DECLARATION OF EASEMENTS, COVENANTS, AND RESTRICTIONS

LINCOLN PARK

A subdivision in White River Township,
Johnson County, Indiana

August, 1999

Developed by:
Bay Communities, LLC
10415 N. College Avenue
Indianapolis, IN 46280
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DECLARATION OF EASEMENTS, COVENANTS, AND
RESTRICTIONS OF LINCOLN PARK

THIS DECLARATION OF EASEMENTS, COVENANTS, AND RESTRICTIONS FOR LINCOLN PARK ("Declaration"), is made this [day of] August, 1999, by BAY COMMUNITIES, LLC (hereinafter referred to as "Declarant"),

WITNESSETH THAT:

WHEREAS, Declarant is the owner of certain real estate located in Johnson County, Indiana, more particularly described on the attached Exhibit A ("Real Estate"); and

WHEREAS, the Real Estate is being developed as a single-family age-restricted Subdivision to be known as Lincoln Park; and

WHEREAS, Declarant intends to sell and convey Lots within Lincoln Park and desires to subject those Lots to certain easements, covenants and restrictions ("Covenants") in order to ensure that their development and use are harmonious with and will not adversely affect the use or value of any of the various Lots in Lincoln Park; and

WHEREAS, the Declarant and/or the Homeowner's Association to be formed in conjunction with this Declaration will provide significant services and facilities specifically designed to meet the physical and social needs of the Owner's and residents of the various Lots in Lincoln Park; and

WHEREAS, Declarant has caused or will cause to be incorporated under the laws of the State of Indiana a non-profit corporation under the name of LINCOLN PARK HOMEOWNERS ASSOCIATION, INC., or a similar name, for the purpose of enforcing the Covenants as set forth herein.

NOW, THEREFORE, Declarant hereby declares that all of the Real Estate as it is now owned or shall be owned, conveyed, transferred, encumbered, used, occupied and improved in the future, shall be subject to the following Covenants. All such Covenants shall run with the Real Estate and shall be binding upon the Declarant and upon all parties having or acquiring any right, title, or interest, legal or equitable, in and to the Real Estate and shall inure to the benefit of the Declarant and every one of the Declarant's successors in title to the Real Estate.

GENERAL PURPOSE OF THIS DECLARATION

The Real Estate is hereby subjected to the Covenants herein declared to preserve the value of the Real Estate, to ensure proper use and appropriate improvement of the Real Estate, to encourage the construction of attractive structures and other improvements at appropriate locations on the Real Estate, to preserve and maintain proper setbacks from streets and adequate open space between structures, and to provide for adequate and proper maintenance of the Real Estate all in compliance with applicable requirements of relevant governmental agencies and the Design Review Committee, as that term is defined herein.
ARTICLE 1

Definitions For All Purposes Of This Declaration

The following terms, whenever used in this Declaration, shall have the meanings assigned to them by this Article:

Section 1.1. Adjoining Real Estate. "Adjoining Real Estate" has the meaning set forth in Section 2.1 of this Declaration.

Section 1.2. Applicable Date. "Applicable Date" shall mean the date which is the earlier of (a) the date on which the written resignation of Declarant as a Class B member is delivered to the Secretary of the Association or (b) the date Declarant no longer owns any Lot.

Section 1.3. Assessment. "Assessment" means the share of the Common Expenses imposed upon and against each Lot as determined and assessed pursuant to the provisions of this Declaration.

Section 1.4. Association. "Association" means Lincoln Park Homeowner’s Association, or an organization of similar name, formed, or to be formed, as an Indiana non-profit corporation, its successors and assigns.

Section 1.5. Common Areas. "Common Areas" means all areas shown on any plat of the Real Estate (including improvements thereto) which are not Lots and which are not dedicated to the public. Common Areas shall also include all storm drainage facilities and improvements, not dedicated to the public or located in the public right-of-way, including but not limited to all detention areas, inlet structures, open ditches, pipes, swales and paved swales, landscaped islands and areas, entrances, walkways or paths.

Section 1.6. Common Expense. "Common Expense" means the actual or estimated costs of the Association for maintenance, management, operation, repair, improvement, and replacement of the Lots and the Common Areas, and any other cost or expense incurred by the Association for the benefit of the Lots and the Common Areas, or the administration and management of the Association, including but not limited to insurance costs, legal and accounting costs, and costs of other appropriate services.

Section 1.7. Declarant. "Declarant" means Bay Communities, LLC, and any successor or assign designated by the Declarant in one or more written recorded instruments, to have the rights of Declarant hereunder, including (but not limited to) any mortgagee acquiring title to any portion of the Real Estate pursuant to the exercise of rights under a mortgage executed by Declarant.

Section 1.8. Declaration. "Declaration" means the Declaration of Covenants, Conditions and Restrictions of Lincoln Park as recorded in Book __________, Page _____, as Instrument
No. ___________ in the office of the Recorder of Johnson County, Indiana (as the same may be amended or supplemented from time to time). Reference is made to the Declaration for a description of the rights, restrictions and obligations associated with the Easements identified on any Plat.

Section 1.9. Design Review Committee. "Design Review Committee" means a committee, composed of up to three members, which shall review and approve all plot plans, construction plans and specifications, and landscaping prior to the commencement of any site development, construction, landscaping, or other improvement, of any kind, within Lincoln Park. The Design Review Committee shall be appointed by the Declarant prior to the Applicable Date and by the Board of Directors of the Association after the Applicable Date.

Section 1.10. Development Period. "Development Period" means the period of time commencing with the date of recordation of this Declaration and ending on the later of the following: (i) the date Declarant no longer owns any Lot within or upon the Real Estate or (ii) the date which is four (4) years after the date on which all improvements and installations have been completed and, if applicable, accepted for public maintenance by any appropriate governmental unit or agency thereof.

Section 1.11. Easements. "Easements" refer to those areas reserved as easements on the plats of the Real Estate.

Section 1.12. Entry Sign. "Entry Sign" means any sign or structure identifying the Real Estate.

Section 1.13. Lot. "Lot" means and refers to each individual platted lot as shown on the preliminary plat of the Real Estate.


Section 1.15. Owner. "Owner" means any person or persons who acquire, after the date of this Declaration, legal and/or equitable title to any Lot; provided, however, that "Owner" shall not include any holder of a mortgage of all or any part of any Lot, so long as such holder does not hold both legal and equitable title thereto.

Section 1.16. Plat. "Plat" means the subdivision plat of the Real Estate as hereafter recorded in the Office of the Recorder of Johnson County, Indiana, (as the same may be amended or supplemented from time to time).

Section 1.17. Regular Assessments. "Regular Assessments" has the meaning set forth in Section 5.2 of this Declaration.

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Section 1.18. Single-Family. "Single-Family" means one person or a group of persons, of whom no more than two (2) shall be unrelated by blood, marriage, or adoption, all of whom share a single common household. Boarders and permanent guests shall be strictly prohibited.

Section 1.19. Special Assessments. "Special Assessments" has the meaning set forth in Section 5.4 of this Declaration.

ARTICLE 2

Easements and Restrictions

Section 2.1. Owners' Easement of Enjoyment of Common Areas. Declarant hereby declares, creates and grants a non-exclusive easement in favor of each Owner for the use and enjoyment of the Common Areas which shall run with and be appurtenant to each Lot, subject to the following:

(i) the right of the Declarant (prior to conveyance of the Common Areas to the Association) to grant nonexclusive easements appurtenant to and for the benefit of other real estate in the vicinity of the Real Estate ("Adjoining Real Estate") for the use and enjoyment of the Common Areas, from time to time, by the owners of all or any part of such Adjoining Real Estate upon and subject to the terms and conditions of such grant, which terms and conditions shall include an obligation to contribute to the cost of the maintenance and repair of such Common Areas;

(ii) the right of the Declarant (prior to conveyance of the Common Areas to the Association) to grant easements in and to the Common Areas to any political subdivision or governmental authority or utility company;

(iii) the right of the Association (after conveyance of the Common Areas to the Association by Declarant), upon approval of two-thirds (2/3) in the aggregate of both classes of members of the Association, to dedicate or transfer all or any part of the Common Areas to any political subdivision or governmental authority or utility company for such purposes and subject to such conditions as may be set forth in an instrument of dedication or transfer;

(iv) any other easements declared, created, granted or reserved elsewhere in this Declaration or in any Plat; and

(v) the terms and provisions of this Declaration.

Neither Declarant nor the Association shall be responsible for any loss, damage or injury to property or injury or death to persons arising out of the use of the Common Areas or any
improvements or facilities installed by Declarant or the Association therein or thereon. The Common Areas and all such equipment and facilities, if any, shall be used at the sole risk of the user.

Section 2.2. Conveyance of Common Areas. Declarant, at any time prior to the conveyance of the last Lot, may convey all of its right, title and interest in and to the Common Areas to the Association by quitclaim deed, and such Common Areas shall then be the property of the Association. If Declarant has not conveyed all of the Common Areas to the Association prior to the conveyance of the last Lot by Declarant, Declarant shall convey those Common Areas to the Association simultaneously with the conveyance of the last Lot.

Section 2.3. Easements. Easements for maintenance, lawn care, landscaping, and snow removal, and for installation and maintenance of utilities and drainage facilities are hereby reserved.

A. Declarant's Reserved Rights. Notwithstanding any provisions contained in this Declaration to the contrary, Declarant hereby reserves the nonexclusive right, privilege, license and easement in, on, over, under and across the entirety of the Real Estate, including the separate Lots thereof, to maintain all lawns, landscaped areas, irrigation systems (as installed by Declarant or with Declarant's express approval), boundary fences and Common Areas and to tie into and/or otherwise connect to and use (without a tap-on or any other fee for so doing), replace, relocate, maintain and repair any device which provides utility or similar services including, without limitation, cable television service, and drainage lines and facilities constructed or installed in, on, under and/or over all or any portion of the Real Estate.

Section 2.4. Rules and Regulations. The Board of Directors may establish reasonable rules and regulations, not inconsistent with the provisions of this Declaration, concerning the use of the Common Areas and the facilities, if any, located thereon, the easements described in Section 2.3 above, and for the enforcement of the provisions of this Declaration. Copies of such rules and regulations and amendments thereto shall be furnished by the Association to all Owners prior to the effective date of any such rules and regulations. Such rules and regulations shall be binding upon the Owners, their family members, tenants, guests, invitees and agents until and unless such rules or regulations shall be specifically overruled, canceled or modified by the Board of Directors or by the Association in a regular or special meeting by the vote of members holding a majority of the total votes of the Association. The Board of Directors shall have the authority to impose reasonable monetary fines and other sanctions for any violation of such rules and regulations, and monetary fines shall be and constitute a Special Assessment against the Owner against whom they are imposed and such Owner's Lot, to be collected and enforced in the manner provided in this Declaration for the collection and enforcement of assessments in general.

Section 2.5. Restrictions.

A. Lot Use. Except as specifically permitted herein, all Lots shall be used exclusively for residential purposes and for occupancy by a Single Family. No non-residential building shall be erected on any Lot. An Owner may maintain an office in such Owner's residence provided that
business meetings and transactions with members of the public shall be prohibited. No signs in connection with an Owner’s business shall be erected on the Lot and no employees of the Owner’s business shall work out of the Owner’s residence or anywhere on the Lot. No residence or any part of a Lot may be leased or rented except for a total of six (6) months during any five (5) year period except where: (i) the Owner leases the Lot and the residence located thereon to a parent or child or (ii) the Owner, as a requirement of Owner’s employment or business, establishes a temporary residence which is more than ninety (90) miles from the Owner’s Lot, in which case the Owner may lease his Lot and the improvements thereon to a tenant for up to a total of twelve (12) months during any five (5) year period.

B. Housing for Older Persons. The Lots and the homes constructed thereon shall be intended and operated for occupancy by persons 55 years of age or older. The Federal Fair Housing Act found currently at 42 U.S.C. §3607(b) and the Indiana Fair Housing Act found currently at Title 22 Chapter 9.5 of the Indiana Code, as either or both may be amended from time to time, are adopted and incorporated herein by reference. The Declarant prior to the Applicable Date and the Association, after the Applicable Date, shall monitor and control the sale, use and occupancy of Lots in Lincoln Park and operate and manage the Common Areas in strict compliance with all applicable provisions of the Federal and State Fair Housing Acts as they relate to housing for persons 55 years of age or older. The Declarant and/or the Association will adopt policies and procedures to ensure compliance with all relevant provisions of the Federal and State Fair Housing Acts.

C. Minimum Living Space. The minimum square footage of living space of dwellings within Lincoln Park shall be 1,132 square feet exclusive of porches, garages, or basements.

D. Minimum Lot Size. The minimum lot size for each lot within Lincoln Park shall be 4,840 square feet.

E. Minimum Front Building Setback. The minimum front building setback for each lot within Lincoln Park shall be 20 feet.

F. Minimum Rear Building Setback. The minimum rear building setback for each lot within Lincoln Park shall be 20 feet.

G. Minimum Side Setback. The minimum side yard setback shall be five feet (5’). Subject to review and approval by the Design Review Committee, residences may be located at various distances from the side boundary of a Lot with no side yard setback (zero lot line), provided that no side wall of any residence is located closer than ten feet (10’) to the side wall of any other residence.

H. Street Right-of-Way and Width. The minimum public street right-of-way within Lincoln Park shall be fifty feet (50’).
I. **Cul-De-Sac Right-of-Way Radius.** The minimum public cul-de-sac right-of-way shall be fifty-five feet (55').

J. **Two Story Homes.** The minimum square footage of living space for two-story dwellings within Lincoln Park shall be 1,400 square feet, exclusive of porches, garages or basements.

K. **Required Plantings and Sod.** At the time of initial landscaping of each Lot, the entire yard area shall be sodded and a minimum of one, 2-inch caliper trees shall be planted in the grass strip between the curb and sidewalk in a manner consistent with all relevant rules and regulations imposed by the Design Review Committee or the Board of Directors of the Association.

L. **Gardens and Landscaped Areas.** Vegetable gardens, flower beds and other landscaped areas may be installed on a Lot by or at the direction of the Owner only with the approval of the Design Review Committee.

M. **Sidewalks.** Prior to occupancy of a residence, a four foot (4') wide concrete sidewalk shall be constructed by the Owner along the entire street frontages of the Owner's Lot. The sidewalk shall be constructed pursuant to specifications approved by the Declarant and/or the Design Review Committee.

N. **Building Height.** The maximum building height of a residence erected on a Lot shall not exceed 35 feet. The maximum building height of any accessory structures, which may be erected only after approval by the Design Review Committee, shall not exceed 20 feet. The building height of the residence or accessory structure for purposes of the foregoing restriction shall be the vertical distance from the Lot ground level to the mean height between eaves and ridges, for a gable, hip or gambrel roof. The Lot ground level shall be selected by either of the following, whichever yields a greater building height:

   (i) the elevation of the highest adjoining sidewalk or ground surface within a ten foot (10') horizontal distance from and parallel to the exterior wall of the building or structure when said sidewalk or ground surface is not more than ten feet (10') above lowest grade; or

   (ii) an elevation of ten feet (10') higher than the lowest grade when said sidewalk or ground surface is more than ten feet (10') above the lowest grade.

O. **Mail Boxes.** Mailboxes and the posts on which they are mounted shall be of uniform size, height, design, and color as specified by the Design Review Committee. Owners shall be prohibited from altering the appearance of their mailboxes or the posts on which they are mounted, except to make repairs to and maintain or replace the mailboxes or the posts on which they are mounted in a manner which is consistent with the uniform appearance as specified by the Design Review Committee. Owners shall install and thereafter keep their mailboxes in a good state of repair at all times.
P. **Driveways.** All driveways shall be paved with a hard surface material as specified and approved by the Declarant and/or the Design Review Committee from the point of connection with the abutting street to the point of connection with the garage apron and shall be totally completed prior to occupancy of the residence.

Q. **Windows.** All residences shall have windows on each facade of the residence unless the Design Review Committee grants a special exception based on architectural features or landscaping.

R. **Recreational Facilities.** All recreational facilities and related items, including, but not limited to, swimming pools, hot tubs, swing sets, basketball goals, and sandboxes, whether permanent or temporary, shall be prohibited unless any such facilities or items are specifically permitted by the By-Laws, Rules and Regulations of the Association or approved by the Declarant and/or the Design Review Committee.

S. **Garages and Accessory Structures.** All residences shall have an attached garage which will accommodate at least two (2) automobiles. No structure shall be erected, placed or permitted to remain upon any Lot, except a Single-Family residence or such accessory structures or improvements as may be approved by the Design Review Committee. No detached storage structure (i.e., minibarns and similar structures) shall be erected or placed on any Lot.

T. **Exterior Materials.** The colors and types of exterior building materials may be specified or limited by the Design Review Committee. Loud or garish colors of brick, trim, siding or other exterior materials or roofing materials are prohibited. Siding and exterior trim shall be vinyl or wood products as may be approved by the Design Review Committee. Aluminum siding, soffits and trim shall be prohibited. All exposed foundations shall be stone or brick, or stone or brick veneer. Exposed concrete blocks shall be prohibited.

U. **Diligence in Construction.** Construction of residences shall be completed within twelve (12) months after commencement of construction. Restoration and repair of any residence which is partially or totally destroyed by fire or other casualty shall be commenced within forty-five (45) days from the time of such destruction or damage and shall be completed within six (6) months.

V. **Maintenance of Lots and Improvements.** The Association shall at all times cut the yards of all Lots and maintain the landscaped areas, trees and shrubs (as installed with the express approval of the Declarant and/or the Design Review Committee). The Declarant and/or the Board of Directors of the Association shall adopt a cost structure for maintenance of yards, landscaped areas, trees and shrubs. The Declarant/Association may bill Owners separately, in addition to any Regular or Special Assessments imposed by this Declaration, for maintenance of yards, landscaped areas, trees, and shrubs based on the various sizes of yards and landscaped areas and the number of trees and shrubs which may be planted and maintained by the Association on the various Lots throughout Lincoln Park. Each Owner shall be obligated to pay to the Association all separate amounts billed for maintenance by the Association of yards, landscaped areas, trees, and shrubs. The
Association shall have the right to collect all such additional amounts from the Owners of the various Lots in Lincoln Park in the same manner that the Association may collect Regular and Special Assessments as provided herein. Specifically, the Association shall:

(i) Mow the grass on all portions of the public right-of-way adjacent to each Lot (i.e., that portion of the public right-of-way between the curb and the Lot line) and provide fertilizer and weed control at such times as may be reasonably required in order to prevent the growth of weeds or other unsightly vegetation.

(ii) Prevent the existence of any other condition on each Lot that reasonably tends to detract from or diminish the aesthetic or well-maintained appearance of the Real Estate.

In addition, the Association shall maintain, repair or replace all grass, trees, shrubs, plantings, including any flowers, landscaped areas, boundary fences and similar improvements and features located within all public rights-of-way and Common Areas.

W. Owner's Maintenance Obligations. The Owner of each Lot shall keep the exterior of all dwellings, structures, porches, decks, and other accessory structures, to the extent permitted by these Covenants, in good repair and condition, at all times. All exterior painted surfaces shall be repainted every five (5) years in the same color or another color approved by the Design Review Committee.

In the event an Owner of any Lot fails to fulfill the maintenance obligations pursuant to this paragraph in a manner satisfactory to the Association, the Association shall have the right (but not the obligation), through its agents, employees and contractors, to perform such obligations at the Owner's expense. Any costs incurred by the Association shall constitute a Special Assessment against such Lot and the Owner thereof, to be collected and enforced in the manner provided in this Declaration for the collection and enforcement of assessments in general. Neither the Association nor any of its agents, employees or contractors shall be liable to the Owner for any damage which may result from any work performed pursuant to this paragraph.

X. Nuisances. No noxious or offensive activities shall be permitted on any Lot; nor shall anything be done on any Lot which may be or become an unreasonable annoyance or nuisance to the Owner of any other Lot. Any violation of this paragraph shall constitute a nuisance which may be abated by the Association in any manner provided at law or in equity. The cost or expense of abatement, including court costs and attorneys' fees, shall constitute a Special Assessment against such Lot and the Owner thereof, to be collected and enforced in the manner provided in this Declaration for the collection and enforcement of assessments in general. Neither the Association nor any of its agents, employees or contractors shall be liable to the Owner for any damage which may result from any work performed hereunder.
Y. **Occupancy of Partially Completed Residence Prohibited.** No residence constructed on any Lot shall be occupied or used for residential purposes until it shall have been substantially completed. The determination of whether the residence shall have been substantially completed shall be made by the Design Review Committee, and such decision shall be binding on all parties.

Z. **General Prohibitions.** In addition to any restrictions or limitations contained elsewhere in this Declaration, the following limitations, restrictions and prohibitions shall apply to the use and occupancy of the Real Estate:

(i) **Signs.** Signs advertising a Lot and related improvements for sale shall be permitted subject to the following:

   a. Only one (1) sign advertising the Lot and related improvements for sale shall be located on the Lot at any given time.

   b. Any such sign shall be located only in the front yard of the Lot.

   c. Any such sign shall be no more than six square feet in size.

   No other signs or advertisements shall be permitted on any Lot other than signs provided and approved by Declarant and/or the Association.

(ii) **Decorative Structures.** No decorative structures, statues, or ornaments shall be permitted in the front yard area of any Lot and may be permitted in the rear yard area of any Lot only with the approval of the Design Review Committee. This section shall not preclude Owners from decorating their Lots or residences during appropriate holiday seasons in a manner that is not offensive or disruptive to the other Owners as may be determined by the Board of Directors of the Association in its sole discretion.

(iii) **Animals.** No animals, livestock, or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats, or other household pets may be kept, provided that they are not bred, kept or maintained for any commercial use and are confined, at all times, within the boundaries of their Owner’s Lot, unless restrained by a leash and attended by their Owner. No outdoor kennels, doghouses, or other structures designed or used as a shelter for any such pets shall be permitted on any Lot. In every case, dogs, cats, and other household pets which are excepted under this section, shall be kept in a manner that does not constitute an annoyance to the Owners of other Lots, and does not adversely affect their use and enjoyment of their property.
(iv) **Passenger Vehicles.** No more than two (2) passenger vehicles shall be permitted to be parked in a driveway for more than a continuous twenty-four (24) hour period of time. No vehicles, of any kind, shall be parked on the streets, within the road rights-of-way or in front of the building setback line of any Lot, except on a casual and temporary basis when Lot owners are entertaining guests. In no event shall any vehicle be permitted to remain parked over night on the street, within the road rights-of-way, or in front of the building setback line of any Lot.

(v) **Trucks, Boats, Recreational Vehicles.** No heavy equipment, tractors, commercial vehicles, semi-trucks, trailers, antique or collector vehicles, mobile homes, recreational vehicles, boats, boat and utility trailers, or other similar vehicles and equipment shall be permitted to be kept on any Lot, Common Area, street, easement or right-of-way, unless kept entirely within a garage or permitted storage area.

(vi) **Inoperative Parked Vehicles.** At no time shall any unlicensed or inoperative vehicle be permitted anywhere on the Real Estate unless kept entirely within a garage or permitted storage area.

(vii) **Garage Doors.** The garage doors on each Lot shall remain closed, at all times, except when garages are being accessed or cleaned.

(viii) **Bicycles and other Toys.** All bicycles, tricycles and other similar use toys and vehicles shall be parked and kept, at all times, within a garage or other permitted storage area.

(ix) **Garbage, Trash, and Other Refuse.** No Owner shall burn garbage or other refuse on his Lot, nor shall any such Owner accumulate out-of-doors any such refuse on his Lot. Rubbish, garbage or other waste shall at all times be kept in sanitary containers which shall be stored within a garage or dwelling, except that all such containers may be placed outside the evening before scheduled trash pick up and remain outside until 9 o'clock p.m. on the day of scheduled trash pick up.

(x) **Outside Storage.** Except for construction materials and equipment used by the builder during the construction of a residence on a Lot, all construction materials and equipment, lawn equipment and similar items shall be stored at all times, when not in use, in a garage or permitted storage area.

(xi) **Temporary Structures.** No trailers or temporary storage sheds shall be erected or situated on any Lot, except those used by a builder during the construction of a residence on a Lot or for marketing of the Real Estate.
(xii) **Satellite Dishes and Outside Speakers.** No satellite dishes or outside speakers shall be installed or permitted on any Lot, except satellite dishes one meter or less in diameter.

(xiii) **Antennas and Solar Panels.** Except as approved by the Design Review Committee, no exposed antennas or solar panels or other apparatus shall be installed or permitted on any Lot.

(xiv) **Awnings.** No metal, fiberglass or similar type material awnings or patio covers shall be permitted on any Lot, except as may be approved by the Design Review Committee.

(xv) **Fences, Walls, Barriers.** No fences, walls, barriers or like structures shall be permitted on any Lot with the exception of such fences, walls, screens or similar structures which are located in close proximity to the residence and are specifically approved by the Declarant and/or the Design Review Committee. A boundary fence may be installed and maintained by the Declarant or the Association along the perimeter boundary of the Real Estate.

(xvi) **Lot Access.** All Lots shall be accessed from the interior street areas of the subdivision.

(xvii) **Tree Preservation.** No trees, other than dead or diseased trees, shall be removed from any Lot without the prior written approval of the Design Review Committee.

(xviii) **Field Tiles.** Any field tile or underground drain which is on any Lot must be allowed to perpetuate.

(xix) **Wells And Septic Tanks.** Water wells and septic tanks shall be prohibited on all Lots.

(xx) **Sump Pumps and Drains.** Sump pumps, gravity drains and other drains serving individual residences on Lots shall outfall only into drainage swales or storm structures included in the storm drainage system for the subdivision.

(xxii) **Hunting, Fishing and Trapping.** Hunting, fishing and trapping are prohibited on any part of the Real Estate.

(xxiii) **Firearms and Fireworks.** The discharge of firearms and use of fireworks is prohibited on any part of the Real Estate.
(xxiv) **Open Fires.** Open fires, leaf burning, trash burning or the like shall be strictly prohibited. This provision shall not prohibit the use of outside grills, stoves, smokers, and other similar appliances designed for personal homeowner use.

( xxv) **Storage Tanks.** No storage tanks including, but not limited to, those used for the storage of water, gasoline, oil, other liquid or other gas shall be permitted on the property outside a building except for portable LP tanks used for outside cooking.

( xxvi) **Improvement Exteriors.** All windows, porches, balconies, and the exteriors of buildings and other improvements shall at all times be maintained in a neat and orderly manner. No clotheslines or other outside drying or airing facility shall be permitted.

AA. **Prohibition Against Granting Other Easements.** Without the prior written approval of the Design Review Committee, an Owner shall not grant any easements to any third party, including public utility companies, political subdivisions or governmental authorities, for the purposes of providing water, sanitary sewer or storm water drainage for a property other than such Owner’s Lot; provided nothing in this paragraph shall be deemed to restrict or otherwise limit Declarant’s rights under Section 2.5A of this Declaration.

Section 2.6. **Street Lighting.** Declarant may (but shall not be obligated to) provide street lighting for any streets located within the Real Estate in connection with the initial development of the Real Estate. If Declarant provides such street lighting, any additional street lighting desired by the Owners shall be installed by the Association at its cost, which cost shall be paid by the Association as a Common Expense.

**ARTICLE 3**

**ASSOCIATION**

Section 3.1. **Membership.** Each Owner shall be a member of the Association throughout the entire term of such Owner’s ownership.

Section 3.2. **Classes of Membership.** The Association shall have two (2) classes of members, as follows:

(i) **Class A Members.** Class A members shall be all Owners other than Declarant (unless the Class B membership has been converted to Class A membership as provided in the following paragraph (ii), in which event Declarant shall then be a Class A member).

(ii) **Class B Members.** The Class B member shall be the Declarant. The Class B membership shall cease and terminate and be converted to Class A
membership upon the "Applicable Date" (as such term is defined in Section 1.2 hereof).

Section 3.3. Voting Rights. Each class of members of the Association shall have the respective voting rights set forth in this Section 3.3.

(i) Except for matters which this Declaration expressly provides shall be approved by both classes of members of the Association and until the Applicable Date, the Class B membership shall exercise all voting rights with respect to any matter submitted to a vote of the members of the Association.

(ii) From and after the Applicable Date and for each matter which this Declaration expressly provides shall be approved by both classes of members of the Association, each Class A member shall be entitled to one (1) vote for each Lot of which such member is the Owner. Where more than one person or entity constitutes the Owner of a particular Lot, all such persons or entities shall be members of the Association, but the vote in respect of such Lot shall be exercised as the persons or entities holding an interest in such Lot determine among themselves, but in no event shall more than one (1) vote be cast with respect to such Lot. Until the Applicable Date, except for each matter which this Declaration expressly provides shall be approved by both classes of members of the Association, the Class A membership shall have no votes with respect to any matter submitted to a vote of the members of the Association. For those matters which this Declaration expressly provides shall be approved by both classes of members of the Association, the Declarant shall have one (1) vote for each Lot owned by the Declarant.

Section 3.4. Board of Directors. The members shall elect a Board of Directors of the Association as prescribed by the Bylaws. The Board of Directors shall manage the affairs of the Association.

Section 3.5. Professional Management. No contract or agreement for professional management of the Association, nor any other contract between Declarant and the Association shall be for a term in excess of three (3) years. Any such agreement or contract shall provide for termination by either party with or without cause, without any termination fee, on written notice of not less than one hundred eighty (180) days.

Section 3.6. Responsibilities of the Association. The responsibilities of the Association include, but shall not be limited to:

(i) The administration and enforcement of the covenants and restrictions contained in this Declaration.
(ii) The maintenance and upkeep of all of the Lots, pursuant to Section 2.5(U) and all other relevant sections of this Declaration, and the Common Areas.

(iii) Procuring and maintaining for the benefit of the Association, its Board of Directors and the Owners the insurance coverages required by this Declaration and such other insurance as the Association deems necessary or advisable.

(iv) Payment of taxes, if any, assessed against and payable with respect to the Common Areas.

(v) Assessment and collection from the Owners of the Common Expenses and collection of expenses of maintenance and repair of the Common Areas from the owners of the Adjoining Real Estate if such owners have been granted the right to use the Common Areas by Declarant as provided in Section 2.1.

(vi) Contracting for such services as management, lawn care and landscaping, snow removal, security control, trash removal or other services as the Association deems necessary or advisable.

(vii) From time to time, adopting, enforcing, amending or rescinding such reasonable rules and regulations (not inconsistent with the provisions of this Declaration) governing care and maintenance of the Lots, the use and enjoyment of the Common Areas and the management and administration of the Association, as the Association deems necessary or advisable. As part of such rules and regulations, the Association may provide for reasonable interest and late charges on past due installments of any assessments or other charges against any Lot. Copies of such rules and regulations shall be furnished by the Association to the Owners prior to the time when the same shall become effective.

Section 3.7. Compensation. No director of the Association shall receive compensation for his/her services as director.

Section 3.8. Non-Liability of Directors and Officers. Neither the directors and officers of the Association nor any members of the Design Review Committee shall be liable to the Owners or any other persons for any error or mistake of judgment in carrying out their duties and responsibilities as said directors, officers or Design Review Committee members, except for their own individual willful misconduct or gross negligence.
ARTICLE 4

DESIGN REVIEW COMMITTEE

Section 4.1. Creation. There is hereby created and established a Design Review Committee to perform the functions provided for herein. Until the Applicable Date, the Committee shall consist of three (3) members appointed by Declarant, from time to time, and who shall be subject to removal by Declarant, at any time with or without cause. After the Applicable Date, the Committee shall be a standing committee of the Association, consisting of three (3) persons appointed by the Board of Directors of the Association, from time to time.

Section 4.2. Purposes and Powers of Committee. The Design Review Committee shall regulate the exterior design, appearance and location of residences, structures and other improvements placed on any Lot and the installation and removal of fences, walls and landscaping on any Lot in such a manner as to preserve and enhance the value and integrity of the Real Estate for the benefit of each Owner. The Design Review Committee shall have the right to promulgate, modify and amend at any time and from time to time reasonable rules and regulations for the submission of matters to the Design Review Committee for approval. The rules and regulations in effect from time to time shall be available upon request to all Owners and builders who seek to engage in construction upon all or any portion of the Real Estate. Such rules and regulations may set forth additional requirements to those set forth in this Declaration, as long as the same are not inconsistent with this Declaration, and shall be binding on all Owners of any Lots.

(i) In General. No residence, structure, wall, patio, garden, flower bed, landscaped area or other improvement of any type or kind ("Improvements") shall be erected, constructed, placed, modified or altered on any Lot and no clearing, excavation, grading or other site work shall take place on any Lot until plans therefor have been approved in writing by the Design Review Committee. Such approval shall include approval of the exterior design and exterior colors and materials. No change shall be made in the exterior colors or materials of any improvement located on a Lot without the prior written approval of the Design Review Committee, unless such colors are specifically set forth on the approved list of colors published from time to time by the Design Review Committee. Approval of the Design Review Committee shall be obtained only after written application has been made to the Design Review Committee by the Owner of the Lot requesting such approval. Such written application shall be in the manner and form prescribed from time to time by the Design Review Committee and, in the case of new construction or the modification or alteration of existing improvements, shall be accompanied by two (2) complete sets of plans for any such proposed construction, modification or alteration. Such plans shall include (a) site plans showing the location of all improvements existing upon the Lot and the location of the improvement(s) proposed to be constructed or placed upon the Lot, including any sidewalk required to be installed by the Owner pursuant to the Declaration, each properly and clearly designated, (b)
exterior elevations of all buildings proposed to be constructed upon such Lot, (c) a list of all exterior surface materials to be utilized (with samples), (d) a grading and drainage plan for the Lot, if applicable, and (e) a landscaping plan, and, if applicable, a tree removal plan showing existing trees which will be required to be removed in connection with the proposed construction, together with any information that the Design Review Committee may request.

(ii) **Power of Disapproval.** The Design Review Committee may refuse to grant approvals required under this Article or elsewhere in this Declaration when:

(a) The plans or other information submitted are inadequate or incomplete or show the proposed improvement to be in violation of any provision of this Declaration;

(b) the exterior design of the proposed improvements are not, in the opinion of the Design Review Committee, consistent with adjacent improvements or consistent with the general development of the Real Estate as a development of residences having traditional design features;

(c) the exterior finishes are not, in the opinion of the Design Review Committee, compatible with finishes on adjacent improvements or appropriate for a development of the type contemplated on the Real Estate or the color range of such finishes is not consistent with the range or palette established by the Design Review Committee for the development;

(d) the grading and drainage plan is not, in the opinion of the Design Review Committee, compatible with the general storm water drainage plan for the Real Estate;

(e) the landscaping is not, in the opinion of the Design Review Committee, appropriate or sufficient; or

(f) the proposed construction, modification or alteration or the proposed tree removal would, in the opinion of the Design Review Committee, be contrary to the interests of any other Owner of inconsistent with the preservation and enhancement of the value of the Real Estate.

**Section 4.3. Duties of Committee.** The Design Review Committee shall approve or disapprove all matters submitted to it for approval within thirty (30) days after all required information is reviewed by it. One copy of the submitted material shall be maintained by the Design Review Committee for its permanent files. All notifications to applicants shall be in writing. In the event that any plans or parts thereof are disapproved, the Design Review Committee shall specify the reason or reasons for such disapproval.
Section 4.4. Liability of Committee. Neither the Design Review Committee nor any member thereof nor the Declarant, the Association nor any office, director, agent or employee of any of the foregoing shall be liable in any way for (i) any defects in any plans, specifications or other materials submitted to it, (ii) any defects in any work done according thereto or (iii) any damages arising out of or in connection with the approval or disapproval of any matter by the Design Review Committee.

Section 4.5 Costs Incurred by Design Review Committee. Costs incurred by the Design Review Committee including, but not limited to, costs to employ or consult with an architect or other design professional shall be charged to the Association and be assessed as a common expense as a part of the regular assessment. Fees, expenses, and other costs incurred by the Design Review Committee in connection with improvements constructed by the Declarant or its successor acting as the developer of the Lots shall not be charged to or paid by the Association.

Section 4.6 Requirement of Completion; Notice of Completion. The Owners of any portion of the Real Estate shall cause all improvement contracted thereon at such Owners’ direction to be diligently pursued to completion within twelve (12) months after the date construction was commenced. Upon the completion of any improvement, the person or entity who completed the same may file with the Design Review Committee a notice of completion and compliance which shall give rise to a rebuttable presumption, in favor of such person or entity and any owner of the Lot on which the improvement is located and any encumbrancers acting in good faith and for value, that said improvement is completed and in compliance with all provisions hereof, unless within thirty (30) days of said filing the Design Review Committee gives actual notice of noncompliance or noncompletion. Notice of noncompliance or noncompletion will be considered to be delivered when it is posted on or about the improvement in question. In the event any improvement is presumed to be completed and in compliance with all provisions hereof, such person or entity and any such Owner and any such encumbrancers may at any time request in writing that the Design Review Committee issue a certificate certifying that said improvement is completed and in compliance with all provisions hereof, which certificate shall be issued by the Design Review Committee within fifteen (15) days of its receipt of written request therefore, and which certificate shall be conclusive evidence that said improvement is completed and in compliance with all provisions hereof. The Design Review Committee may make a reasonable charge for the issuance of such certificates, which must be paid at the time that the request for such certificate is made.

Section 4.7. Noncompletion or Noncompliance. In the event construction of any improvement is not completed within the aforesaid time limits, or as extended by the Board of Directors, in their sole discretion (but only for good cause shown), the Owner shall pay the Association as liquidated and agreed damages, since the ascertainment of actual damages would be difficult if not impossible to accurately ascertain, the sum of Twenty Dollars ($20.00) per day for each day that the construction remains incomplete after the date required herein for completion, as measured in 1989 dollars, and adjusted thereafter, annually, by changes in the Consumer Price Index for all Items, United States, All City Average, as published by the Bureau of Labor Statistics, United States Department of Labor, or successor index, from that for December 1989 to that for the
December of the year preceding the year in which the delay occurred. This payment shall be in addition to any other remedies at law or equity and shall not be exclusive thereof.

Section 4.8. Duty to Build. Any Owner of a Lot (or that Owner’s successor in ownership) shall within eighteen (18) months of the first closing of the purchase of the Lot, or such longer time as the Declarant may agree, in writing, commence the construction of a residential dwelling thereon. If the Owner or Owner’s successor fails to do so, the Declarant has reserved the right and option, as set forth in the individual purchase contracts for Lots, to repurchase the property for the purchase price paid by the purchaser, without payment of interest or other charges for a period extending from the end of that eighteen (18) month period to five (5) years from the date of the purchase.

Section 4.9. Declarant Approval. Notwithstanding the foregoing, or any other provision of this Declaration, so long as Declarant owns any Lot in the Subdivision, no improvements maybe constructed on any Lot in the Subdivision unless and until the plans and specifications therefore have been submitted to Declarant and approved by it.

Section 4.10. Inspection. The Design Review Committee may inspect work being performed to assure compliance with this Declaration and the materials submitted to it pursuant to this Article 4.

Section 4.11. Nonapplication to Declarant. Notwithstanding the provisions of this Article 4 or any other provisions of this Declaration requiring the approval of the Design Review Committee, the Declarant, or any entity related to Declarant, shall not be required to apply for or secure the approval of the Design Review Committee in connection with any construction, modification or alteration on the Real Estate by Declarant or any entity related to Declarant.

ARTICLE 5

ASSESSMENTS

Section 5.1. Creation of Lien and Personal Obligation. Each Owner of a Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree, to pay to the Association (i) regular assessments for Common Expenses ("Regular Assessments"), (ii) special assessments for capital improvements and operating deficits and for special maintenance and repairs ("Special Assessments"), and (iii) any separate amounts assessed by the Association for costs incurred by the Association to maintain the yard, landscaped areas, trees, and shrubs of any Owner’s separate Lot. The Regular Assessments may include an amount to be set aside or otherwise allocated in a reserve fund for the purpose of providing repair and replacement of any capital improvements which the Association is required to maintain. Each initial purchaser of a Lot (whether from Declarant or a successor or assignee of Declarant) shall, at the time of the closing of the purchase of the Lot, contribute to the Association the sum of Two Hundred Dollars ($200.00) which shall be deposited and held by the Association in such a reserve fund. This contribution shall be nonrefundable and shall not be in lieu of a credit against any other
assessments provided herein. All such assessments shall be established, shall commence upon such dates and shall be collected as hereinafter provided and shall be due and payable without relief from valuation and appraisal laws. Such assessments, together with interest, costs of collection and reasonable attorneys' fees, shall be a continuing lien upon the Lot against which such assessment is made prior to all other liens except only (i) tax liens on any Lot in favor of any unit of government or special taxing district and (ii) the lien of any first mortgage of record. Each such assessment, together with interest, costs of collection and reasonable attorneys' fees, shall also be the personal obligations of the Owner of the Lot at the time such assessment becomes due and payable. Where the Owner constitutes more than one person, the liability of such persons shall be joint and several. The personal obligation for delinquent assessments (as distinguished from the lien upon the Lot) shall not pass to such Owner's successors in title unless expressly assumed by them. The Association shall, upon request of a proposed Mortgagor or proposed purchaser having a contractual right to purchase a Lot, furnish to such Mortgagor or purchaser a statement setting forth the amount of any unpaid assessments or other charges against the Lot. Such statement shall be binding upon the Association as of the date of such statement.

Section 5.2. Regular Assessments. The Board of Directors is authorized without the approval of the members of the Association to impose, from time to time, Regular Assessments against each Lot in amounts deemed appropriate by the Board of Directors.

Section 5.3. Special Assessments. The Board of Directors may impose Special Assessments against each Lot for the purpose of defraying, in whole or in part, the cost of constructing, reconstructing, repairing or replacing any capital improvement which the Association is required to maintain or the cost of special maintenance and repairs or to recover any operating deficits which the Association may from time to time incur after the Applicable Date only with the approval of a majority, in the aggregate, of both classes of members of the Association who are voting in person or by proxy at a meeting of the members of the Association duly called for such purpose.

Section 5.4. Date of Commencement of Regular Assessments: Due Dates. Each Owner shall be subject to Regular Assessments commencing on the first day of the first calendar month following the conveyance of such Lot by Declarant; provided, however, that Declarant may in its sole and absolute discretion delay the imposition date for Regular Assessments for any Lot for as long as Declarant deems appropriate. Regular Assessments shall in all events be payable semi-annually on the first day of January and first day of July of each year. First semi-annual Regular Assessment for each Lot shall be prorated based on the number of days then remaining in the semi-annual assessment period and shall be payable within ten (10) days after completion of the Lot. Until the Applicable Date, and notwithstanding anything else contained herein, no Regular Assessments or Special Assessments shall be owed or payable by Declarant with respect to any Lot or shall become a lien on any Lot while such Lot is owned by Declarant, but Declarant shall be obligated to pay any operating deficits the Association may incur prior to the Applicable Date. The Board of Directors of the Association shall fix the amount of the Regular Assessment at least thirty (30) days in advance of the annual assessment period. Written notice of the Regular Assessment,
any Special Assessments, and such other assessment notices as the Board of Directors shall deem appropriate shall be sent to each Owner subject thereto. All assessments shall be due and payable in such manner and on such schedule as the Board of Directors may provide. The Board of Directors may provide for reasonable interest and late charges on past due assessments.

Section 5.5. Failure of Owner to Pay Assessments

(i) If any Owner shall fail to pay any assessment (or periodic installment of an assessment, if applicable) when due, the lien for such assessment on the Owner’s Lot may be foreclosed by the Board of Directors for and on behalf of the Association as a mortgage on real property or as otherwise provided by law. Upon the failure of an Owner to pay any assessment (or a periodic installment of an assessment, if applicable) when due, the Board of Directors may in its discretion accelerate the entire balance of any unpaid assessments and declare the same immediately due and payable, notwithstanding any other provisions hereof to the contrary. The Board of Directors may, at its option, bring a suit to recover a money judgment for any unpaid assessment without foreclosing or waiving the lien securing the same.

(ii) Notwithstanding anything contained in this Section 5.7 or elsewhere in this Declaration, any sale or transfer of a Lot to a Mortgagor pursuant to a foreclosure of its mortgage or conveyance in lieu thereof, or a conveyance to any person at a public sale in the manner provided by law with respect to mortgage foreclosures, shall extinguish the lien of any unpaid assessments (or periodic installments, if applicable) which became due prior to such sale, transfer or conveyance; provided, however, that the extinguishment of such lien shall not relieve the prior Owner from personal liability therefor. No such sale, transfer or conveyance shall relieve the Lot or the purchaser at such foreclosure sale, or grantee in the event of conveyance in lieu thereof, from liability for any assessments (or periodic installments of such assessments, if applicable) thereafter becoming due or from the lien therefor. Such unpaid share of any assessments, the lien for which has been divested as aforesaid, shall be deemed to be a Common Expense, collectible from all Owners (including the party acquiring the subject Lot from which it arose).

ARTICLE 6

INSURANCE

Section 6.1. Insurance. The Association shall maintain in force adequate public liability insurance protecting the Association against liability for property damage and personal injury with the amount of such coverage in no event less than One Million Dollars ($1,000,000.00) for any single occurrence, occurring on or in connection with any and all Common Areas. The Association shall also maintain in force adequate fire and extended coverage insurance, insuring all Common
Property against fire, and extended coverage insurance, insuring all Common Areas against fire, windstorm, vandalism, and such other hazards as may be insurable under standard "extended coverage" provisions in an amount equal to the full replacement value of such Common Area improvements. The Association shall notify all Mortgagors which have requested notice of any lapse, cancellation, or material modification of any insurance policy. All policies of insurance shall contain an endorsement or clause whereby the insurer waives all rights of subrogation on any claim against the Association, its officers, Board members, the Declarant, any property manager, their respective employees and agents, the Lot Owners and occupants, and also waives any defenses based on co-insurance or on invalidity arising from acts of the insured, and shall cover claims of one or more insured parties against other insured parties.

The Association shall maintain a fidelity bond indemnifying the Association, the Board of Directors and the Lot Owners for loss of funds resulting from fraudulent or dishonest acts of any director, officer, employee or anyone who either handles or is responsible for funds held or administered by the Association, whether or not they receive compensation for their services. The fidelity bond should cover the maximum amount of funds which will be in the custody of the Association or its management agent at any time, but in no event shall such fidelity bond coverage be less than the sum of three (3) months' assessments on all Lots in Lincoln Park, plus the Association's reserve funds.

The Association shall cause all insurance policies and fidelity bonds to provide at least ten (10) days written notice to the Association, and all Mortgagors who have requested such notice, before the insurance policies or fidelity bonds can be canceled or substantially modified for any reason. The Association shall cause the provisions of all insurance policies and fidelity bonds to comply with the Federal National Mortgage Association lending guide Chapter 3, Part 5, as established on January 3, 1983, as amended on June 30, 1983, or as such guidelines may be amended thereafter.

ARTICLE 7

DAMAGE TO COMMON AREAS

Section 7.1. Damage to Common Areas. In the event of damage to or destruction of any part of the Common Areas, the Association shall repair or replace the same from the insurance proceeds available. If such insurance proceeds are insufficient to cover the costs of repair or replacement of the property damaged or destroyed, the Association may make a special Assessment to cover the additional cost of repair or replacement not covered by the insurance proceeds. Notwithstanding any obligation or duty of the Association hereunder to repair or maintain the Common Areas, if, due to the willful, intentional or negligent acts or omissions of an Owner or of a member of his family or of a guest, tenant, invitee or other occupant or visitor of such Owner, damage shall be caused to the Common Areas or if maintenance, repairs or replacements shall be required thereby which would otherwise be a Common Expense, then such Owner shall pay for such damage and such maintenance, repairs and replacements, as may be determined by the Association,
unless such loss is covered by the Association’s insurance. If not paid by such Owner upon demand by the Association, the cost of repairing such damage shall be added to and constitute a special assessment against such Owner and his Lot to be collected and enforced in the manner provided in this Declaration for the collection and enforcement of assessments in general.

Section 7.2. Condemnation, Destruction. In the event that any of the Common Areas shall be condemned or taken by any competent public authority, or in the event the same shall be damaged or destroyed by any cause whatsoever, the Association shall represent the interests of the Owners in any proceedings, negotiations, insurance adjustments, settlements, or agreements in connection with such condemnation, damage, or destruction. Any sums recovered by the Association shall be applied, first, to the restoration and repair of any Common Area condemned, damaged, or destroyed, to the extent such restoration or repair is practicable, and the balance of such sums shall either be held as a reserve for future maintenance of the Common Areas or turned over to the Owners in proportion to their Pro-Rata Shares, whichever may be determined by a majority vote of the members of the Association. Each Owner shall be responsible for pursuing his own action for damages to his Lot, either by reason of direct damage thereto or by reason of an impairment of value due to damage to the Common Areas; provided, however, that upon request of any Owner(s), the Association shall pursue such claims on such requesting Owner(s) behalf, and shall turn any recoveries for such Owners over to such Owners directly. The Association shall notify all Mortgagees of which it has notice of any condemnation, damage, or destruction of any Common Area.

ARTICLE 8

MORTGAGES

Section 8.1. Notice to Association. Any Mortgagee who places a first mortgage lien upon a Lot shall notify the Secretary of the Association of the existence of such mortgage and provide the name and address of such Mortgagee. A record of such Mortgagee and name and address shall be maintained by the Secretary of the Association, and any notice required to be given to the Mortgagee pursuant to the terms of this Declaration, the Bylaws or otherwise shall be deemed effectively given if mailed to such Mortgagee at the address shown in such record in the time provided. Unless notification of any such mortgage and the name and address of Mortgagee are furnished to the Secretary, as herein provided, no notice to any Mortgagee as may be otherwise required by this Declaration, the Bylaws or otherwise shall be required, and no Mortgagee shall be entitled to vote on any matter to which it otherwise may be entitled by virtue of this Declaration, the Bylaws, a proxy granted to such Mortgagee in connection with the mortgage, or otherwise.

Section 8.2. Notice to Mortgagees. The Association, upon request, shall provide to any Mortgagee a written certificate specifying unpaid assessments and any other defaults of the Owner of such Lot under this Declaration or any other applicable documents known to the Association.

Section 8.3. Mortgagees’ Rights. The Mortgagees shall have the right, at their option, jointly or severally, to pay taxes or other charges which are in default or which may have become
a charge against the Common Area to pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy for the Common Area, and Mortgagees making such payment shall be owed immediate reimbursement therefor from the Association.

ARTICLE 9

AMENDMENT

Section 9.1 By the Association. Except as otherwise provided in this Declaration, amendments to this Declaration shall be proposed and adopted in the following manner:

(i) **Notice.** Notice of the subject matter of any proposed amendment shall be included in the notice of the meeting at which the proposed amendment is to be considered.

(ii) **Resolution.** A resolution to adopt a proposed amendment may be proposed by the Board of Directors or Owners having in the aggregate at least a majority of the votes of all Owners.

(iii) **Meeting.** The resolution concerning a proposed amendment must be adopted by the designated vote at a meeting of the members of the Association duly called and held in accordance with the provisions of the Bylaws.

(iv) **Adoption.** Any proposed amendments to this Declaration must be approved by a vote of not less than two-thirds (2/3) in the aggregate of both classes of members of the Association; provided, however, that any such amendments shall require the prior written approval of Declarant so long as Declarant owns any Lots within and upon the Real Estate. Any Mortgagee that has given prior notice of its mortgage interest to the Board of Directors of the Association in accordance with the provisions of the foregoing Section 8.1 shall be entitled to notice of the meeting and the proposed amendment in the same manner as an Owner.

(v) **Amendments of a Material Nature.** No amendment to this Declaration shall be adopted pursuant to this Section 9.1 which constitutes an Amendment of a Material Nature (as such term is hereinafter defined) unless approved by a vote of two-thirds (2/3) in the aggregate of both classes of members of the Association and fifty-one percent (51%) of all Mortgagees who have given prior notice to the Board of Directors of the Association in accordance with the provisions of the foregoing Section 8.1. For purposes of this Section 9.1(v), the term "Amendment of a Material Nature" means any amendment to this Declaration that:

(a) changes or reduces the voting rights of the Class A members;
(b) allows the Board of Directors to increase the maximum Regular Assessment on a Lot for any calendar year prior to the calendar year in which the Applicable Date occurs by more than twenty-five percent (25%) above the Regular Assessment for the previous calendar year;

(c) changes the procedure for imposing Special Assessments;

(d) releases the Association from its obligations to maintain and repair the Lots or the Common Areas;

(e) terminates the rights of the Owners to use any of the Common Areas;

(f) changes the boundaries of any Lot;

(g) permits any Lot to be converted to a Common Area;

(h) allows the Declarant to withdraw property from the Real Estate;

(i) changes hazard insurance requirements;

(j) imposes any new restrictions on an Owner’s right to sell or lease his Lot; or

(k) permits the repair or restoration of any improvements to the Common Areas other than to their original condition.

Any Mortgagee which has been duly notified of the nature of any proposed amendment shall be deemed to have approved the same if said Mortgagee or a representative thereof fails to appear in person or by proxy at the meeting in which such amendment is to be considered.

Section 9.2. By Declarant. Declarant hereby reserves the right, so long as Declarant or any entity related to Declarant owns any Lot, to make such amendments to this Declaration as may be deemed necessary or appropriate by Declarant, without the approval of any other person or entity, in order to bring Declarant into compliance with the requirements of any statute, ordinance, regulation or order of any public agency having jurisdiction thereof, or to comply with the requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the Federal Housing Administration, the Veterans Administration or any other governmental agency relating to the purchase, assignment, transfer, insuring, or guaranteeing of first

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mortgages, or to correct clerical or typographical errors in this Declaration or any amendment hereto; provided, that Declarant shall not be entitled to make any amendment which has a materially adverse effect on the rights of any Mortgagee, or which substantially impairs the benefits of this Declaration to any Owner or substantially increases the obligations imposed by this Declaration on any Owner.

Section 9.3. Recording. All amendments to this Declaration shall be recorded in the Office of the Recorder of Johnson County, Indiana, and no amendment shall become effective until so recorded. Any amendments which may be made by the Declarant without any further consent or approval shall be executed by an authorized representative of the Declarant. All other amendments shall be executed by the President or Vice President and Secretary of the Association. Any amendments prior to the Applicable Date shall be effective only upon Declarant's written consent.

ARTICLE 10

GENERAL PROVISIONS

Section 10.1. Covenants Run With the Land. The covenants created by this Declaration shall attach to and run with the Real Estate and shall be binding upon every person who may hereafter come into ownership, occupancy or possession of any portion of the Real Estate.

Section 10.2. Scope of Covenants. Declarant and each Owner are deemed to have agreed to each and every one of the various terms, Covenants, and conditions contained in this Declaration, and the same shall be of mutual and reciprocal benefit to Declarant and each Owner of each Lot. Declarant and each Owner shall be entitled to enforce this Declaration against any Owner to the full extent permitted herein and under applicable law, and shall have all rights and remedies for such enforcement at law or in equity. Each Owner shall be liable for such enforcement at law or in equity. Each Owner shall be liable for any failure to fully comply with all of the terms, Covenants, and conditions, contained in this Declaration only so long as each such Owner shall have any interest in any Lot; provided, however, that the relinquishing of all of such interest shall not operate to release any Owner from liability for a failure to comply with this Declaration which occurred while said Owner had such interest.

Section 10.3. Attorneys’ Fees. As to any legal or equitable proceedings for the enforcement of, or to restrain the violation of, this Declaration or any provision hereof, if the party bringing such action is successful in obtaining any remedy against any defaulting Owner, such defaulting Owner shall pay the reasonable attorneys’ fees of such successful party, in such amount as may be fixed by the Court in such proceedings.

Section 10.4. Failure to Enforce Not a Waiver of Rights. The failure of Declarant, the Association, or any Owner to enforce any term, Covenant, or condition, herein contained shall in no event be deemed to be a waiver of the right to do so thereafter, nor of the right to enforce any other such term, Covenant or condition.
Section 10.5. Effect of Invalidation. If any provision of this Declaration is held to be invalid by any Court, the invalidity of such provision shall not affect the validity of the remaining provisions thereof.

Section 10.6. Section Headings. Section headings used herein are used for convenience only and are not intended to be a part of this Declaration or in any way to define, limit, or describe the scope and intent of the particular sections to which they refer.

Section 10.7. Notices. All notices in connection with this Declaration shall be made in writing and shall be deemed delivered (a) upon personal delivery to the individual person, if any, designated in writing by the Owner; or (b) seventy-two hours after the deposit thereof in any United States main or branch post office, first class postage prepaid, properly addressed to the addressee thereof at the address listed in the said roster.

Section 10.8. Limitations and Declarant's Rights. Any notice to or approval by Declarant under any provision of this Declaration shall not be necessary after the Class B membership has been converted to Class A membership pursuant to Section 3.2 herein.

Section 10.9. Deed Clause to Implement Declaration. Each Owner covenants and agrees not to execute or deliver any deed or conveyance of a fee title interest in any Lot, or any portion thereof, unless such deed or conveyance contains a clause substantially as follows:

"By acceptance and recording of this conveyance, the Grantee herein covenants and agrees to be bound by the Declaration of Covenants, Conditions and Restrictions For Lincoln Park pertaining to the Real Estate hereby granted, which is recorded in the Office of the Recorder of Johnson County, Indiana",

and properly identifying the instrument number therein. However, the failure to include such clause shall not have any effect on this Declaration or the enforceability thereof against any Owner of any interest in any portion of the Real Estate.

Section 10.10. Provision Against Merger. Declarant hereby intends that the Real Estate shall be subject to this Declaration, that the Covenants contained herein shall not be merged into the title of the Declarant regardless of whether Declarant is the fee title owner of all or any part of the Real Estate at the time this Declaration is executed or recorded.

Section 10.11. Governing Law. This Declaration of Covenants shall be governed and interpreted pursuant to the laws of the State of Indiana.
In Witness Whereof, the Declarant has caused this Declaration to be executed on the date first above written.

BAY COMMUNITIES, LLC

By: ________________________________
    BRUCE SELARE

Printed: ________________________________

STATE OF INDIANA    )
    )SS:
COUNTY OF JOHNSON    )

On this 24 day of AUGUST, 1999, before me, a Notary Public in and for the State of Indiana, personally appeared BRUCE SELARE, who executed the foregoing Declaration of Easements, Covenants, Conditions and Restrictions of Lincoln Park and the same person duly acknowledged to me that he executed the same.

My Commission Expires: 2/23/2008

Notary Public, Jerry L. March
Resident of Marion County, IN

This document prepared by: J. Lee Robbins, Attorney at Law, WILLIAMS HEWITT & ROBBINS, LLP, 300 S. Madison Ave., Suite 400, P.O. Box 405, Greenwood, IN 46142, (317) 888-1121.
A part of the Northeast Quarter of Section 26, Township 14 North, Range 3 East, Johnson County, Indiana, described as follows: Commencing at the Harrison-type marker found at the northeast corner of said quarter section, said corner being North 01 degree 38 minutes 33 seconds East 2,659.50 feet, measured along the east line of said quarter section, from the Harrison-type marker found at the southeast corner of said quarter section; thence North 89 degrees 40 minutes 00 seconds West 2,167.49 feet along the north line of said quarter section to the northeast corner of Carefree Subdivision, Eleventh Section, the plat of which is recorded in Plat Cabinet B, Slides 363-364, in the Office of the Recorder of Johnson County, said corner being South 89 degrees 40 minutes 00 seconds East 500.49 feet, measured along the north line of said quarter section, from the PK nail found at the northwest corner of said quarter section; thence South 01 degree 53 minutes 15 seconds West 50.02 feet along the east line of said Carefree Subdivision to an iron pin found at the northeast corner of Lot 311 in said Carefree Subdivision and the POINT OF BEGINNING of this description; thence South 89 degrees 40 minutes 00 seconds East 691.05 feet along the south line of the land described in the Warranty Deed to the Johnson County Commissioners recorded in Deed Record 252, page 676, in said Recorder’s office, to an iron pin with Woolpert LLP Cap set on the prolonged west line of Meridian Meadows Subdivision, the plat of which is recorded in Plat Cabinet B, Slide 533, in said Recorder’s office; thence South 01 degree 49 minutes 33 seconds West 1,521.55 feet along said prolonged west line and along the west line of said Meridian Meadows Subdivision and along said west line prolonged to the iron pin with Woolpert LLP Cap set on the north line of Sable Ridge Subdivision, Section II, the plat of which is recorded in Plat Cabinet C, Slide 407, in said Recorder’s office; thence North 89 degrees 41 minutes 56 seconds West 692.70 feet along the north line of said Sable Ridge Subdivision to the iron pin with Woolpert LLP Cap set at the northwest corner of said Sable Ridge Subdivision, said corner coinciding with the east line of Carefree Subdivision, Twelfth Section, the plat of which is recorded in Plat Cabinet B, Slide 369, in said Recorder’s office; thence North 01 degree 53 minutes 15 seconds East 1,521.99 feet along the east line of said Carefree Subdivisions to the POINT OF BEGINNING and containing 24.162 acres, more or less. The bearings in this description are based upon the plats of said Carefree Subdivisions.

EXHIBIT "A"
FIRST AMENDMENT TO THE DECLARATION OF EASEMENTS, COVENANTS, AND RESTRICTIONS FOR LINCOLN PARK

This First Amendment to the Declaration of Easements, Covenants, and Restrictions for Lincoln Park amends the original Declaration dated August 24, 1999 and recorded with the Johnson County Recorder's Office on August 30, 1999 under Instrument Number 1999-23514 ("Original Declaration").

WITNESSETH THAT:

WHEREAS, the Original Declaration referred and related to real estate that was described on Exhibit "A" attached to the Original Declaration;

WHEREAS, the Declarant has discovered that the real estate described on Exhibit "A" to the Original Declaration describes all of the real estate that is a part of the Lincoln Park PUD as approved and adopted by the Johnson County Commissioners;

WHEREAS, the Lincoln Park PUD consists of approximately 25 acres which have been approved for a mixed use development consisting of 81 single-family lots, an assisted living facility and a commercial/professional retail project;

WHEREAS, the Original Declaration was intended to relate to and encumber only that part of the Lincoln Park PUD that will be developed as a single-family subdivision;

WHEREAS, the legal description attached as Exhibit "A" to the Original Declaration includes that area of the Lincoln Park PUD that will be developed as an assisted living facility and commercial/professional retail development; and

WHEREAS, the purpose of this Declaration is to amend the description of the Real Estate as that term is defined and referred to throughout the Original Declaration to include only that part of the Lincoln Park PUD that is being developed as a single-family subdivision.
IN WITNESS WHEREOF, the Declaration is hereby amended as follows:

1. Exhibit "A" attached to the Original Declaration is hereby stricken in its entirety and is replaced by Exhibit "A" attached to this First Amendment. Exhibit "A" attached to this First Amendment accurately describes the Real Estate which is subject to the Original Declaration and all of its separate provisions, covenants, and restrictions which are a part thereof. Any real estate described on Exhibit "A" attached to the Original Declaration that is not also described in and included as a part of Exhibit "A" attached to this First Amendment is not subject to or encumbered by the Original Declaration and is hereby released therefrom.

2. All provisions of the Declaration not specifically amended herein shall remain unchanged and in full force and effect.

3. This Amendment shall be effective upon being recorded with the Johnson County Recorder's Office.

Dated: SEPTEMBER 1, 1999

BAY COMMUNITIES, LLC

By: [Signature]

Bruce Sklar

STATE OF INDIANA }
COUNTY OF MARION } SS:

On this 8th day of September, 1999, before me, a Notary Public, personally appeared Bruce Sklar, personally known to me to be the same person described in and who executed the within instrument, and the same person duly acknowledged to me that he executed the same.

My Commission Expires: 2/23/2008

Notary Public, Jerry L. March
Resident of Marion County, IN

This instrument prepared by J. Lee Robbins, Attorney at Law, Williams Hewitt & Robbins, LLP, 300 S. Madison Street, Suite 300, Greenwood, IN 46142.
EXHIBIT A

A part of the Northeast Quarter of Section 26, Township 14 North, Range 3 East, Johnson County, Indiana, described as follows: Commencing at the Harrison-type marker found at the northeast corner of said quarter section, said corner being North 01 degree 38 minutes 33 seconds East 2,659.50 feet, measured along the east line of said quarter section, from the Harrison-type marker found at the southeast corner of said quarter section; thence North 89 degrees 40 minutes 00 seconds West 2,167.49 feet along the north line of said quarter section to the northeast corner of Carefree Subdivision, Eleventh Section, the plat of which is recorded in Plat Cabinet B, Slides 363-364, in the Office of the Recorder of Johnson County, said corner being South 89 degrees 40 minutes 00 seconds East 500.49 feet, measured along the north line of said quarter section, from the PK nail found at the northwest corner of said quarter section; thence South 01 degree 53 minutes 15 seconds West 50.02 feet along the east line of said Carefree Subdivision to an iron pin found at the northeast corner of Lot 311 in said Carefree Subdivision; thence South 01 degree 53 minutes 15 seconds West 375.14 feet along the east line of said Carefree Subdivision to an iron pin with Woolpert LLP cap set and the POINT OF BEGINNING of this description; thence South 89 degrees 40 minutes 00 seconds East 691.46 feet parallel with the north line of said quarter section to the iron pin with Woolpert LLP cap set on the prolonged west line of Meridian Meadows Subdivision, the plat of which is recorded in Plat Cabinet B, Slide 533, in said Recorder's office; thence South 01 degree 49 minutes 33 seconds West 1,146.42 feet along said prolonged west line and along the west line of said Meridian Meadows Subdivision and along said west line prolonged to the iron pin with Woolpert LLP cap set on the north line of Sable Ridge Subdivision, Section II, the plat of which is recorded in Plat Cabinet C, Slide 407, in said Recorder's office; thence North 89 degrees 41 minutes 56 seconds West 692.70 feet along the north line of said Sable Ridge Subdivision to the iron pin with Woolpert LLP cap set at the northwest corner of said Sable Ridge Subdivision, said corner coinciding with the east line of Carefree Subdivision, Twelfth Section, the plat of which is recorded in Plat Cabinet B, Slide 369, in said Recorder's office; thence North 01 degree 53 minutes 15 seconds East 1,146.85 feet along the east line of said Carefree Subdivision, Twelfth Section and along the east line of said Carefree Subdivision, Eleventh Section to the POINT OF BEGINNING and containing 18.211 acres, more or less. The bearings in this description are based upon the plats of said Carefree Subdivisions.
SECOND AMENDMENT TO THE DECLARATION OF EASEMENTS, COVENANTS, AND RESTRICTIONS FOR LINCOLN PARK

This Second Amendment to the Declaration of Easements, Covenants, and Restrictions for Lincoln Park amends the original Declaration dated August 24, 1999 and recorded with the Johnson County Recorder’s Office on August 30, 1999 under Instrument Number 1999-025514 ("Original Declaration").

WITNESSETH THAT:

WHEREAS, the Original Declaration was previously amended by the First Amendment to the Declaration of Easements, Covenants and Restrictions for Lincoln Park by providing a different legal description;

WHEREAS, the First Amendment did not change any of the separate easements, covenants or restrictions of the Original Declaration;

WHEREAS, Section 2.5(b) of the Original Declaration entitled "Housing for Older Persons" defines the Declarant's intent that the Lots and homes constructed thereon be occupied by persons 55 years of age or older and incorporates into the Declaration the Federal Fair Housing Act and the Indiana Fair Housing Act;

WHEREAS, the Declarant has deemed it appropriate to add additional specific restrictions relating to the age of residents who may occupy homes constructed on Lots in Lincoln Park and to include those additional restrictions in Section 2.5.B. of the Declaration;

WHEREAS, 2.5.V. of the Original Declaration entitled "Maintenance of Lots and Improvements" provides for the Association to cut the yards and maintain the landscaped areas, trees and shrubs on all Lots in Lincoln Park;

WHEREAS, the Declarant has decided to afford to Lot Owners the option to maintain the yard and landscaped area of their respective Lots, on their own and at their own expense, or to have the
Association, through its Board of Directors, arrange for their yard and Lots to be maintained and to bill them an amount equal to the pro rata costs; and

WHEREAS, the purpose of this Second Amendment is to add the additional restrictions related to the age of residents occupying homes on Lots in Lincoln Park and to provide to the Owners the option to maintain their own Lots or to have their Lots maintained by the Association.

IN WITNESS WHEREOF, the Declaration is hereby amended as follows:

1. Section 2.5.B. is hereby amended to add the highlighted provisions as shown:

Section 2.5.B. Housing for Older Persons. The Lots and the homes constructed thereon shall be intended and operated for occupancy by persons 55 years of age or older. **No persons under the age of 50 shall reside on any Lot. At least one person 55 years of age or older shall reside on 80% of the Lots.** The Owner of each Lot shall provide the Association with the names and dates of birth of all persons who reside on all Lots owned by that Owner and shall provide updated information to the Association immediately upon that information changing. The Federal Fair Housing Act found currently at 42 U.S.C. §3607(b) and the Indiana Fair Housing Act found currently at Title 22 Chapter 9.5 of the Indiana Code, as either or both may be amended from time to time, are adopted and incorporated herein by reference. The Declarant prior to the Applicable Date and the Association, after the Applicable Date, shall monitor and control the sale, use and occupancy of Lots in Lincoln Park and operate and manage the Common Areas in strict compliance with all applicable provisions of the Federal and State Fair Housing Acts as they relate to housing for persons 55 years of age or older. The Declarant and/or the Association will adopt policies and procedures to ensure compliance with all relevant provisions of the Federal and State Fair Housing Acts.

2. Section 2.5.V. under the Original Declaration reads as follows:

V. Maintenance of Lots and Improvements. The Association shall at all times cut the yards of all Lots and maintain the landscaped areas, trees and shrubs (as installed with the express approval of the Declarant and/or the Design Review Committee). The Declarant and/or the Board of Directors of the Association shall adopt a cost structure for maintenance of yards, landscaped areas, trees and shrubs. The Declarant/Association may bill Owners separately, in addition to any Regular or Special Assessments imposed by this Declaration, for maintenance of yards, landscaped areas, trees, and shrubs based on the various sizes of yards and landscaped areas and the number of trees and shrubs which may be planted and maintained by the Association on the various Lots throughout Lincoln Park. Each Owner shall be obligated to pay to the Association all separate amounts billed for maintenance by the Association of yards, landscaped areas, trees, and shrubs. The Association shall have the right to collect all
such additional amounts from the Owners of the various Lots in Lincoln Park in the same manner that the Association may collect Regular and Special Assessments as provided herein. Specifically, the Association shall:

(i) Mow the grass on all portions of the public right-of-way adjacent to each Lot (i.e., that portion of the public right-of-way between the curb and the Lot line) and provide fertilizer and weed control at such times as may be reasonably required in order to prevent the growth of weeds or other unsightly vegetation.

(ii) Prevent the existence of any other condition on each Lot that reasonably tends to detract from or diminish the aesthetic or well-maintained appearance of the Real Estate.

In addition, the Association shall maintain, repair or replace all grass, trees, shrubs, plantings, including any flowers, landscaped areas, boundary fences and similar improvements and features located within all public rights-of-way and Common Areas.

Section 2.5.V. is hereby stricken, in its entirety from the Original Declaration and replaced with the following:

Section 2.5.V. Maintenance of Lots and Improvements. The Owner of each Lot shall maintain the yard, all landscaped areas, trees and shrubs, and all sidewalks on that Owner’s Lot and within the public right-of-way between the street curb and the Lot line. Alternatively, any Owner may elect to have the Declarant/Association maintain the yard, all landscaped areas, trees and shrubs, and all sidewalks on that Owner’s Lot and within the public right-of-way between the street curb and the Lot line. The Declarant and/or the Board of Directors of the Association shall contract for maintenance of the yards, all landscaped areas, trees and shrubs, and all sidewalks for those Lots, the Owner’s of which elect to have their Lots maintained by the Declarant/Association. Maintenance, either provided by an Owner or the Declarant/Association, shall include snow removal from the sidewalks.

The Declarant and/or the Board of Directors of the Association shall adopt a cost structure for maintenance of those Lots that are not maintained by their respective Owners. The Declarant/Association may bill those Owners whose Lots are maintained by the Declarant/Association separately, in addition to any Regular or Special Assessments imposed by this Declaration. Based on the various sizes of yards, landscaped areas and sidewalks that are maintained by the Declarant/Association on the various Lots throughout Lincoln Park, each Owner whose Lot is maintained by the Declarant/Association shall pay to the Declarant/Association all separate amounts billed for maintenance. The Declarant/Association shall have the right to collect all such additional amounts from the Owners of the various Lots.
in Lincoln Park in the same manner that the Association may collect Regular and Special Assessments as provided herein.

In addition, the Association shall maintain, repair or replace all grass, trees, shrubs, plantings, including any flowers, landscaped areas, boundary fences and similar improvements and features located within all public rights-of-way and Common Areas.

3. All provisions of the Declaration, as previously amended, not specifically amended herein shall remain unchanged and in full force and effect.

4. This Amendment shall be effective upon being recorded with the Johnson County Recorder’s Office.

Dated: 6/7/00

BAY COMMUNITIES, LLC

By: ____________________________

Bruce Sklare

STATE OF INDIANA

) SS:

COUNTY OF

On this 7th day of June, 2000, before me, a Notary Public, personally appeared Bruce Sklare, personally known to me to be the same person described in and who executed the within instrument, and the same person duly acknowledged to me that he executed the same.

My Commission Expires: 2/23/2008

Notary Public, Jerry L. March
Resident of Marion County, IN

This instrument prepared by J. Lee Robbins, Attorney at Law, Williams Hewitt & Robbins, LLP, 300 S. Madison Avenue, Suite 400, Greenwood, IN 46142.
AMENDED AND RESTATED DECLARATION OF EASEMENTS, COVENANTS, AND RESTRICTIONS

LINCOLN PARK

A subdivision in White River Township,
Johnson County, Indiana

Cross references:  
1999-025514 - Original Covenant Declaration
1999-026800 - First Amendment to Declaration

Duly entered for taxation
Subject to final acceptance
for transfer
July 18, 2000

Auditor of Johnson County

July, 2000

Developed by:
Bay Communities, LLC
10415 N. College Avenue
Indianapolis, IN 46280
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REAL ESTATE CONSTRUCTION MORTGAGE,
SECURITY AGREEMENT AND FIXTURE FILING

THIS REAL ESTATE CONSTRUCTION MORTGAGE, SECURITY AGREEMENT AND FIXTURE FILING is made as of the 15th day of July, 1999, by Bay Communities L.L.C., an Indiana limited liability company ("Mortgagor"), to and for the benefit of REPUBLIC BANK, a Michigan State Savings Bank ("Mortgagee"):

RECITALS:

A. Mortgagee has agreed to loan to Mortgagor the principal amount not to exceed One Million Six Hundred Ten Thousand Five Hundred Thirty-Eight Dollars ($1,610,538.00) and provide letters of credit not to exceed Six Hundred Fifty Thousand Dollars ($650,000.00) (collectively the "Loan"), pursuant to the Construction Loan Agreement of even date between Mortgagor and Mortgagee. The Loan shall be evidenced by a certain Mortgage Note and Reimbursement Note, each of even date herewith (collectively the "Note") made by Mortgagor payable to Mortgagee in the principal amount of One Million Six Hundred Ten Thousand Five Hundred Thirty-Eight Dollars ($1,610,538.00) and Six Hundred Fifty Thousand Dollars ($650,000.00), respectively.

B. A condition precedent to Mortgagee's extension of the Loan to Mortgagor is the execution and delivery by Mortgagor of this Mortgage.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Mortgagor agrees as follows:

Mortgagor hereby mortgages, grants, assigns, remises, releases, warrants and conveys to Mortgagee, its successors and assigns, the real estate legally described on Exhibit A attached hereto (the "Real Estate"), together with the other property described in the following paragraph (the Real Estate and property being hereinafter referred to as the "Premises") to secure: (i) the payment of the Loan and all interest, late charges and other indebtedness evidenced by or owing under the Note or any of the other Loan Documents (as defined in the Mortgage Note) and by any extensions, modifications, renewals or refinancings thereof; (ii) the performance and observance of the covenants, conditions, agreements, representations, warranties and other liabilities and obligations of Mortgagor or any other obligor to or benefiting Mortgagee which are evidenced or secured by or otherwise provided in the Note, this Mortgage or any of the other Loan Documents; and (iii) the reimbursement of Mortgagee for any and all sums expended or advanced by Mortgagee pursuant to any term or provision of or constituting additional indebtedness under or secured by this Mortgage or any of the other Loan Documents, with interest thereon as provided herein or therein.

In addition to the Real Estate, the Premises hereby mortgaged includes all buildings, structures and improvements owned by Mortgagor and now or hereafter constructed or erected upon or located on the Real Estate, all tenements, easements, rights-of-way and rights used as a means of access thereto, all fixtures and appurtenances thereto now or hereafter belonging or pertaining to the
Real Estate, and all rents, issues, royalties, income, revenue, proceeds, profits, security deposits and all accounts relating to the Premises and all other benefits thereof, and any after-acquired title, franchise, or license and the reversions or remainders thereof, for so long and during all such times as Mortgagor may be entitled thereto (which are pledged primarily and on a parity with said Real Estate and not secondarily), and all machinery, apparatus, equipment, appliances, floor covering, furniture, furnishings, supplies, materials, fittings, fixtures and other personal property of every kind and nature whatsoever, and all proceeds thereof, now or hereafter located thereon or therein and which is owned by Mortgagor. All of the land, estate and property hereinabove described, real, personal and mixed, whether or not affixed or annexed, and all rights hereby conveyed and mortgaged are intended so to be as a unit and are hereby understood, agreed and declared, to the maximum extent permitted by law, to form a part and parcel of the Real Estate and to be appropriated to the use of the Real Estate, and shall be for the purposes of this Mortgage deemed to be conveyed and mortgaged hereby; provided, however, as to any of the property aforesaid which does not so form a part and parcel of the Real Estate, this Mortgage is hereby deemed also to be a Security Agreement under the Uniform Commercial Code of the State of Indiana (the "Code") for purposes of granting a security interest in such property, which Mortgagor hereby grants to Mortgagee, as secured party (as defined in the Code).

TO HAVE AND TO HOLD the Premises unto Mortgagee, its successors and assigns, forever, for the purposes and uses herein set forth, together with all right to retain possession of the Premises after any Event of Default (as hereinafter defined).

IT IS FURTHER UNDERSTOOD AND AGREED THAT:

1. **Title.**

   Mortgagor represents, warrants and covenants that (a) Mortgagor is the holder of the fee simple title to the Premises, free and clear of all liens and encumbrances, except those liens and encumbrances described on Exhibit B attached hereto (the "Permitted Exceptions"); and (b) Mortgagor has legal power and authority to mortgage and convey the Premises.

2. **Maintenance, Repair and Restoration of Improvements, Payment of Prior Liens, etc.**

   Mortgagor shall: (a) promptly repair, restore or rebuild any buildings or improvements owned by Mortgagor and now or hereafter on the Premises which may become damaged or be destroyed; (b) keep the Premises in good condition and repair, without waste, and free from mechanics' liens or other liens or claims for lien, except that Mortgagor shall have the right to contest by appropriate proceedings the validity or amount of any such lien if and only if Mortgagor shall, within thirty (30) days after the filing thereof, (i) place a bond with Mortgagee in an amount, form, content and issued by a surety reasonably acceptable to Mortgagee for the payment of any such lien or (ii) cause the title company which has issued the loan policy of title insurance to Mortgagee insuring the lien of this Mortgage to issue an endorsement thereto insuring against loss or damage on account of any such lien; (c) immediately pay when due any indebtedness which may be secured
by a lien or charge on the Premises superior or inferior to or at parity with the lien hereof (no such superior, inferior or parity lien to be permitted hereunder), and upon request exhibit satisfactory
evidence of the discharge of any such lien to Mortgagee; (d) complete within a reasonable time any
buildings or any other improvements owned by Mortgagor and now or at any time in process of
construction upon the Premises; (e) comply with all requirements of law, municipal ordinances and
restrictions of record with respect to the Premises and the use thereof, including without limitation,
those relating to building, zoning, environmental protection, health, fire and safety; (f) make no
material alterations to the Premises or any buildings or other improvements now or hereafter
constructed thereon, without the prior written consent of Mortgagee; (g) not suffer or permit any
change in the general nature of the occupancy of the Premises without the prior written consent of
Mortgagee; (h) not initiate or acquiesce in any zoning reclassification without the prior written
consent of Mortgagee; (i) pay each item of indebtedness secured by this Mortgage when due
according to the terms of the Note and the other Loan Documents; and (j) duly perform and observe
all of the covenants, terms, provisions and agreements herein, in the Note and in the other Loan
Documents on the part of Mortgagor to be performed and observed. As used in this Paragraph and
elsewhere in this Mortgage, the term "indebtedness" shall mean and include the principal sum
evidenced by the Note, together with all interest thereon and all other amounts payable to Mortgagee
thereunder, and all other sums at any time secured by this Mortgage.

3. Payment of Taxes and Assessments.

Mortgagor shall pay all general taxes, special taxes, special assessments, water charges,
sewer service charges, and all other liens or charges levied or assessed against the Premises, or any
interest therein, of any nature whatsoever when due and before any penalty or interest is assessed,
and, at the request of Mortgagee, shall furnish to Mortgagee duplicate receipts of payment therefor.
If any special assessment is permitted by applicable law to be paid in installments, Mortgagor shall
have the right to pay such assessment in instalments, so long as all such installments are paid prior
to the due date thereof. Notwithstanding anything contained herein to the contrary, Mortgagor shall
have the right to protest any taxes assessed against the Premises, so long as such protest is conducted
in good faith by appropriate legal proceedings diligently prosecuted and Mortgagor shall furnish to
the title insurer such security or indemnity as said insurer requires to induce it to issue an
endorsement, in form and substance acceptable to Mortgagee, insuring over any exception created
by such protest.

4. Tax Deposits.

Upon an Event of Default hereunder, Lender may, at Lender's option, require Mortgagor to
deposit with Mortgagee on the first day of each month until the indebtedness secured by this
Mortgage is fully paid, a sum equal to one-twelfth (1/12th) of 105% of the annual taxes and
assessments (general and special) on the Premises, as reasonably determined by Mortgagee. Such
deposits are to be held without any allowance of interest and are to be used for the payment of taxes
and assessments on the Premises next due and payable when they become due. Mortgagee may, at
its option, pay such taxes and assessments when the same become due and payable (upon submission
of appropriate bills therefor from Mortgagor) or shall release sufficient funds to Mortgagor for the
payment thereof. If the funds so deposited are insufficient to pay any such taxes or assessments for any year (or installments thereof, as applicable) when the same shall become due and payable, Mortgagor shall, within ten days after receipt of demand therefor, deposit additional funds as may be necessary to pay such taxes and assessments in full. If the funds so deposited exceed the amount required to pay such taxes and assessments for any year, the excess shall be applied toward subsequent deposits. Said deposits need not be kept separate and apart from any other funds of Mortgagor.

5. **Mortgagor's Interest In and Use of Deposits.**

Upon the occurrence of an Event of Default, Mortgagor may, at its option, apply any monies at the time on deposit pursuant to Paragraph 4 hereof toward any of the indebtedness secured hereby in such order and manner as Mortgagor may elect. When such indebtedness has been fully paid, any remaining deposits shall be returned to Mortgagor. Such deposits are hereby pledged as additional security for the indebtedness hereunder and shall not be subject to the direction or control of Mortgagor. Mortgagor shall not be liable for any failure to apply to the payment of taxes, assessments and insurance premiums any amount so deposited unless Mortgagor, prior to the occurrence of an Event of Default, shall have requested Mortgagor in writing to make application of such funds to the payment of such amounts, accompanied by the bills for such taxes, assessments and insurance premiums. Mortgagor shall not be liable for any act or omission taken in good faith.

6. **Insurance.**

A. Mortgagor shall at all times keep all buildings, improvements, fixtures and articles of personal property now or hereafter situated on the Premises insured against loss or damage by fire and such other hazards as may reasonably be required by Mortgagor, including without limitation: (i) all-risk fire and extended coverage insurance, with vandalism and malicious mischief endorsements, for the full replacement value of the Premises, with agreed upon amount and inflation protection endorsements; (ii) if the Premises are located in a flood hazard area, flood insurance in the maximum amount obtainable up to the amount of the indebtedness hereby secured; and (iii) such other insurance as Mortgagor may from time to time require. Mortgagor also shall at all times maintain comprehensive public liability, property damage and workmen’s compensation insurance covering the Premises and any employees thereof, with such limits for personal injury, death and property damage as Mortgagor may require. Mortgagor shall be the named insured under such policies and Mortgagor shall be identified as an additional insured party. All policies of insurance to be furnished hereunder shall be in forms, with companies, in amounts and with deductibles reasonably satisfactory to Mortgagor, with mortgagor clauses attached to all policies in favor of and in form satisfactory to Mortgagor, including a provision requiring that the coverage evidenced thereby shall not be terminated or modified without thirty days prior written notice to Mortgagor and shall contain endorsements that no act or negligence of the insured or any occupant and no occupancy or use of the Premises for purposes more hazardous than permitted by the terms of the policies will affect the validity.
or enforceability of such policies as against Mortgagee. Mortgagor shall deliver all policies, including additional and renewal policies, to Mortgagee, and, in the case of insurance about to expire, shall deliver renewal policies not less than thirty days prior to their respective dates of expiration.

B. Mortgagor shall not take out separate insurance concurrent in form or contributing in the event of loss with that required to be maintained hereunder unless Mortgagee is included thereon as the loss payee or an additional insured as applicable, under a standard mortgage clause acceptable to Mortgagee and such separate insurance is otherwise acceptable to Mortgagee.

C. In the event of loss, Mortgagor shall give immediate notice thereof to Mortgagee, who shall have the sole and absolute right to make proof of loss, and each insurance company concerned is hereby authorized and directed to make payment for such loss directly to Mortgagee (rather than to Mortgagor and Mortgagee jointly). Mortgagee shall have the right, at its option and in its sole discretion, to apply any insurance proceeds so received after the payment of all of Mortgagee’s expenses, either (i) on account of the unpaid principal balance of the Note, irrespective of whether such principal balance is then due and payable, whereupon Mortgagee may declare the whole of the balance of indebtedness hereby secured to be due and payable, or (ii) to the restoration or repair of the property damaged as provided in Paragraph 22 hereof. If insurance proceeds are delivered to Mortgagor by Mortgagee as herein provided, Mortgagor shall repair, restore or rebuild the damaged or destroyed portion of the Premises so that the condition and value of the Premises are substantially the same as the condition and value of the Premises prior to being damaged or destroyed. In the event Mortgagee permits the application of such insurance proceeds to the cost of restoration and repair of the Premises, any surplus which may remain out of said insurance proceeds after payment of such costs shall be applied on account of the unpaid principal balance of the Note, irrespective of whether such principal balance is then due and payable. In the event of foreclosure of this Mortgage, all right, title and interest of Mortgagor in and to any insurance policies then in force shall pass to the purchaser at the foreclosure sale. At the request of Mortgagee, from time to time, Mortgagor shall furnish Mortgagee, without cost to Mortgagee, evidence of the replacement value of the Premises.

7. Condemnation.

If all or any part of the Premises are damaged, taken or acquired, either temporarily or permanently, in any condemnation proceeding, or by exercise of the right of eminent domain, the amount of any award or other payment for such taking or damages made in consideration thereof, to the extent of the full amount of the remaining unpaid indebtedness secured by this Mortgage, is hereby assigned to Mortgagee, who is empowered to collect and receive the same and to give proper receipts therefor in the name of Mortgagor and the same shall be paid forthwith to Mortgagee. Such award or monies shall be applied on account of the unpaid principal balance of the Note, irrespective of whether such principal balance is then due and payable and, at any time from and after the taking
Mortgagee may declare the whole of the balance of the indebtedness hereby secured to be due and payable.

8. **Stamp Tax.**

If, by the laws of the United States of America, or of any state or political subdivision having jurisdiction over Mortgagor, any tax is due or becomes due in respect of the execution and delivery of this Mortgage, the Note or any of the other Loan Documents, Mortgagor covenants and agrees to pay such tax in the manner required by any such law. Mortgagor further covenants to reimburse Mortgagee for any sums which Mortgagee may expend by reason of the imposition of any such tax. Notwithstanding the foregoing, Mortgagor shall not be required to pay any income or franchise taxes of Mortgagee.

9. **Lease Assignment.** As part of the consideration for the indebtedness evidenced by the Note, Mortgagor hereby absolutely and unconditionally assigns and transfers to Mortgagee all of the occupancy agreements and leases now existing or hereafter entered into with respect to the Premises, and all modifications, renewals and extensions thereof, (collectively the "Leases") and all the rents, accounts and revenues, which shall include all deposits, of the Premises, including those now due, past due, or to become due by virtue of any of the Leases or any other agreement for the occupancy or use of all or any part of the Premises, regardless as to whom the rents, accounts and revenues of the Premises are payable; provided, however, that prior to an Event of Default under this Mortgage, Mortgagor shall exercise all of its rights under the Leases and shall collect and receive all of the rents, accounts and revenues of the Premises, and Mortgagor shall apply the rents, accounts and revenues so collected to current operating expenses of the Premises and current amounts due Mortgagee with the balance, so long as no such Event of Default has occurred, to the account of Mortgagor. Upon an Event of Default hereunder, and without the necessity of Mortgagor entering upon and taking and maintaining full control of the Premises in person, by agent or by a court-appointed receiver, Mortgagee shall immediately (i) be entitled to exercise all of the rights of Mortgagor under the Leases, and (ii) be entitled to possession of all rents, accounts and revenues of the Premises as specified in this paragraph 16 as the same become due and payable, including but not limited to rents, accounts and revenues then due and unpaid. At the time of any such Event of Default, any such rents, accounts and revenues then held by Mortgagor shall immediately be held by Mortgagor as trustee for the benefit of Mortgagee only. Mortgagor agrees that commencing upon an Event of Default, each occupant of the Premises shall make such rents, accounts and revenues payable to and pay such rents, accounts and revenues to Mortgagee or Mortgagee's agents on Mortgagee's written demand to each occupant therefor, delivered to each occupant personally, by mail or by delivering such demand to each rental unit, without any liability on the part of said occupant to inquire further as to the existence of a default by Mortgagor. Unless Mortgagee takes possession of the property or exercises control over it, Mortgagee shall not be liable for any loss sustained by the Mortgagor resulting from any failure by Mortgagee either to collect the rents, accounts and revenues of the Premises or in exercising or failing to exercise any of the rights of Mortgagor under the Leases. Mortgagee shall have no liability to any occupant under any of the Leases for the performance or observance of any of the terms, conditions or obligations contained therein unless Mortgagee takes possession of the Premises.
10. **Effect of Extensions of Time.**

If the payment of the indebtedness secured hereby or any part thereof is extended or varied or if any part of any security for the payment of the indebtedness is released, all persons now or at any time hereafter liable therefor, or interested in the Premises or having an interest in Mortgagor, shall be held to assent to such extension, variation or release, and their liability and the lien and all of the provisions hereof shall continue in full force, any right of recourse against all such persons being expressly reserved by Mortgagee, notwithstanding such extension, variation or release.

11. **Effect of Changes in Laws Regarding Taxation.**

If any law is enacted after the date hereof requiring (i) the deduction of any lien on the Premises from the value thereof for the purpose of taxation or (ii) the imposition upon Mortgagee of the payment of the whole or any part of the taxes or assessments, charges or liens herein required to be paid by Mortgagor, or (iii) a change in the method of taxation of mortgages or debts secured by mortgages or Mortgagee’s interest in the Premises, or the manner of collection of taxes, so as to affect this Mortgage or the indebtedness secured hereby or the holders thereof, then Mortgagor, upon demand by Mortgagee, shall pay such taxes or assessments, or reimburse Mortgagee therefor; provided, however, that Mortgagor shall not be deemed to be required to pay any income or franchise taxes of Mortgagee. Notwithstanding the foregoing, if in the opinion of counsel for Mortgagee it may be unlawful to require Mortgagor to make such payment or the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then Mortgagee may declare all of the indebtedness secured hereby to be immediately due and payable.

12. **Mortgagee’s Performance of Defaulted Acts and Expenses Incurred by Mortgagee.**

If an Event of Default has occurred, Mortgagee may, but need not, make any payment or perform any act herein required of Mortgagor in any form and manner deemed expedient by Mortgagee, and may, but need not, make full or partial payments of principal or interest on prior encumbrances, if any, and purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof, or redeem from any tax sale or forfeiture affecting the Premises or consent to any tax or assessment or cure any default of Mortgagor in any lease of the Premises. All monies paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including attorneys’ fees, and any other monies advanced by Mortgagee in regard to any tax referred to in Paragraph 8 above or to protect the Premises or the lien hereof, shall be so much additional indebtedness secured hereby, and shall become immediately due and payable by Mortgagor to Mortgagee, upon demand, and with interest thereon at the Default Rate (as defined in the Note) then in effect. In addition to the foregoing, any costs, expenses and fees, including attorneys’ fees, incurred by Mortgagee in connection with (a) sustaining the lien of this Mortgage or its priority, (b) protecting or enforcing any of Mortgagee’s rights hereunder, (c) recovering any indebtedness secured hereby, (d) any litigation or proceedings affecting the Note, this Mortgage, any of the other Loan Documents or the Premises, including without limitation, bankruptcy and probate
proceedings, or (e) preparing for the commencement, defense or participation in any threatened litigation or proceedings affecting the Note, this Mortgage, any of the other Loan Documents or the Premises, shall be so much additional indebtedness secured hereby, and shall become immediately due and payable by Mortgagor to Mortgagee, upon demand, and with interest thereon at the Default Rate. The interest accruing under this Paragraph 12 shall be immediately due and payable by Mortgagor to Mortgagee, and shall be additional indebtedness evidenced by the Note and secured by this Mortgage. Mortgagee's failure to act shall never be considered as a waiver of any right accruing to Mortgagee on account of any Event of Default. Should any amount paid out or advanced by Mortgagee hereunder, or pursuant to any agreement executed by Mortgagee in connection with the Loan, be used directly or indirectly to pay off, discharge or satisfy, in whole or in part, any lien or encumbrance upon the Premises or any part thereof, then Mortgagee shall be subrogated to any and all rights, equal or superior titles, liens and equities, owned or claimed by any owner or holder of said outstanding liens, charges and indebtedness, regardless of whether said liens, charges and indebtedness are acquired by assignment or have been released of record by the holder thereof upon payment.

13. **Mortgagee's Reliance on Tax Bills and Claims for Liens.**

Mortgagee, in making any payment hereby authorized: (a) relating to taxes and assessments, may do so according to any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof; or (b) for the purchase, discharge, compromise or settlement of any other prior lien, may do so without inquiring as to the validity or amount of any claim for lien which may be asserted.

14. **Event of Default; Acceleration.**

Each of the following shall constitute an "Event of Default" for purposes of this Mortgage:

A. Mortgagor fails to pay within ten (10) days on the date when due (i) any installment of principal or interest payable pursuant to the Note, or (ii) any other amount payable pursuant to the Note, this Mortgage, the Construction Loan Agreement or any of the other Loan Documents;

B. The existence of any inaccuracy or untruth in any material respect in any representation or warranty contained in this Mortgage or any of the other Loan Documents or of any statement or certification as to facts delivered to Mortgagee by Mortgagor or any guarantor of the Note;

C. Any sale, transfer, lease, assignment, conveyance, financing, lien or encumbrance made in violation of Paragraph 27 of this Mortgage.

D. Any Event of Default under the Construction Loan Agreement.
If an Event of Default occurs, Mortgagee may, at its option, declare the whole of the indebtedness hereby secured to be immediately due and payable without further notice to Mortgagor, with interest thereon from the date of such Event of Default at the Default Rate.

15. **Foreclosure: Expense of Litigation.**

A. When all or any part of the indebtedness hereby secured shall become due, whether by acceleration or otherwise, Mortgagee shall have the right to foreclose the lien hereof for such indebtedness or part thereof and/or exercise any right, power or remedy provided in this Mortgage or any of the other Loan Documents. It is further agreed that if default be made in the payment of any part of the secured indebtedness, as an alternative to the right of foreclosure for the full secured indebtedness after acceleration thereof, Mortgagee shall have the right to institute partial foreclosure proceedings with respect to the portion of said indebtedness so in default, as if under a full foreclosure, and without declaring the entire secured indebtedness due (such proceeding being hereinafter referred to as a "partial foreclosure"), and provided that if foreclosure sale is made because of default of a part of the secured indebtedness, such sale may be made subject to the continuing lien of this Mortgage for the unmatured part of the secured indebtedness. It is further agreed that such sale pursuant to a partial foreclosure shall not in any manner affect the unmatured part of the secured indebtedness, but as to such unmatured part, the lien hereof shall remain in full force and effect just as though no foreclosure sale had been made under the provisions of this Paragraph. Notwithstanding the filing of any partial foreclosure or entry of a decree of sale in connection therewith, Mortgagee may elect at any time prior to a foreclosure sale pursuant to such decree to discontinue such partial foreclosure and to accelerate the entire secured indebtedness by reason of any uncured Event of Default upon which such partial foreclosure was predicated or by reason of any other Event of Default and proceed with full foreclosure proceedings. It is further agreed that several foreclosure sales may be made pursuant to partial foreclosures without exhausting the right of full or partial foreclosure sale for any unmatured part of the secured indebtedness. In the event of a foreclosure sale, Mortgagee is hereby authorized, without the consent of Mortgagor, to assign any and all insurance policies to the purchaser at such sale or to take such other steps as Mortgagee may deem advisable to cause the interest of such purchaser to be protected by any of such insurance policies.

B. In any suit to foreclose or partially foreclose the lien hereof, there shall be allowed and included as additional indebtedness in the decree for sale all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for reasonable attorneys' fees, appraisers' fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to the title as Mortgagee may deem reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or the value of the Premises. All expenditures and expenses of the nature mentioned in
this paragraph and such other expenses and fees as may be incurred in the enforcement of
Mortgagor's obligations hereunder, the protection of said Premises and the maintenance of
the lien of this Mortgage, including the reasonable fees of any attorney employed by
Mortgagee in any litigation or proceeding affecting this Mortgage, the Note, or the Premises,
including probate and bankruptcy proceedings, or in preparations for the commencement or
defense of any proceeding or threatened suit or proceeding shall be immediately due and
payable by Mortgagor, with interest thereon at the Default Rate and shall be secured by this
Mortgage.


The proceeds of any foreclosure (or partial foreclosure) sale of the Premises shall be
distributed and applied in the following order of priority: first, to all costs and expenses incident
to the foreclosure proceedings, including all such items as are mentioned in Paragraph 15 above;
second, to all other items which may under the terms hereof constitute secured indebtedness
additional to that evidenced by the Note, with interest thereon as provided herein or in the other Loan
Documents; third, to all principal and interest remaining unpaid on the Note; and fourth, any surplus
to Mortgagor, its successors or assigns, as their rights may appear or to any other party legally
entitled thereto.

17. Appointment of Receiver.

Upon or at any time after the filing of a complaint to foreclose (or partially foreclose) this
Mortgage, the court in which such complaint is filed shall, upon petition by Mortgagee, appoint a
receiver for the Premises. Such appointment may be made either before or after sale, without notice,
without regard to the solvency or insolvency of Mortgagor at the time of application for such
receiver and without regard to the value of the Premises or whether the same shall be then occupied
as a homestead or not and Mortgagee hereunder or any other holder of the Note may be appointed
as such receiver. Such receiver shall have power to collect the rents, issues and profits of the
Premises (i) during the pendency of such foreclosure suit, (ii) in case of a sale and a deficiency,
during the full statutory period of redemption, whether there be redemption or not, and (iii) during
any further times when Mortgagor, but for the intervention of such receiver, would be entitled to
collect such rents, issues and profits. Such receiver also shall have all other powers and rights that
may be necessary or are usual in such cases for the protection, possession, control, management and
operation of the Premises during said period, including, to the extent permitted by law, the right to
lease all or any portion of the Premises for a term that extends beyond the time of such receiver's
possession without obtaining prior court approval of such lease. The court from time to time may
authorize the application of the net income received by the receiver in payment of (a) the
indebtedness secured hereby, or by any decree foreclosing this Mortgage, or any tax, special
assessment or other lien which may be or become superior to the lien hereof or of such decree,
provided such application is made prior to foreclosure sale, and (b) any deficiency upon a sale and
deficiency.
18. **Mortgagor's Right of Possession in Case of Default.**

At any time after an Event of Default has occurred, Mortgagor shall, upon demand of Mortgagor, surrender to Mortgagor possession of the Premises. Mortgagor, in its discretion, may, with or without process of law, enter upon and take and maintain possession of all or any part of the Premises, together with all documents, books, records, papers and accounts relating thereto, and may exclude Mortgagor and its employees, agents or servants therefrom, and Mortgagor may then hold, operate, manage and control the Premises, either personally or by its agents. Mortgagor shall have full power to use such measures, legal or equitable, as in its discretion may be deemed proper or necessary to enforce the payment or security of the avails, rents, issues, and profits of the Premises, including actions for the recovery of rent, actions in forcible detainer and actions in distress for rent. Without limiting the generality of the foregoing, Mortgagor shall have full power to:

A. sell any of the lots under any purchase agreement with builders or buyers for amounts which Mortgagor deems appropriate;

B. make any repairs, renewals, replacements, alterations, additions, betterments and improvements to the Premises as Mortgagor deems are necessary;

C. insure and reinsure the Premises and all risks incidental to Mortgagor's possession, operation and management thereof; and

D. receive all of such avails, rents, issues and profits.

19. **Application of Income Received by Mortgagor.**

Mortgagor, in the exercise of the rights and powers hereinabove conferred upon it, shall have full power to use and apply the avails, rents, issues and profits of the Premises to the payment of or on account of the following, in such order as Mortgagor may determine:

A. to the payment of the operating expenses of the Premises, including cost of management and leasing thereof (which shall include compensation to Mortgagor and its agent or agents, if management be delegated to an agent or agents, and shall also include lease commissions and other compensation and expenses of seeking and procuring tenants and entering into leases), established claims for damages, if any, and premiums on insurance hereinabove authorized;

B. to the payment of taxes and special assessments now due or which may hereafter become due on the Premises; and

C. to the payment of any indebtedness secured hereby, including any deficiency which may result from any foreclosure sale.
20. Rights Cumulative.

Each right, power and remedy herein conferred upon Mortgagee is cumulative and in addition to every other right, power or remedy, express or implied, given now or hereafter existing under any of the Loan Documents or at law or in equity, and each and every right, power and remedy herein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient by Mortgagee, and the exercise or the beginning of the exercise of one right, power or remedy shall not be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy, and no delay or omission of Mortgagee in the exercise of any right, power or remedy accruing hereunder or arising otherwise shall impair any such right, power or remedy, or be construed to be a waiver of any Event of Default or acquiescence therein.


Mortgagor and its representatives shall have the right to inspect the Premises and the books and records with respect thereto at all reasonable times, and access thereto shall be permitted for that purpose.

22. Disbursement of Insurance or Eminent Domain Proceeds.

A. Before commencing to repair, restore or rebuild following damage to, or destruction of, all or a portion of the Premises, whether by fire or other casualty, Mortgagor shall obtain from Mortgagee its approval of all site and building plans and specifications pertaining to such repair, restoration or rebuilding.

B. Prior to each payment or application of any insurance proceeds to the repair or restoration of the improvements upon the Premises to the extent permitted in Paragraph 6 above (which payment or application may be made, at Mortgagee's option, through an escrow, the terms and conditions of which are satisfactory to Mortgagee and the cost of which is to be borne by Mortgagor), Mortgagee shall be entitled to be satisfied as to the following:

(i) An Event of Default has not occurred;

(ii) Either (a) such improvements have been fully restored, or (b) the expenditure of money as may be received from such insurance proceeds or condemnation award will be sufficient to repair, restore or rebuild the Premises, free and clear of all liens, claims and encumbrances, except the lien of this Mortgage and the Permitted Exceptions, or, in the event such insurance proceeds or condemnation award shall be insufficient to repair, restore and rebuild the Premises, Mortgagor has deposited with Mortgagee such amount of money which, together with the insurance proceeds or condemnation award, shall be sufficient to restore, repair and rebuild the Premises; and
(iii) Prior to each disbursement of any such proceeds held by Mortgagee in accordance with the terms of this Paragraph 22 for the cost of any repair, restoration or rebuilding, Mortgagee shall be furnished with a statement of Mortgagor's architect (the cost of which shall be borne by Mortgagor), certifying the extent of the repair and restoration completed to the date thereof, and that such repairs, restoration, and rebuilding have been performed to date in conformity with the plans and specifications approved by Mortgagee and with all statutes, regulations or ordinances (including building and zoning ordinances) affecting the Premises; and Mortgagee shall be furnished with appropriate evidence of payment for labor or materials furnished to the Premises, and total or partial lien waivers substantiating such payments.

C. Prior to the payment or application of insurance proceeds to the repair, restoration or rebuilding of the improvements upon the Premises to the extent permitted in Paragraph 6 above, there shall have been delivered to Mortgagee the following:

(i) A waiver of subrogation from any insurer with respect to Mortgagor or the then owner or other insured under the policy of insurance in question;

(ii) Such plans and specifications, such payment and performance bonds and such insurance, in such amounts, issued by such company or companies and in such forms and substance, as are required by Mortgagee.

D. In the event Mortgagor shall fail to restore, repair or rebuild the improvements upon the Premises within a time deemed reasonably satisfactory by Mortgagee, then Mortgagee, at its option, may commence and perform all necessary acts to restore, repair or rebuild the said improvements for or on behalf of Mortgagor. In the event insurance proceeds shall exceed the amount necessary to complete the repair, restoration or rebuilding of the improvements upon the Premises, such excess shall be applied on account of the unpaid principal balance of the Loan irrespective of whether such balance is then due and payable.

E. In the event Mortgagor commences the repair or rebuilding of the improvements located on the Premises, but fails to comply with the conditions precedent to the payment or application of insurance proceeds set forth in this Paragraph 22, or Mortgagor shall fail to restore, repair or rebuild the improvements upon the Premises within a time deemed reasonably satisfactory by Mortgagee, and if Mortgagee does not restore, repair or rebuild the said improvements as provided in subparagraph (d) above, then such failure shall constitute an Event of Default.
23. **Release Upon Payment and Discharge of Mortgagor’s Obligations.**

Mortgagor shall release this Mortgage and the lien hereof by proper instrument upon payment and discharge of all indebtedness secured hereby, including payment of all reasonable expenses incurred by Mortgagor in connection with the execution of such release.

24. **Notices.**

Any notices, communications and waivers under this Mortgage shall be in writing and shall be (i) delivered in person, (ii) mailed, postage prepaid, either by registered or certified mail, return receipt requested, or (iii) by overnight express carrier, addressed in each case as follows:

**To Lender:**
Republic Bank  
201 S. Capitol Avenue, Suite 650  
Indianapolis, IN 46225  
Attn: E. Christian Barham

**With copy to:**
Jeffrey A. Abrams  
Dann Pecar Newman & Kleiman  
2300 One American Square  
Indianapolis, IN 46282

**To any Indemnitee:**
Bay Communities L.L.C.  
10415 North College Avenue  
Indianapolis, IN 46280  
Attn: Bruce Sklare

**With copy to:**
Steven M. Crelia  
Cohen Garelick & Glazier  
8888 Keystone Crossing Blvd., Suite 800  
Indianapolis, IN 46240

or to any other address as to any of the parties hereto, as such party shall designate in a written notice to the other party hereto. All notices sent pursuant to the terms of this Paragraph shall be deemed received (i) if personally delivered, then on the date of delivery, (ii) if sent by overnight, express carrier, then on the next federal banking day immediately following the day sent, or (iii) if sent by registered or certified mail, then on the earlier of the third federal banking day following the day sent or when actually received.

*25. **Waiver of Defenses.**

No action for the enforcement of the lien or of any provision hereof shall be subject to any defense which would not be good and available to the party interposing the same in an action at law upon the Note.*
26. **Waiver of Rights.**

Mortgagor hereby covenants and agrees that Mortgagor shall not apply for or avail itself of any appraisement, valuation, stay, extension or exemption laws, or any so-called "Moratorium Laws," now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, but hereby waives the benefit of such laws. To the fullest extent permitted by law, Mortgagor, for itself and all who may claim through or under it, waives any claims based on allegations that Mortgagee has failed to act in a commercially reasonable manner (except as otherwise expressly provided in this Mortgage or the other Loan Documents) and any and all rights to have the property and estates comprising the Premises marshalled upon any foreclosure of the lien hereof and further agrees that any court having jurisdiction to foreclose such lien may order the Premises sold as an entirety.

27. **Transfer of Premises; Further Encumbrance.**

A. Neither all nor any portion of (i) the Premises (except for lot sales) or (ii) any interest in Mortgagor or (iii) any interest of Mortgagor in the Premises shall be sold, conveyed, assigned, encumbered or otherwise transferred (nor shall any agreement be entered into to sell, convey, assign, encumber or otherwise transfer same) without, in each instance, the prior written consent of Mortgagee, which consent may be given or withheld in Mortgagee's sole and absolute discretion, and may be conditioned in any manner that Mortgagee desires, including, without limitation, increases in the rate of interest charged on the Loan and payment of assumption fees. Any violation or attempted violation of the provisions of this Paragraph 27 shall be an Event of Default for purposes of all of the Loan Documents.

B. Any consent by Mortgagee, or any waiver by Mortgagee of an Event of Default under this Paragraph 27 shall not constitute a consent to or waiver of any right, remedy or power of Mortgagee upon a continuing or subsequent Event of Default under this Paragraph 27. Mortgagor acknowledges that any agreements, liens, charges or encumbrances created in violation of the provisions of this Paragraph 27 shall be void and of no force or effect. Mortgagor agrees that if any provision of this Paragraph 27 is deemed a restraint on alienation, that such restraint is a reasonable one.

28. **Expenses Relating to Note and Mortgage.**

A. Mortgagor will pay all expenses, charges, costs and fees relating to the Loan or necessitated by the terms of the Note, this Mortgage or any of the other Loan Documents, including without limitation, Mortgagee's reasonable attorneys' fees in connection with the negotiation, documentation, administration, servicing and enforcement of the Note, this Mortgage and the other Loan Documents, all filing, registration and recording fees, all other expenses incident to the execution and acknowledgment of this Mortgage and all federal, state, county and municipal taxes, and other taxes (provided Mortgagor shall not be required
to pay any income or franchise taxes of Mortgagee), duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of the Note and this Mortgage. Mortgagor recognizes that, during the term of this Mortgage, Mortgagee:

(i) May be involved in court or administrative proceedings, including, without restricting the foregoing, foreclosure, probate, bankruptcy, creditors' arrangements, insolvency, housing authority and pollution control proceedings of any kind, to which Mortgagee shall be a party by reason of the Loan Documents or in which the Loan Documents or the Premises are involved directly or indirectly;

(ii) May make preparations following the occurrence of an Event of Default hereunder for the commencement of any suit for the foreclosure hereof, which may or may not be actually commenced;

(iii) May make preparations following the occurrence of an Event of Default hereunder for, and do work in connection with, Mortgagee's taking possession of and managing the Premises, which event may or may not actually occur;

(iv) May make preparations for and commence other private or public actions to remedy an Event of Default hereunder, which other actions may or may not be actually commenced;

(v) May enter into negotiations with Mortgagor or any of its agents, employees or attorneys in connection with the existence or curing of any Event of Default hereunder, the sale of the Premises, the assumption of liability for any of the indebtedness represented by the Note or the transfer of the Premises in lieu of foreclosure; or

(vi) May enter into negotiations with Mortgagor or any of its agents, employees or attorneys pertaining to Mortgagee's approval of actions taken or proposed to be taken by Mortgagor which approval is required by the terms of this Mortgage.

B. All expenses, charges, costs and fees described in this Paragraph 28 shall be so much additional indebtedness secured hereby, shall bear interest thirty (30) days after the date so incurred until paid at the Default Rate and shall be paid, together with said interest, by Mortgagor forthwith upon demand.

29. Financial Statements.

Mortgagor hereby represents and warrants that the financial statements for Mortgagor and the Premises previously submitted to Mortgagee are true, complete and correct in all material respects, disclose all actual and contingent liabilities of Mortgagor or relating to the Premises and do not contain any untrue statement of a material fact or omit to state a fact material to such financial
statements. No material adverse change has occurred in the financial condition of Mortgagor or the Premises from the dates of said financial statements until the date hereof.

30. **Statement of Indebtedness.**

Mortgagor, within seven days after being so requested by Mortgagee, shall furnish a duly acknowledged written statement setting forth the amount of the debt secured by this Mortgage, the date to which interest has been paid and stating either that no offsets or defenses exist against such debt or, if such offsets or defenses are alleged to exist, the nature thereof.

31. **Further Instruments.**

Upon request of Mortgagee, Mortgagor shall execute, acknowledge and deliver all such additional instruments and further assurances of title and shall do or cause to be done all such further acts and things as may reasonably be necessary fully to effectuate the intent of this Mortgage and of the other Loan Documents.

32. **Additional Indebtedness Secured.**

All persons and entities with any interest in the Premises or about to acquire any such interest should be aware that this Mortgage secures more than the stated principal amount of the Note and interest thereon; this Mortgage secures any and all other amounts which may become due under the Note or any other document or instrument evidencing, securing or otherwise affecting the indebtedness secured hereby, including, without limitation, any and all amounts expended by Mortgagee to operate, manage or maintain the Premises or to otherwise protect the Premises or the lien of this Mortgage.

33. **Indemnity.**

Mortgagor hereby covenants and agrees that no liability shall be asserted or enforced against Mortgagee in the exercise of the rights and powers granted to Mortgagee in this Mortgage, and Mortgagor hereby expressly waives and releases any such liability. Mortgagor shall indemnify and save Mortgagee harmless from and against any and all liabilities, obligations, losses, damages, claims, costs and expenses (including attorneys' fees and court costs) (collectively, the "Claims") of whatever kind or nature which may be imposed on, incurred by or asserted against Mortgagee at any time by any third party which relate to or arise from: (a) any suit or proceeding (including probate and bankruptcy proceedings), or the threat thereof, in or to which Mortgagee may or does become a party, either as plaintiff or as a defendant, by reason of this Mortgage or for the purpose of protecting the lien of this Mortgage; (b) the offer for sale or sale of all or any portion of the Premises; and (c) the ownership, leasing, use, operation or maintenance of the Premises, if such Claims relate to or arise from actions taken prior to the surrender of possession of the Premises to Mortgagee in accordance with the terms of this Mortgage; provided, however, that Mortgagor shall not be obligated to indemnify or hold Mortgagee harmless from and against any Claims directly arising from the gross negligence or willful misconduct of Mortgagee. All costs provided for herein...
and paid for by Mortgagee shall be so much additional indebtedness secured hereby and shall become immediately due and payable without notice and with interest at the Default Rate.

34. **Waiver of Rights of Redemption and Reinstatement.**

Mortgagor hereby releases and waives, to the fullest extent permitted by law, any and all rights of reinstatement and redemption provided in the Indiana Mortgage Foreclosure Act.

35. **Fixture Filing.**

Mortgagor and Mortgagee agree that this Mortgage shall constitute a financing statement and fixture filing under the Code with respect to all "fixtures" (as defined in the Code) attached to or otherwise forming a part of the Premises and that a security interest in and to such fixtures is hereby granted to Mortgagee. For purposes of the foregoing, Mortgagee is the secured party and Mortgagor is the debtor and the collateral covered by this financing statement shall be all items of property contained within the definition of the "Premises" which is or becomes a fixture on the Real Estate or any other real estate contained within the definition of the Premises. The requirements under I.C. § 26-1-9-402 are found in other provisions of this Mortgage.

36. **Compliance with Environmental Laws.**

In addition to all other provisions of this Mortgage, Mortgagor, at its cost and expense, shall comply with all laws, and all rules and regulations of any governmental authority ("Agency") having jurisdiction, concerning environmental matters, including, but not limited to, any discharge (whether before or after the date of this Mortgage) into the air, waterways, sewers, soil or ground water or any substance or "pollutant". Mortgagee and its agents and representatives shall have access to the Premises and to the books and records of Mortgagor and any occupant of the Premises claiming by, through or under Mortgagor for the purpose of ascertaining the nature of the activities being conducted thereon and to determine the type, kind and quantity of all products, materials and substances brought onto the Premises or made or produced thereon. Mortgagor and all occupants of the Premises claiming under Mortgagor shall provide to Mortgagee copies of all manifests, schedules, correspondence and other documents of all types and kinds when filed or provided to any Agency or as such are received from any Agency. Mortgagee and its agents and representatives shall have the right to take samples in quantity sufficient for scientific analysis of all products, materials and substances present on the Premises including, but not limited to, samples of products, materials or substances brought onto or made or produced on the Premises by Mortgagor or an occupant claiming by, through or under Mortgagor or otherwise present on the Premises.

37. **Uniform Commercial Code Security Agreement.** In addition to being a mortgage, this Mortgage is intended to be a security agreement pursuant to the Uniform Commercial Code as enacted in the state wherein the Premises is located, for any of the items specified above as part of the Premises which, under applicable law, may be subject to a security interest pursuant to the Uniform Commercial Code, and Mortgagor hereby grants to Mortgagee a security interest in said items. Mortgagor agrees that Mortgagee may file this Mortgage, or a reproduction thereof, in the
real estate records or other appropriate index, as a financing statement filed as a fixture filing with respect to all items constituting a part of the collateral which are or are to become fixtures related to the Premises, in accordance with I.C. §26-1-9-402(6). The information required under I.C. §26-1-9-402 is set forth in other provisions of this Mortgage. Mortgagor is the record owner of the Premises. Any reproduction of this Mortgage or of any other security agreement or financing statement shall be sufficient as a financing statement. In addition, Mortgagor agrees to execute and deliver to Mortgagee, upon Mortgagee's request, any financing statements, as well as extensions, renewals and amendments thereof, and reproductions of this Mortgage in such form as Mortgagee may require to perfect a security interest with respect to said items. Mortgagor shall pay all costs of filing such financial statements and any extensions, renewals and amendments thereof, and shall pay all reasonable costs and expenses of any record searches for financing statements which Mortgagee may require. Without the prior written consent of Mortgagee, Mortgagor shall not create or suffer to be created pursuant to the Uniform Commercial Code any other security interest in said items, including replacements and additions thereto. Upon an Event of Default, Mortgagee shall have the remedies of a secured party under the Uniform Commercial Code and, at Mortgagee's option, may also invoke the remedies provided in this Mortgage as to such items. In exercising any of said remedies, Mortgagee may proceed against the items of real property and any items of personal property specified above as part of the Premises, separately or together and in any order whatsoever, without in any way affecting the availability of Mortgagee's remedies under the Uniform Commercial Code or of the remedies provided in this Mortgage.

38. **Miscellaneous.**

A. **Successors and Assigns.**

This Mortgage and all provisions hereof shall be binding upon and enforceable against Mortgagor and its assigns and other successors. This Mortgage and all provisions hereof shall inure to the benefit of Mortgagee, its successors and assigns and any holder or holders, from time to time, of the Note.

B. **Invalidity of Provisions; Governing Law.**

In the event that any provision of this Mortgage is deemed to be invalid by reason of the operation of law, or by reason of the interpretation placed thereon by any administrative agency or any court, Mortgagor and Mortgagee shall negotiate an equitable adjustment in the provisions of the same in order to effect, to the maximum extent permitted by law, the purpose of this Mortgage and the validity and enforceability of the remaining provisions, or portions or applications thereof, shall not be affected thereby and shall remain in full force and effect. This Mortgage is to be construed in accordance with and governed by the laws of the State of Indiana.
C. Municipal and Zoning Requirements.

Mortgagor shall not by act or omission permit any building or other improvement on premises not subject to the lien of this Mortgage to rely on the Premises or any part thereof or any interest therein to fulfill any municipal or governmental requirement, and Mortgagor hereby assigns to Mortgagor any and all rights to give consent for all or any portion of the Premises or any interest therein to be so used. Similarly, no building or other improvement on the Premises shall rely on any premises not subject to the lien of this Mortgage or any interest therein to fulfill any governmental or municipal requirement. Mortgagor shall not by act or omission alter (or permit the alteration of) the zoning classification of the Premises in effect as of the date hereof, nor shall Mortgagor impair the integrity of the Premises as a single zoning lot separate and apart from all other premises. Any act or omission by Mortgagor which would result in a violation of any of the provisions of this subparagraph shall be void.

D. Mortgagee in Possession.

Nothing herein contained shall be construed as constituting Mortgagor a mortgagee in possession in the absence of the actual taking of possession of the Premises by Mortgagee pursuant to this Mortgage.

E. Relationship of Mortgagee and Mortgagor.

Mortgagee shall in no event be construed for any purpose to be a partner, joint venturer, agent or associate of Mortgagor or of any lessee, operator, concessionaire or licensee of Mortgagor in the conduct of their respective businesses, and, without limiting the foregoing, Mortgagee shall not be deemed to be such partner, joint venturer, agent or associate on account of Mortgagee becoming a mortgagee in possession or exercising any rights pursuant to this Mortgage, any of the other Loan Documents, or otherwise.

F. Time of the Essence.

Time is of the essence of the payment by Mortgagor of all amounts due and owing to Mortgagee under the Note and the other Loan Documents and the performance and observance by Mortgagor of all terms, conditions, obligations and agreements contained in this Mortgage and the other Loan Documents.

G. No Merger.

It being the desire and intention of the parties hereto that the Mortgage and the lien hereof do not merge in fee simple title to the Premises, it is hereby understood and agreed that should Mortgagee acquire any additional or other interest in or to the Premises or the ownership thereof, then, unless a contrary intent is manifested by Mortgagor as evidenced by an express statement to that effect in an appropriate document duly recorded, this
Mortgage and the lien hereof shall not merge in the fee simple title and this Mortgage may be foreclosed as if owned by a stranger to the fee simple title.

H. **Maximum Indebtedness.**

Notwithstanding anything contained herein to the contrary, in no event shall the indebtedness secured by this Mortgage exceed an amount equal to Three Million Dollars ($3,000,000.00).

I. **Jurisdiction and Venue.**

MORTGAGOR HEREBY AGREES THAT ALL ACTIONS OR PROCEEDINGS INITIATED BY MORTGAGOR AND ARISING DIRECTLY OR INDIRECTLY OUT OF THIS MORTGAGE SHALL BE LITIGATED IN THE CIRCUIT COURT OF MARION COUNTY OR JOHNSON COUNTY, INDIANA, OR THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF INDIANA OR, IF MORTGAGEE INITIATES SUCH ACTION, ANY COURT IN WHICH MORTGAGEE SHALL INITIATE SUCH ACTION AND WHICH HAS JURISDICTION. MORTGAGOR HEREBY EXPRESSLY SUBMITS AND CONSENTS IN ADVANCE TO SUCH JURISDICTION IN ANY ACTION OR PROCEEDING COMMENCED BY MORTGAGEE IN ANY OF SUCH COURTS, AND HEREBY WAIVES PERSONAL SERVICE OF THE SUMMONS AND COMPLAINT, OR OTHER PROCESS OR PAPERS ISSUED THEREIN, AND AGREES THAT SERVICE OF SUCH SUMMONS AND COMPLAINT OR OTHER PROCESS OR PAPERS MAY BE MADE BY REGISTERED OR CERTIFIED MAIL ADDRESSED TO MORTGAGOR AT THE ADDRESS TO WHICH NOTICES ARE TO BE SENT PURSUANT TO THIS MORTGAGE. MORTGAGOR WAIVES ANY CLAIM THAT MARION COUNTY OR JOHNSON COUNTY, INDIANA OR THE SOUTHERN DISTRICT OF INDIANA IS AN INCONVENIENT FORUM OR AN IMPROPER FORUM BASED ON LACK OF VENUE. SHOULD MORTGAGOR, AFTER BEING SO SERVED, FAIL TO APPEAR OR ANSWER TO ANY SUMMONS, COMPLAINT, PROCESS OR PAPERS SO SERVED WITHIN THE NUMBER OF DAYS PRESCRIBED BY LAW AFTER THE MAILING THEREOF, MORTGAGOR SHALL BE DEEMED IN DEFAULT AND AN ORDER AND/OR JUDGMENT MAY BE ENTERED BY MORTGAGEE AGAINST MORTGAGOR AS DEMANDED OR PRAYED FOR IN SUCH SUMMONS, COMPLAINT, PROCESS OR PAPERS. THE EXCLUSIVE CHOICE OF FORUM FOR MORTGAGOR SET FORTH IN THIS PARAGRAPH SHALL NOT BE DEEMED TO PRECLUDE THE ENFORCEMENT, BY MORTGAGEE, OF ANY JUDGMENT OBTAINED IN ANY OTHER FORUM OR THE TAKING, BY MORTGAGEE, OF ANY ACTION TO ENFORCE THE SAME IN ANY OTHER APPROPRIATE JURISDICTION, AND MORTGAGOR HEREBY WAIVES THE RIGHT, IF ANY, TO COLLATERALLY ATTACK ANY SUCH JUDGMENT OR ACTION.
J.  Waiver of Right to Jury Trial.

MORTGAGEE AND MORTGAGOR ACKNOWLEDGE AND AGREE THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THE LOAN DOCUMENTS OR WITH RESPECT TO THE TRANSACTIONS CONTEMPLATED HEREIN AND THEREIN WOULD BE BASED UPON DIFFICULT AND COMPLEX ISSUES AND THEREFORE, THE PARTIES AGREE THAT ANY COURT PROCEEDING ARISING OUT OF ANY SUCH CONTROVERSY WILL BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY.

K.  Construction Loan.

The Note which is secured by this Mortgage evidences a debt created by one or more disbursements made by Mortgagor to Mortgagor to finance the cost of the construction of certain improvements upon the Real Estate in accordance with the provisions of the Loan Agreement, and this Mortgage is a construction mortgage as such term is defined in Section 9-313(1)(c) of the Uniform Commercial Code as adopted in the State of Indiana. The terms and conditions recited and set forth in the Loan Agreement are fully incorporated in this Mortgage and made a part hereof, and an Event of Default under any of the conditions or provisions of the Loan Agreement shall constitute a default hereunder. Upon the occurrence of any such Event of Default, the holder of the Note may at its option declare the indebtedness secured thereby immediately due and payable, or complete the construction of said improvements and enter into the necessary contracts therefor, in which case all money expended shall be so much additional indebtedness secured hereby and any money expended in excess of the amount of the original principal shall be immediately due and payable with interest at the Default Rate. Upon completion of the improvements described in the Loan Agreement free and clear of mechanic's lien claims, and upon compliance with all of the terms, conditions and covenants of the Loan Agreement, the terms of this paragraph shall become null and void and of no further force and effect. In the event of a conflict between the terms of the Loan Agreement and this Mortgage, the provisions of the Loan Agreement shall apply and take precedence over this Mortgage.

IN WITNESS WHEREOF, Mortgagor has executed this instrument the day and year first above written.

Bay Communities L.L.C.,
an Indiana limited liability company

By: [Signature]
Bruce Sklare, Member

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STATE OF INDIANA  
COUNTY OF MARION  

Before me, a Notary Public in and for said County and State, personally appeared Bruce Sklar, a Member of Bay Communities L.L.C., an Indiana limited liability company, who, after having been duly sworn, acknowledged the execution of the foregoing Real Estate Construction Mortgage, Security Agreement and Fixture Filing for and on behalf of such limited liability company.

Witness my hand and Notarial Seal this _2_ day of July, 1999.

Notary Public

My Commission Expires: 9-9-2001
My County of Residence: Marion

This Instrument prepared by: Jeffrey A. Abrams, Attorney at Law, 2300 One American Square, Indianapolis, IN 46282.
EXHIBIT "A"
LEGAL DESCRIPTION

LAND BOUNDARY DESCRIPTION

Amended June 29, 1999

A part of the Northeast Quarter of Section 26, Township 14 North, Range 3 East, Johnson County, Indiana described as follows: Commencing at the Harrison-type marker found at the northeast corner of said quarter section, said corner being North 01 degree 30 minutes 00 seconds West 2,659.50 feet, measured along the east line of said quarter section, from the Harrison-type marker found at the southeast corner of said quarter section, thence North 89 degrees 40 minutes 00 seconds West 2,167.49 feet along the north line of said which is recorded in Plat Cabinet B, Slides 363-364, in the Office of the Recorder of Johnson County, said corner being South 89 degrees 40 minutes 00 seconds East 500.49 feet, measured along the north line of said quarter section, from the PK north found at the northwest corner of said quarter section; thence South 01 degree 53 minutes 15 seconds West 50.02 feet along the east line of said quarter section, thence South 01 degree 53 minutes 15 seconds West 375.14 feet along the east line of said Carefree Subdivision to the iron pin found at the northeast corner of Lot 311 in said Carefree Subdivision; thence South 01 degree 53 minutes 15 seconds West 375.14 feet along the east line of said Carefree Subdivision to the iron pin with Woolpert LLP cap set and the POINT OF BEGINNING of this description; thence along the west line of said Meridian Meadows Subdivision, the plat of which is recorded in Plat Cabinet B, Slide 533, in said Recorder’s office; thence South 01 degree 49 minutes 33 seconds West 1,146.42 feet along the prolong west line and along the west line of said Meridian Meadows Subdivision line of Sable Ridge Subdivision, Section 7, the plat of which is recorded in Plat Cabinet C, Slide 407, in said Recorder’s office; thence North 89 degrees 40 minutes 55 seconds West Woolpert LLP cap set at the northwest corner of said Sable Ridge Subdivision, the iron pin with coinciding with the east line of Carefree Subdivision, the Twelfth Section, the plat of which is recorded in Plat Cabinet B, Slide 369, in said Recorder’s office; thence North 01 degree 53 minutes 15 seconds East 1,146.42 feet along the east line of said Carefree Subdivision, the Twelfth Section and along the east line of said Carefree Subdivision, the Eleventh Section to the POINT OF BEGINNING and containing 18.211 acres, more or less. The bearings in this description are based upon the plats of said Carefree Subdivisions.
EXHIBIT B

Permitted Exceptions

General real estate taxes for the year 1998 and each year thereafter not yet due and payable.

Exceptions 7 of 1 in Schedule B - Section II of title insurance commitment dated June 23, 1999 from Commercial Title Insurance Company, Case #239359CA

2nd Real Estate Mortgage to R. of Indiana, etc. dated July 4, 1999.