and the amendments thereto are attached hereto and marked Exhibit "A".
4. That Article III, Section 3.5(a), of the Declaration of Covenants, Conditions and Restrictions for Notting Hill, provides as follows:

"(a) No structure may be erected, placed or altered on any Lot (except by Developer) until the construction plans and building specifications and a plan consisting of (i) a survey of the Lot prepared by a land surveyor, licensed in the Commonwealth of Kentucky; (ii) the location and specifications of all improvements including any building, fence, wall or other structure on the Lot; (iii) the grade elevation (including rear, front and side evaluations); (iv) the type of exterior materials (including delivery of a sample thereof, if requested by Developer); (v) the color of paint or stain to be applied to any exterior surface (including delivery of a sample thereof); (vi) the location and size of the driveway, which shall be concrete, brick or decorative stone; and (vi) such other data as the Developer may request, shall have been approved by Developer in its sole discretion. In addition to the foregoing, no structure may be erected, placed or altered on any Lot until a plat plan depicting the location of all improvements, setbacks and easements has been approved by Developer in its sole discretion. In reviewing any proposed structure, Developer shall have the right to take into consideration the suitability of the structure to the site, the harmony thereof with the surroundings, and the effect of the structure on the view from adjacent or neighboring Lots. Developer, in its sole discretion, shall have the right to accept or reject construction plans and building specifications solely on the basis of aesthetics."

5. That Article III, Section 3.5(b) of the Declaration of Covenants, Conditions and Restrictions for Notting Hill, provides as follows:

“References to ‘Developer’ in this Declaration shall include any entity, person or association to whom Developer may assign its rights and responsibilities, including these rights of approval. References to ‘structure’ in this Section 3.5 shall include, but not be limited to, any building (including a garage), fence, sheds, walls, hedges, antennae, microwave and other receivers and transmitters (including those currently called ‘satellite dishes’), swimming pool(s), tennis court(s) and mail and paper box.”

6. That Article III, Section 3.2 of the Declaration of Covenants, Conditions and Restrictions for Notting Hill, provides as follows:

“No structure shall be located on any Lot nearer to the front Lot line or the street side Lot line than the minimum building setback lines shown on the recorded plat of Subdivision, except steps may project into said areas, and open porches may project into said areas not more than six (6) feet. Developer may vary the established building lines, in its sole discretion, where not in conflict with applicable zoning regulations.”

7. That Article III, Section 3.4 of the Declaration of Covenants, Conditions and Restrictions for Notting Hill, provides as follows:

“(a) One attached garage for a minimum of two vehicles on Each lot is required. All garages shall have doors that must be maintained by the owner in usable condition. Garage doors shall remain closed at all times except when the garage is in use. Garages, as structures, are subject to prior plan approval under Article III of this Declaration.

(b) No carport shall be constructed on any Lot in Subdivision.”

8. That Article II, Section 2.2(d) of the Declaration of Covenants, Conditions and Restrictions for Notting Hill, provides as follows:

“No in ground swimming pool shall be erected or placed on any Lot unless and the plans have been approved pursuant to Article III of this Declaration...”

9. That Article II, Section 2.2(b) of the Declaration of Covenants, Conditions and Restrictions for Notting Hill, provides as follows:

“No fence, hedge or wall of any nature shall be placed or planted on any Lot unless its design and placement of planting and the material are approved in writing by Developer (or the Homeowners Association after Developer assigns this approval right to the Association).”

10. That Article VI, Section 6.4 of the Declaration of Covenants, Conditions and Restrictions for Notting Hill, as amended by the Fifth Amendment, provides as follows:

“Enforcement of these restrictions may also be by fine, levied by the Board of Directors of the Homeowners Association. Each Lot owner, by accepting a deed for a lot within the subdivision, agrees to accept the judgment of the Board of Directors with regard to any fine levied for violation of these restrictions and further agrees to the same lien rights for nonpayment as set forth in Article V Section 4.10 of the Declaration. Fines shall not be more than \$50 per violation per day, each day being considered a new violation, but such fines up to that amount are entirely within the discretion of the Board of Directors. All costs and attorneys’ fees for enforcement of these restrictions shall be the obligation of the Lot owner. Unpaid fines shall bear interest at the same rate as unpaid assessments and shall be collectible in the same method as unpaid assessments, along with reasonable attorneys fees.”

11. That the Developer has turned over control of the Association to its members in April of 2021.

12. That on July 21, 2021, the Defendants sent an email to the Association’s property manager, Bill Haley, regarding certain proposed outdoor improvements, which included an in ground swimming pool, a spa, patio area and sidewalk, an outdoor kitchen, a pergola, gated fence and a utility/single car garage. A copy of said email is attached hereto as Exhibit “B”.

13. That on August 9, 2021, the Defendants applied for a permit with the city of Louisville for the installation of a pool. A copy of the IPL records is attached hereto as Exhibit “C”.

14. That pursuant to the permit that was issued, “New work shall not encroach upon any easements or required yards.”

15. That at the time the Defendants applied for the aforementioned permit, the Association, by and through its Board of Directors (“Board”) had not approved the proposed in ground swimming pool.
16. That on December 13, 2021, the Association, via its property manager, requested a scaled drawing for the swimming pool, plat, layout and renderings of the proposed pool.
17. That the Defendants failed to provide the Association with a scaled drawing and the additional information that was requested.
18. That to date, the Association has not approved the in ground swimming pool.
19. That Defendants, James E. Feger and Elisha Feger, have violated the above-described provisions by installing an in ground pool without Board approval.
20. That the installed in ground pool violates the permit because it encroaches upon an easement and/or required yards.
21. That the Defendants have violated the above-described provisions by installing certain landscaping on their lot without Board approval.
22. That on January 25, 2022, the Association, via its property manager, sent a request asking for additional documentations, including a scaled drawing and precise placement of the pavilion and fireplace. A copy of said email is attached hereto as Exhibit “D”.
23. That on March 22, 2022, the Association, via its property manager, again requested information from the Defendants regarding their proposed project.
24. That on March 30, 2022, the Defendants submitted new plans for a larger, roofed “gazebo/pavilion” with 4’ walls on two sides and a fireplace with a 20 plus foot chimney.
25. That on April 1, 2022, members of the Association’s Board met with the Defendants regarding their project.

26. That on April 5, 2022, the President of the Association sent the Defendants an email regarding the April 1st meeting, and the Defendants responded to said email on April 6, 2022. A copy of said emails are attached hereto and marked Exhibit "E".
27. That the Association has not approved the pavilion, outdoor kitchen, free standing garage and fencing.
28. That the Defendants have continued construction on erecting the unapproved structures in violation of the Declaration of Covenants, Conditions and Restrictions.
29. That the Association, by and through its Board, has instructed the Defendants to stop all construction until the plans are approved.
30. That the Defendants have ignored the demands to cease and desist and has continued construction without obtaining the necessary approval from the Board.
31. That the Defendants have verbally represented to the Association that they and their agent(s)/contractor(s) will continue the project without obtaining the necessary written approval. See the Affidavit of Bill Haley that is attached hereto and marked Exhibit "F".
32. By continuing the aforementioned project, in violation of the Declaration of Covenants, Conditions and Restrictions, the Defendants have caused damage to the Plaintiff in an undetermined amount, and has and continues to cause irreparable harm to the Plaintiff and the members of the community it represents.
33. By installing the in ground pool, in violation of the Declaration of Covenants, Conditions and Restrictions, the Defendants have caused damage to the Plaintiff in an undetermined amount, and has caused irreparable harm to the Plaintiff and the members of the community it represents.

34. The Defendants' failure to respond or to comply with the demands of the Plaintiff has become an annoyance and nuisance to other property owners and violates the above-quoted provisions which allow the Plaintiff injunctive relief as provided in the Declaration of Covenants, Conditions and Restrictions for Notting Hill.

35. That the Plaintiff is entitled to its reasonable attorneys fees and costs pursuant to Article VI, Section 6.4 of the Declaration of Covenants, Conditions and Restrictions for Notting Hill.

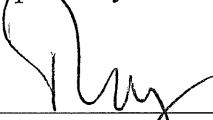
WHEREFORE the Plaintiff, Notting Hill Homeowners Association Inc. demands as follows:

1. That the Court enter a Restraining Order and an Injunction mandating that the Defendants, James E. Feger and Elisha Feger, immediately refrain from continuing construction on their lot, and that if Defendants violate said Restraining Order, that Notting Hill Homeowners Association, Inc. be allowed to restore the lot and surrounding areas to its original pre-construction condition, with any and all expenses associated with said restoration to be paid by the Defendants in violation;
2. That the Court enter a Restraining Order and an Injunction mandating that the Defendants, James E. Feger and Elisha Feger, obtain the Plaintiff's necessary written approval for the in ground swimming pool, and that the Defendants shall abide by all terms and conditions contained in the written approval, and that if Defendant violate said Restraining Order, that Notting Hill Homeowners Association, Inc. be allowed to restore the lot to the condition prior to the installation of the in ground swimming pool, with any and all expenses associated with said restoration to be paid by the Defendants in violation;
3. That the Court enter a Restraining Order and an Injunction mandating that the Defendants, James E. Feger and Elisha Feger, hereafter refrain from altering their lot in a manner that

violates the Declaration of Covenants, Conditions and Restrictions, and that if Defendants violate said Restraining Order, that Notting Hill Homeowners Association, Inc. be allowed to restore the lot to the condition prior to the violation, with any and all expenses associated with said restoration to be paid by the Defendants in violation;

4. For Judgment for all damage caused by the Defendants' conduct in amounts to be determined;
5. That pursuant to the Declaration of Covenants, Conditions and Restrictions of Notting Hill, the Plaintiff be awarded its costs here incurred, including court costs and a reasonable fee for its attorney;
6. Any and all other relief to which the Plaintiff shows itself properly entitled; and
7. For leave to Amend.

Respectfully submitted,

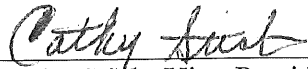


RICHARD V. HORNUNG
Hebel & Hornung, PSC
6511 Glenridge Park Place, #1
Louisville, KY 40222
(502) 429-9790

VERIFICATION

I hereby verify that the foregoing statements are true and correct to the best of my knowledge.

Notting Hill Homeowners Association, Inc.

A handwritten signature in cursive script, appearing to read "Cathy Stich", written over a horizontal line.

Cathy Stich, Vice-President of Notting Hill
Homeowners Association, Inc.

**DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS**

NOTTING HILL
Jefferson County, Kentucky

This Master Declaration of Covenants, Conditions and Restrictions for Notting Hill (this "**Declaration**") is made, as of _____, 2005, by NOTTING HILL DEVELOPMENT, LLC, a Kentucky limited liability company, 301 Middletown Park Place, Suite A, Louisville, Kentucky 40243 ("**Developer**").

RECITALS

A. **Property.** Developer owns certain real property (the "**Property**") in Jefferson County, Kentucky, more particularly described as follows:

BEING 99.502 acre tract on Shelbyville Road, and BEING Tract 2 as shown on the Minor Subdivision Plat approved by the Louisville Metro Planning Commission on August 11, 2004, Docket No. 159-04, which Minor Subdivision Plat is attached to and made part of the Deed of record in Deed Book 8492, Page 676, in the office of the Clerk of Jefferson County, Kentucky.

BEING part of the property conveyed to Notting Hill Development, LLC, by Deed dated September 22, 2004, of record in Deed Book 8492, Page 676, of Jefferson County, Kentucky.

B. **Plan.** Developer is developing or may develop the Property into a various sections or phases for residential housing to be known generally as Notting Hill. Each phase or section may have different types of residential housing, including single family detached houses, patio home-style housing (which may be submitted to a condominium regime), and condominium homes other than patio-style homes. Each section or phase of the single family detached houses may have different style or minimum sized housing restrictions, and each phase or section may have additional, fewer or different restrictions and requirements than those set forth in this Declaration. Nevertheless, the Property will or may contain common areas, open spaces, a community center and recreational facilities that benefit each section or phase of the Property as it is developed. Accordingly, Developer desires to establish a scheme for the development of the Property, although portions of the Property may never be subjected to that scheme. Nothing in this Declaration subjects any portion of the Property to this Declaration (except the portion described in Section 1.1 of this Declaration) until such time as other portions of the Property are expressly made subject to this Declaration as set forth in Section 1.2 of this Declaration. Accordingly, Developer retains the right to sell, mortgage, convey, lease, dispose of and otherwise use other portions of the Property without regard to this Declaration until such time as other portions are expressly made subject to this Declaration as contemplated by Section 1.2 of this Declaration, and nothing in this Declaration, implicitly or otherwise, subjects the Property to this Declaration, except only that portion described in Section 1.2 of this Declaration, and Developer may for clarity expressly withdraw portions of the Property from this Declaration without the consent of any owner of any part of the Property.

C. **Purpose.** This Declaration is for the purpose of protecting the value and desirability of the portions of the Property. The easements, restrictions, covenants and conditions shall run with the real property and be binding on all parties having any right, title or interest in it, their heirs, successors and assigns, and shall inure to the benefit of each owner. These Recitals are incorporated in and made part of this Declaration.

ARTICLE I INITIAL PROPERTY

Section 1.1. **Existing Property.** The real property which is hereby made subject to this Declaration is located in Jefferson County, Kentucky, and is more particularly described as follows, and the term "**Subdivision**" as used in this Declaration means Notting Hill, Section 1A, as described on the plats referenced below:

BEING Lots 1 through 17 inclusive, Lots 19 through 25 inclusive, and Lots 28 through 44 inclusive, as shown on the plats of Notting Hill, Section 1A, of record in Plat and Subdivision Book 51, Pages 7 and 8, in the office of the Clerk of Jefferson County, Kentucky. The real property shown on these plats also includes Open Space Lots 18, 26, 27, 45 and 46.

BEING part of the property conveyed to Notting Hill Development, LLC, by Deed dated September 22, 2004, of record in Deed Book 8492, Page 676, of Jefferson County, Kentucky.

Section 1.2. **Additions.** Additional portions of the Property may become subject to this Declaration, as set forth in the Recitals, although all of the Property will not necessarily be made subject to this Declaration. Also, Developer may include other real property under the scheme established by or contemplated by this Declaration. To the extent Developer does incorporate other portions of the Property into Notting Hill, the other portions may contain certain common areas or open spaces or a community center and recreational facilities benefiting this Section 1A, and this Section 1A may contain common areas for the benefit of future phases or sections. Developer reserves the right to create cross easements, restrictions, covenants and conditions on any such common areas or open spaces or a community center and recreational facilities. Any common areas initially covered by this Declaration shall inure to the benefit of the owners of any new Lots in future phases or sections, and the common areas in any future phases or sections, if so designated by Developer shall inure to the benefit of the owners of Lots in this Section 1A, to the extent and only to the extent set forth in this Declaration or subsequent declarations or supplements or amendments, each to enjoy the common areas or open spaces or a community center and recreational facilities of the others and to have and to hold such common areas or open spaces or a community center and recreational facilities as if they had been developed and subjected to this Declaration simultaneously. Developer does reserve the right to limit the use and enjoyment of certain common area or open space in future sections or phases to the residents of such future sections or phases, particularly but not exclusively with respect to future sections or phases that are developed as condominiums or patio home condominiums. All additions shall be made by filing in the office of the Clerk of Jefferson County, Kentucky, a separate, supplementary or amended Declaration of Covenants, Conditions and Restrictions with respect to the

additional portions of the Property which shall extend the scheme (as modified or amended) of the covenants, conditions, restrictions and covenants of this Declaration to such property. The supplementary, separate or amended Declaration may contain additions to, modifications of and differences from the covenants, conditions, restrictions and covenants contained in this Declaration as may be appropriate to reflect the different character of the other properties.

ARTICLE II USE RESTRICTIONS

Section 2.1. **Primary Use Restrictions.** The term "Lot" means each residential building Lots described in Section 1.1 of this Declaration (that is, not the Open Space "not a building site" lots shown on the plats). No Lot shall be used except for private single family residential purposes. No structure shall be erected, placed, altered or permitted to remain on any Lot except single family dwellings designed for the occupancy of one family not to exceed two and one-half stories in height and including a garage for the sole use of the owner and occupants of the Lot. "Family," as used in this Section 2.1, shall include any domestic servants living on the premises. Without limiting the generality of the phrase "private single-family residential purposes", Developer expressly excludes from that phrase, and the following shall not be permitted on any lot, regardless of whether any of the following uses would be permitted by applicable zoning regulations or other applicable laws, ordinances or regulations, and uses which constitute or relate to (a) boarding houses, (b) lodging houses, (c) fraternities or sororities, (d) clubs, (e) hotels or motels, (f) residences or homes for social rehabilitation, (g) nursing homes, (h) residences or homes for the aged or infirm, (i) programs with respect to which admission or residency in or occupancy of the premises is limited to or intended in whole or in part for persons in the custody of the criminal justice system and/or persons engaged in the care, custody, nurturance or supervision of such persons, and (j) any "group home" or other similar use as determined by Developer or the Homeowners Association (defined below). With respect to future portions of the Property subjected to this Declaration but developed as patio home or other style condominiums, the term "Unit" may be substituted for the term "Lot" and the restriction limiting a lot to one single family residence shall not apply; instead the provisions of the master deed and declaration of condominium regime for such future portions shall control.

Section 2.2. **Clothes Lines; Fences and Walls; Antennae and Receivers/Transmitters; Firewood; Mailboxes; Tennis Courts and Pools; Sports Equipment.**

- (a) No outside clotheslines shall be erected or placed on any Lot.
- (b) No fence, hedge or wall of any nature shall be place or planted on any Lot unless its design and placement of planting and the material are approved in writing by Developer (or the Homeowners Association after Developer assigns this approval right to the Homeowners Association).
- (c) No tennis court and fence shall be erected or placed on any Lot unless the fencing is coated with black or green vinyl acceptable to Developer (or the Homeowners Association after Developer assigns this approval right to the Homeowners Association) and the plans have been approved pursuant to Article III of this Declaration.

(d) No in ground swimming pool shall be erected or placed on any Lot unless and the plans have been approved pursuant to Article III of this Declaration. No above ground pools shall be erected or place on any Lot.

(e) No antenna (except for a standard small television antennae) or microwave or other receivers and transmitters (including those currently called "satellite dishes") shall be erected or placed on any Lot unless (i) the Lot owner can show special circumstances requiring the use of extraordinary receivers or transmitters [small digital satellite dishes of eighteen (18) inches or less shall satisfy this subsection]; (ii) the site design and placement are approved in writing by Developer (or the Homeowners Association after Developer assigns this approval right to the Homeowners Association), which approval shall be within the discretion of Developer, and (iii) the device is adequately screened or buffered by mature shrubbery or trees, by terrain, by fences or other structures. By granting permission to one or more Lot owners, Developer shall not be deemed to have waived this restriction as it applies to other Lots.

(f) No ornamental yard objects, statuary, sculpture or similar items may be placed on any Lot unless the design and placement are approved in writing by Developer (or the Homeowners Association after Developer assigns this approval right to the Homeowners Association).

(g) Developer, for itself and the Homeowners Association, reserves the right to place a fence on the perimeter of the subdivision or to replace existing fences. Any such fence placed or replaced on the perimeter by Developer or the Homeowners Association shall be maintained by the Homeowners Association. Each Lot owner grants to Developer and the Homeowners Association an easement for such fencing, including an easement for access to the fence for maintenance purposes.

(h) No basketball goals or other goals, nets, skateboard ramps, or other sports equipment of any nature shall be placed on any Lot unless the design or placement are approved in writing by Developer (or the Homeowners Association after Developer assigns this approval right to the Homeowners Association).

(i) No firewood shall be stored in a location that is visible from the front of the Lot on which it is stored.

(j) All mailboxes and paper boxes shall be of a uniform style provided by Developer (at the cost of a Lot owner).

Section 2.3. Use of Other Structures and Vehicles.

(a) No structure of a temporary character shall be permitted on any Lot, except temporary tool sheds or field or sales offices used by a builder with the written approval of Developer, or sales or field offices used by Developer, which shall be removed when construction or development is completed. This restriction does not prohibit the construction or erection of a recreational structure (such as a gazebo, small playhouse, swing set, jungle gym or the like), but only if the design, size, placement and screening have been approved in writing by Developer (or the Homeowners Association after Developer assigns this approval right to the Homeowners Association).

(b) No outbuilding, trailer, basement, tent, shack, garage, barn or structure other than the main residence erected on a Lot shall at any time be used as a residence, either temporarily or permanently.

(c) No trailer, boat, truck (except SUVs and pickup trucks weighing less than 7,000 pounds), recreational vehicle or other vehicle, except an automobile and except SUVs and pickup trucks weighing less than 7,000 pounds, shall be parked on any street or alley in Notting Hill, for a period in excess of an aggregate of 48 hours in any calendar year. No trailer, boat, truck, recreational vehicle or other vehicle, including an automobile and including SUVs and pickup trucks weighing less than 7,000 pounds, shall be parked, placed or stored anywhere on any Lot in the Notting Hill development at any time, including in any yard or driveway of a Lot, excepting only (I) that all such vehicles may be parked in a garage with the garage door closed when not in use, (II) that automobiles, SUVs and pickup trucks weighing less than 7,000 pounds may be parked in a driveway at any time, and (III) that a trailer, boat, truck, recreational vehicle or any other vehicle may be parked in a driveway for a period of time not to exceed 24 consecutive hours and not to exceed an aggregate of 48 hours in any calendar year.

(d) No automobile shall be habitually or continuously parked on any street or right-of-way in Subdivision.

(e) No repairing of cars, trucks or other vehicles shall take place on any street, driveway or outbuilding or in any garage unless the garage door is shut. No inoperable or junked vehicle shall be parked on any street or driveway in Subdivision.

Section 2.4. **Nuisances.** No noxious or offensive activity shall be conducted on any Lot, nor shall anything be done which may be or become an annoyance or nuisance to the neighborhood.

Section 2.5. **Animals.** No animals, including reptiles, livestock or poultry of any kind, shall be raised, bred or kept on any Lot for any commercial purposes except that dogs, cats or other household pets (meaning the domestic pets traditionally recognized as household pets in this geographic area) may be kept, providing they are not kept, bred or maintained for any commercial purposes. All household pets, including dogs and cats, shall at all times be confined to the Lot occupied by the owner of such pet; provided, however, that household pets may be walked within Subdivision, so long as such animals are at all times on a leash and under the control of a resident. The owner or handler of such pet must clean up and remove any animal feces from any area in which it is deposited. No pet may be kept in the Notting Hill development if it is or becomes a nuisance. Actions that constitute a nuisance include, but are not limited to, repeated barking, an attack on a person, or more than one unprovoked attack on other animals. Abnormal or unreasonable crying, barking, scratching, or failure to have the pet licensed and inoculated, or fleas or other vermin infesting the pet (if not eradicated promptly after the discovery of such infestation), or repeated defecation that is not immediately cleaned up by the pet's owner, shall be cause for the Homeowners Association to require and force removal of the pet from the Notting Hill development. Pet owners are fully responsible for personal injuries and property damage caused by their pets and shall (and do hereby) indemnify and hold harmless the Homeowners Association and Developer from and against losses, costs, claims and expenses, including without limitation attorney fees and court costs, caused by such pets. No dog runs

or similar structures may be erected or placed on any Lot unless first approved in writing by Developer (or the Homeowners Association after Developer assigns this approval right to the Homeowners Association). The Homeowners Association may establish other rules regulating the activities of pets and may impose fines established and published by the Homeowners Association for violations of those rules.

Section 2.6. Disposal of Trash. No Lot shall be used or maintained as a dumping ground of rubbish, trash, garbage, grass clippings, weeds, shrubs or tree trimmings. Trash, garbage or other waste shall not be kept except in sanitary containers. No trash, garbage or other waste in sanitary containers shall be kept or allowed to remain outside, except same may be placed outside after 5:00 p.m. of the evening before any regular trash or garbage collection day, and until same is collected on said day. Each Lot owner shall use the waste disposal company or companies designated by Developer (or by the Homeowners Association after Developer assigns this right to the Homeowners Association) and the Homeowners Association may, but is not required to, include in the assessments established below the cost of waste disposal.

Section 2.7. Drainage; Erosion; Sediment Control. Drainage of each Lot shall conform to the general drainage plans of Developer for Subdivision. Developer shall provide to the initial purchaser from Developer a detailed drainage plan for the Lot, each Lot owner and builder shall conform the construction on a Lot to such drainage plan. It is the Lot owner's responsibility to ensure that grading of a Lot complies with the drainage plan. If drainage is blocked or altered, the Lot owner shall correct the problem at the Lot owner's expense. If any Lot owner fails to do so, Developer (or the Homeowners Association after Developer assigns this right to the Homeowners Association) may perform the corrective work and charge the cost thereof to the Lot owner. Developer may place a lien on the Lot to ensure payment of those costs. No storm water drains, roof downspouts, ground water or other water shall be introduced into the sanitary sewage system. Plumbing connections on each Lot shall be made with watertight joints in accordance with all applicable plumbing code requirements. Each Lot owner shall be responsible for preventing mud, dirt, silt, gravel or other debris from washing, draining or being otherwise deposited on any street. This requirement is in keeping with the Federal Clean Water Act and the laws of the Commonwealth of Kentucky.

Section 2.8. Business; Home Occupations. No trade or business of any kind (including any practice of medicine, dentistry, chiropody, osteopathy, and other like endeavors) shall be conducted on any Lot. Notwithstanding the provisions hereof or of section 2.1 of this Declaration, a new house may be used by a builder thereof as a model home for display or for the builder's own office for a period not to exceed 24 months after completion of the house (which 24-month period Developer may extend in Developer's discretion). Also, until such time as Developer has sold all of its Lots in Subdivision, it may maintain a sales office within Subdivision.

Section 2.9. Signs. No sign for advertising or for any other purpose shall be displayed on any Lot or on a building or a structure on any Lot, except one sign for advertising the sale or rent thereof, which sign shall not be greater in area than nine (9) square feet; provided, however, Developer shall have the right to (i) erect larger signs when advertising Subdivision or the larger Notting Hill development, (ii) place signs on Lots designating the lot number of any Lot, and (iii) following the sale of a Lot, place signs on such Lot indicating it has been sold and the name of the purchaser of that Lot.

This restriction shall not prohibit placement of occupant name signs and lot numbers as allowed by applicable zoning regulations.

Section 2.10. Duty to Repair and Build.

(a) Each Lot owner shall, at the owner's sole cost and expense, repair his residence, keeping the same in condition comparable to the condition of such residence at the time of its initial construction, excepting only normal wear and tear.

(b) If all or any portion of a residence is damaged or destroyed by fire, or other casualty, then owner shall, with all due diligence, promptly rebuild, repair or reconstruct such residence in a manner which will substantially restore it to the condition which existed immediately prior to the casualty.

Section 2.11. Duty to Maintain Lot. After the date of purchase, it shall be the duty of each owner to keep the grass on the Lot properly cut, to keep the Lot free from weeds and trash and to keep it otherwise neat and attractive in appearance. This requirement includes, without limitation, performing such duties in all areas of the Lot subject to easements. Should any owner fail to do so, then Developer may take such action as it deems appropriate, including mowing, in order to make such Lot neat and attractive, and the owner shall, immediately upon demand, reimburse Developer or other performing party for all expenses incurred in so doing, together with allowable statutory interest, and Developer shall have a lien on that Lot and the improvements thereon to secure the repayment of such amounts. Such lien may be enforced by foreclosure against that Lot and the improvements thereon, but such lien shall be subordinate to any first mortgage lien thereon. The owner shall and does hereby indemnify and hold harmless Developer for any liability, loss or damage as a result of the entry by Developer onto the owner's Lot in accordance with this Section 2.11.

Section 2.12. Underground Utility Service.

(a) Each Lot owner's electric utility, gas, sewer, cable television, internet access and telephone service lines shall be underground at locations designated by Louisville Gas & Electric (LG&E) or the other service provider, throughout the length of service from the point of delivery to customer's building, and title to the service lines shall remain in and the cost of installation or maintenance thereof shall be borne individually by the respective owner upon which said service line is located.

Appropriate easements are hereby dedicated and reserved to each property owner, together with the rights of ingress and egress over abutting Lots or properties to install, operate and maintain utility service lines to the provider's termination points. Electric service lines, as installed, shall determine the exact location of said easements.

The electric, telephone and other easements shown on the plat of Subdivision shall be maintained and preserved in their present condition and no encroachment therein and no change in the grade or elevation thereof shall be made by any person or owner without the express written consent of LG&E or Bell South or other service providers, and their respective successors and assigns.

(b) Easements for electric transmission and distribution feeder lines, poles and equipment appropriate in connection therewith are reserved over, across and under all spaces (including park, open and drainage space area) outlined by appropriate lines on the plat and designated for underground and overhead facilities.

Above ground electric transformers and pedestals may be installed at appropriate locations in electric easements where described and directed by Developer.

In consideration of bringing service to the property, service providers are granted the right to make further extensions of its lines from all overhead and underground distribution lines.

(c) The electric and telephone easements hereby dedicated and reserved to LG&E and Bell South, as shown on the recorded plat of Subdivision, shall include easements for the installation, operation and maintenance of cable television service to the owners, including the overhead and/or underground installation and service of coaxial cables, cable drop wires, converters, home terminal units and other necessary or appropriate equipment, as well as easements for the installation, operation and maintenance of future communication, telecommunication and energy transmission mediums, including but not limited to internet lines.

(d) Lot owners are responsible for assuring that all utility trenched holes are filled properly and the fill compacted properly before finish grading.

Section 2.13. **Obligation to Construct or Reconvey.** If within twenty-four (24) months after the conveyance by Developer of a Lot without a dwelling thereon the Lot owner has not begun in good faith the construction of a single-family dwelling approved according to this Declaration, Developer may (without obligation) elect to repurchase the Lot or Lots on which construction has not commenced in good faith for the original purchase price paid to Developer. Also, a Lot owner may not sell a Lot on which construction of a single family dwelling has not commenced in good faith without first offering in writing to re-convey the Lot to Developer for the original purchase price paid to Developer for the Lot; if Developer does not accept the offer within 10 days of receiving the offer, then the Lot owner may sell the Lot to a third party. If Developer exercises either one of these rights to repurchase, the Lot owner shall upon demand and tender of the purchase price, execute and deliver to Developer a special warranty deed to the applicable Lot, subject to no liens, encumbrances, easements, restrictions or stipulations other than those in effect at the time of the conveyance of the Lot from Developer to the Lot owner.

ARTICLE III ARCHITECTURAL CONTROL

Section 3.1. **Building Materials; Builder.**

(a) The exterior building material of all structures shall be approved by Developer. The color of any paint or stain to be applied to exterior surfaces, whether initial application or reapplication, must be approved by Developer (or the Homeowners Association after Developer assigns this approval right to the Homeowners Association).

(b) Developer reserves the right of prior approval of each general contractor, contractor, or builder which proposes, or is contracted with, hired or otherwise retained by any owner, to build a residential structure on any Lot, which approval must be obtained prior to the commencement of any such construction in Subdivision. Developer reserves the right of prior approval in order to ensure (i) the maintenance of a quality construction within Subdivision, (ii) that the economic value of other Lots and structures within Subdivision will not be impaired by the construction of residential structures not of the comparable quality, and (iii) the maintenance of the aesthetic quality of Subdivision. Developer's approval of any general contractor or builder for any particular Lot shall not be considered approval to build on any subsequent Lot, nor does the Developer waive any right to disapprove any general contractor or builder on any subsequent Lot because of approval on a previous lot.

(c) Any approval by Developer of any general contractor, contractor or builder shall in no manner whatsoever serve as a guarantee, warranty or representation of the quality of workmanship by said general contractor, contractor or builder, or of the ability of said general contractor or builder to fully perform the work for which the owner contracted, nor the owner's satisfaction therewith.

Section 3.2. **Setbacks.** No structure shall be located on any Lot nearer to the front Lot line or the street side Lot line than the minimum building setback lines shown on the recorded plat of Subdivision, except steps may project into said areas, and open porches may project into said areas not more than six (6) feet. Developer may vary the established building lines, in its sole discretion, where not in conflict with applicable zoning regulations.

Section 3.3. **Minimum Floor Areas.** The following shall be the minimum floor areas for homes to be constructed after this Declaration is recorded:

(a) The total floor area of a one-story dwelling shall be (i) a minimum of 2,750 square feet on Lots 19 through 25 inclusive, (ii) a minimum of 2,200 square feet on Lots 1 through 17 inclusive, and (iii) a minimum of 1,750 on Lots 28 through 44 inclusive.

(b) The total floor area for a two-story dwelling shall be (i) a minimum of 3,000 square feet on Lots 19 through 25 inclusive, with a minimum of 1,500 square feet on the first floor, (ii) a minimum of 2,400 square feet on Lots 1 through 17 inclusive, with a minimum of 1,450 square feet on the first floor, and (iii) a minimum of 2,000 square feet on Lots 28 through 44 inclusive, with a minimum of 1,000 square feet on the first floor.

(c) The total floor area of a one and one-half story dwelling shall be (i) a minimum of 3,000 square feet on Lots 19 through 25 inclusive, with a minimum of 1,750 square feet on the first floor, (ii) a minimum of 2,400 square feet on Lots 1 through 17 inclusive, with a minimum of 1,450 square feet on the first floor, and (iii) a minimum of 2,000 square feet on Lots 28 through 44 inclusive, with a minimum of 1,150 square feet on the first floor.

(d) Basement areas (finished and unfinished), garages, decks and open porches shall not be included in calculating floor areas.

Section 3.4. Garages; Carports.

(a) One attached garage for a minimum of two vehicles on each Lot is required. All garages shall have doors that must be maintained by the owner in usable condition. Garage doors shall remain closed at all times except when the garage is in use. Garages, as structures, are subject to prior plan approval under Article III of this Declaration.

(b) No carport shall be constructed on any Lot in Subdivision.

Section 3.5. Approval of Construction, Fencing and Landscaping Plans.

(a) No structure may be erected, placed or altered on any Lot (except by Developer) until the construction plans and building specifications and a plan consisting of (i) a survey of the Lot prepared by a land surveyor, licensed in the Commonwealth of Kentucky; (ii) the location and specifications of all improvements including any building, fence, wall or other structure on the Lot; (iii) the grade elevation (including rear, front and side elevations); (iv) the type of exterior materials (including delivery of a sample thereof, if requested by Developer); (v) the color of paint or stain to be applied to any exterior surface (including delivery of a sample thereof); (vi) the location and size of the driveway, which shall be concrete, brick or decorative stone; and (vi) such other data as the Developer may request, shall have been approved by Developer in its sole discretion. In addition to the foregoing, no structure may be erected, placed or altered on any Lot until a plot plan depicting the location of all improvements, setbacks and easements has been approved by Developer in its sole discretion. In reviewing any proposed structure, Developer shall have the right to take into consideration the suitability of the structure to the site, the harmony thereof with the surroundings, and the effect of the structure on the view from adjacent or neighboring Lots. Developer, in its sole discretion, shall have the right to accept or reject construction plans and building specifications solely on the basis of aesthetics.

(b) References to "Developer" in this Declaration shall include any entity, person or association to whom Developer may assign its rights and responsibilities, including these rights of approval. References to "structure" in this Section 3.5 shall include, but not be limited to, any building (including a garage), fence, sheds, walls, hedges, antennae, microwave and other receivers and transmitters (including those currently called "satellite dishes"), swimming pool(s), tennis court(s) and mail and paper boxes.

Section 3.6. Landscaping; Driveways; Trees; Sidewalks.

(a) Promptly after the construction of a residence, the Lot owner shall promptly grade and sod the entire yard of the Lot, unless Developer in its sole discretion approves in writing seeding and strawing the rear and side yards.

(b) Each owner shall finish the driveway and apron prior to occupancy of a single family dwelling. Any driveway which in Developer's determination restricts drainage by, over or into a roadway shall be removed and replaced by owner within twenty (20) days of demand for such removal and replacement by Developer at the sole cost and expense of owner.

(c) Prior to occupancy of any residence and unless otherwise permitted by the express written approval of Developer, the owner shall cause to be planted at least one tree (at least two to three inches in caliper) in the front yard of the Lot. Developer retains the right, in its sole discretion, to determine the location of any and all trees on the Lot. This requirement is in addition to any street trees placed on any Lot by Developer in the right-of-way, and Developer reserves the right to place such trees either before or after completion of construction of a dwelling. No tree shall be removed from any Lot without the prior written approval of Developer.

(d) Each owner shall construct on that owner's Lot a four (4) foot wide concrete sidewalk along the full length of the front Lot line, and where such Lot is a corner Lot, the sidewalk shall be constructed along the full length of each Lot line adjacent to a right-of-way, all in accordance with applicable laws and regulations. Such sidewalk shall be concrete and of broom finish. The sidewalk shall be installed prior to completion of a dwelling on the Lot; provided, however, once at least 80% of the Lots in Subdivision have dwellings constructed on them, each Lot owner (except Developer) shall install a sidewalk whether or not construction of a dwelling on that Lot has commenced.

(e) Upon an owner's failure to comply with the provisions of this Section 3.6, Developer may take such action as necessary to cause the owner to comply therewith or take such other actions as Developer shall deem appropriate, and the owner shall immediately, upon demand, reimburse Developer or other performing party for all expenses incurred in so doing, together with allowable statutory interest, and Developer shall have a lien on that Lot and the improvements thereon to secure the repayment of such amounts. Such lien may be enforced by foreclosure against that Lot and the improvements thereon, but such lien shall be subordinate to any first mortgage thereon.

Section 3.7. **Subdividing Lots.** No owner of a Lot shall subdivide any Lot in Subdivision, without the prior written consent of the Developer.

ARTICLE IV COMMON AREAS AND HOMEOWNERS ASSOCIATION

Section 4.1. **Common Area.** Every Lot owner in Subdivision shall have a right and easement of enjoyment in and to any "Common Area", which right and easement shall be appurtenant to and shall pass with the title to every Lot. The term "Common Area" means and refers to all non-residential Lots and areas designated as "common area" or "open space" or "non-buildable" on the plat of the Subdivision or future phases or sections developed on the Property, including without limitation Open Space Lots 18, 26, 27, 45 and 46 as shown on the plats of Notting Hill Section 1A referenced above and shall also mean any area intended and designated by Developer for the common use and enjoyment of Lot owners in the Subdivision and the larger Notting Hill development, as contemplated by this Declaration, including without limitation as contemplated by the Recitals and Section 1.2 of this Declaration, whether or not so designated on a plat, and expressly including any community center and recreational facilities. Such Common Area may also mean and include, to the extent necessary and appropriate for the enjoyment of or maintenance by the Homeowners Association, certain areas dedicated to public use and certain easement areas on a Lot or Lots in Subdivision, including without limitation areas where signature walls or entrances may be located, and including islands located in rights-of-way. AGAIN, I NEED TO SEE A DRAFT PLAT

The right of enjoyment is subject to the following provisions:

(a) The right of the Homeowners Association to permit or regulate the use of any facilities situated within Common Area. With respect to the community center and recreational facilities that are part of the general Common Area, there will be an exercise room and restrooms that will be available to all Unit Owners by key. The remaining portions of the community center and recreational facilities will be available either at hours designated by the Homeowners Association (for example with respect to the pool), or by reservation (such as a party room of the community center) subject to such rules and regulations as the Homeowners Association determines from time to time, including possibly the imposition of security deposits, cleaning fees or rental fees.

(b) The right of the Homeowners Association to borrow money for the purpose of improving the Common Area or for constructing, repairing or improving any facilities located or to be located thereon, and to give a security for the payment of any such loan a mortgage on all or part of the Common Area.

(c) The right of the Homeowners Association to suspend the voting rights and the right to use and enjoy the Common Area, by any Lot owner for any period during which an assessment against the owner's Lot remains unpaid, and for a period of time for any infraction of its published rules and regulations.

(d) The right of the Homeowners Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Homeowners Association. Developer may dedicate utility or service easements at its sole discretion so long as Developer owns any of the Property.

(e) The right of the Homeowners Association to make rules and regulations governing the use of the Common Area and to charge fines or other penalties for violation of the rules and regulations.

(f) Common Area, including open space, private roads, islands in dedicated rights-of-way, and signature entrances shall not be dedicated to a unit of local government without the acceptance of the unit of local government involved and the approval of the Louisville Metro Planning Commission, or its successors or assigns. The Homeowners Association may not amend this restriction without approval from the Louisville Metro Planning Commission, or its successors or assigns.

(g) Anything to the contrary herein notwithstanding, the Homeowners Association and the Lot owners shall be responsible for the maintenance of all Common Area and common open space, private roads, islands in the right-of-way, an signature entrances, so long as the subdivision is used as a residential subdivision or until properly dedicated to a unit of local government. This provision shall not be amended.

Section 4.1A. Tree Canopy Protection Area. Any Tree Canopy Protection Areas designated on the record plat for the Subdivision or any future phase or section of Notting Hill developed on the Property shall be permanently preserved in a natural state. No clearing, grading, or other land disturbing activity shall occur in the Tree Canopy Protection Areas except clearing,

grading and filling for sanitary sewer and drainage facilities as allowed by the conditions of approval for Notting Hill as approved by the Louisville Metro Planning Commission, and except for supplemental landscape planting, pruning to improve the general health of trees, removing dead or declining trees that pose a public health and safety threat, and clearing of under story brush to remove a public health and safety threat. Any tree or shrub removed in violation of this Declaration shall be replaced by the person who removed the tree or shrub within thirty (30) days.

Trees planted to replace a tree that is improperly removed shall equal the diameter of the removed tree (that is, one tree of the same diameter or multiple trees, each with a minimum caliper of one and three-quarter inches, together equaling the same diameter of the removed tree planted at intervals acceptable to the healthy growth of the particular species to be planted) and shrubs and under story vegetation shall be replaced using native species. As trees are lost through natural causes, new trees shall be planted in order to maintain the minimum tree canopy as specified in Chapter 10, Part 1 of the Land Development Code in effect on the date of this Declaration. These restrictions may be amended or released only with the prior approval of the Louisville Metro Planning Commission or its successor.

Section 4.2. Delegation of Use. Any Lot owner may delegate, in accordance with the Homeowners Association's bylaws or rules and regulations, his or her right of enjoyment to the Common Area and facilities to the members of his or her family or to tenants or contract purchasers who reside on that owner's Lot. Membership in the Homeowners Association may not be conveyed separately from ownership of the Lot.

Section 4.3. Homeowners Association's Right of Entry. The authorized representative(s) of the Homeowners Association or its Board of Directors shall be entitled to reasonable access to the individual Lots as may be required in connection with the preservation of property on an individual Lot or in the event of an emergency or in connection with the maintenance of, repairs or replacements within the Common Area, or any equipment, facilities or fixtures affecting or serving other Lots or the Common Areas or to make any alteration required by any governmental authority.

Section 4.4. Assessments; Creation of Lien and Personal Obligation. Each Lot owner, except Developer, by acceptance of a deed for a Lot, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Homeowners Association (i) annual assessments or charges, and (ii) special assessments for capital improvements, such assessments to be established and collected as provided in this Article IV. Developer shall be responsible for the maintenance costs of the Homeowners Association incurred over and above assessed amounts payable to the Homeowners Association by Lot owners, until Developer transfers control of the Homeowners Association to the Lot owners. The annual and special assessments, together with interest, cost and reasonable attorney fees, shall be a charge on each owner's Lot and improvements thereon and shall be a continuing lien upon such property against which each such assessment is made. Each such assessment, together with interest, cost and reasonable attorney fees, shall also be the personal obligation of the person who was the owner of such Lot at the time when the assessment fell due. The personal obligation for delinquent assessment shall not pass to his successors in title unless expressly assumed by them; provided, however, the lien shall remain effective against a Lot for delinquent assessments notwithstanding any transfer of the Lot.

Section 4.5. **Purpose of Assessments.** The assessments levied by the Homeowners Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents and in particular for the acquisition, improvement and maintenance of properties, services and facilities devoted to this purpose, including without limitation street lights in the Subdivision, and for the use and enjoyment of the Common Area, including but not limited to the cost of repairs, replacements and additions, the cost of labor, equipment, materials, management and supervision, payment of taxes assessed against the Common Area, the procurement and maintenance of insurance in accordance with the Bylaws of the Homeowners Association, the employment of attorneys, accountants and other professionals to represent and advise the Homeowners Association, and such other needs as may arise, and for the improvement and maintenance of the Common Area. The Homeowners Association shall maintain, operate and repair, unless such obligations are assumed by any municipal or governmental agency having jurisdiction thereof, the Common Area. Until Class B membership ceases and is converted to Class A membership pursuant to Section 4.13 of this Article V, Developer or its nominee shall administer the assessments and receipts of the Homeowners Association, which may only be used for the purposes set forth in this Declaration.

Section 4.6. **Assessment Amounts.** The Board of Directors of the Homeowners Association may fix the annual assessment at an amount determined by the Board to be reasonably necessary to meet the budgeted expenses of the Homeowners Association. The Board of Directors shall determine when the assessment shall be due, and whether the assessment shall be paid monthly, quarterly or annually. The Board of Directors may establish from such assessments a reserve account.

Section 4.7. **Special Assessments.** In addition to the annual, regular assessments authorized above, the Homeowners Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto. As determined by the Board of Directors, any such special assessment may be payable in a lump sum or the Board of Directors may allow installment payments, such installment payments to bear interest at a rate set by the Board of Directors.

Section 4.8. **Uniform Rate of Assessment.** Both annual and special assessments shall be fixed at a uniform rate for all Lots except those owned by Developer and those not occupied as a residence. Developer or the Board of Directors may at its discretion waive the assessment for any year or part of a year for any Lot not occupied as a residence. If Developer or the Board of Directors does so, it shall be the obligation of the builder of a residence whose assessment is waived during construction to cause to be collected and transmitted to the Homeowners Association at the time of closing the conveyance from the builder to the homeowner a prorated assessment for the remainder of the year of closing.

Section 4.9. **Date of Commencement.** The annual assessments provided for shall begin as to any Lot subject to the assessment at the earlier of (a) the time the Lot is occupied as a residence, or (b) eighteen months after the date on which Developer conveys the Lot to a third party. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year when the earlier of those events occurs.

Section 4.10. **Effect of Non-Payment; Remedies.** Any assessment not paid by the due date shall bear interest from the due date at a rate of interest established from time to time by the Board of Directors of the Homeowners Association. Until such rate is established, the interest rate shall be 10% (unless such rate is usurious under applicable law, in which event the interest rate shall be automatically deemed to be the maximum rate allowed by applicable law). The Homeowners Association may bring an action at law against the owner personally obligated to pay the assessment, and/or the Homeowners Association may foreclose the lien against a nonpaying Lot owner's Lot and improvements thereon, and interest, cost and reasonable attorney fees of such action or foreclosure shall be added to the amount of such assessments. No owner may waive or otherwise escape liability for the assessments by nonuse of the Common Area or abandonment of a Lot.

Section 4.11. **Subordination to Mortgages.** The lien of the assessments provided for in this Declaration shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien or liens provided for in this Declaration. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien.

Section 4.12. **Homeowners Association and Membership.** Developer has incorporated as a not-for-profit corporation under the laws of the Commonwealth of Kentucky "Notting Hill Homeowners Association, Inc.", or a similar name (the "**Homeowners Association**"). Developer and every owner of a Lot that is in Subdivision shall be a member of the Homeowners Association, as well as all Lot owners and condominium owners in future sections or phases developed on the Property as part of Notting Hill generally. Such owner and member shall abide by the Homeowners Association's Articles of Incorporation, Bylaws, rules and regulations, shall pay the assessments provided for in this Declaration when due, and shall comply with decisions of the Homeowners Association's Board of Directors. Membership shall be appurtenant to and may not be separated from ownership of any Lot that is subject to assessment.

Section 4.13. **Classes of Membership.** The Homeowners Association shall have two classes of voting membership:

(a) Class A. Class A members shall be all Lot owners, with the exception of Developer (until conversion of the membership as set forth below), and shall be entitled to one vote for each Lot owned. If more than one person or entity owns a Lot, they shall vote their vote together and, if they cannot agree, no vote shall be cast. That is, no votes may be split.

(b) Class B. Class B members shall be Developer. Developer shall be entitled to one vote for each Lot or condominium unit in any phase or section of Notting Hill developed on the Property, including Lots or condominium units sold or conveyed to third parties. The Class B membership shall cease and be converted to Class A membership on the happening of the earliest of the following events: (i) December 31, 2020; (ii) when 100% of all Lots and condominium units developed on the Property as part of Notting Hill have been conveyed to third parties, or (iii) when Developer elects to convert Class B membership to Class A membership.

ARTICLE V
CERTAIN REQUIRED DEVELOPMENT MATTERS

The following requirements have been imposed on the development of the Property by the Louisville Metro Planning Commission. These requirements have been made for the benefit of the Louisville Metro Planning Commission and for the benefit of the owners of certain nearby properties (the "Neighbors"), as set forth below, and may be enforced by the Louisville Metro Planning Commission or by the Neighbors. The requirements in this Article V may be amended by agreement of Developer, the Louisville Metro Planning Commission and the Neighbors, without the consent of any Lot or unit owner in Notting Hill. Conversely, the Neighbors have no right to enforce any other portion of this Declaration except only for the provisions contained in this Article V. The term "Neighbors" means the record title owners from time to time of the real properties having the following addresses: 18700 U. S. 60, 18702 U. S. 60, 18704 U. S. 60 and 18706 U. S. 60 in Jefferson County, and 10400 U. S. 60 and 10260 U. S. 60 in Shelby County.

Section 5.1 **U. S. 60 Lots - Minimum Square Footage.** Lots 19 through 25 inclusive shall have a minimum of 3,000 square feet of livable area for a two-story or one and one-half story home and a minimum of 2,750 square feet of livable area for a ranch style home. The phrase "livable area" means heated and cooled above ground level area; measured from outside wall to outside wall, specifically excluding below ground finished area.

Section 5.2 **Parkway Buffer.** A parkway buffer of variable width not less than 200 feet from the right-of-way of Shelbyville Road to the building lines of Lot 1, Lot 2 and Lots 19 through 25 inclusive is established on the plats of Notting Hill Subdivision Section 1A by the creation of Open Space Lots 26 and 27 as shown on those plat (which area is included in the Common Area defined above). Within this area, Developer shall install and the Homeowners Association shall maintain landscaping consisting of evergreen and deciduous shade and flowering trees as shown on the concept plan discussed at the May 21, 2004 public hearing before the Louisville Metro Planning Commission and as otherwise required by the Louisville Metro Planning Commission. Developer shall also install and the Homeowners Association shall maintain a four-board horse fence along the right-of-way of U. S. 60 for the entire length of the frontage of this parkway buffer area.

Section 5.3 **Condominium Set Back.** The residential condominiums or patio homes on a portion of the Property now zoned R-5A Residential District (which property is not part of the plat of this section of Notting Hill) shall be no closer to the new Shelbyville Road right-of-way than as follows, proceeding in an east-west direction: the easternmost patio home building shall be no closer than 370 feet; the westernmost patio home building shall be no closer than 345 feet; and the easternmost manor home building shall be no closer than 370 feet; and the westernmost manor home building shall be no closer than 365 feet.

Section 5.4 **U. S. 60 Lots – Orientation.** Lots 19 through 25 inclusive shall front on and face Shelbyville Road, but they shall have access only over Foxboro Glen Place and not Shelbyville Road. Those Lots shall, as shown on the plats of Notting Hill Section 1A, extend to the Shelbyville Road right of way line, but subject to the Common Area easement 160 or 200 feet in width.

Section 5.5 **U. S. 60 Lots – Building Materials and Setbacks.** Lot 1, Lot 2 and Lots 19 through 25 inclusive shall have exterior materials consisting of a minimum of 80 percent brick and/or

stone and shall have a front building set-back line of not less than 200 feet from and parallel with the new northern right-of-way line of U. S. 60, also known as Shelbyville Road, as shown on the plats of Notting Hill Phase 1A.

Section 5.6. **U. S. 60 Lots – Initial Lots.** As accomplished by recording the plat referenced in Section 1.1 of this Declaration, Lots 19 through 25 inclusive have been subdivided, platted and recorded before development of other portions of the Property, with appropriate infrastructure in place, and are to be marketed for sale immediately. This section does not require actual construction of homes before other portions of the Property are developed.

Section 5.7 **Common Area.** As provided for in Article IV of this Declaration, the minimum required 160 feet of setback along Shelbyville Road and Open Space Lots 26 and 27 are to be maintained by the Homeowners Association.

ARTICLE VI GENERAL PROVISIONS

Section 6.1. **Restrictions Run with Land; Amendment.** Unless canceled, altered or amended under the provisions of this Section 1, these covenants, conditions and restrictions are to run with the land and shall be binding on all parties claiming under them for a period thirty (30) years from the date this document is recorded, after which time they shall be extended automatically for successive periods of ten (10) years, unless an instrument signed by a majority of owners prior to the date of extension is placed of record in the Jefferson County Clerk's office canceling such automatic extension. These restrictions may be canceled, altered or amended at any time by the affirmative vote of the owners of seventy-five percent (75%) of the Lots subject to these restrictions. No cancellation of, alteration of or amendment to any covenant, condition or restriction shall take effect until the owners of seventy-five percent (75%) of the Lots subject to these restrictions file in the Office of the Jefferson County Clerk an Amendment to the Declaration describing such cancellation of, alteration to or amendment to such provision herein. Developer reserves the right, for so long as Class B membership exists in the Homeowners Association, to amend this Declaration unilaterally and without the consent of any Lot owners in the following instances: (a) as expressly contemplated herein, including without limitation in connection with supplementary or amended or additional Declarations for future phases or sections, as contemplated by Section 1.2 of this Declaration, or to withdraw portions of the Property; (b) to correct clerical errors or to clarify or effectuate the intent and scheme of this Declaration; (c) to comply with governmental requirements; and (d) to the extent necessary to effectuate the overall plan for Notting Hill.

Section 6.2. **Severability; Modification.** The provisions of this Declaration are severable. While the covenants, conditions or restrictions set forth above are considered to be reasonable in all circumstances, it is recognized that covenants, conditions or restrictions of this nature may fail for reasons unforeseen, and accordingly it is hereby declared that if any of such covenants, conditions or restrictions shall be adjudged void as going beyond what is reasonable in all circumstances, the said covenant, condition or restriction shall apply with such modifications as may be necessary to make it valid and effective. In the event any provision or portion of this Declaration shall be held or adjudged invalid or unenforceable and incapable of reasonable modification to make it valid and effective in

accordance with this Section 2, the remaining provisions or portions of this Declaration shall not be invalidated thereby, but shall remain in full force and effect.

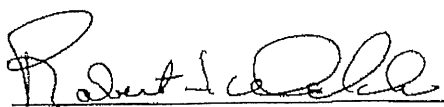
Section 6.3. **Non-Liability of the Developer.** Developer shall not be personally liable to the owners of the Lots for any mistake of judgment or for any other acts or omissions of any nature whatsoever while acting within the scope of the rights and duties specified in this Declaration, except for any acts or omissions found by a court to constitute gross negligence or actual fraud. The owners shall indemnify and hold harmless Developer and its respective successors and assigns from and against any damage, costs and/or other expenses (including reasonable fees of counsel of the indemnified party's choice) arising out of or in connection with any actions taken in good faith in accordance with this Declaration.

Section 6.4. **Enforcement.** Enforcement of these restrictions shall be by proceeding of law or in equity, brought by any owner or by Developer against any party violating or attempting to violate any covenant or restriction, either to restrain violation, to direct restoration and/or to recover damages. Failure of any owner or Developer to demand or insist upon observance of any of these restrictions or covenants, or to proceed for restraint of violations, shall not be deemed a waiver of a violation, or the right to seek enforcement of these restrictions.

Section 6.5. **Developer Rights.** No provision of this Declaration shall be construed to prevent or limit Developer's rights to complete the development, construction, promotion, marketing, sale and leasing of all or any portion of the Property; to construct or alter improvements on any portion of the Property owned by Developer; to assign certain rights to others; to maintain model homes, offices for construction, offices for sales or leasing or similar facilities on any portion of the Property (including any Common Area) owned by Developer or the Homeowners Association; or to post signs incidental to the construction, development, promotion, sale and leasing of the Property. Nothing in this Declaration shall limit the rights of Developer or require Developer to obtain approval for any matters whatsoever, including without limitation (a) the right to excavate, cut, fill or grade any property owned by Developer or the Homeowners Association; or (b) the right to rezone or alter any subdivision plan or development plan. At any time that Developer is granted a right of approval herein, such right of approval shall be exercisable within the sole and absolute discretion of the Developer.

WITNESS the signature of Developer on the above date.

NOTTING HILL DEVELOPMENT, LLC

By: 
Robert J. Welch, Manager

DB 08686PG0343

COMMONWEALTH OF KENTUCKY)
)SS
COUNTY OF JEFFERSON)

The foregoing instrument was acknowledged before me on AUGUST 26, 2005, by Robert J. Welch, manager of Notting Hill Development, LLC, a Kentucky limited liability company, on behalf of the company.

Danni L. Khan
Notary Public
Commission expires: JUNE 14, 2006

This Instrument Prepared By:

[Signature]
David B. Buechler
Salyers & Buechler, P.S.C.
The 1000 Building, Suite 204
6200 Dutchmans Lane
Louisville, Kentucky 40205

Recorded In Plat Book
No. 51 Page 7-8
Part No. _____

END OF DOCUMENT

Document No.: DN2885144669
Lodged By: NOTTING HILL
Recorded On: 08/30/2005 12:52:35
Total Fees: 44.00
Transfer Tax: .00
County Clerk: BOBBIE HOLSCLOW-JEFF CO KY
Deputy Clerk: CARHAR

**FIRST AMENDMENT TO
DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS**

NOTTING HILL
Adding Villages at Chadwick Patio Homes
Jefferson County, Kentucky

This First Amendment to Declaration of Covenants, Conditions and Restrictions for Notting Hill (this "**First Amendment**") is made as of November 30, 2005, by NOTTING HILL DEVELOPMENT, LLC, a Kentucky limited liability company, 301 Middletown Park Place, Suite A, Louisville, Kentucky 40243 ("**Developer**").

RECITALS

A. Developer placed of record a Declaration of Covenants, Conditions and Restrictions for Notting Hill, which is of record in Deed Book 8686, Page 325, in the office of the Clerk of Jefferson County, Kentucky (the "**Declaration**").

B. Pursuant to the Declaration, Developer reserved the right to amend and or supplement the Declaration to subject additional land to the scheme of the Declaration and to make certain changes and other provisions with respect to the Patio Home Regime, and Developer hereby amends and supplements the Declaration in accordance with those reserved rights.

AMENDMENTS

1. **Annexation of Additional Property.** The following real property is hereby made subject to the Declaration, which property is located in Jefferson County, Kentucky, and more particularly described as follows:

BEING Lot 47 and Lot 127, each as shown on the plat of Notting Hills, Section 1B, which plat is of record in Plat and Subdivision Book 51, Page 45, in the office of the Clerk of Jefferson County, Kentucky.

BEING part of the property conveyed to Notting Hill Development, LLC, by Deed dated September 22, 2004, of record in Deed Book 8492, Page 676, of Jefferson County, Kentucky.

Lot 47 is sometimes referred to as the "**Patio Home Property**". Lot 127 is sometimes referred to as the "**Condominium Property**".

Except as expressly set forth below in this First Amendment, the Patio Home Property and the Condominium Property are subject in all other respects to the covenants, conditions and restrictions of the Declaration, including without limitation making the Patio Home Property unit owners and the Condominium Property unit owners members of the Homeowners Association (as defined in the Declaration) and subjecting the Patio Home Property unit owners and the

Condominium Unit owners to all of the rights and obligations set forth in the Declaration. Without limiting the generality of the foregoing, Patio Home Property unit owners are expressly advised of their rights and obligations under Section 4.1A of the Declaration with respect to Tree Canopy Protection Area shown on the plat of any section of Notting Hills and the provisions of section 5.3 with respect to certain setbacks that apply to the Patio Home Property and/or the Condo Property.

2. **Amendments.** Pursuant to the right reserved in Section 1.2 of the Declaration to make certain changes with respect to the covenants, conditions and restrictions set forth in the Declaration with respect to any additional property subjected to the Declaration, Developer hereby amends makes the following amendments to the Declaration with respect to the Patio Home Property and the Condominium Home Property.

(a) Condominium Regimes. Each of the Patio Home Property and the Condominium Property will be developed as residential condominium regimes. Except as otherwise set forth in this First Amendment, (i) all references in the Declaration to "residence" or "home" or similar terms shall be deemed also to include a condominium unit or units located on the Patio Home Property or the Condominium Property, (ii) all references in the Declaration to the term "lot" shall be deemed to include a condominium unit or units located on the Patio Home Property or the Condominium Property, and (iii) all references in the Declaration to the term "single family residence" shall be deemed to include a condominium unit or units located on the Patio Home Property or the Condominium Property. Because of the different nature of the residences to be constructed on the Patio Home Property and the Condominium Property, the Patio Home Property and the Condominium Home Property are exempt from application of the following provisions of the Declaration: Section 2.2(a), Section 2.2(b), Section 2.2(c), Section 2.2(d), Section 2.2(e), Section 2.2(f), Section 2.2(h), Section 2.2(i), Section 2.2(j), Section 2.3(a), Section 2.3(b), Section 2.10, Section 2.13, and all Sections of Article III. Section 2.3(c) and (d) applies to all streets in any section of Notting Hill except there may be certain areas within the Patio Home Property or the Condominium Property that may be designated for on-street parking or for common parking as set forth in a master deed and declaration of condominium property regime or rules and regulations enacted by the condominium council of co-owners pursuant to the applicable master deed and declaration. Section 2.5 of the Declaration is modified to provide that permitted pets must be confined to limited common elements of the unit owned by the pet owner and in certain common areas and not just on a "Lot". Some of these exemptions are because the provisions are inapplicable (or are hereby made inapplicable) to a condominium development and some are because the same matters will be regulated by the respective condominium councils of co-owners that have been or will be established for the Patio Home Property and the Condominium Property.

(b) Common Areas. Although the owners of condominium units on the Patio Home Property and the Condominium Property have the same rights to and responsibilities in connection with the Common Area (as defined in the Declaration), no portion of the Patio Home Property or of the Condominium Property shall be "Common Area" for purposes of the Declaration.

(c) Assessments by Homeowners Association. Notwithstanding that each condominium unit constructed on the Patio Home Property and the Condominium Property will be subject to the assessments for Common Expenses pursuant to the Master Deeds and Declarations that will be established for the Patio Home Property and the Condominium

Property, the terms and provisions of Article IV of the Declaration, including without limitation the assessments levied by the Homeowners Association with respect to each residential condominium unit located on the Patio Home Property or the Condominium Property shall apply to each condominium unit owner and each condominium unit owner shall be a member of and have the same rights and responsibilities with respect to the Homeowners Association as do the owners of single family residences constructed in other sections of Notting Hill. The assessments payable to the Homeowners Association for each condominium unit shall be the same as that for each single family residential lot, as such assessments may from time to time be increased or decreased by the Homeowners Association. Payment of the assessments shall begin as to any condominium unit on the date on which title to the condominium unit is conveyed to the initial unit owner by Developer. All assessments levied by the Homeowners Association against owners of condominium units established on the Patio Home Property and the Condominium Property shall be used as provided in the Declaration.

3. **Ratification.** In all other respects, Developer ratifies and affirms the Declaration.

WITNESS the signature of Developer on the above date.

NOTTING HILL DEVELOPMENT, LLC

By: Robert J. Welch, Manager
Robert J. Welch, Manager

COMMONWEALTH OF KENTUCKY)
)SS
COUNTY OF JEFFERSON)

The foregoing instrument was acknowledged before me on November 30, 2005, by Robert J. Welch, manager of Notting Hill Development, LLC, a Kentucky limited liability company, on behalf of the company.

Michelle A. Duncan
Notary Public
Commission expires: 11-04-2006

This Instrument Prepared By:

David B. Buechler (Bue)

David B. Buechler
Salyers & Buechler, P.S.C.
The 1000 Building, Suite 204
6200 Dutchmans Lane
Louisville, Kentucky 40205

Document No.: DN2885218314
Lodged By: NOTTING HILL SEC 1B
Recorded On: 12/14/2005 10:21:31
Total Fees: 12.00
Transfer Tax: .00
County Clerk: BOBBIE HOLSCLAW-JEFF CO KY
Deputy Clerk: SHESCH

Recorded in Plat Book
No. 51 Page 45
Part No. _____

END OF DOCUMENT

**SECOND AMENDMENT TO
DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS**

NOTTING HILLS SUBDIVISION, SECTION 2
Jefferson County, Kentucky

This Second Amendment to Declaration of Covenants, Conditions and Restrictions for Notting Hills (this "**First Amendment**") is made as of November ____, 2006, by NOTTING HILL DEVELOPMENT, LLC, a Kentucky limited liability company, 301 Middletown Park Place, Suite A, Louisville, Kentucky 40243 ("**Developer**").

RECITALS

A. Developer placed of record a Declaration of Covenants, Conditions and Restrictions for Notting Hill (aka Notting Hills), which is of record in Deed Book 8686, Page 325, in the office of the Clerk of Jefferson County, Kentucky (the "**Declaration**").

B. Developer amended the Declaration by a First Amendment dated November 30, 2005, of record in Deed Book 8748, Page 647, in the office of the Clerk of Jefferson County, Kentucky, which subjected to the Declaration certain real property described therein.

B. Pursuant to the Declaration, Developer reserved the right to amend and or supplement the Declaration to subject additional land to the scheme of the Declaration and to make certain changes and other provisions with respect to the additional land subjected to the Declaration, and Developer hereby amends and supplements the Declaration in accordance with those reserved rights.

AMENDMENTS

1. **Annexation of Additional Property.** The following real property is hereby made subject to the Declaration, which property is located in Jefferson County, Kentucky, and more particularly described as follows:

BEING Lots 48 through 110 inclusive, and Lots 112 through 126 inclusive, and Open Space Lot 111, all as shown on the plat of Notting Hills, Section 2, which plat is of record in Plat and Subdivision Book 52, Page 8, in the office of the Clerk of Jefferson County, Kentucky.

BEING part of the property conveyed to Notting Hill Development, LLC, by Deed dated September 22, 2004, of record in Deed Book 8492, Page 676, of Jefferson County, Kentucky.

Except as expressly set forth below in this Second Amendment, the Lots described above are made subject in all respects to the covenants, conditions and restrictions of the Declaration, including without limitation making Lot owners members of the Homeowners Association (as

defined in the Declaration) and subjecting the Lot owners to all of the rights and obligations set forth in the Declaration. Without limiting the generality of the foregoing, the Lot owners are expressly advised of their rights and obligations under Section 4.1A of the Declaration with respect to Tree Canopy Protection Area shown on the plat of any section of Notting Hills.

2. **Amendments.** Pursuant to the right reserved in Section 1.2 of the Declaration to make certain changes with respect to the covenants, conditions and restrictions set forth in the Declaration with respect to any additional property subjected to the Declaration, Developer hereby makes the following amendment to the Declaration with respect only to the Lots described above and made subject to the Declaration by this Second Amendment:

One Story Homes: Section 3.3 of the Declaration regarding minimum floor areas is amended to read as follows with respect to Lots 48 through 110 inclusive, and Lots 112 through 126 inclusive, all as shown on the plat of Notting Hills, Section 2, recorded as set forth above:

"Section 3.3. **Minimum Floor Areas.** The following shall be the minimum floor areas for homes to be constructed in Notting Hills, Section 2, after this Amendment is recorded:

(a) The total floor area of a one-story dwelling shall be a minimum of 1,800 square feet on Lots 48 through 110 inclusive and Lots 112 through 126 inclusive.

(b) The total floor area for a two-story dwelling shall be a minimum of 2,400 square feet on Lots 48 through 110 inclusive and Lots 112 through 126 inclusive, with a minimum of 1,200 square feet on the first floor.

(c) The total floor area of a one and one-half story dwelling shall be a minimum of 2,200 square feet on Lots 48 through 110 inclusive and Lots 112 through 126 inclusive, with a minimum of 1,250 square feet on the first floor.

(d) Basement areas (finished and unfinished), garages, decks and open porches shall not be included in calculating floor areas."

3. **Ratification.** In all other respects, Developer ratifies and affirms the Declaration.

WITNESS the signature of Developer on the above date.


NOTTING HILL DEVELOPMENT, LLC

By: 

Robert J. Welch, Manager


COMMONWEALTH OF KENTUCKY)
)SS
COUNTY OF JEFFERSON)

The foregoing instrument was acknowledged before me on September 19, 2006, by Robert J. Welch, manager of Notting Hill Development, LLC, a Kentucky limited liability company, on behalf of the company.



Notary Public
Commission expires: 11/17/2007

This Instrument Prepared By:



David B. Buechler
Salyers & Buechler, P.S.C.
The 1000 Building, Suite 204
6200 Dutchmans Lane
Louisville, Kentucky 40205

Document No.: DW2006197697
Lodged By: sabak wilson & lingo
Recorded On: 12/12/2006 11:01:01
Total Fees: 13.00
Transfer Tax: .00
County Clerk: BOBBIE HOLSCLOW-JEFF CO KY
Deputy Clerk: SHESCH

Recorded in Plat Book
No. 52 Page 8

**THIRD AMENDMENT TO
DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS**

NOTTING HILLS SUBDIVISION
Jefferson County, Kentucky

THIS THIRD AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (this "Third Amendment"), is made as of the 29 day of November, 2011, by **NOTTING HILL DEVELOPMENT, LLC**, a Kentucky limited liability company, having an address at 301 Middletown Park Place, Suite A, Louisville, Kentucky 40243 (the "Developer").

RECITALS

A. Developer placed of record a Declaration of Covenants, Conditions and Restrictions for Notting Hill (a/k/a Notting Hills), executed by Developer on August 23, 2005, which is of record in Deed Book 8686, Page 325, as amended by First Amendment dated as of November 30, 2005, of record in Deed Book 8748, Page 647, and as further amended by Second Amendment dated as of November __, 2006, of record in Deed Book 8951, Page 816, all in the office of the Clerk of Jefferson County, Kentucky (the "Declaration"), with respect to certain real property located in Jefferson County, Kentucky and more fully described therein (the "Property").

B. Pursuant to the Declaration, Developer retained the right to withdraw portions of the Property from the Declaration without the consent of any owner of any part of the Property.

NOW, THEREFORE, in consideration of the foregoing preambles, Developer hereby amends the Declaration as follows:

I. WITHDRAWAL OF PROPERTY. The following property is hereby withdrawn from the Property effective as of the date hereof:

BEING Tracts 18 and 19, as shown on minor subdivision plat approved by the Louisville Metro Planning Commission on November 17, 2011, Case No. 16345, of record in Plat and Subdivision Book 54, Page 7, in the office of the Clerk of Jefferson County, Kentucky, said Tracts 18 and 19 having been consolidated with other tracts into what is currently described as Tract 2, as shown on such minor subdivision plat.

Tract 18 being formerly a part of Lot 68, and Tract 19 being formerly a part of Lot 69, both in Notting Hills, Section 2, as shown on plat of record in Plat and Subdivision Book 52, Page 8, in the aforesaid Clerk's office.

FOURTH AMENDMENT TO
DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS

NOTTING HILLS SUBDIVISION, SECTION 3
Jefferson County, Kentucky

This Fourth Amendment to Declaration of Covenants, Conditions and Restrictions for Notting Hills (this "Fourth Amendment") is made as of 9-26-15, 2015, by **NOTTING HILL DEVELOPMENT, LLC**, a Kentucky limited liability company, 301 Middletown Park Place, Suite A, Louisville, Kentucky 40243 ("Master Developer") and by **WELCH DEVELOPERS LLC**, a Kentucky limited liability company, 301 Middletown Park Place, Suite A, Louisville, Kentucky 40243 ("Section 3 Developer").

RECITALS

A. Master Developer placed of record a Declaration of Covenants, Conditions and Restrictions for Notting Hill (aka Notting Hills), which is of record in Deed Book 8686, Page 325, in the office of the Clerk of Jefferson County, Kentucky (the "Declaration").

B. Master Developer amended the Declaration by a First Amendment dated November 30, 2005, of record in Deed Book 8748, Page 647, and by a Second Amendment dated November, 2006, of record in Deed Book 8951, Page 816, each in the office of the Clerk of Jefferson County, Kentucky, and each of which subjected to the Declaration certain real property described therein. By a Third Amendment dated November 29, 2011, of record in Deed Book 9823, Page 94, in the office of the Clerk of Jefferson County, Kentucky, Master Developer again amended the Declaration to withdraw certain property described in that Third Amendment.

C. Pursuant to the Declaration, Master Developer reserved the right to amend and or supplement the Declaration to subject additional land to the scheme of the Declaration and to make certain changes and other provisions with respect to the additional land subjected to the Declaration. Section 3 Developer is the owner of the additional property described below, and both Master Developer and Section 3 Developer desire to subject that additional property to the Declaration, with certain modifications as set forth herein.

AMENDMENTS

In accordance with the rights reserved in the Declaration, Master Developer and Section 3 Developer hereby amend and supplement the Declaration as follows.

1. **Annexation of Additional Property.** The following real property is hereby made subject to the Declaration, which real property is located in Jefferson County, Kentucky, and more particularly described as follows:

BEING Lots 131 through 171 inclusive, and Open Space Lots 172 through 174 inclusive, all as shown on the plat of Notting Hills, Section 3, which plat is of

record in Plat and Subdivision Book 55, Page 16, in the office of the Clerk of Jefferson County, Kentucky.

BEING the property conveyed to Welch Developers LLC, by Deed dated January 27, 2015, of record in Deed Book 10358, Page 39, as corrected by Deed of Correction of record in Deed Book 10402, Page 943, in the office of the Clerk of Jefferson County, Kentucky.

Except as expressly set forth below in this Fourth Amendment, the Lots described above are made subject in all respects to the covenants, conditions and restrictions of the Declaration, including without limitation making Lot owners members of the Homeowners Association (as defined in the Declaration) and subjecting the Lot owners to all of the rights and obligations set forth in the Declaration. Without limiting the generality of the foregoing, the Lot owners are expressly advised of their rights and obligations under Section 4.1A of the Declaration with respect to Tree Canopy Protection Area shown on the plat of any section of Notting Hills.

2. **Amendments.** Pursuant to the right reserved in Section 1.2 of the Declaration to make certain changes with respect to the covenants, conditions and restrictions set forth in the Declaration with respect to any additional property subjected to the Declaration, Master Developer and Section 3 Developer hereby makes the following amendments to the Declaration with respect only to the Section 3 Lots described above and made subject to the Declaration by this Fourth Amendment:

(A) **Minimum Square Footages.** Section 3.3 of the Declaration regarding minimum floor areas is amended to read as follows with respect to Lots 131 through 171 inclusive, as shown on the plat of Notting Hills, Section 3, recorded as set forth above:

"Section 3.3. **Minimum Floor Areas.** The following shall be the minimum floor areas for homes to be constructed in Notting Hills, Section 3, after this Fourth Amendment is recorded:

(a) The total floor area of a one-story dwelling shall be a minimum of 1,800 square feet on Lots 131 through 171 inclusive.

(b) The total floor area for a two-story dwelling shall be a minimum of 2,400 square feet on Lots 131 through 171 inclusive, with a minimum of 1,200 square feet on the first floor.

(c) The total floor area of a one and one-half story dwelling shall be a minimum of 2,200 square feet on Lots 131 through 171 inclusive, with a minimum of 1,250 square feet on the first floor.

(d) Basement areas (finished and unfinished), garages, decks and open porches shall not be included in calculating floor areas."

(B) **Basements.** The following provision is added to the Declaration with respect only to Lots 131 through 171 inclusive, as shown on the plat of Notting Hills, Section 3, recorded as set

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forth above: "At least twenty-four (24) of the residences constructed on Lots 131 through 171 shall have a basement, and the basement may either be enclosed or be a walk-out basement."

3. **Ratification.** In all other respects, Master Developer ratifies and affirms the Declaration and Section 3 Developer adopts the Declaration.

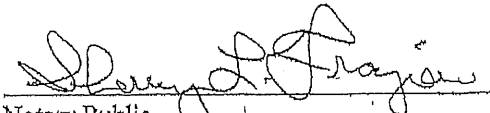
WITNESS the signatures of Master Developer and Section 3 Developer on the above date.

MASTER DEVELOPER:
NOTTING HILL DEVELOPMENT, LLC

By: 
Scott A. Welch, Manager

COMMONWEALTH OF KENTUCKY)
)SS
COUNTY OF JEFFERSON)

The foregoing instrument was acknowledged before me on September 25, 2015, by Scott A. Welch, manager of Notting Hill Development, LLC, a Kentucky limited liability company, on behalf of the company.


Notary Public
Commission expires: April 3, 2016

SECTION 3 DEVELOPER:
NOTTING HILL DEVELOPMENT, LLC

By: 
Scott A. Welch, Member

0010477PG0390

COMMONWEALTH OF KENTUCKY)
)SS
COUNTY OF JEFFERSON)

The foregoing instrument was acknowledged before me on 9-25-15, 2015, by Scott A. Welch, member of Welch Developers LLC, a Kentucky limited liability company, on behalf of the company.

Denny L. Gray
Notary Public
Commission expires: April 3, 2016

This Instrument Prepared By:

D Buechler
David B. Buechler
Stuart & Buechler, P.S.C.
906 Lily Creek Road, Suite 202
Louisville, Kentucky 40243

Document No.: DNE015134402
Lodged By: S & B
Recorded On: 10/07/2015 10:11:10
Total Fees: 16.00
Transfer Tax: .00
County Clerk: BOBBIE HOLSCLOW-JEFF CO KY
Deputy Clerk: EVERAY

END OF DOCUMENT

Recorded In Flat Book
No. 55 Page 16
Part No. _____



Bobbie Holsclaw
Jefferson County Clerk's Office

As evidenced by the instrument number shown below, this document
has been recorded as a permanent record in the archives of the
Jefferson County Clerk's Office.



INST # 2017184980

BATCH # 90913

JEFFERSON CO, KY FEE \$13.00

PRESENTED ON: 07-21-2017 7 03:01:24 PM

LODGED BY: BARDENWERPER TALBOTT & ROBERTS PLLC

RECORDED: 08-21-2017 03:01:24 PM

BOBBIE HOLSCAW
CLERK

BY: EVELYN MAYES
RECORDING CLERK

BK: D 10961

PG: 109-112

FIFTH AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR NOTTING HILL SUBDIVISION, SECTIONS 1A, 1B, 2 & 3
JEFFERSON COUNTY, KENTUCKY

THIS FIFTH AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR NOTTING HILL SUBDIVISION, SECTIONS 1A, 1B, 2 & 3 ("Amendment") is made this 17th day of August, 2017, by NOTTING HILL DEVELOPMENT, LLC, a Kentucky limited liability company, 301 Middletown Park Place, Suite A, Louisville, Kentucky 40243 ("Master Developer") and by WELCH DEVELOPERS, LLC, a Kentucky limited liability company, with a mailing address of 301 Middletown Park Place, Suite A, Louisville, Kentucky 40243 ("Section 3 Developer") (collectively "Developer").

WITNESSETH:

WHEREAS, Notting Hill Development, LLC, a Kentucky limited liability company is the developer of that certain residential subdivision known as "NOTTING HILL SUBDIVISION SECTION 1A" as shown on plat of same of record in Plat and Subdivision Book 51, Pages 7 & 8, in the Office of the Clerk of Jefferson County, Kentucky, pursuant to that certain Declaration of Covenants, Conditions and Restrictions for Notting Hill Subdivision, Section 1A, of record in Deed Book 8686, Page 325; as amended by that certain First Amendment to Declaration of Covenants, Conditions and Restrictions for Notting Hill Subdivision, Section 1B, of record in Deed Book 8748, Page 647; as amended by that certain Second Amendment to Declaration of Covenants, Conditions and Restrictions for Notting Hill Subdivision, Section 2, of record in Deed Book 8951, Page 816; as amended by that certain Third Amendment to Declaration of Covenants, Conditions and Restrictions for Notting Hill Subdivision, of record in Deed Book 9823, Page 94; as amended by that certain Fourth Amendment to Declaration of Covenants, Conditions and Restrictions for Notting Hill Subdivision, of record in Deed Book 10477, Page 387; all in the Office of the Clerk aforesaid (the original declaration as previously and herein amended, the "Declaration") (the property described therein being collectively referred to herein as the "Subdivision");

WHEREAS, pursuant to Article VI, Section 6.1, Developer hereby amends certain terms of the Declaration to apply to all Sections of the Subdivision to effectuate the intent and scheme of the Declaration and the overall plan for the Subdivision.

NOW, THEREFORE, in accordance with the foregoing preambles, which are hereby incorporated herein, Developer hereby declares as follows:

1) Developer declares that the following Section of the Declaration is amended as set forth herein as if these conditions and restrictions were included in and made a part of the Declaration:

A. Article VI, Section 6.4 Enforcement. shall be amended as follows:

Enforcement. Enforcement of these restrictions may also be by fine, levied by the Board of Directors of the Homeowners Association. Each Lot owner, by accepting a deed for a lot within the subdivision, agrees to accept the judgment of the Board of Directors with regard to any fine levied for violation of these restrictions and further agrees to the same lien rights for nonpayment as set forth in Article V Section 4.10 of the Declaration. Fines shall not be more than \$50 per violation per day, each day being considered a new violation, but such fines up to that amount are entirely within the discretion of the Board of Directors. All costs and attorneys' fees for enforcement of these restrictions shall be the obligation of the Lot owner. Unpaid fines shall bear interest at the same rate as unpaid assessments and shall be collectible in the same method as unpaid assessments, along with reasonable attorney fees.

WITNESS the signature of Developer by its duly authorized representative as of the day, month, and year first above written.

MASTER DEVELOPER
NOTTING HILL DEVELOPMENT, LLC
a Kentucky limited liability company

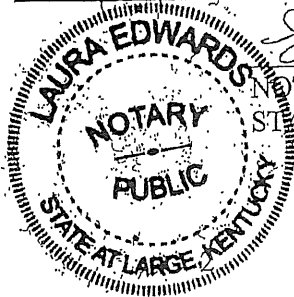
By: *Scott A. Welch*
Scott A. Welch, Manager

COMMONWEALTH OF KENTUCKY)
)SS
COUNTY OF JEFFERSON)

Subscribed, sworn to and acknowledged before me this 17th day of AUGUST, 2017, by Scott A. Welch as Manager of **Notting Hill Development, LLC**, a Kentucky limited liability company, as his free and voluntary act and deed and as the free and voluntary act of the company.

My Commission expires: 05/13/2019

Laura Edwards
NOTARY PUBLIC
STATE AT LARGE, KENTUCKY



From: **jfeger68** <jfeger68@gmail.com>

Date: Wed, Jul 21, 2021 at 4:57 PM

Subject: Pool and Outdoor building Project Proposal for 18701 Foxbough Glen Place

To: Bill Haley <bh@kyrealtyonline.net>, starr tingle <starr@sanctuaryhomes.net>, Elisha Feger <elishafeger04@gmail.com>

Elisha and I are excited to share our proposed outdoor improvements. We are contracting with Sanctuary Homes and Pools of Shelbyville to install an inground pool and patio on the rear of our property. Pending approval of the utility companies and HOA, our plan includes the following improvements:

1. An inground swimming pool
 - a. 13x30- Fiberglass, black bottom, heated, saltwater swimming pool.
 - b. To be located immediately behind our house and within the usable space not set aside by MSD for water egress/easement
 - c. 8x8 Spa, staged above patio grade and immediately adjoining pool. Visible spa walls will be veneered and capped with complementary stone.
2. Patio area and sidewalk
 - a. Patio area around pool and attached to current covered patio complying with same easements
 - b. Sidewalk to connect driveway, proximal to garage door to existing covered patio
3. Outdoor kitchen
 - a. To be constructed behind the rear and side build lines of our home, proximal to our only adjoining neighbor and parallel to Ladbrooke Grove Rd.
 - b. The outdoor kitchen will be masonry constructed and faced with stone veneer that complement the exterior brick of our home and the overall aesthetic of Notting Hill.
4. A 12x 14 pergola
 - a. Constructed of rough hewn oak, stained and finished to complement existing structures and overall aesthetics of Notting Hill.
 - b. Pergola will stand behind the rear build line of our home, proximal to our property line that joins Ladbrooke Grove Rd.
 - c. Pergola will be seated on a concrete pad, contiguously joined to the patio area surrounding the pool and join the existing covered, attached patio.
 - d. Pergola will be improved by a masonry constructed fireplace to be situated in the midline, rear of the structure.
 - i. Fireplace will be veneered with the same or complementary stone to be used for the proposed outdoor kitchen veneer.
 - ii. Fireplace will be constructed for both gas and wood burning. (However, we anticipate largely using gas).
5. Gated Fence
 - a. Fence will project from the rear build line of our home between the existing covered patio posts and join the masonry structure of the outdoor kitchen.
 - b. Fence will also project from the rear build line of our home to the property line that parallels Nottinghill Blvd.
 - c. Fence will run between the existing Wood Fence and Shrubbery Berm to the existing fence that separates our property from our only adjoining neighbor.
6. Utility/Single Car Garage
 - a. 16x24 Garage.
 - b. Seated adjacent to and with doors facing at a right angle to existing two gar, attached garage
 - c. Veneered entirely with brick and mortar of matching design, including decorative brick coins and matching garage doors
 - d. Rendering attached in initial project overview. Blueprints are in the process of being purchased.

From my reading and understanding, the project's entirety falls either within the parameters set forth in Section 3.2 CCRs of Notting Hill or within the discretion of the current HOA board. As you can imagine, this is a project of a lifetime for us. We hope you will be pleased with the thought, planning and consideration we've taken to create an ideal outdoor living space. Our hope is not just for our family's enjoyment but to provide a safe place to entertain and enjoy the company of our Notting Hill neighbors and friends who have become so dear.

We are pleased to partner with Sanctuary Homes and Pools to lead our project. Tony and Starr Tingle (Sanctuary's Owners) have been in the building business for almost twenty years and they have already started pursuing the appropriate permits. We have a project start date of October 11, 2021.

Elisha and I take pride in our home and its appearance. We are mindful that our home is the 'first face' of Notting Hill and have thought through each improvement we've undertaken since we moved here three years ago to provide a beautiful aesthetic our neighbors can enjoy as they walk, jog, bike or otherwise pass by our home and who knows, maybe even enjoy a summer's dip in the pool or winter's conversation in front of our warm fireplace.

I've attached an initial project rendering. Let me know if you have additional questions or concerns and cc: Elisha Feger, Starr Tingle/Sanctuary Pools we look forward to your reply.

Kindest Regards,

Jim and Elisha Feger



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Attention builders/contractors:

Building permits are listed under the Building tab below. Building, contractor, special event & business related applications are located under the Licenses tab.

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Records

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Date	Record Number	Record Type	Project Name	Address	Status	Action	Description	Expiration Date	Short Notes
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Select the search type from the drop-down list.

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Search my records only

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Street Name: Street Type:

Unit Type: Unit No.:

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Address
18701 FOXBOUGH GLEN PL, LOUISVILLE KY 40245, 18701 FOXBOUGH GLEN PL
18701 FOXBOUGH GLEN PL, LOUISVILLE KY 40245, 18701 FOXBOUGH GLEN PL

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<input type="checkbox"/>	Date	Record Number	Record Type	Project Name	Address	Status	Action	Description	Expiration Date	Short Notes
<input type="checkbox"/>	01/03/2022	RES-ELC-22-00010	Electrical Residential	Pool	18701 FOXBOUGH GLEN PL, LOUISVILLE KY 40245	Issued		Applying for permit needed to wire new pool equipment. 30' Fiberglass Pool and Spa Installation with cartridge filter. New work shall not encroach upon any easements or required yards. All work shall comply with KRC2018. An electrical permit shall be required for all electrical work including grounding, bonding, etc., and shall be performed by a licensed electrician. MO	07/11/2022	
<input type="checkbox"/>	08/09/2021	RES-POOL-21-00242	Pool/Spa - Residential	Feger, Jim	18701 FOXBOUGH GLEN PL, LOUISVILLE KY 40245	Issued			09/04/2022	



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Date	Record Number	Record Type	Project Name	Address	Status	Action	Description	Expiration Date	Short Notes
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No records found.

Search for Records

Enter information below to search for records.

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- Contractor License Information
- Parcel Number
- Record Information
- Contact Information

Select the search type from the drop-down list.

Search by Address

Search by Address

Search my records only

Street No.: 1876 - To Direction: --Select--

Street Name: Foxbough Glen Street Type: PL

Unit Type: --Select-- Unit No.:

City: Louisville State: KY Zip: 40245

Search Clear

2 search results returned matching your address

Click any of the results below to view more details.

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Address
18701 FOXBOUGH GLEN PL, LOUISVILLE KY 40245, 18701 FOXBOUGH GLEN PL
18701 FOXBOUGH GLEN PL, LOUISVILLE KY 40245, 18701 FOXBOUGH GLEN PL

Listed below are the records issued for

18701 FOXBOUGH GLEN PL, LOUISVILLE KY 40245, 18701 FOXBOUGH GLEN PL

Showing 1-2 of 2 | Download results | Add to collection | Add to cart

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From: Bill Haley
Sent: Tuesday, January 25, 2022 8:41 AM
To: jfeger68 <jfeger68@gmail.com>
Subject: Updated Paperwork Needed for Pool

Mr Feger

Thank you for updating us with the documentation. I immediately forwarded the paperwork you sent over the weekend and this was the response from the board. Please see what can be done regarding the scaled drawing and precise placement of the pavilion and fireplace.

"We were specifically looking for a scaled rendering with precise placement of the pavilion & fireplace and the fence (per Sec. 3.5 of the CCR's). The concerns that we've heard are that there is too much crammed into limited buildable space and that the west section of fence must not extend beyond the 30' build line. It cannot connect with the board fence along Notting Hill Blvd but must run back to the neighbor's fence along the rear property line."

Although this has been put on hold for now, a future, free-standing garage remains a concern. Sec. 2.1 states that . . . "No structure shall be erected, placed, altered or permitted to remain on any Lot except single family dwellings designed for the the occupancy of one family not to exceed two and one-half stories in height and including a **garage** for the sole use of the owner and occupants of the Lot." Sec. 3.4 (a) states that "**One** attached garage for a minimum of two vehicles on each Lot is required."

Thank you.

Bill Haley
Project Manager



Kentucky Realty Corp
3944 Bardstown Rd
Louisville KY 40218
502-473-0003 (p)
502-473-7269 (f)

Richard Hornung

From: President NH HOA <nhhoapresident@gmail.com>
Sent: Thursday, April 7, 2022 9:05 AM
To: Richard Hornung; Vice Pres NH HOA
Subject: Fwd: Summary of meeting
Attachments: Screenshots_2022-04-06-18-40-35.png

----- Forwarded message -----

From: jfeger68 <jfeger68@gmail.com>
Date: Wed, Apr 6, 2022, 11:17 PM
Subject: Re: Summary of meeting
To: President NH HOA <nhhoapresident@gmail.com>

Good evening,

You asked, 'Do you see the setback lines and reference to R-4 Zoning?' I freely admit I am not a surveyor. However, when I examined the subdivision plat, including my lot, I saw the reference to R-4 Zoning in the Yard Requirement legend, but the only 'lines' I see on our lot (17) are property lines and the easements on them. Our surveyor addressed the matter of Yard Requirements that are detailed on our subdivision plat and I tried my best to convey that in my previous reply. Specifically, if you look at my last reply, I provided a brief and direct answer to the presence of setbacks under point 1 and expanded the answer in the latter part of point number "3".

Mr. Graves applied affirmatively in response to my email, sent at your request, asking if the survey he conducted for us includes all setbacks, including setbacks identified on the subdivision plan. Mr. Graves specifically wrote, "The recorded copy of the plat is attached to this email. If you examine the area around your lot (17), you will see that, other than the 10 feet of sewer/drain easement, there are no additional easements or building limits listed/shown. There is a rear yard requirement for structures." I replied to Mr. Graves and asked, "...can you help me understand what you mean, 'there is a rear yard requirement for structures'?" Mr. Graves then replied, "...Within each Form District and Zoning combination there are 'Yard Requirements' for structures. It is just a standard distance from a side line or rear line or front line, (generally right-of-way). If you aren't building an enclosed structure, they don't apply."

In addition, the building inspector visited our property twice just a few weeks ago. He said he conducted the site visit in response to a complaint that our pool may be violating zoning. (Interestingly, he assumed Elisha and I had filed the complaint to check on our contractors. I assured him that was not the case). The building inspector conducted an initial site visit late in the evening, then returned the following day to conduct measurements. After completing his inspections, the building inspector issued a provisional pass, noting all construction to date is in compliance. As I said in previous emails and in our meeting, I am happy to share the building inspector's written report, if you haven't already received one.

I am hopeful this expanded explanation from the surveyor and documentation of the building inspector's site visit which revealed no code violations, should be all the HOA needs to put to rest any concerns whether our pool installation was conducted in accordance with applicable Metro codes.

Kindest Regards,
Jim

On Apr 6, 2022, at 5:51 PM, President NH HOA <nhhoapresident@gmail.com> wrote:

Jim:

On the attached photo you sent me, do you see the setback lines and reference to R4 Zoning? I have attached a closeup screenshot.

Any suggestion from the surveyor that only an easement line existed would seem to be contradicted on the plan in plain sight.

Agree or disagree?

Thanks!!!

Kelly

From: **jfeger68** <jfeger68@gmail.com>
Date: Tue, Apr 5, 2022, 4:33 PM
Subject: Re: Summary of meeting
To: President NH HOA <nhhoapresident@gmail.com>

Hi Kelly,

Thank you for reaching out. Know that we appreciate the time spent, too. We have accomplished most everything we agreed to do and I'm happy to share a formal update with you.

1. I contacted the surveyor and inquired about all setback lines. Mr. Graves, (the licensed surveyor who conducted our survey), replied that our survey does indeed reflect all setbacks and easements associated with our lot and detailed on the subdivision plat. Details of Mr. Graves' reply are shared under (3).

2. I spoke with an MSD Customer Service representative (Julie) this morning and asked for MSD to inspect the berm and planting mounds around our property to ensure they do not compromise the drainage plan for the neighborhood. Julie said that was an unusual request and MSD doesn't have the manpower to do a site visit like that. Julie also stated MSD easements do not impact a homeowner's choice of plantings. She concluded, stating if a homeowner plants anything on an easement, the homeowner understands if MSD must come in they don't replace shrubs or plants. When I asked how I can best document our conversation, to relay to the HOA Board, Julie requested our mailing address and said she would send relevant documents from MSD.

3. I bought a walk behind tape measure this weekend and will include the scaled rendering of our plantings as soon as the weather clears. I am happy to provide the HOA Board with a scaled rendering of our project, but plan to do so on the survey I have already provided to Kentucky Realty and the

board. As I recollect, Cathy asked for a second survey because she did not believe the survey I provided included all setbacks. However, I did not agree to do that in our meeting because I believed the survey I provided was complete and accurate. As detailed above, I heard back from our surveyor and he confirmed the survey we initially provided is complete and in accordance with the recorded copy of the subdivision plat. Mr. Graves attached a copy of the plat to his email reply and stated, "...If you examine the area around your lot (17), you will see that other than the 10 feet of sewer/drain easement, there are no additional easements or building limits listed/shown..." Mr. Graves additionally noted, "Within each Form District and Zoning combination there are "Yard Requirements" for structures. It is just a standard distance from a side line or rear line or front line (generally right-of-way). If you aren't building an enclosed structure, they don't apply." Since the pool isn't an enclosed structure, they don't apply. You may recollect during our meeting Friday, I shared the location of our proposed pavilion and it will rest entirely within the build lines detailed on our survey. For the board's convenience, I have attached a copy of the recorded plat provided by Mr. Graves, (surveyor) on this reply.

4. As we said Friday, the only construction we will be engaging in will be in conjunction with our already installed pool. We will not conduct any additional construction, (i.e., the pavilion) without HOA Board approval.

I hope this addresses and clarifies everything we discussed. I have to travel to Houston for treatment tomorrow, so it will be this weekend before I can perform the measurements requested in our meeting. Feel free to reach out anytime. We are happy to communicate and coordinate our plans.

Kindest Regards,

Jim and Elisha Feger

On Tue, Apr 5, 2022 at 3:03 PM President NH HOA <nhhoapresident@gmail.com> wrote:

Jim:

Thanks to both of you for meeting with us on Friday. I can assure you we appreciate your cooperation with all of these matters.

I want to clarify with you to make sure we are on the same page. Below is the outline of the conversation. Please feel free to correct the record on anything you disagree with or have a differing opinion.

If I am correct, you have agreed to do the following:

- 1.) Contact your surveyor to inquire about all setback lines, which includes the 35' setback and advise us of his response.
- 2.) Ask MSD to inspect the berm & planting mounds around the property to ensure that they do not compromise the drainage plan for the neighborhood.
- 3.) Provide the HOA Board with a scaled rendering of your project/projects on an updated survey that includes the setbacks.
- 4.) You won't proceed with any further construction until you have written board approval for such.

Please let me know if we agree!

Thanks!!!!!!!

Kelly

NO. _____

JEFFERSON CIRCUIT COURT
DIVISION _____

JUDGE _____

NOTTING HILL HOMEOWNERS ASSOCIATION, INC.

PLAINTIFF

V.

AFFIDAVIT OF BILL HALEY

JAMES E. FEGER, et al.

DEFENDANTS

Comes the Affiant, Bill Haley, and after being duly sworn, states as follows:

1. That Affiant is the property manager for Notting Hill Homeowners Association, Inc. of Jefferson County Kentucky.
2. That the Affiant is familiar with the Plaintiff's governing documents, and said governing documents require that the Board approve any structure, including but not limited to in ground swimming pools, spas, patios, sidewalks, outdoor kitchens, pergolas, fences before any work/construction is performed.
3. That part of Affiant's job duties is to receive owners' applications to install structures on the lot and then forward said applications to the Board of Directors.
4. That Affiant received an email from the Defendants on July 21, 2021 regarding certain proposed outdoor improvements on the Defendants' lot.
5. That Affiant communicated multiple times with the Defendants regarding the proposed improvements.
6. That at no time did Affiant provide the Defendants' authorization to install any of the proposed improvements.
7. That at no time did the Plaintiff provide the Defendants' authorization to install any of the proposed improvements.

8. That the Defendants ignored the Association's governing documents and installed an in ground pool on their lot without the necessary approval.
9. That the Defendants have also began construction on their lot to install the various other improvements contained in their email dated July 21, 2021.
10. That Affiant is aware the Defendants on March 30, 2022 submitted new plans for a larger, roofed "gazebo/pavillon" with 4' walls on two sides and a fireplace with a 20 plus foot chimney.
11. That members of the Association's Board of Directors met with the Defendants on April 1, 2022.
12. That the Board of Directors have requested additional documentation from the Defendants regarding the proposed improvements, but the Defendants refuse to provide such information.
13. That the Association has never approved the Defendants proposed improvements.
14. That the Defendants were on notice that the Association had not approved the proposed improvements and that all construction must stop until the Defendants obtain the required approval.
15. That despite not obtaining the required approval, the Defendants have continued their construction on their lot to erect certain structures.
16. That it will be difficult, if not impossible, to restore the lot to its original condition once the construction is complete.
17. That the Plaintiff has suffered and will continue to suffer irreparable harm should the Defendants continue construction without obtaining the necessary approval.
18. Further, Affiant sayeth naught.

NO. 2201001971

FILED IN CLERK'S OFFICE
DAVID L. NICHOLSON, CLERK
APR 21 2022
BY _____
CLERK

JEFFERSON CIRCUIT COURT
DIVISION _____

JEFFERSON CIRCUIT COURT
DIVISION TWO (2)
PLAINTIFF

NOTTING HILL HOMEOWNERS ASSOCIATION, INC.

V.

RESTRAINING ORDER

JAMES E. FEGER, et al.

DEFENDANTS

Upon review of the Verified Complaint and Affidavit filed in the above-styled action in support of the Motion for Restraining Order, it is the finding of the Court that:

1. That the Plaintiff's rights are being violated by the Defendants' actions.
2. That Defendants, James E. Feger and Elisha Feger, are the owners of real property located at 18701 Foxbough Glen Place, Louisville, Kentucky 40245, which property is located within Notting Hills Subdivision. The Defendants have erected an in ground pool on the real property, without obtaining the Plaintiff's written approval. The in ground pool is in violation of the Declaration of Covenants, Conditions and Restrictions of Notting Hill, and has caused and will continue to cause the Plaintiff and the residents it represents to suffer immediate and irreparable injury, harm, loss and/or damage pending a final Judgment in this action.
3. That Defendants, James E. Feger and Elisha Feger, are the owners of real property located at 18701 Foxbough Glen Place, Louisville, Kentucky 40245, which property is located within Notting Hills Subdivision, is in the process of erecting other structures without obtaining the Plaintiff's written approval. This construction is in violation of the Declaration of Covenants, Conditions and Restrictions of Notting Hill, and has caused and will continue to cause the Plaintiff and the residents it represents to suffer immediate and irreparable injury, harm, loss and/or damage pending a final Judgment in this action.

WHEREFORE, the Court therefore concludes, as a matter of law, that Plaintiff, Notting Hills Homeowners Association, is entitled to a Restraining Order without notice pursuant to CR 65.03.

IT IS HEREBY ORDERED that the Defendants, James E. Feger and Elisha Feger, shall immediately be restrained and enjoined from altering their lot within Notting Hills Subdivision unless and until they obtain the Plaintiff's written approval for said alteration. This Order shall remain in effect until further notice, or upon further Order of this Court after proper hearing. The Defendants' failure to abide by this Order will result in a finding that they be held in contempt of this Court and fined in an amount of no less than \$_____ per day, and that any alteration/improvement of the lot in violation of this Court Order be restored to the original condition at the expense of the Defendant. There is no just cause for delay in the entry of this Restraining Order or its execution and delivery. It is further Ordered that Bond shall be set in the amount of \$_____, with proper surety.

JUDGE, JEFFERSON CIRCUIT COURT

Date and Time Entered: _____AM/PM