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John A Donofrio, Summit Fiscal Officer

AMENDMENTS TO THE  
DECLARATION OF COVENANTS, CONDITIONS,  
EASEMENTS AND RESTRICTIONS  
OF  
THE ROYAL CLUSTERS AT KINGSBURY TRACE

PLEASE CROSS MARGINAL REFERENCE WITH THE DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS OF THE ROYAL CLUSTERS AT KINGSBURY TRACE RECORDED AT INSTRUMENT NO. 54074251 AND THE CODE OF REGULATIONS OF THE ROYAL CLUSTERS AT KINGSBURY TRACE HOMEOWNERS' ASSOCIATION, INC. RECORDED AT INSTRUMENT NO. 54074252, OF THE SUMMIT COUNTY RECORDS.

THIS WILL CERTIFY THAT A COPY OF THESE AMENDMENTS TO THE DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS OF THE ROYAL CLUSTERS AT KINGSBURY TRACE WERE FILED IN THE OFFICE OF THE FISCAL OFFICER OF SUMMIT COUNTY, OHIO.

**JOHN A. DONOFRIO**

DATED: 6-23-06

BY: \_\_\_\_\_  
FISCAL OFFICER

*By D. Taylor, Deputy Auditor*



AMENDMENTS TO THE  
DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND  
RESTRICTIONS OF THE ROYAL CLUSTERS AT KINGSBURY TRACE

WHEREAS, the Declaration of Covenants, Conditions, Easements and Restrictions of The Royal Clusters at Kingsbury Trace (the "Declaration") was recorded at Summit County Records Instrument No. 54074251 and the Code of Regulations of The Royal Clusters at Kingsbury Trace Homeowners' Association, Inc. (the "Code"), attached to and made a part of the Declaration was recorded at Summit County Records Instrument No. 54074252, and

WHEREAS, The Royal Clusters at Kingsbury Trace Homeowners' Association, Inc. (the "Association") is a corporation consisting of all Owners in The Royal Clusters at Kingsbury Trace and as such is the representative of all Owners, and

WHEREAS, Article XVI, Section 16.12(d) of said Declaration authorizes amendments to the Declaration and Code Article VII, Section 6 authorizes amendments to the Code, and

WHEREAS, a meeting of the Association's Owners was held on or about APRIL 12, 2006, and, at such meeting and any adjournment thereof, Owners representing at least a majority (>50%) of the voting power of the Association executed, in person or by proxy, an instrument in writing setting forth specifically the matters to be modified (the "Amendments"), and

WHEREAS, the Association has in its records the signed, written consents to Amendments A, B, C, D, E, F, G, H, I, J, K, L, M, N and O signed by Owners representing a majority (>50.0%) of the Association's voting power as of May 22, 2006, together with the minutes from said meeting and any adjournment thereof, and

WHEREAS, the Association has in its records the power of attorney signed by Owners representing a majority (>50.0%) of the Association's voting power authorizing the Association's officers to execute Amendments A, B, C, D, E, F, G, H, I, J, K, L, M, N and O on their behalf, and

WHEREAS, the proceedings necessary to amend the Declaration as required by the Declaration of Covenants, Conditions, Easements and Restrictions of The Royal Clusters at Kingsbury Trace have in all respects been complied with.

NOW THEREFORE, the Declaration of Covenants, Conditions, Easements and Restrictions of The Royal Clusters at Kingsbury Trace is hereby amended by the following:

AMENDMENT A

INSERT a new DECLARATION ARTICLE VII, SECTION 7.26 entitled, "Occupancy Restriction." Said new addition, to be added on Page 32 of the Declaration, as recorded at Summit County Records, Instrument No. 54074251, is as follows:

Section 7.26 Occupancy Restriction. No person who is adjudicated to be a sexual predator or a habitual sex offender and required to register with a designated registering agency, thereby requiring notice to be given pursuant to the Ohio Sex Offenders Act or similar statute from another jurisdiction, as the same may from time to time be amended, may reside in or occupy a Living Unit for any length of time. Any violation of this restriction shall subject the Owner and/or any Occupant of the Living Unit to any and all remedies provided for by law as well as this Declaration. The Association shall not, however, be liable to any Owner or Occupant, or anyone visiting any Owner or the Association, as a result of the Association's alleged failure, whether negligent, intentional or otherwise, to enforce the provisions of this restriction.

Any conflict between this provision and any other provisions of the Declaration and Code shall be interpreted in favor of this restriction on the occupancy of Living Units. Upon the recording of this amendment, only Owners of record at the time of such filing shall have standing to contest the validity of the amendment, whether on procedural, substantive or any other grounds, provided further that any such challenge shall be brought in the court of common pleas within one year of the recording of the amendment.

AMENDMENT B

DELETE the last SENTENCE of DECLARATION ARTICLE VI, SECTION 6.1(e) entitled, "Drainage System." Said deletion is to be made on Page 18 of the Declaration, as recorded at Summit County Records, Instrument No. 54074251

~~The cleaning, maintenance and repair of gutters, downspouts, and other facilities attached to Living Units are the responsibility of the Owners of such Living Units.~~

MODIFY the 1<sup>st</sup> SENTENCE of DECLARATION ARTICLE VI, SECTION 6.4 entitled, "Exterior Maintenance of Living Units and Maintenance of Originally Installed Landscaping by the Association." Said modification, to be made on Page 19 of the Declaration, as recorded at Summit County Records, Instrument No. 54074251, is as follows (new language is underlined):



In addition to the maintenance and repair of the Common Areas, the Association shall provide exterior maintenance, repair and replacement for each Living Unit as follows: exterior paint, repair and care of roofs, foundations, Party Walls, gutters (including cleaning), downspouts (including cleaning), exterior building surfaces, repair, replacement and maintenance of driveways, including snow removal from driveways, maintenance of the Originally Installed Landscaping and other structural and non-structural improvements.

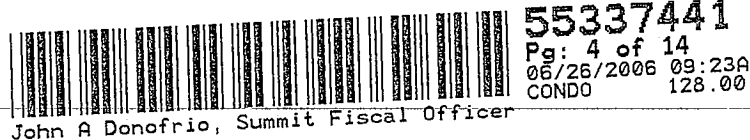
Any conflict between the above provision and any other provisions of the Declaration and Code shall be interpreted in favor of this Amendment making the Association responsible for the cleaning, maintenance and repair of gutters and downspouts on Living Units. Upon the recording of this amendment, only Owners of record at the time of such filing shall have standing to contest the validity of this amendment, whether on procedural, substantive or any other grounds, provided further that any such challenge shall be brought in the court of common pleas within one year of the recording of the amendment.

#### AMENDMENT C

MODIFY DECLARATION ARTICLE III, SECTION 3.8 entitled, "Parking in Common Areas." Said modification, to be made on Page 11 of the Declaration, as recorded at Summit County Records, Instrument No. 54074251, is as follows (deleted language is crossed-out; new language is underlined):

#### Section 3.8 - Parking in Common Areas

There shall be no parking of motor vehicles on Association Roads, except that non-Occupant guests may temporarily park on Association Roads, subject to reasonable rules and regulations and further provided that there shall be (1) no parking overnight; (2) no parking in the cul-de-sacs or on the side of the street with fire hydrants; (3) no parking on the shoulder(s) or grassy area(s); and (4) no parking if snow exceeds two inches (2"). ~~e~~Certain off-street parking areas situated off of Association Roads are also designated for parking by visitors or guests on a temporary basis subject to reasonable rules and regulations, and subject to applicable laws. ~~The Developer and/or the Association reserves~~ the right to create additional off-street parking spaces to be situated within the Common Areas off of the Association Roads.



MODIFY the 3<sup>rd</sup> SENTENCE of DECLARATION ARTICLE VII, SECTION 7.9 entitled, "Storage of Vehicles and Machinery; No Parking on Association Roads" and INSERT a NEW SENTENCE THEREAFTER Said modification, to be made on Page 27 of the Declaration, as recorded at Summit County Records, Instrument No. 54074251, is as follows (deleted language is crossed-out; new language is underlined):

~~Furthermore, there shall be no parking of motor vehicles on the Association Roads, except that the Developer and/or the Board may designate certain off-street parking areas for temporary use by visitors or guests subject to reasonable rules and regulations, and subject to applicable laws, and except that the Developer may maintain a construction/office/sales trailer(s) on the Common Areas and on Sublots owned by the Developer so long as the construction and sales by the Developer of Living Units on the Property is continuing.~~ Non-Occupant guests may temporarily park on Association Roads, subject to reasonable rules and regulations and further provided that there shall be (1) no parking overnight; (2) no parking in the cul-de-sacs or on the side of the street with fire hydrants; (3) no parking on the shoulder(s) or grassy area(s); and (3) no parking if snow exceeds two inches (2").

Any conflict between the above provision and any other provisions of the Declaration and Code shall be interpreted in favor of this Amendment permitting visitor and guest parking on Association Roads. Upon the recording of this amendment, only Owners of record at the time of such filing shall have standing to contest the validity of this amendment, whether on procedural, substantive or any other grounds, provided further that any such challenge shall be brought in the court of common pleas within one year of the recording of the amendment.

#### AMENDMENT D

MODIFY DECLARATION ARTICLE VII, SECTION 7.20(c) entitled, "Names of Owners and Occupants of Living Units." Said modification, to be made on Page 30 of the Declaration, as recorded at Summit County Records, Instrument No. 54074251, is as follows (new language is underlined):

(c) Names of Owners and Occupants of Living Units. To enable the Association to maintain accurate records of the names, addresses and phone numbers of Owners and other Occupants of Living Units, each Owner agrees to notify the Association in writing within five (5) days of any change in information while they continue to own or occupy the Living Unit. Furthermore, each Owner agrees to notify the Association in writing after such Owner's Living Unit has been transferred or leased to another person. In addition, each Owner agrees to provide to a purchaser or lessee of such



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Owner's Living Unit a copy of this Declaration, the Code, the Rules and other relevant documents.

Any conflict between this provision and any other provisions of the Declaration and Code of Regulations shall be interpreted in favor of this amendment requiring Owners and/or Occupants to advise the Association of any change in information within five (5) days. Upon the recording of this amendment, only Owners of record at the time of such filing shall have standing to contest the validity of the amendment, whether on procedural, substantive or any other grounds, provided further that any such challenge shall be brought in the court of common pleas within one year of the recording of the amendment.

#### AMENDMENT E

All references in the Declaration and Code of Regulations to the term "Board of Trustees" shall be replaced with the term "Board of Directors."

MODIFY DECLARATION ARTICLE II, SECTION 2.2(g) entitled, "BOARD." Said modification, to be made on Page 5 of the Declaration, as recorded at Summit County Records, Instrument No. 54074251, is as follows (deleted language is crossed-out; new language is underlined):

(g) "BOARD." The Board of Directors ~~Trustees~~ of the Association. The Board is sometimes also referred to as the "Directors ~~Trustees~~."

Any conflict between this provision and any other provisions of the Declaration and Code of Regulations shall be interpreted in favor of this amendment changing the definition of "Board of Trustees" to "Board of Directors". Upon the recording of this amendment, only Owners of record at the time of such filing shall have standing to contest the validity of the amendment, whether on procedural, substantive or any other grounds, provided further that any such challenge shall be brought in the court of common pleas within one year of the recording of the amendment.



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AMENDMENT F

INSERT a new DECLARATION ARTICLE IX, SECTION 9.11 entitled, "Application of Payments." Said new addition, to be added on Page 38 of the Declaration, as recorded at Summit County Records, Instrument No. 54074251, is as follows:

Section 9.11 - Application of Payments

The Association shall credit payments made by a Delinquent Owner in the following order of priority:

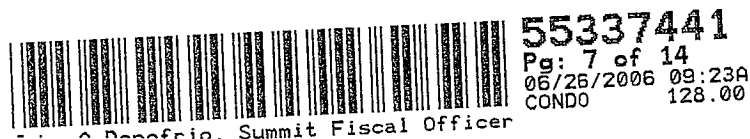
- (1) First, to interest owed to the Association;
- (2) Second, to administrative late fees owed to the Association;
- (3) Third, to collection costs, attorney's fees, and paralegal fees incurred by the Association; and
- (4) Fourth, to the principal amounts the Unit Owner owes to the Association for the common expenses or enforcement Assessments chargeable against the Unit.

Any conflict between this provision and any other provisions of the Declaration and Code of Regulations shall be interpreted in favor of this Amendment determining the priority in which payment shall be credited to a delinquent account. Upon the recording of this amendment, only owners of record at the time of such filing shall have standing to contest the validity of the amendment, whether on procedural, substantive or any other grounds, provided further that any such challenge shall be brought in the court of common pleas within one year of the recording of the amendment.

AMENDMENT G

INSERT a new 2<sup>nd</sup> PARAGRAPH to DECLARATION ARTICLE IX, SECTION 9.3 entitled, "No Exemption for Non-Use of Facilities; No Refund of Reserves." Said new addition, to be added on Page 36 of the Declaration, as recorded at Summit County Records, Instrument No. 54074251, is as follows:

The obligation to pay all Assessments is an independent covenant. No Owner of a Living Unit may exempt himself/herself from liability for Assessments by waiver of the use or enjoyment of any of the Common Areas, by the abandonment of his/her Living Unit, or for any other reason. Regardless of any effort or action of a Owner to the contrary, the Association shall credit any and all payments made by an Owner for all Assessments levied against such





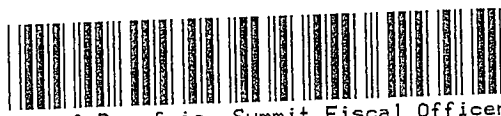
Owner in the order established in Declaration Article IX, Section 9.11, as amended, and if not amended, in order so established by the Board.

Any conflict between this provision and any other provisions of the Declaration and Code of Regulations shall be interpreted in favor of this Amendment requiring Owners to pay Assessments as an independent obligation. Upon the recording of this amendment, only owners of record at the time of such filing shall have standing to contest the validity of the amendment, whether on procedural, substantive or any other grounds, provided further that any such challenge shall be brought in the court of common pleas within one year of the recording of the amendment.

### AMENDMENT H

MODIFY DECLARATION ARTICLE XVI, SECTION 16.12(d). Said modification, to be made on Page 53 of the Declaration, as recorded at Summit County Records, Instrument No. 54074251, is as follows (deleted language is crossed-out; new language is underlined):

(d) Except as expressly provided in this Declaration, ~~and after expiration of the period set forth in (a) of this Article,~~ any provision of this Declaration may be amended or repealed in writing or following a meeting of the Members held for such purpose, by the affirmative vote of the ~~Class "B" Member and the vote of~~ at least a majority of the voting power of the Class "A" Members unless a greater percentage of vote is required pursuant to this Declaration or in accordance with the statutes of the State of Ohio; provided, however, that any amendment which would terminate or materially affect the easements set forth in Article III of this Declaration shall not be amended (except as expressly provided to the contrary in this Declaration) unless all persons whose rights are terminated or materially affected shall affirmatively consent in writing to such amendment; provided further, that any amendment affecting the rights of Developer in this Declaration shall not be effective without the prior written consent of Developer. If a meeting is held, ~~Written~~ notice shall be given each Member at least ten (10) days in advance of the date of the meeting held for the purpose of amending this Declaration, which notice shall expressly state the modification to be considered at such meeting. Each amendment shall be effective when signed by the President and one other officer of the Association, signed by the Developer if the amendment affects the rights of the Developer and filed for record with the Summit County Records Recorder.



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John A Donofrio, Summit Fiscal Officer

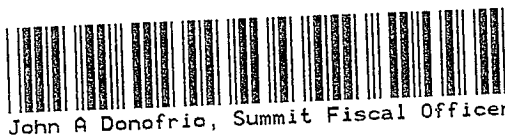
Any conflict between this provision and any other provision of the Declaration and Code shall be interpreted in favor of this amendment permitting Owners to vote on amendments without a meeting. Upon the recording of this amendment, only Owners of record at the time of such filing shall have standing to contest the validity of the amendment, whether on procedural, substantive or any other grounds, provided further that any such challenge shall be brought in the court of common pleas within one year of the recording of the amendment.

### AMENDMENT I

MODIFY CODE ARTICLE II, SECTION 9 entitled, "Proxies." Said modification, to be made on Page 3 of the Code, as recorded at Summit County Records, Instrument No. 54074252, is as follows (new language is underlined):

Section 9. Proxies. Class "A" Members may execute written consents, waivers or releases or otherwise act or vote in person or by proxy. The person appointed as proxy need not be a member of the Association. Designation by a Member or Members of a proxy to vote or act on his or her behalf shall be made in writing and signed by such Member or Members or appointed in any other manner permitted by Ohio law, shall be submitted to the Secretary of the Association (or if there is no Secretary, then with the person conducting the meeting for which the proxy is given) at or before the meeting and shall be revocable at any time by actual notice to the Secretary of the Association by the Member or Members making such designation. Notice to the Association in writing or in open meeting of the revocation of the designation of a proxy shall not affect any vote or act previously taken or authorized. The presence at a meeting of the person appointing a proxy does not revoke the appointment.

Any conflict between this provision and any other provision of the Declaration and Code shall be interpreted in favor of this amendment permitting the use of proxies as permitted by Ohio law. Upon the recording of this amendment, only Owners of record at the time of such filing shall have standing to contest the validity of the amendment, whether on procedural, substantive or any other grounds, provided further that any such challenge shall be brought within one year of the recording of the amendment.



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AMENDMENT J

MODIFY CODE ARTICLE II, SECTION 13 entitled, "Action Without A Meeting." Said modification, to be made on Page 4 of the Code, as recorded at Summit County Records, Instrument No. 54074252, is as follows (deleted language is crossed-out; new language is underlined):

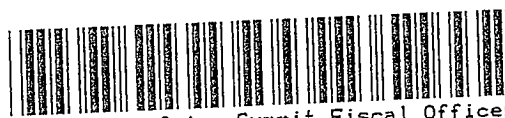
Section 13. Action Without A Meeting. Any action required by law to be taken at a meeting of the Class "A" Members or any action which may be taken at a meeting of the Class "A" Members, including votes to amend the Declaration or Code but excepting an action for the removal of a Board member, may be taken without a meeting with the approval of, and in writing or writings signed by, Owners having the percentage of voting power required to take such action as if it had been taken at a meeting. ~~If a consent in writing setting forth the action so taken shall be signed by all of the Class "A" Members entitled to vote with respect to the subject matter thereof, and such consent shall have the same force and effect as a unanimous vote of the Class "A" Members.~~ Such writings shall be filed at the direction of the Secretary of the Association.

Any conflict between the above provision and any other provisions of the Declaration and Code shall be interpreted in favor of this Amendment permitting actions without a meeting. Upon the recording of this amendment, only Owners of record at the time of such filing shall have standing to contest the validity of these amendments, whether on procedural, substantive or any other grounds, provided further that any such challenge shall be brought in the court of common pleas within one year of the recording of the amendment.

AMENDMENT K

MODIFY CODE ARTICLE III, PARAGRAPH B, SECTION 17 entitled, "Action Without a Formal Meeting." Said modification, to be made on Page 10 of the Code, as recorded at Summit County Records, Instrument No. 54074252, is as follows (deleted language is crossed-out; new language is underlined):

Section 17. Action Without a Formal Meeting. Any action, except removal of Directors or officers, to be taken at a meeting of the Board or any action that may be taken at a meeting of the Board may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed, or approved at the immediately following Board meeting, by electronic mail, by telegram, by telephone or by such other means as permitted by Ohio law, by all of the members of the Board, and such consent shall have the



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same force and effect as a ~~unanimous~~ majority vote taken at a meeting. An explanation of the action taken shall be posted at a prominent place or places within the Common Areas within three (3) days after the written consents of all the members of the Board have been obtained.

Any conflict between the above provision and any other provisions of the Declaration and Code shall be interpreted in favor of this Amendment permitting Board actions without a meeting. Upon the recording of this amendment, only Owners of record at the time of such filing shall have standing to contest the validity of these amendments, whether on procedural, substantive or any other grounds, provided further that any such challenge shall be brought in the court of common pleas within one year of the recording of the amendment.

### AMENDMENT L

MODIFY CODE ARTICLE III, PARAGRAPH C, SECTION 21 entitled, "Borrowing." Said modification, to be made on Page 14 of the Code, as recorded at Summit County Records, Instrument No. 54074252, is as follows (deleted language is crossed-out; new language is underlined):

Section 21. Borrowing. The Board shall have the power to borrow money, assign the Association's right to future income, including the right to receive common assessments and insurance proceeds, as collateral for any monies borrowed, and issue, sell and/or pledge notes, bonds and/or other evidences of indebtedness of the Association and execute related documents, for the purpose of repair or restoration of the Common Areas or Areas of Common Responsibility without the approval of the Class "A" Members of the Association; provided, however, the Board shall obtain membership approval in the same manner as is provided in Section 9.1 of the Declaration for Assessments for borrowings made for matters referred to in said Section.

Any conflict between this provision and any other provision in the Declaration and Code shall be interpreted in favor of this provision giving the Board, on behalf of the Association, the authority to assign assessments as collateral for a loan. Upon the recording of this amendment, only Owners of record at the time of such filing shall have standing to contest the validity of the amendment, whether of procedural, substantive or any other grounds, provided further that any such challenge shall be brought in the court of common pleas within one year of the recording of the Amendment.

AMENDMENT M

INSERT a new CODE ARTICLE III, PARAGRAPH C, SECTION 18(p). Said new addition, to be added on Page 12 of the Code, as recorded at Summit County Records, Instrument No. 54074252, is as follows:

(p) Subject to the Declaration and Code, the Association may purchase, hold title to, and sell real property that is not declared to be part of the Property with the approval of the Owners who exercise not less than fifty percent (50%) of the voting power of the Association, and the authorization of the Board of Directors. Expenses incurred in connection with any transaction pursuant to this section are Common Expenses.

Any conflict between this provision and any other provision in the Declaration and Code shall be interpreted in favor of this provision giving the Board, on behalf of the Association, to purchase property. Upon the recording of this amendment, only Owners of record at the time of such filing shall have standing to contest the validity of the amendment, whether of procedural, substantive or any other grounds, provided further that any such challenge shall be brought in the court of common pleas within one year of the recording of the Amendment.

AMENDMENT N

INSERT a new 8<sup>th</sup> SENTENCE to the 1<sup>st</sup> PARAGRAPH of CODE ARTICLE VI, SECTION 1 entitled, "Preparation of Estimated Budget." Said new addition, to be added on Page 19 of the Code, as recorded at Summit County Records, Instrument No. 54074252, is as follows:

In the alternative, if the Association has collected a common surplus at the end of any fiscal year, the Board may determine that such amount will be applied toward reserves.

Any conflict between the above provision and any other provisions of the Declaration and Code shall be interpreted in favor of the Amendment permitting the Association to apply common surplus towards reserves. Upon the recording of this amendment, only Owners of record at the time of such filing shall have standing to contest the validity of this amendment, whether on procedural, substantive or any other grounds, provided further that any such challenge shall be brought in the court of common pleas within one year of the recording of the amendment.



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AMENDMENT O

DELETE the last SENTENCE of DECLARATION ARTICLE VII, SECTION 7.5 entitled, "Animals." Said deletion is to be made on Page 25 of the Declaration, as recorded at Summit County Records, Instrument No. 54074251, is as follows: (deleted language is struck-through)

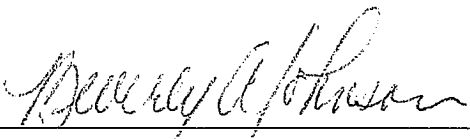
~~An Owner may erect or install a dog house within the rear of such Owner's Sublot with the prior written approval of the Design Review Committee.~~

Any conflict between the above provision and any other provisions of the Declaration and Code shall be interpreted in favor of the Amendment prohibiting dog house from being erected on Sublots. Upon the recording of this amendment, only Owners of record at the time of such filing shall have standing to contest the validity of this amendment, whether on procedural, substantive or any other grounds, provided further that any such challenge shall be brought in the court of common pleas within one year of the recording of the amendment.

IN WITNESS WHEREOF, the said The Royal Clusters at Kingsbury Trace Homeowners' Association, Inc. has caused the execution of this instrument this 13<sup>th</sup> day of JUNE, 2006.

THE ROYAL CLUSTERS AT KINGSBURY TRACE  
HOMEOWNERS' ASSOCIATION, INC.

By:   
DOUGLAS C. DOMECK, its President

By:   
BEVERLY A. JOHNSON, its Secretary



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STATE OF OHIO )  
 )  
COUNTY OF Summit ) SS


BEFORE ME, a Notary Public, in and for said County, personally appeared the above named The Royal Clusters at Kingsbury Trace Homeowners' Association, Inc., by its President and its Secretary, who acknowledged that they did sign the foregoing instrument, on Page 13 of 14, and that the same is the free act and deed of said corporation and the free act and deed of each of them personally and as such officers.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal in Akron, Ohio, this 13<sup>th</sup> day of June, 2006.

Karen Ann Fegal  
NOTARY PUBLIC

KAREN ANN FEGAL, Notary Public  
Residence - Summit County  
State Wide Jurisdiction, Ohio  
My Commission Expires Dec. 9, 2010

*ENV*  
This instrument prepared by:  
KAMAN & CUSIMANO, Attorneys at Law  
50 Public Square  
2000 Terminal Tower  
Cleveland, Ohio 44113  
(216) 696-0650

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John A Donofrio, Summit Fiscal Officer

