

(56) #7902

DECLARATION OF COVENANTS,
CONDITIONS
AND RESTRICTIONS FOR
HAMPTON PLACE

0102926



[Handwritten signature]

01 MAR 13 PM 1:11
HARDCOPY
[Handwritten initials]

CHICAGO TITLE

01-02926

C. Morgan
**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR HAMPTON PLACE**

0102926

01 MAR 13 PM 1:12

THIS DECLARATION, dated MARCH 13 2001, is by C.P. MORGAN COMMUNITIES, L.P., an Indiana limited partnership ("Developer").

Recitals:

A. Developer is the purchaser and owner of all of the lands contained in the area shown on Exhibit "A", attached hereto and made a part hereof (the "Real Estate"), which lands will be subdivided for development of Hampton Place, a single family housing development in Hancock County, Indiana (the "Development"), and will be more particularly described on the plats of the various sections thereof recorded and to be recorded in the Office of the Recorder of Hancock County, Indiana (the "Plats").

B. As provided herein, Developer has retained and reserved the right, privilege and option to submit to the provisions of this Declaration at a later time and from time to time as a part of the Development additional property and has retained and reserved the right to withdraw and remove any portion of the Real Estate from the control and provisions of this Declaration.

C. Developer is about to sell and convey the residential lots situated within the platted areas of the Development and before doing so desires to subject and impose upon all real estate within the platted areas of the Development mutual and beneficial restrictions, covenants, conditions and charges contained hereir contained and as set forth in the Plats (the "Declaration" or "Restrictions") under a general plan or scheme of improvement for the benefit and complement of the lots and lands in the Development and future owners thereof.

Terms:

NOW, THEREFORE, Developer hereby declares that all of the platted lots and lands located within the Development are held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, subject to the Restrictions, all of which are declared and agreed to be in furtherance of a plan for the improvement and sale of said lots and lands in the Development, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Development as a whole and of each of said lots situated therein. All of the Restrictions shall run with the land and shall be binding upon Developer and upon the parties having or acquiring any right, title or interest, legal or equitable, in and to the real property or any part or parts thereof subject to the Restrictions, and shall inure to the benefit of Developer's successors in title to any real estate in the Development.

®

CHICAGO TITLE

01-02926

Carl J. Jones
CHICAGO TITLE
DEFINITIONS
ARTICLE III PH 1:12

0102926

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

Section 1.1 "Assessment" shall mean the share of the Common Expenses imposed on each Lot or other special assessments, as determined and levied pursuant to the provisions of Article V hereof.

Section 1.2 "Association" shall mean Hampton Place Homeowners' Association, Inc., or an entity of similar name, its successors and assigns, which shall be created as an Indiana nonprofit corporation formed or to be formed under the Indiana Nonprofit Corporation Act of 1991, as amended.

Section 1.3 "Board" shall mean the Board of Directors of the Association.

Section 1.4 "Committee" shall mean the Development Control Committee which shall be appointed by the Board and have such duties as provided in Article VI, below.

Section 1.5 "Common Area(s)" shall mean those areas and all improvements located thereon which are identified on the Plats.

Section 1.6 "Common Expenses" shall mean the actual and estimated cost to the Association of the costs for maintenance, management, operation, repair, improvement and replacement of the Common Areas, and any other cost or expense incurred by the Association for the benefit of the Common Areas or for the benefit of the Association.

Section 1.7 "Development Period" shall mean the period of time during which Developer owns at least one (1) Lot.

Section 1.8 "Dwelling Unit" shall mean and refer to any structure (or portion thereof) designed or intended for use and occupancy as a residence by one (1) family on a Lot located within the Development, irrespective of whether such dwelling is detached or attached to another Dwelling Unit.

Section 1.9 "Easement Area" shall mean any portion of the Real Estate which is subject to an easement as more particularly described in Article III, below.

Section 1.10 "Lake" or "Lakes" shall mean and refer to the water detention pond(s) or lakes(s), whether or not such are also a Common Area, together with the shoreline area thereon, as shown on the Plats.

Section 1.11 "Limited Common Area" may appear upon the Plats designated by block letter and further identified as a "cul-de-sac" which is created for the exclusive use and enjoyment of those particular lots having public street access therefrom. Each such owner shall have an easement for ingress and egress in common with the other adjacent owners to the public street across such area. Such cul-de-sac may further have a landscaped island as may be shown on the

CHICAGO TITLE

01-02926

Carly Thomas

Plats therein adjacent to the public right-of-way and such Limited Common Area shall be owned and maintained by equal undivided interests as tenants in common of the lots abutting thereon and using the cul-de-sac as a means of ingress and egress to the public street. Such maintenance and repair shall be undertaken by a determination in writing of a majority of the lot owners having an undivided interest in the Limited Common Area, and upon the failure of any such lot owner to pay his equal contributive share for such maintenance or repair, the remaining lot owners or any one of them may advance the defaulting lot owner's contributive share upon thirty (30) days' written notice and such advancement shall constitute a lien upon the lot of the defaulting lot owner enforceable in the same manner and under the same terms as made and provided under the provisions of the Mechanics Lien Laws of the State of Indiana, Chapter 116 of the Acts of the 1909 Indiana General Assembly as amended to date, I.C. 32-8-3-1 et seq. Any such lien shall be subordinate to the lien of any first mortgage and any first mortgagee taking title to a lot by foreclosure or deed in lieu thereof shall take title free and clear of any such assessments for work performed prior to such mortgagee's taking title.

Section 1.12 "Lot" or "Lots" shall mean any parcel(s) of the Real Estate (excluding the Common Areas) which are designated and intended for use as a building site, or developed and improved for use as a single family residence identified by number on the Plats. No Lot shall be further subdivided for development purposes, except as may be reasonably necessary to adjust for minor side or rear yard encroachments or inconsistencies.

Section 1.13 "Member" shall mean any person or entity holding membership in the Association.

Section 1.14 "Owner" shall mean the record owner, whether by one or more persons, of the fee simple title to any Lot, but excluding those persons having such interest merely as security for the performance of an obligation.

Section 1.15 "Supplemental Declaration" shall mean an amendment or supplement to this Declaration or a Plat executed by or consented to by Developer, or by the Association pursuant to Article II, and recorded in the public records of the county in which the Declaration was originally recorded, which subjects additional real estate to this Declaration and/or imposes, expressly or by reference, additional restrictions and obligations on the Real Estate or the land described therein. A Supplemental Declaration may also remove any portion of the Real Estate then owned by Developer from the control and provisions of this Declaration.

ARTICLE II DEVELOPMENT OF THE REAL ESTATE

Section 2.1 Development of the Real Estate. All Lots shall be and hereby are restricted exclusively to single-family residential use and shall be subject to the standards and restrictions set forth in this Declaration. Developer shall have the right, but not the obligation, during the Development Period, to submit additional real estate to or exclude any portion of the Real Estate from the provisions of this Declaration, and to make and maintain improvements, repairs and changes to any Common Area and all Lots owned by Developer, including without limitation: (a)

CHICAGO TITLE
01-02926

Carlyle
installation and maintenance of improvements in and to the Common Areas; (b) changes in the location of the boundaries of any Lots owned by Developer or of the Common Areas; (c) installation and maintenance of any water, sewer, gas, electric, telephone and facilities; (d) installation of security or refuse systems; and (e) additions or changes to the boundaries of any Common Areas or Easement Areas.

Section 2.2 Public Streets. The streets and public rights-of-way shown on the Plats are, upon recording of the Plats, dedicated to the public use, to be owned and maintained by the governmental body having jurisdiction, subject to construction standards and acceptance by such governmental body. All Lots shall be accessed from the interior streets of the Development.

Section 2.3 Development of Additional Property. Developer hereby reserves the right and option, to be exercised in its sole discretion and without further approval by any party, to submit at any time and from time to time during the Development Period, additional real estate to the provisions of this Declaration. This option may be exercised by Developer in accordance with the following rights, conditions, and limitations:

(a) Additional real estate may be added to the Development at different times, and there are no limitations fixing the boundaries of the portions or regulating the order, sequence, or location in which any of such portions may be added to the Development. No single exercise of Developer's option to submit additional real estate to the Declaration shall preclude any further exercises of this option thereafter and from time to time as to other real estate.

(b) The option to add additional real estate may be exercised by Developer by the execution of a Supplemental Declaration or Plat describing such additional real estate which shall be filed in the public records of the county in which the Declaration was originally recorded, together with a legal description of the additional real estate. The provisions of this Declaration shall then be construed as embracing the real property described in Exhibit "A" and such additional real estate so submitted to the terms hereof, together with all improvements located thereon.

Section 2.4 Annexation of Additional Real Estate by Members. After the Development Period, the Association may annex additional real property to the provisions of this Declaration and the jurisdiction of the Association. Such annexation shall require the affirmative vote of at least two-thirds (2/3) of the Members. Annexation by the Association shall be accomplished by the appropriate filing of record of a Supplemental Declaration describing the property being annexed. Any such Supplemental Declaration shall be signed by the President and the Secretary of the Association, and by the owner of the property being annexed and any such annexation shall be effective upon filing unless otherwise provided therein. The relevant provision of the By-Laws dealing with regular or special meetings, as the case maybe, shall apply to determine the time required for and the proper form of notice of any meeting called for the purpose of considering annexation of property pursuant to this Section 2.4 and to ascertain the presence of a quorum at such meeting.

4
CHICAGO TITLE
01-02926

Carlini/Decca
Section 2.5 **Withdrawal of Property.** Developer hereby reserves the right and option during the Development Period, to be exercised in its sole discretion and without further approval by any party, to withdraw and remove any portion of the Real Estate then owned by Developer from the control and provisions of this Declaration. Such removal by Developer shall be carried out generally by the execution and filing of a Supplemental Declaration or other document which shall be filed in the public records of county in which the Declaration was originally recorded, together with a legal description of the Real Estate being withdrawn.

**ARTICLE III
PROPERTY RIGHTS AND EASEMENTS**

Section 3.1 **General.** Each Lot shall for all purposes constitute real property which shall be owned in fee simple and which, subject to the provisions of this Declaration, may be conveyed, transferred, and encumbered the same as any other real property. The Owners of any Lot subject to this Declaration, by acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from Developer or a subsequent Owner of such Lot, shall accept such deed and execute such contract subject to each and every restriction and agreement herein contained. By acceptance of such deed or execution of such contract, the new Owner acknowledges the rights and powers of Developer with respect to this Declaration and also for themselves, their heirs, personal representatives, successors and assigns. Each Owner shall be entitled to the exclusive ownership and possession of his Lot subject to the provisions of this Declaration, including without limitation, the provisions of this Article III. The ownership of each Lot shall include, and there shall pass with each Lot as an appurtenance thereto, whether or not separately described, a non-exclusive right and easement of enjoyment in and to the Common Areas as established hereunder and membership in the Association. Each Owner shall automatically become a member of the Association and shall remain a Member thereof until such time as his ownership ceases for any reason, at which time his membership in the Association shall automatically pass to his successor-in-title any certificates or other evidences of his membership in the Association. Lots shall not be subdivided by Owners and the boundaries between Lots and between the Development and other neighborhoods shall not be relocated, unless the relocation thereof is made with the approval of the Board and, during the Development Period, of Developer.

Section 3.2 **Owner's Easement of Enjoyment.** Every Owner, his family, tenants, and guests shall have a non-exclusive right and easement of use and enjoyment in and to the Common Areas, such easement to be appurtenant to and to pass with title to each Lot, subject to the provisions of this Declaration and the rules, regulations, fees, and charges from time to time established by the Board in accordance with the By-Laws and subject to the following provisions:

(a) The Right of the Association to mortgage all or any portion of the Common Areas for the purpose of securing a loan of money to be used to manage, repair, maintain, improve, operate, or expand the Common Areas.

CHICAGO TITLE

01-02926

Confidential

(b) The easements reserved elsewhere in this Declaration or in any Plat of all or any part of the Real Estate, and the right of the Association to grant and accept easements as provided in this Article 4. The location of any improvements, trees or landscaping within an easement area is done at the Owner's risk and is subject to possible removal by the Association or the grantee of such easement.

(c) The right of the Association to dedicate or transfer fee simple title to all or any portion of the Common Areas to any appropriate public agency or authority, public service district, public or private utility, or other person, provided that any such transfer of fee simple title must be approved by a majority vote of the Members as provided in the By-Laws, or by Developer during the Development Period.

(d) The rights of the Association and Developer reserved elsewhere in this Declaration or as provided in any Plat of all or any part of the Real Estate.

(e) The rights of the holder of any mortgage which is prior in right or superior to the rights, interests, options, licenses, easements, and privileges herein reserved or established.

Section 3.3 Easements for Developer. During the Development Period, Developer shall have an easement for access to the Real Estate, including any Lot and all Common Areas, for the purpose of constructing structures and other improvements in and to the Lots and Common Areas, and for installing, maintaining, repairing, and replacing such other improvements to the Real Estate (including any portions of the Common Areas) as are contemplated by this Declaration or as Developer desires, in its sole discretion, including, without limitation, any improvements or changes permitted and described by Article 11 hereof, and for the purpose of doing all things reasonably necessary and proper in connection therewith, provided in no event shall Developer have the obligation to do any of the foregoing. In addition to the other rights and easements set forth herein and regardless of whether Developer at that time retains ownership of a Lot, Developer shall have an alienable, transferable, and perpetual right and easement to have access, ingress and egress to the Common Areas and improvement thereon for such purposes as Developer deems appropriate, provided that Developer shall not exercise such right so as to unreasonably interfere with the rights of owners in the Development.

Section 3.4 Drainage, Utility and Sewer Easements ("DU&SE").

(a) There is hereby reserved for the benefit of Developer, the Association, and their respective successors and assigns, the perpetual right and easement, as well as the power, to hereafter grant and accept easements to and from any public authority or agency, public service district, public or private utility or other person, upon, over, under, and across (i) all of the Common Areas; and (ii) those portions of all Lots designated on the Plat as "DU&SE" and as otherwise are reasonably necessary for the purpose of installing, replacing, repairing, maintaining, and using master television antenna and/or cable systems, security and similar systems, and all utilities, including, but not limited to, storm sewers, drainage systems, and retention ponds and facilities for the development of any portion thereof, and electrical, gas, telephone, water, and sewer lines, provided that such easements shall not unreasonably affect the use, development potential, marketability, or value of any such Lot. To the extent possible, all utility lines and facilities serving the Development and

01-029261

01-02926
located therein shall be located underground. By order of any such easements and facilities, it shall be expressly permissible for the providing utility company or other supplier of service provider, with respect to the portions of the Development so encumbered, (i) to erect and maintain pipes, lines, manholes, pumps, and other necessary equipment and facilities, (ii) to cut and remove any fences, trees, bushes, or shrubbery, (iii) to grade, excavate, or fill, or (iv) to take any other similar action reasonably necessary to provide economical and safe installation, maintenance, repair, replacement, and use of such utilities and systems.

(b) Developer hereby grants to such governmental authority or agency as shall from time to time have jurisdiction over the Development with respect to law enforcement and fire protection, the perpetual, non-exclusive right and easement upon, over, and across all of the Common Areas for purposes of performing such duties and activities related to law enforcement and fire protection in the Development as shall be required or appropriate from time to time by such governmental authorities under applicable law.

(c) There shall be created sanitary sewer easements in those areas designated on the Plat which easements shall run in favor of Developer and any governmental or private entity needing such access for the purpose of installation and maintenance of the pipes, lines, manholes, pumps and other equipment necessary for the sanitary sewer system.

Section 3.5 Drainage Easements. There is hereby reserved an easement for the benefit of Developer, the Association, and their respective successors and assigns for access to and installation, repair, or removal of a drainage system, either by surface drainage or appropriate underground installations, for the Real Estate; provided, however, that the Owner of any Lot subject to a drainage easement shall be required to maintain the portion of said drainage easement on his Lot (as shown on any Plat) in the condition originally provided by Developer and free from obstructions so that the surface water drainage will be unimpeded. No changes shall be made to said area by the Owner without the written consent of the applicable governmental agency; provided, however, that Developer, in its sole discretion, may make any changes. No permanent structures shall be erected or maintained upon said drainage easements.

Section 3.6 Landscape Easements ("L.E"). Landscape Easements, as designated on a Plat of all or any part of the Real Estate, are hereby created and reserved for the use of Developer and the Association for access to and installation, maintenance, repair, and replacement of signs, walls, earth mounds, trees, foliage, landscaping, and other improvements. Except as installed by Developer or the Association, no improvements or permanent structures, including without limitation, fences, patios, decks, driveways, and walkways, shall be erected or maintained in or upon said Landscape Easements without the written consent of the Board and provided such are in accordance with all applicable zoning laws. Notwithstanding the reservation of this easement, the Owners of Lots subject to an L.E. which does not extend along adjoining streets or roads shall have the exclusive right to use such area, subject to any other easement affecting such Lot.

01-02926

Carroll

HANDCOP COPY

Section 3.7 Lake Maintenance Access Easement and Emergency Access Easement:

There may be strips of grounds as shown on the Plat marked Lake Maintenance Access Easement (L.M.A.E.) and Emergency Access Easement (E.A.E.), which are created and reserved: (a) for the use of the Developer during the Development Period for access to the Common Area or the Lakes and (b) for the nonexclusive use of the Association or any applicable governmental authority for access to the Common Areas or the Lakes. The Owner of any Lot which is subject to an LMAI or EAE shall be required to keep the portion of his Lot which is subject to such easement free from obstructions so that access will be unimpeded.

Section 3.8 Medians and Entry Features: There may be landscaped medians and/or islands located within the Development and within the public right-of-way of the streets which are not otherwise labeled as Common Areas or as L.A.E. These areas are created and reserved for installation and maintenance of landscaping and entry features such as but not limited to permanent walls, signs, fences and landscaping material. These landscaped areas and features shall be maintained by the Association as if such were a Common Area.

Section 3.9 Sales and Construction Offices. Notwithstanding any provisions or restrictions herein to the contrary, during the Development Period, and for a reasonable time thereafter, there is hereby reserved and created for the use of Developer, and its successors and assigns, and persons constructing improvements within the Development, an easement for access to the Real Estate for the maintenance of signs, sales offices, construction offices, business offices, and model houses, together with such other facilities as in the sole opinion of Developer may be reasonably required, convenient, or incidental to the completion, improvement and/or sale of Lots and the Common Areas.

Section 3.10 Maintenance Easement. There is hereby reserved and created for the use of Developer, the Association and their respective agents, employees, successors and assigns, a maintenance easement to enter upon any Lot for the purpose of mowing, removing, clearing, cutting, or pruning underbrush, weeds, stumps, or other unsightly growth and removing trash, so as to maintain a community-wide standard of health, fire safety, and appearance within the Development, provided that such easements shall not impose any duty or obligation upon Developer or the Association to perform any such actions.

Section 3.11 Patio Homes. In the event that Developer permits a builder to construct within the Development a Dwelling Unit that is to be substantially contiguous with a the side lot line of an adjacent Lot (such Dwelling Unit herein referred to as a "Patio Home"), then the provisions of this Section 3.11 shall apply:

- (a) To the extent necessary, the owner of the Lot upon which a Patio Home is constructed is hereby granted a six (6) foot access easement upon the Lot which is adjacent and substantially contiguous to the side wall of the Patio Home. The easement under this subsection is for the construction, maintenance and the encroachment by walls, eaves, roof overhang, gutters and similar structures, and as necessary or appropriate, for underground utility lines and utility services, in favor of the Owners of each of the affected Lots and to all public, private and municipal utility companies. Notwithstanding the foregoing, there shall be maintained a minimum distance between the side walls of Dwelling Units of ten (10) feet, and between rear walls of Dwelling Units of twenty (20) feet. The surface of

01-02926

the easement area shall be restored by the person disturbing the easement area to the condition as existed prior to any disturbance.

01 MAR 13 PM 1:12

(b) Each Patio Home, other than one specifically excepted by Developer, shall have one (1) side wall constructed without windows (the "blank wall") below a point which is seven (7) feet above the finished floor elevation. The Owner of a Patio Home shall have an exclusive easement of use of the area extended from the exterior side wall of such Owner's Patio Home to the blank wall of the adjacent Dwelling Unit which faces said area, and running the length of such blank wall side of such adjacent residence (the "patio area"); provided that such exclusive easement shall not apply in the case where there are two (2) adjacent lots where two (2) patio areas face each other, and it further shall not apply in the case when the adjacent Dwelling Unit is not constructed substantially contiguous to a side lot line. The Owner of the Patio Home benefited by the patio area shall maintain such patio area, excluding the blank wall of the adjacent residence. In the event such Owner fails to maintain said patio area, the Owner of the adjacent Dwelling Unit shall have the right and an easement to enter such area as necessary to maintain any portion of his Lot within such easement area. No fences, except fences installed by Developer, shall be erected in said patio area without the written consent of both Owners, and otherwise with the consent of the Committee. In the event two (2) Patio Homes are constructed side by side with blank walls facing a common property line, the Owners of each Patio Home shall be responsible for maintaining the area between the blank wall of their patio homes and the common property line.

ARTICLE IV ORGANIZATION AND DUTIES OF ASSOCIATION

Section 4.1 Organization of Association. The Association shall be organized as a nonprofit corporation under the laws of the State of Indiana, to be operated in accordance with the Articles of Incorporation which have been filed or will be filed by Developer, and the Code of By-Laws of the Association. The membership of the Association shall consist of one class of voting members, with each Member having equal voting rights. In the event that any one Lot shall be owned by more than one person, partnership, trust, corporation, or other entity, they shall be treated collectively as one Member for voting purposes, so that as to any matter being considered by the Association, only one vote appertains to each Lot. Notwithstanding anything herein to the contrary, during the Development Period, Developer shall appoint the Board and elect all officers of the Association, and all actions of the Association shall otherwise require the prior written approval of the Developer.

Section 4.2 General Duties of the Association. The Association is hereby authorized to act and shall act on behalf of, and in the name, place, and stead of, the individual Owners in all matters pertaining to the maintenance, repair, and replacement, of the Common Areas, the determination of Common Expenses, and the collection of annual and special Assessments. The Association shall also have the right, but not the obligation to act on behalf of any Owner or Owners in seeking enforcement of the terms, covenants, conditions and restrictions contained in the Plans. Neither the Association nor its officers or authorized agents shall have any liability whatsoever to any Owner for any action taken under color of authority of this Declaration, or for any failure to take any action called for by this Declaration, unless such act or failure to act is in

01-02926

the nature of a willful or reckless disregard of the rights of the Owners or in the nature of willful, intentional, fraudulent or negligent conduct.

01 MAR 13 PM 1:12

(a) *Maintenance by Association.* The Association shall maintain and keep in good repair the Common Areas. The maintenance shall include, but need not be limited to, maintenance, repair and replacement of all landscaping and other flora, structures, play equipment, and improvements, including all private streets situated upon the Common Areas, landscaping easements along the primary roads through the Development, medians and rights of ways of public streets within the Real Estate, entry features for the Development, and such portions of any other real property included within the Common Areas as may be provided in this Declaration, or by a contract or agreement for maintenance with any other person or entity, by the Association.

(b) *Maintenance by Owners.* Unless specifically identified herein, each Owner shall maintain and repair the interior and exterior of his or her Lot and Dwelling Unit, and all structures, parking areas, lawns, landscaping, grounds and other improvements comprising the Lot and Dwelling Unit in a manner consistent with all applicable covenants.

(c) *Association's Remedies if Owner Fails to Maintain Lot.* In the event that Developer or the Association determines that: (i) any Owner has failed or refused to discharge properly his obligations with regard to the maintenance, cleaning, repair, or replacement of items for which is his responsibility hereunder, or (ii) that the need for maintenance, cleaning, repair, or replacement which is the responsibility of the Association hereunder is caused through the willful or negligent act of an Owner, his family, tenants, guests, or invitees, and is not covered or paid for by insurance in whole or in part, then in either event, Developer or the Association, except in the event of an emergency situation, may give such Owner written notice of Developer's or the Association's intent to provide such necessary maintenance, cleaning, repair, or replacement, at the sole cost and expense of such Owner as the case may be, shall have ten (10) days within which to complete such maintenance, cleaning, repair or replacement in a good and workmanlike manner, or in the event that such maintenance, cleaning, repair or replacement is not capable of completion within said ten (10) day period, to commence said maintenance, cleaning, repair or replacement and diligently proceed to complete the same in a good and workmanlike manner. In the event of emergency situations or the failure of any Owner to comply with the provision hereof after such notice, Developer or the Association may provide (but shall not have the obligation to so provide) any such maintenance, cleaning, repair or replacement at the sole cost and expense of such Owner and said cost (together with the cost of attorneys' fees, if any, in the enforcement of the Owner's obligations and collection of the charge to the Owner) shall become a lien against the individual Owner's Lot (with respect to any matter relating to an individual Owner's responsibility) and such cost shall become a part of the costs of the Association (until such time as reimbursement is received from the individual Lot Owner). In the event that the Developer undertakes such maintenance, cleaning, repair or replacement, the Association shall promptly reimburse the Developer for the Developer's costs and expenses, including reasonable attorneys' fees and filing fees.

01-02926

Carly...

Section 4.3 Insurance. The Association shall maintain in force adequate public liability insurance protecting the Association against liability for property damage and personal injury. The Association may, but need not, maintain in force adequate fire and extended coverage insurance covering the officers and directors of the Association. If appropriate, the Association shall also maintain in force adequate 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 insurable value of such improvements and property. The Association shall notify all mortgagees 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 any right to be subrogated to any claim against the Association, its officers, Board members, the Developer, any property manager, their respective employees and agents, the 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 parties against other insured parties.

The Association may maintain a fidelity bond indemnifying the Association, the Board and the 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 one (1) years' assessment on all Lots in the Development, 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 mortgagees who have requested such notice, before the insurance policies or fidelity bonds can be canceled or substantially modified for any reason.

Section 4.4 Owners' Insurance Requirements. By virtue of taking title to a Lot subject to the terms of this Declaration, each Owner covenants and agrees with all other Owners and with the Association that each Owner shall carry blanket all-risk casualty insurance on the Lot(s) and structures constructed thereon. The Board may require all Owners to furnish copies or certificates thereof to the Association. Each Owner further covenants and agrees that in the event of a partial loss or damage resulting in less than total destruction of structures comprising his Lot, the Owner shall proceed promptly to repair or to reconstruct the damaged structure in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article IX of this Declaration and all applicable zoning, building and other governmental regulations. The Owner shall pay any costs of repair or reconstruction, which are not covered by insurance proceeds. In the event that the structure is totally destroyed, the Owner may decide not to rebuild or to reconstruct, in which case the Owner shall clear the Lot of all debris and return it to substantially the natural state in which it existed prior to the beginning of construction and thereafter the Owner shall continue to maintain the Lot in a neat, safe, and attractive condition.

01-02926

Confidential

Section 4.5 Condemnation or 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, in any case whatsoever, the Association shall protect 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 Areas 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 (as hereinafter defined), 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. The Association shall notify all Mortgagees of which it has notice of any condemnation, damage, or destruction of any Common Areas.

Section 4.6 Transfer of Control of Association. Developer shall transfer control of the Association to the Members, and its right to elect the Board and officers of the Association shall terminate, as soon as is practical upon the transfer of a number of Lots equal to eighty percent (80%) of the Lots in the Development; provided, however, that Developer may transfer control of the Association at an earlier date in its sole discretion. Notwithstanding such transfer of control, during the Development Period, all actions of the Association shall continue to require the prior written approval of the Developer.

Section 4.7 Interim Advisory Committee. Developer may, in its sole discretion, establish and maintain until such time as Developer shall transfer control of the Association pursuant to Section 4.6 hereof, an Interim Advisory Committee (the "Advisory Committee"). If established: (a) The Advisory Committee shall serve as a liaison between the Owners (other than the Developer) and the Association, and advise the Association from time to time during such period; (b) The Advisory Committee shall consist of three (3) members, each of whom must be an Owner (other than Developer, or an officer, director or employee of Developer); (c) The members of the Advisory Committee shall serve without compensation. The Advisory Committee shall be elected for a term of one (1) year by the Owners (other than Developer) at a meeting thereof called for such purpose; and (d) The Owners (other than Developer) may remove any member of the Advisory Committee with or without cause, and elect a successor at a meeting thereof called for such purpose.

Section 4.8 Mortgagees' Rights. Any mortgagees of any Owners shall have the right, at their option, jointly or severally, to pay taxes or other charges which are in default or which may or have become a charge against the Common Areas and to pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy for the Common Areas, and mortgagees making such payment shall be owed immediate reimbursement therefor from the Association. In addition, neither the Owners nor the Association shall materially impair the right of any mortgagee holding, insuring, or guaranteeing any mortgage on all or any portion of the Real Estate.

01-02926

Carroll
**ARTICLE V
ASSESSMENTS**

0102926

01 MAR 13 PM 11:12

Section 5.1 Purpose of Assessments. The Assessments levied by the Association shall be used exclusively for the purpose of preserving the values of the Lots within the Development and promoting the health, safety, and welfare of the Owners, users, and occupants of the Development and, in particular, for the Association's obligations relating to the improvement, repairing, operating, and maintenance of the Common Areas, including, but not limited to, the payment of taxes and insurance thereon, enforcement of the Restrictions, and for the cost of labor, equipment, material, and management furnished with respect to the Common Areas; provided that the Association shall not be responsible for the replacement, repair or maintenance of any Common Areas which are or hereafter may be dedicated to the public. Each Owner (except the Developer) hereby covenants and agrees to pay to the Association:

(a) A Pro-rata Share (as hereinafter defined) of the annual Assessment fixed, established, and determined from time to time, as hereinafter provided.

(b) A Pro-rata Share (as hereinafter defined) of any special Assessments fixed, established, and determined from time to time, as hereinafter provided.

The Developer hereby covenants and agrees to pay to the Association during the Development Period an amount equal to the difference, if any, between the expenditures of the Association made pursuant to this Section 5.1 and the aggregate amount of the annual Assessments collected by the Association.

Section 5.2 Liability for Assessment. Each Assessment, together with any interest thereon and any costs of collection thereof, including attorneys' fees, shall be a charge on each Lot other than Lots owned by the Developer and shall constitute a lien from and after the due date thereof in favor of the Association upon each such Lot. Each such Assessment, together with any interest thereon and any costs of collection thereof, including attorneys' fees, shall also be the personal obligation of the Owner of each such Lot at the time when the Assessment is due. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such Assessments as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any Assessments thereafter becoming due or from the lien thereof, nor shall any sale or transfer relieve any Owner of the personal liability hereby imposed. The personal obligation for delinquent Assessments shall not pass to any successor in title unless such obligation is expressly assumed by such successor.

Section 5.3 Pro-rata Share. The Pro-rata Share of each Owner for purposes of this Article V shall be the percentage obtained by dividing one by the total number of Lots shown on the Plans of the Development ("Pro-rata Share").

Section 5.4 Basis of Annual Assessments. The Board shall establish an annual budget prior to the beginning of each fiscal year, setting forth estimates of all Common Expenses for the coming fiscal year, together with a reasonable allowance for contingencies and reserves of the Association. A copy of this budget shall be mailed or delivered to each Owner prior to the

01-02926

Beginning of each fiscal year of the Association. Such budget shall serve as the basis for establishing the annual assessments.

01 MAR 13 PM 1:13

Section 5.5 Basis of Special Assessments. Should the Board at any time during the fiscal year determine that the Assessment levied with respect to such year are insufficient to pay the Common Expenses for such year, the Board may, at any time, and from time to time levy such special Assessments as it may deem necessary for meeting the Common Expenses. In addition, the Board shall have the right to levy at any time, and from time to time, one or more special Assessments for the purpose of defraying, in whole, or in part, any unanticipated Common Expense not provided for by the annual Assessments.

Section 5.6 Fiscal Year; Date of Commencement of Assessments; Due Dates. The fiscal year of the Association shall be established by the Association and may be changed from time to time by action of the Association. The liability of an Owner, other than Developer, for Assessments under this Article V shall commence as of the date such Owner acquires his interest in a Lot. The first annual Assessment within the Development shall be made for the balance of the Association's fiscal year in which such Assessment is made and shall become due and payable commencing on any date fixed by the Association. The annual Assessment for each year after the first assessment year shall be due and payable on the first day of each fiscal year of the Association. Annual Assessments shall be due and payable in full as of the above date, except that the Association may from time to time by resolution authorize the payment of such Assessments in installments.

Section 5.7 Duties of the Association Regarding Assessments.

(a) The Board shall keep proper books and records of the levy and collection of each annual and special Assessment including a roster setting forth the identification of each and every Lot and each Assessment applicable thereto, which books and records shall be kept by the Association and shall be available for the inspection and copying by each Owner or duly authorized representative of any Owner at all reasonable times during regular business hours of the Association. The Board shall cause written notice of all Assessments levied by the Association upon the Lots and upon the Owners to be mailed or delivered to the Owners or their designated representatives as promptly as practicable and in any event not less than thirty (30) days prior to the due date of such Assessment or any installment thereof. In the event such notice is mailed or delivered less than thirty (30) days prior to the due date of the Assessment to which such notice pertains, payment of such Assessment shall not be deemed past due for any purpose if paid by the Owner within thirty (30) days after the date of actual mailing or delivery of such notice.

(b) The Association shall promptly furnish to any Owner or any mortgagee of any Owner upon request a certificate in writing signed by an officer of the Association, setting forth the extent to which Assessments have been levied and paid with respect to such requesting Owner's or mortgagee's Lot. As to any person relying thereon, such certificate shall be conclusive evidence of payment of any Assessment therein stated to have been paid. The Association may assess an administrative fee for such certificate not to exceed the sum of \$25.00.

01-02926

Beginning of each fiscal year of the Association. Such budget shall serve as the basis for establishing the annual assessments.

0102926

01 MAR 13 PM 1:13

Section 5.5 Basis of Special Assessments. Should the Board at any time during the fiscal year determine that the Assessment levied with respect to such year are insufficient to pay the Common Expenses for such year, the Board may, at any time, and from time to time levy such special Assessments as it may deem necessary for meeting the Common Expenses. In addition, the Board shall have the right to levy at any time, and from time to time, one or more special Assessments for the purpose of defraying, in whole, or in part, any unanticipated Common Expense not provided for by the annual Assessments.

Section 5.6 Fiscal Year; Date of Commencement of Assessments; Due Dates. The fiscal year of the Association shall be established by the Association and may be changed from time to time by action of the Association. The liability of an Owner, other than Developer, for Assessments under this Article V shall commence as of the date such Owner acquires his interest in a Lot. The first annual Assessment within the Development shall be made for the balance of the Association's fiscal year in which such Assessment is made and shall become due and payable commencing on any date fixed by the Association. The annual Assessment for each year after the first assessment year shall be due and payable on the first day of each fiscal year of the Association. Annual Assessments shall be due and payable in full as of the above date, except that the Association may from time to time by resolution authorize the payment of such Assessments in installments.

Section 5.7 Duties of the Association Regarding Assessments.

(a) The Board shall keep proper books and records of the levy and collection of each annual and special Assessment, including a roster setting forth the identification of each and every Lot and each Assessment applicable thereto, which books and records shall be kept by the Association and shall be available for the inspection and copying by each Owner or duly authorized representative of any Owner) at all reasonable times during regular business hours of the Association. The Board shall cause written notice of all Assessments levied by the Association upon the Lots and upon the Owners to be mailed or delivered to the Owners or their designated representatives as promptly as practicable and in any event not less than thirty (30) days prior to the due date of such Assessment or any installment thereof. In the event such notice is mailed or delivered less than thirty (30) days prior to the due date of the Assessment to which such notice pertains, payment of such Assessment shall not be deemed past due for any purpose if paid by the Owner within thirty (30) days after the date of actual mailing or delivery of such notice.

(b) The Association shall promptly furnish to any Owner or any mortgagee of any Owner upon request a certificate in writing signed by an officer of the Association, setting forth the extent to which Assessments have been levied and paid with respect to such requesting Owner's or mortgagee's Lot. As to any person relying thereon, such certificate shall be conclusive evidence of payment of any Assessment therein stated to have been paid. The Association may assess an administrative fee for such certificate, not to exceed the sum of \$25.00.

01-02926

Carlyle...

(c) The Association shall notify any mortgagee from which it has received a request for notice of any delinquency in the performance of any obligation under the By-laws or this Declaration which is not cured within sixty (60) days.

Section 5.8 Non-payment of Assessments; Remedies of Association.

(a) If any Assessment is not paid on the date when due, then such Assessment shall be deemed delinquent and shall, together with any interest thereon and any cost of collection thereof, including attorneys' fees, become a continuing lien on the Lot against which such Assessment was made, and such lien shall be binding upon and enforceable as a personal liability of the Owner of such Lot as of the date of levy of such Assessment, and shall be enforceable against the interest of such Owner and all future successors and assignees of such Owner in such Lot, and shall be collected in the same manner as the Assessments described in subparagraph (b) hereof; provided, however, that such lien shall be subordinate to any mortgage on such Lot recorded prior to the date on which such Assessment becomes due.

(b) If any Assessment upon any Lot is not paid within thirty (30) days after the due date, such Assessment and all costs of collection thereof, including attorneys' fees, shall bear interest at the rate of twelve percent (12%) per annum until paid in full. In addition to such interest, the Association shall assess a late fee, as from time to time determined by the Board of Directors of the Association. The Association may bring an action in any court having jurisdiction against the delinquent Owner to enforce payment of the same and/or to foreclose the lien against said Owner's Lot, and there shall be added to the amount of such Assessment all costs of such action, including the Association's attorneys fees, and in the event a judgment is obtained, such judgment shall include such interest, late fees, costs, and attorneys' fees.

Section 5.9 Adjustments. In the event that the amounts actually expended by the Association for Common Expenses in any fiscal year exceed the amounts budgeted and assessed for Common Expenses for that fiscal year, the amount of such deficit shall be carried over and become an additional basis for Assessments for the following fiscal year. Such deficit may be recouped either by inclusion in the budget for annual Assessments or by the making of one or more special Assessments for such purpose, at the option of the Association. In the event that the amounts budgeted and assessed for Common Expenses in any fiscal year exceed the amount actually expended by the Association for Common Expense for that fiscal year, a Pro-rata Share of such excess shall be a credit against the Assessment(s) due from each Owner for the next fiscal year(s).

CHICAGO TITLE
ARTICLE VI
ARCHITECTURAL STANDARDS AND REQUIREMENTS

Section 6.1 Purpose. In order to preserve the natural setting and beauty of the Development, to establish and preserve a harmonious and aesthetically pleasing design for the Development, and to protect and promote the value of the Real Estate, the Lots and all

01-02926

improvements located therein or thereon shall be subject to the restrictions set forth in this Article VI and in Article VII. Notwithstanding the foregoing, this Article or Article VII shall apply to the activities of the Developer, nor to construction or improvements or modifications to the Common Areas by or on behalf of the Association. The Board shall have the authority and standing, on behalf of the Association, to enforce in courts of competent jurisdiction decisions of the Committee.

Section 6.2 Development Control Committee. The Board shall establish a Development Control Committee to consist of three (3) persons, all of whom shall be appointed by and shall serve at the discretion of the Board. Members of the Committee may include persons who are not Members of the Association. Members of the Committee may or may not be members of the Board. During the Development Period, the Developer shall have all of the powers and authority of the Committee.

The regular term of office for each member of the Committee shall be one year, coinciding with the fiscal year of the Association. Any member appointed by the Board may be removed with or without cause by the Board at any time by written notice to such appointee, and a successor or successors appointed to fill such vacancy shall serve the remainder of the term of the former member. The Committee shall elect a Chairman and Vice Chairman and he, or in his absence, the Vice-Chairman, shall be presiding officer at its meetings. The Committee shall meet at least once in each calendar month, as well as upon call of the Chairman, and all meetings shall be held at such places as may be designated by the Chairman. A majority of the members shall constitute a quorum for the transaction of business, and the affirmative vote of a majority of those present in person or by proxy at a meeting of the Committee shall constitute the action of the Committee on any matter before it. The Committee is authorized to retain the services of consulting architects, landscape architects, urban designers, engineers, inspectors, and/or attorneys in order to advise and assist the Committee in performing its functions set forth herein. Such costs associated with the use of consultants shall be considered a Common Expense, unless the Committee determines that such costs are the responsibility of the applying Owner.

The Committee shall have exclusive jurisdiction over modifications, additions, or alterations made on or to existing lots or structures containing Lots and the open space, if any, appurtenant thereto. The Committee shall promulgate a Common Interest and Community Information Disclosure Document (the "CID"), which may contain additional architectural standards and guidelines for the Development. In addition to such standards, the following shall apply: plans and specifications showing the nature, kind, shape, color, sizes, materials, and location of such modifications, additions, or alterations shall be submitted to the Committee for approval as to quality of workmanship and design and as to harmony of external design with existing structures and location in relation to surroundings, topography, and finished grade elevation. Nothing contained herein shall be construed to limit the right of an Owner to remodel the interior of his Dwelling Unit, or to paint the interior of his Dwelling Unit any color desired. The Committee shall endeavor to approve or to disapprove such plans or to request additional information within thirty (30) days after submission of completed plans, proposals, specifications or drawings.

01-02926

Carlyle Shaw

Section 6.3 No Waiver of Future Approvals. The approval by the Committee of any proposals or plans and specification or drawings for any work done or proposed, or in connection with any other matter, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings or matters whatever subsequently or additionally submitted for approval or consent.

Section 6.4 Architectural Approval. To preserve the architectural and aesthetic appearance of the Development, no construction of improvements of any nature whatsoever with the exception of vegetative landscaping shall be commenced or maintained by an Owner, other than the Developer, with respect to the construction or affecting the exterior appearance of a Dwelling Unit or with respect to any other portion of the Real Estate, including, without limitation, the construction or installation of sidewalks, driveways, parking lots, mail boxes, decks, patios, courtyards, swimming pools, tennis courts, greenhouses, playhouses, tree houses, playground equipment, or similar structures, awnings, walls, fences, exterior lights, garages, or outbuildings, nor shall any exterior addition to or change or alteration therein be made (excluding repainting in the original color but otherwise including, without limitation, painting or staining of any exterior surface), unless and until two (2) copies of the plans and specifications and related data (including, if required by the Committee, a survey showing the location of trees of six (6) inches in diameter at a height of four (4) feet and other significant vegetation on such Lot) showing the nature, color, type, shape, height, materials, and location of the same shall have been submitted to and approved in writing by the Committee, as to the compliance of such plans and specifications with such standards as may be published by the Committee from time to time including the harmony of external design, location, and appearance in relation to surrounding structures and topography. One copy of such plans, specifications, and related data so submitted shall be retained in the records of the Committee, and the other copy shall be returned to the Owner marked "approved", "approval as noted", or "disapproved".

(a) *Power of Disapproval.* The Committee may refuse to grant permission to construct, place or make the requested improvement, when: (i) The plans, specifications, drawings or other material submitted are themselves inadequate or incomplete, or show the proposed improvements to be in violation of the restrictions contained in this Declaration; (ii) The design, proposed material or color scheme of a proposed improvement is not in harmony with the general surroundings of the Lot or with adjacent buildings or structures, including trim, siding, roof and brick colors, or with the Development in general; (iii) The proposed improvement or any part thereof would architecturally, in the reasonable judgment of the Committee, be contrary to the interests, welfare or rights of all or any other Owners; and/or (iv) The Committee is otherwise authorized to disapprove the requested improvement in this Declaration or in the CC&D.

(b) *Powers Following Approval.* Following approval of any plans and specifications by the Committee, representatives of the Committee shall have the right during reasonable hours to enter upon and inspect any Lot, or other improvements with respect to which construction is underway to determine whether or not the plans and specifications therefor have been approved and are being complied with. In the event the Committee shall determine that such plans and specifications have not been approved or are not being complied with, the Committee shall be entitled to enjoin further construction and to require

01-02926

Carly Johnson

the removal or correction of any work in place which does not comply with approved plans and specifications.

0102926

01 MAR 13 PM 1:13

Section 6.5 Non Vegetative Landscaping Approval. To preserve the aesthetic appearance of the Development, no material modification to the grading, excavation, or filling of any Lot shall be implemented by an Owner, unless and until the plans therefore have been submitted to and approved in writing by the Committee. The provisions hereof regarding time for approval of plans, right to inspect, right to enjoin and /or require removal, etc. shall also be applicable to approvals required under this Section.

Section 6.6 Approval Not a Guarantee. No approval of plans and specifications and no publication of standards shall be construed as representing or implying that such plans, specifications, or standards will, if followed, result in properly designed improvements. Such approvals and standards shall in no event be construed as representing or guaranteeing that any improvement built in accordance therewith will be built in a good and workmanlike manner. Neither the Developer, the Association, nor the Committee shall be responsible or liable for: (a) any defects in any plans or specifications submitted, revised, or approved pursuant to the terms of this Article VI; (b) loss or damages to any person arising out of the approval or disapproval of any plans or specifications; (c) any loss or damage arising from the noncompliance of such plans and specifications with any governmental ordinances and regulations; nor (d) any defects in construction undertaken pursuant to such plans and specifications.

Section 6.7 Building Restrictions. All improvements shall be constructed in compliance with any and all applicable state, county and municipal zoning and building restrictions. Prior to any such grading, clearing, construction of impervious surface, building, or other construction activity, the Owner of any Lot which is subject to such rules, regulations, guidelines or restriction shall make such filings, and obtain such authorizations and permits as are required thereunder, and further, shall receive the prior written approval of the Committee.

**ARTICLE VII
USE RESTRICTIONS**

The Association, acting through its Board, shall have the authority to make and to enforce standards and restrictions governing the use of the Real Estate, in addition to those contained herein, and to impose reasonable user fees for use of Common Areas. Such regulations and use restrictions shall be binding upon all Owners and occupants until and unless overruled, canceled or modified in a regular or special meeting of the Association by a majority of Members entitled to vote thereon; subject to the prior written consent of the Developer during the Development Period.

Section 7.1 Use of Lots. Except as permitted by Section 7.26 hereof, each Lot shall be used for residential purposes only, and no trade or business of any kind may be carried therein. The use of a portion of a Dwelling Unit as an office by an Owner, or his tenant shall not be considered to be a violation of this covenant if Owner is in compliance with Section 7.26 below. No building or structure shall be located on any Lot outside of the setback lines designated on the Plans.

01-02926

Carlynn J. ...

Section 7.2 Awnings and Window Screens. No awnings or other reflective material shall be used on any windows for sunscreens, blinds, shades, or other purposes nor shall any window-mounted heating or air conditioning units be permitted. Collapsible or retractable awnings or patio covers shall be permitted. Collapsible or retractable clotheslines, not to exceed fifteen feet in length will be allowed with proper Committee approval. Permanent clotheslines will not be approved. While not in use, the clothes lines must always be kept collapsed or retracted. Clothing, rugs, or other items which are visible to others in the Development shall not be hung on any railing, fence, hedge, or wall.

Section 7.3 Signs. No signs of any kind shall be erected within the Development, or permitted within any windows, without the written consent of the Board, except for such signs as may be required by legal proceedings and except for a single standard real estate "for sale" or "for rent" sign may exist on a Lot if such does not exceed six (6) square feet in area. Developer may use such signs as it deems necessary or appropriate during the Development Period. No business signs, flags, banners or similar items except those placed and used by Developer advertising or providing directional information shall be erected by any Owner. If permission is granted to any Person to erect a sign, including name and address signs within the Development, the Board reserves the right to determine the size and composition of such sign as it, in its sole discretion, deems appropriate.

Section 7.4 Parking and Prohibited Vehicles.

(a) **Parking.** Vehicles shall be parked in the garages or on the driveways serving the Lots. No motor vehicle, whether or not utilized by an Owner, shall be parked on any street or public right-of-way, except on a temporary and non-recurring basis. Garages shall be used for parking of vehicles and no other use or modification thereof shall be permitted which would reduce the number of vehicles which may be parked therein below the number for which the garage was originally designed.

No Owners or other occupants of any portion of the Development shall repair or restore any vehicles of any kind upon or within any Lot or within any portion of the Common Areas, except (i) within enclosed garages or workshops, or (ii) for emergency repairs, and then only to the extent necessary to enable the movement thereof to a proper repair facility.

(b) **Prohibited Vehicles.** Commercial vehicles primarily used or designed for commercial purposes, tractors, busses, mobile homes, recreational vehicles, trailers (either with or without wheels), campers, camper trailers, boats and other watercraft, and boat trailers shall be parked only in enclosed garages or areas, if any, designated by the Board. Stored vehicles and vehicles which are either obviously inoperable or do not have current operating licenses shall not be permitted on the Real Estate except within enclosed garages. Notwithstanding the foregoing, service and delivery vehicles may be parked in the Real Estate during daylight hours for such period of time as is reasonably necessary to provide service or to make a delivery to a Lot or the Common Areas. Any vehicles parked in violation of this Section or parking rules promulgated by the Board may be towed at the expense of the Owner.

01-02926

Carlyle Davis

Section 7.5 Animals and Pets. No farm animals, fowls or domestic animals for commercial purposes shall be kept or permitted on any lot or lots in the Development. All pets shall remain under the control and supervision of an adult. Pets shall not be permitted off of such Owner's respective Lot unless on a leash or other restraint. The owner of any pet shall be responsible to clean up or repair any waste or damage caused by such pet, and assure that such pet does not create any unreasonable disturbance.

Section 7.6 Quiet Enjoyment. No portion of the Real Estate shall be used, in whole or in part, for the storage of any property or thing that will cause it to appear to be in an unclean or untidy condition. No noxious or illegal activity shall be carried on upon any portion of the Real Estate. No hunting of any nature shall be permitted within the Development. No outside burning of wood, leaves, trash, garbage or household refuse shall be permitted within the Real Estate. The Developer or the Association may order the relocation of any wood piles which are unsightly. No horns, whistles, bells or other sound devices, except security and fire alarm devices used exclusively for such purposes, shall be located, used, or placed within the Development.

Section 7.7 Unsightly or Unkempt Conditions; Lawn Care; Dumping. It shall be the responsibility of each Owner to prevent the development of any unclean, unhealthy, unsightly or unkempt condition on his or her Lot. All lawns and other landscaping materials shall be maintained on a regular basis. In no event shall the grass on any Lot exceed the length of six inches (6"). The pursuit of hobbies or other activities, specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken on any part of the Real Estate. Nothing which would result in a cancellation of any insurance for any portion of the Development, or which would be in violation of any law or governmental code or regulation shall be permitted in the Development. Any Owner, or his family, tenants, guests, invitees, servants, or agents, who dumps or places any trash or debris upon any portion of the Development shall be liable to the Association for the actual costs of removal thereof or the sum of \$150.00, whichever is greater, and such sum shall be added to and become a part of that portion of any assessment next becoming due to which such Owner and his Lot are subject.

Section 7.8 Antennas, Aerials and Satellite Dishes. No exterior antennas, aerials, satellite dishes, or other apparatus larger than thirty-six (36) inches in diameter and intended for the reception of television, radio, satellite or other signals of any kind shall be placed, allowed, or maintained upon any portion of any Lot. Any such antennas, aerials, satellite dishes or other such apparatus that do not exceed thirty-six (36") in diameter shall be permitted on a Lot only if such will be aesthetically concealed by landscaping or otherwise and shall be installed so as not to be visible from front elevation street view or constitute a nuisance or offensive effect on other Lot Owners. Under no circumstances shall any such antennas, aerials, satellite dishes, or other such apparatus be installed without the approval of the Committee. No radio or television signals, nor electromagnetic radiation, shall be permitted to originate from any Lot which may unreasonably interfere with the reception of television or radio signals within the Development, provided however that the Developer and/or the Association shall have the right, without obligation, to erect an aerial, satellite dish, or other apparatus or master antenna or cable system for the benefit of all or a portion of the Real Estate, should any such master system or systems be utilized by the Association and require any such exterior apparatus.

01-02926

Carl's House

Section 7.9 Garbage Cans, Tanks, Etc. No storage tanks of any kind shall be allowed upon a Lot. No rubbish, trash or garbage containers shall be stored or maintained outdoors except for such temporary storage necessary for immediate pick up of the trash and, in that event, trash shall be stored in appropriate containers.

Section 7.10 Pools. No above ground swimming pools shall be erected, constructed or installed on any Lot; provided, nothing herein shall preclude installation and use of hot tubs, spas or in ground pools with prior approval of the Committee as provided herein.

Section 7.11 Storage Sheds and Temporary Structures. Except as may be utilized by Developer during the Development Period, no tent, shack, trailer, storage shed, mini-barn or other similar detached structure shall be placed upon a Lot or the Common Areas. Notwithstanding the above, party tents or similar temporary structures may be erected for special events with prior written approval of the Committee or the Developer and children's overnight camping tents will be allowed as long as they are not up longer than forty-eight (48) hours.

Section 7.12 Drainage, Water Wells and Septic Systems.

(a) Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No Person other than the Developer may obstruct or rechannel the drainage flows after location and installation of drainage swales, storm sewers, or storm drains.

(b) No private water wells may be drilled or maintained and no septic tanks or similar sewerage facilities may be installed or maintained on any Lot.

Section 7.13 Traffic Regulation and Sight Distance at Intersections. All Lots located at street intersections shall be landscaped so as to permit safe sight across the street corners. No fence, wall, hedge, or shrub planting shall be placed or permitted to remain wherein it would create a traffic or sight problem. All vehicular traffic on the private streets and roads in the Development shall be subject to the provisions of the laws of the State of Indiana, and any other applicable governmental agency, concerning operation of motor vehicles on public streets. The Association is hereby authorized to promulgate, administer, and enforce reasonable rules and regulations governing vehicular and pedestrian traffic, including modifications of those in force on public streets, within the Development. The Association shall be entitled to enforce same by establishing such enforcement procedures as it deems necessary, including levying fines for the violation thereof. Only drivers licensed to operate motor vehicles by the State of Indiana or by any other state in the United States may operate any type of motor vehicle within the Development. All vehicles of any kind and nature which are operated on the streets in the Development shall be operated in a careful, prudent, safe and quiet manner and with due consideration for the rights of all residents of the Development.

Section 7.14 Utility Lines. No overhead utility lines, including lines for cable television, shall be permitted within the Development, except for temporary lines as required during construction and high voltage lines if required by law for safety purposes.

01-029261

Carly's
Section 7.15 Air Conditioning Units. Except as may be permitted by the Board, no window air conditioning units may be installed in any Lot.

0102926 01 MAR 13 PM 1:13
Section 7.16 Mailboxes. Each Owner of a Lot shall maintain the mailbox and structure which was originally installed by a builder, and shall replace same as necessary with a mailbox and structure which is substantially the same in appearance as that which was originally provided to the Dwelling Unit. Nothing may be attached to the mailbox structure which will affect the uniformity thereof with other such structures in the Development. The Committee shall have the discretion to require the replacement of any mailbox within the Development at the expense of the Owner of the Lot served thereby.

Section 7.17 Solar Panels. No solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed on any Lot.

Section 7.18 Homeowner Landscape Requirement. Within six (6) months of closing, the homeowner is responsible for installing one additional tree in the front yard which may be either a one (1) inch caliper ornamental, one and a half (1 1/2) inch caliper shade or four (4) foot high evergreen. Also, the homeowner is responsible for installing at least eight (8) shrubs with a mixture of flowering and evergreen and with an eighteen (18) inch spread or height in the front yard.

Section 7.19 Seeding of Rear Yards. Within thirty (30) days of initial occupancy of a Dwelling Unit, the Owner thereof shall cause the rear yard of such Lot to be seeded with grass of a type generally used in the Development. The initial seeding may be delayed if the occupancy date occurs between November 1 and the following March 31, or if, as of the date of occupancy, the final grading of the rear yard has not been completed; however, in either of such events, the initial seeding of the rear yard shall be completed on or before (a) May 1 following the date of occupancy, or (b) thirty (30) days following completion of final grading, whichever is later.

Section 7.20 Exterior Flags and Sculpture. Exterior sculptures, fountains, flags, and similar items must be approved by the Committee.

Section 7.21 Driveways and Sidewalks. All driveways will be constructed by a builder of the Dwelling Unit which it serves. Owners shall maintain and replace the driveway of their Lot thereafter so as to maintain the same appearance as provided at the time of original construction, ordinary wear and tear excepted. Each Dwelling Unit shall have a continuous side walk from the driveway to the front porch or entry.

Section 7.22 Wetlands, Lakes and Water Bodies. All wetlands, lakes, ponds, and streams within the Real Estate, if any, shall be aesthetic amenities only, and no other use thereof, including without limitation, fishing, swimming, boating, playing or use of personal flotation devices, shall be permitted except as provided in Section 7.30. The Association shall not be responsible for any loss, damage, or injury to any person or property arising out of the authorized or unauthorized use of lakes, ponds or streams within the Real Estate.

CHICAGO TITLE
01-02926

Handwritten signature
HANCOCK COUNTY

Section 7.23. Fences. No fencing shall be installed on any Lot without the prior review and approval of the Committee and that nothing in this Chapter shall apply to Developer or any fencing installed by the Developer. No fence shall be higher than six (6) feet unless such fence is proposed for the rear yard of a Lot which abuts or is adjacent to a Lake or detention pond, in which event such fence shall not be higher than four (4) feet; provided, however, that in the discretion of the Committee, the portion of such fence closest to the rear side of the residence may be six (6) feet in height but may not, at the six (6) foot height, extend more than ten (10) feet from the rear corner(s) of the residence. In exercising its discretion, the Committee shall take into account the affect such proposed fence would have on the use and enjoyment of the lake or pond areas by other owners within the Subdivision. Notwithstanding the foregoing, no fence may be constructed within twenty-five (25) feet of the shoreline of any Lake or detention pond. No fencing shall extend forward at a point, which is ten (10) feet behind the front corner of the residence. Fencing on any corner-Lot shall be at least five (5) feet from the sidewalk. All fencing shall be constructed of wood, vinyl, or vinyl coated chainlink. All chainlink fencing shall have a black or brown finish and cannot exceed four (4) feet in height. No fences, except those fences installed initially by the Developer, shall be erected without the prior written consent of the Development Control Committee.

No enclosures, structures or "runs" which are designed primarily for the outside keeping of pets or other animals and which are made in whole or part from chain link fencing material, including but not limited to dog runs, kennels, or other similar enclosures, shall be permitted; provided, however, the Committee shall have the discretion to approve such an enclosure or structure if such is surrounded by a wooden privacy fence which minimizes the visibility of such structure by adjoining property owners.

Section 7.24 Business Uses. No trade or business may be conducted in or from any Lot, except that an Owner or occupant residing in a Dwelling Unit may conduct business activities within the Dwelling Unit so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Dwelling Unit; (b) the business activity conforms to all zoning requirements for the Real Estate; (c) the business activity does not involve persons coming onto the Real Estate who do not reside in the Real Estate or door-to-door solicitation of residents of the Development; and (d) the business activity is consistent with the residential character of the Development and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Real Estate, as may be determined in the sole discretion of the Board.

The terms "business" and "trade", as used in this provision, shall be construed to have their ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involve the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required therefore. Notwithstanding the above, the leasing of a Lot or Dwelling Unit shall not be considered a trade or business within the meaning of this section. This section shall not apply to any commercial property within the Development nor shall it apply to any activity conducted by the Developer or a builder approved by the Developer with respect to its development and sale of the Real Estate or its use of any Lots or Dwelling Units which it owns within the Real Estate.

01-02926

Carlyle Stone

Section 7.25 Basketball Goals. No basketball goals shall be permitted on any lot without the prior review and approval of the Architectural Control Committee of the Homeowners Association. No basketball goals shall be permitted to be used on the sidewalk or in any street of the Community.

Section 7.26 Playground Equipment. No playground equipment shall be installed on any lot without the prior review and approval of the Architectural Control Committee of the Homeowners Association. All such equipment shall be located at least ten (10) feet from any adjacent property lines and in the rear yard of a lot (being the portion of such lot behind the rear corners of the residence on such lot). Notwithstanding the foregoing, in the event such lot is located on a corner in the Community, the Architectural Control Committee may, in its discretion, approve a location for such equipment other than a rear yard provided such is not closer than ten (10) feet from any public sidewalk.

Section 7.27 On-Site Fuel Storage. No on-site storage of gasoline, heating or other fuels shall be permitted on any part of the Real Estate except that up to five (5) gallons of fuel may be stored on each Lot for emergency purposes and operation of lawn mowers and similar tools or equipment, and the Association shall be permitted to store fuel for operation of maintenance vehicles, generators and similar equipment.

Section 7.28 Contiguous Lots. Whenever two or more contiguous Lots shall be owned by the same Owner, and such Owner shall not be permitted to use two or more of said Lots as a site for a single dwelling. Each Lot shall be, and shall remain, improved with a single Dwelling Unit, and each Lot shall be subject to the Assessments.

Section 7.29 Control of Lakes and Common Areas.

(a) *Control by the Association.* As part of its general duties, the Association shall regulate the Lakes and Common Areas and shall provide for the maintenance thereof in such a manner so as to preserve and enhance values and to maintain a harmonious relationship among structures in the vicinity thereof and the natural or other vegetation and topography of the Lakes and Common Areas. No improvements, excavation, changes in grade or other work shall be done upon the Lakes or Common Areas by any Owner, nor shall the Lakes or Common Areas be changed by any Owner from its natural or improved existing state, without the prior written approval of the Committee.

(b) *Restrictions of Use of Lakes and Common Areas.* The following covenants and restrictions on the use and enjoyment of the Lots, the Lakes, and the Common Areas shall be in addition to any other covenants or restrictions contained herein or in the Plats and all such covenants and restrictions are for the mutual benefit and protection of the present and future Owners and shall run with the land and inure to the benefit of and be enforceable by any Owner, or by the Association. Present or future Owners or the Association shall be entitled to injunctive relief against any violation or attempted violation of any of such covenants and restrictions, and shall, in addition, be entitled to damages for any injuries or losses resulting from any violations thereof, but there shall be no right of reversion or

01-029261

Carlyle

Forfeiture resulting from such violation. These covenants and restrictions are as follows:

(i) No one other than Owners who are Members in good standing with the Association, or such an Owner's occupant, tenants, guests or invitees, may use the Lakes or the Common Areas.

(ii) No nuisance shall be permitted to exist on any Lot and no waste shall be committed on any Lot which shall or might damage or cause injury to the Lakes or the Common Areas.

(iii) All Owners and members of their families, their guests, or invitees, and all occupants of any Lot or the Properties or other persons entitled to use the same and to use and enjoy the Lakes and the Common Areas, shall observe and be governed by such rules and regulations as may from time to time be promulgated and issued by the Board governing the operation, use and enjoyment of the Lakes and the Common Areas.

(iv) No Owner shall be allowed to plant trees, landscape or do any gardening in any part of the Lakes or the Common Areas, except with express permission from the Committee.

(v) The Lakes and the Common Areas shall be used and enjoyed only for the purposes for which they are designed and intended, and shall be used subject to the rules and regulations from time to time adopted by the Board. Without limiting the generality of the foregoing, the Lakes are and will be an integral part of the storm water drainage system serving the Development, and are intended to be used for such purpose and primarily as a visual and aesthetic amenity and not as a recreational amenity. Accordingly, no use shall be made of the Lakes which in any way interferes with their proper functioning as part of such storm water drainage system. No boating, swimming, diving, skiing, ice skating or other recreational activity shall be permitted in or on the Lakes. No sewage, garbage, refuse, or other solid, liquid, gaseous or other materials or items (other than storm and surface water drainage) shall be put into the Lakes, except the Association may take steps to clear and purify the waters thereof by the addition of chemicals or other substances commonly used for such purposes or by providing therein structures and equipment to aerate the same. Fishing from the shoreline area of the Lakes by an owner, his occupants, his invited guests and family, shall be permitted subject to rules determined by the Association and compliance with all applicable fishing and game laws, ordinances, rules and regulations. No Owner or other person shall take or remove any water from or out of the Lakes, or utilize the water contained therein for any purposes, including, without limitation, connection with any sprinkler or irrigation systems. No piers, docks, retaining walls, rafts or other improvements shall be built, constructed or located on any Lot or on the Real Estate, which extend into, or to within

01-02926

twenty-five (25) feet of, the shoreline of any Lake, except by Developer or the Association.

0102926

01 MAR 13 PM 1:13

Section 7.30 Laws and Ordinances. Every Owner and occupant of any Lot or Dwelling Unit, their guests and invitees, shall comply with all laws, statutes, ordinances and rules of federal, state and municipal governments applicable to the Real Estate and any violation thereof may be considered a violation of this Declaration; provided, however, the Board shall have no obligation to take action enforce such laws, statutes, ordinances and rules.

Section 7.31 Sales and Construction. Notwithstanding any provisions or restrictions contained in this Declaration to the contrary, it shall be expressly permissible for the Developer and its agents, employees, successors, and assigns to maintain and carry on such facilities and activities as may be reasonably required, convenient, or incidental to the completion, improvement, and sale of Lots and Dwelling Units or the developing of Lots, Dwelling Units and Common Areas, including, without limitation, the installation and operation of sales and construction trailers and offices, signs and model houses, as may be approved by the Developer from time to time, provided that the location of any construction trailer of any assignees of the Developer's rights under this Section 7.30 shall be subject to the Developer's approval. The right to maintain and carry on such facilities and activities shall include specifically the right to use Dwelling Units as model residences, and to use any Dwelling Unit as an office for the sale of Lots and Dwelling Units and for related activities.

Section 7.32 Occupants Bound. All provisions of the Declaration, By-Laws and of any rules and regulations or use restrictions promulgated pursuant thereto which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all occupants, guests and invitees of any Lot. Every Owner shall cause all occupants of his or her Lot to comply with the Declaration, By-Laws, and the rules and regulations adopted pursuant thereto, and shall be responsible for all violations and losses to the Common Areas caused by such occupants, notwithstanding the fact that such occupants of a Lot are fully liable and may be sanctioned for any violation of the Declaration, By-Laws and rules and regulations adopted pursuant thereto.

**ARTICLE VIII
RULEMAKING AND REMEDIES FOR ENFORCEMENT**

Section 8.1 Rules and Regulations. Subject to the provisions hereof, the Board may establish reasonable rules and regulations concerning the use of Lots and Dwelling Units, and the amendments thereto shall be furnished by the Association to all Members prior to the effective date upon the Owners, their families, tenants, guests, invitees, servants and agents, until and unless any such rule or regulations be specifically overruled, cancelled, or modified by the Board or in a regular or special meeting of the Association by a majority of the Members as set forth in the By-Laws, subject to Developer's consent during the Development Period.

Section 8.2 Authority and Enforcement.

(a) Upon the violation of this Declaration, the By-Laws, or any rules and regulations duly adopted hereunder, including, without limitation, the failure to timely pay any assessments,

01-02926

0112926
The Association shall have the power, after fifteen (15) days written notice to the Owner or the occupant of said violation, and failure by said Owner or occupant to cure the violation: (i) to cause the Association to correct the violation at its own expense, which said cost and expense shall constitute a continuing lien upon the Lot of the Owner or the occupant who is guilty of such violation; (ii) to suspend an Owner's right to vote in the Association; and (iii) to suspend an Owner or occupant's right (and the right of his or her family, guests, and tenants) to use any of the Common Areas.

The Board shall have the power to impose all or any combination of these sanctions. Such sanctions are in addition to the Association's remedies under Section 4.2. above, relating to maintenance. An Owner or occupant shall be subject to the foregoing sanctions in the event of such a violation by him or her, his or her family, guests, or tenants. Any such suspension of rights may be for the duration of the infraction and or any additional period thereafter, such additional period not to exceed thirty (30) days per violation.

(b) Notwithstanding subsection (a) above, a violation or threatened violation of any of the covenants and restrictions contained in this Declaration and the provisions contained in the Articles of Incorporation and By-Laws of the Association, or any rules and regulations adopted hereunder, shall be grounds for an action at law or equity instituted by the Developer, the Association, or any Owner against any person violating or threatening to violate any such covenant, restriction, rule, or regulation. Available relief in any such action shall include the recovery of damages; injunctive relief, either to restrain the violation or threatened violation or to compel compliance with the covenants, restrictions, rules or regulations; declaratory relief; the enforcement of any lien created by these covenants, restrictions, rules, or regulations; and the recovery of costs and attorneys' fees incurred by any party successfully enforcing such covenants, restrictions, rules, or regulations. Failure by the Developer, the Association, or Owner to enforce any covenant, restriction, rule, or regulation shall in no event be deemed a waiver of the right to do so thereafter; provided, however, that no action shall be brought against either the Developer or the Association for failing to enforce or carry out any such covenants, restrictions, rules, or regulations.

ARTICLE IX
GENERAL PROVISIONS



Section 9.1 Term. The covenants and restrictions of this Declaration shall run with and bind the Real Estate, and shall inure to the benefit of and shall be enforceable by the Association or the Owner of any property subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a term of sixty (60) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless an instrument in writing, signed by more than seventy five percent (75%) of the then Owners has been recorded within the year preceding the beginning of each successive period of ten (10) years, agreeing to change said covenants and restrictions, in whole or in part, or to terminate the same, in which case this Declaration shall be modified or terminated as specified therein. The number of ten (10) year renewal periods shall be unlimited.

01-02926

Section 9.2 Amendment. Prior to the conveyance of the first Lot to an Owner, the Developer may unilaterally amend this Declaration. After such conveyance, the Developer may unilaterally amend this Declaration at any time and from time to time if such amendment is (a) necessary to bring any provision hereof into compliance with any applicable governmental statutes, rules or regulations, or judicial determination; (b) necessary to enable any reputable title insurance company to issue title insurance coverage on the Lots and the Dwellings; (c) required by an institutional or governmental agency or lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to acquire or purchase mortgage loans on the Lots and the Dwellings; (d) necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on the Lots; (e) to annex additional real estate to the Development; (f) to correct clerical or typographical errors in this Declaration or any exhibit hereto, or any supplement or amendment thereto; provided, however, any amendment permitted under subsections (a) through (f) of this Section 9.2 shall not adversely affect the title to any Lot unless the Owner shall consent thereto in writing. Additionally, during the Development Period, the Developer may unilaterally amend this Declaration for any purpose, provided the amendment has no material adverse effect upon any right of the Owner.

Hereafter and otherwise, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of voting Members representing at least seventy-five percent (75%) of the Members entitled to vote thereon. Any amendment to be effective must be recorded in the public records of the County in which this Declaration was recorded.

If an Owner consents to any amendment to this Declaration or the By-Laws, it will be conclusively presumed that such Owner has the authority so to consent and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

No amendment may remove, revoke, or modify any right or privilege of Developer without the written consent of the Developer or the assignee of such right or privilege.

Section 9.3 Indemnification. The Association shall indemnify every officer, director, and committee member against any and all expenses, including counsel fees, reasonably incurred by or imposed upon such officer, director, or committee member in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board) to which he or she may be a party by reason of being or having been an officer, director or committee member. The officers, directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers, directors and committee members shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association and the Association shall indemnify and forever hold each such officer, director and committee member free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer, director, or committee member or former officer, director, or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

01-02926

Concordia
Section 9.4 Interpretation. In all cases, the provisions set forth or provided for in this Declaration shall be construed together and given that interpretation or construction which, in the opinion of the Developer or the Board, best effect the intent of the general plan of development. The provisions hereof shall be liberally interpreted and, if necessary, they shall be so extended or enlarged by implication as to make them fully effective. The provisions of this Declaration shall be given full force and effect notwithstanding the existence of any zoning ordinance or building codes which are less restrictive. The effective date of this Declaration shall be the date of its filing in the public records. The captions of each Article and Section hereof as to the contents of each Article and Sections are inserted only for limiting, extending, or otherwise modifying or adding to the particular Article or Section to which they refer. This Declaration shall be construed under and in accordance with the laws of the State of Indiana.

Section 9.5 Right of Entry. The Association, and during the Development Period the Developer, shall have the right, but not the obligation, to enter onto any Lot for emergency, security, and safety reasons, and to inspect for the purpose of ensuring compliance with this Declaration, the By-Laws, and the Association rules, which right may be exercised by the Association's Board, officers, agents, employees, managers, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner or occupant directly affected thereby. This right of entry shall include the right of the Association to enter a Lot and Dwelling Unit to cure any condition which may increase the possibility of a fire or other hazard in the event an Owner fails or refuses to cure the condition within a reasonable time after request by the Board.

Section 9.6 Perpetuities. If any of the covenants, conditions, restrictions, or other provisions of this Declaration would be unlawful, void, or voidable for violation of the common law rule against perpetuities, then such provisions shall continue on for the maximum amount of time as allowed by Indiana Code 32-1-4.3-1, et seq. As amended from time to time.

Section 9.7 Litigation. No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by a vote representing at least two-thirds (2/3) of the Members entitled to vote thereon. However, this Section shall not apply to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens), (b) actions brought for collection of assessments, (c) proceedings involving challenges to ad valorem taxation, or (d) counterclaims brought by the Association in proceedings instituted against it.

Section 9.8 Notice of Sale or Transfer of Title. In the event that any Owner desires to sell or otherwise transfer title to his or her Lot, such Owner shall give the Board at least seven (7) days prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. Until such written notice is received by the Board, the transferor shall continue to be jointly and severally responsible for all obligations of the Owner of the Lot hereunder, including payment of assessments, notwithstanding the transfer of title to the Lot.

01-02926

STATE OF INDIANA)
) SS:
COUNTY OF HAMILTON) 0102926

Carl J. Chase
HANCOCK COUNTY RECORDER
01 MAR 13 PM 1:14

Before me, a Notary Public in and for said County and State, personally appeared Mark W. Boyce, the Vice President of C.P. Morgan Investment Co., Inc., the general partner of C.P. Morgan Communities, L.P., who acknowledged the execution of the foregoing Declaration of Covenants, Conditions and Restrictions for *MARK W. BOYCE* on behalf of such developer, and who, having been duly sworn, stated that the representations therein contained are true.

Witness my hand and Notarial Seal this *15th* day of *March, 2001*

Michelle M. Cook
Michelle M. Cook

My Commission Expires: *10-17-2001* My County of Residence is _____



CHICAGO TITLE

This instrument was prepared by C.P. Morgan Communities L.P., by C.P. Morgan Investment Co., Inc., General Partner, by Mark W. Boyce, Vice President.

01-02926

Carly Johnson
Section 9.9 Gender and Grammar. The singular pronouns used herein shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provision hereof apply to corporations or other entities or to individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

Section 9.10 Severability. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of the Declaration to any person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and to this end the provisions of this Declaration are declared to be severable.

Section 9.11 Rights of Third Parties. This Declaration shall be recorded for the benefit of the Developer, the Owners and their Mortgagees as herein provided, and by such recording, no adjoining property owner or third party shall have any right, title or interest whatsoever in the Community, except as provided for herein, or in the operation or continuation thereof or in the enforcement of any of the provisions hereof, and subject to the rights of the Developer and the Mortgagees as herein provided, the Owners shall have the right to extend, modify, amend, or otherwise change the provisions of this Declaration without the consent, permission, or approval of any adjoining owner or third party.

IN WITNESS WHEREOF, the Developer has caused this Declaration of Covenants, Conditions and Restrictions for CHAMPION PLACE to be executed as of the date written above.

C.P. MORGAN COMMUNITIES, L.P.

By: C.P. Morgan Investment Co., Inc.,
General Partner

By: *Mark W. Boyce*
Mark W. Boyce, Vice President

CHICAGO TITLE

01-029261

29MS
65
+1
66

C. J. ...
HANCOCK COUNTY RECORDER

0111532

01 AUG 16 AM 10:00

8/16/01

REAL ESTATE MORTGAGE
AND
SECURITY AGREEMENT
(AND FIXTURE FILING)
(Hampton Place - Hancock County)

THIS INSTRUMENT (hereinafter called the "Mortgage") made as of the 30th day of July, 2001, from C.P. MORGAN COMMUNITIES, L.P., an Indiana limited partnership having its principal office at 301 East Carmel Drive, Suite E-100, Carmel, Indiana 46032-2892 (hereinafter referred to as "Mortgagor"), in favor of BANK ONE, INDIANA, N.A., a national banking association (successor by merger to NBD Bank, N.A.), having a notice address of 111 Monument Circle, IN1-2012, Indianapolis, Indiana 46277 (hereinafter called "Mortgagee");

WITNESSETH:

FOR GOOD AND VALUABLE CONSIDERATION, including the indebtedness herein recited, the receipt of which is hereby acknowledged, Mortgagor hereby mortgages and warrants to Mortgagee, its successors and assigns, and grants it and them a security interest in and lien upon, the following property, to-wit:

The parcel of real estate located in Hancock County, Indiana which is more particularly described on Exhibit A attached hereto and incorporated herein by reference as though set forth herein in full (the "Property"); ®

TOGETHER WITH, any and all buildings, homes and improvements now or hereafter erected on the Property, including, but not limited to, building materials and supplies stored on the Property, fixtures, attachments, appliances, equipment, machinery and other articles attached to said buildings, homes and improvements (the "Improvements");

TOGETHER WITH, all rents, issues, profits, royalties, income and other benefits derived from the Property and/or Improvements (collectively the "rents"), subject to the right, power, and authority hereinafter given to Mortgagor to collect and apply such rents;

Handwritten signature

TOGETHER WITH, all leasehold estate, right, title and interest of Mortgagor in and to all leases or subleases covering the Property (whether written or oral) and/or the Improvements or any portion thereof now or hereafter existing or entered into, and all right, title and interest of Mortgagor thereunder, including, without limitation, all cash or security deposits, advance rentals, and deposits or payments of similar nature.

TOGETHER WITH, all right, title and interest of Mortgagor in and to all options to purchase or lease the Property or any portion thereof or interest therein, and any greater estate in the Property owned or hereafter acquired;

TOGETHER WITH, all interests, estate or other claims, both in law and in equity, which Mortgagor now has or may hereafter acquire in the Property and/or the Improvements;

TOGETHER WITH, all easements, rights-of-way and rights used in connection therewith or as a means of access thereto, and all tenements, hereditaments and appurtenances thereof and thereto, and all water rights and shares of stock evidencing the same;

TOGETHER WITH, all rights, title and interest of Mortgagor, now owned or hereafter acquired, in and to any land lying within the right-of-way of any street, open or proposed, adjoining the Property, and any and all sidewalks, alleys and strips and gores or land adjacent to or used in connection with the Property;

TOGETHER WITH, all tangible personal property now or hereafter owned by Mortgagor and now or at any time hereafter located on or at the Property and used in connection with the construction, maintenance or operation of the Property or the Improvements, including, but not limited to: all goods, machinery, tools, insurance proceeds, trucks, fork-lifts, equipment (including fire sprinklers and alarm systems, office air conditioning, heating, refrigerating, electronic monitoring, entertainment, recreational, window or structural cleaning rigs, maintenance, exclusion of vermin or insects, removal of dust, refuse or garbage and all other equipment of every kind), lobby and all other indoor and outdoor furniture (including tables, chairs, planters, desks, sofas, shelves, lockers and cabinets), storage racks, hydraulic lifts, wall beds, wall safes, furnishings, appliances (including ice boxes, refrigerators, fans, heaters, stoves, water heaters and incinerators), inventory rugs, carpets and other floor coverings, draperies and drapery rods and brackets, awnings, window shades, venetian blinds, curtains, lamps, chandeliers and other lighting fixtures and office maintenance and other supplies (the "Personal Property");

TOGETHER WITH, all estate, interest, right, title and any other demand or claim, which Mortgagor now has or may hereafter acquire in any plans and specifications, construction contracts, construction management agreements, material purchase agreements, builder's and manufacturer's warranties with respect to the Property, the Improvements or the Personal Property;

TOGETHER WITH, all accounts, contract rights and rights to payments arising out of the operation of the Property or the Improvements, whether or not earned by performance, and all proceeds of the foregoing, whether cash or non-cash; and

TOGETHER WITH, all the estate, interest, right, title, other claim or demand, including claims or demands with respect to the proceeds of insurance in effect with respect thereto, which Mortgagor now has or may hereafter acquire in the Property, the Improvements or the Personal Property, and any and all awards made for the taking by eminent domain, or by any proceedings or purchase in lieu thereof, of the whole or any part of the Property, the Improvements or the Personal Property including, without limitation, any awards resulting from a change of grade of streets and awards for severance damages.

The property and interest hereby mortgaged to Mortgagee may hereafter be referred to as the "Mortgaged Property".

Mortgagor covenants, warrants and represents that it is lawfully seized of the Mortgaged Property and fee simple title to the Property; that it has a good right to convey the same; that the Mortgaged Property is free from all liens and encumbrances, except for those liens and encumbrances described on Exhibit B attached hereto and incorporated herein by reference; and that Mortgagor will warrant and defend the title to the Mortgaged Property against all claims made thereon.

FOR THE PURPOSE OF SECURING:

- a. Payment of indebtedness in the principal amount of Forty-Four Million Dollars (\$44,000,000) with interest thereon, evidenced by that certain Third Amended and Restated Revolving Mortgage Note in the original principal amount of Forty Million Dollars (\$40,000,000), executed by Mortgagor, payable to the order of Mortgagee, dated November 30, 2000, as modified by that certain First Modification of Third Amended and Restated Revolving Mortgage Note and Amended and Restated Master Loan Agreement by and between Mortgagor and Mortgagee, dated June 14, 2001 (the "First Modification"), which First Modification increased the principal amount of the loan evidenced by said Third Amended and Restated Revolving Mortgage Note to Forty-Four Million Dollars (\$44,000,000) as the same may be hereafter further amended, restated, modified, extended or renewed (such Third Amended and Restated Revolving Mortgage Note, as modified by the First Modification, as the same may be hereafter further amended, restated, modified, extended or renewed, being referred to herein as the "Note"). The Note has a maturity of September 1, 2002.
- b. Payment of all obligations of Mortgagor under that certain Amended and Restated Master Loan Agreement by and between Mortgagor and Mortgagee, dated November 30, 2000, as modified by the First Modification, and as the same may be hereafter further amended, restated, modified, extended or renewed (such Amended and Restated Master Loan Agreement, as modified by the First Modification, and as the same may be hereafter further amended, restated, modified, extended or renewed, being referred to herein as the "Loan Agreement"), and each agreement of Mortgagor incorporated by reference therein or herein, or contained therein or herein;
- c. Payment of all sums advanced or expended pursuant to Paragraph 4.03 hereof;

d. Payment of all sums advanced by Mortgagee to protect the Mortgaged Property, with interest thereon at the highest default rate of interest provided in the Note (the "Default Rate");

e. Payment of all sums advanced by Mortgagee, with interest thereon under any letters of credit issued by Mortgagee for the account of Mortgagor (the "Letters of Credit") in respect of the Mortgaged Property;

f. Payment of all other sums, with interest thereon, which may hereafter be lent to Mortgagor, or its successors or assigns, by Mortgagee, when evidenced by a promissory note or notes reciting that they are secured by this Mortgage; and

g. Performance of all obligations of any guarantor of any of the obligations of Mortgagor contained in this Mortgage, the Note, the Loan Agreement or any other instrument given to evidence or further secure the payment and the performance of the obligation secured hereby.

This Mortgage, the Note, the Loan Agreement, any guaranty thereof and any other instrument given to evidence or further secure the payment and performance of any obligation secured hereby may hereafter be referred to as the "Loan Instruments."

MORTGAGOR HEREBY COVENANTS AND AGREES AS FOLLOWS:

ARTICLE I

COVENANTS AND AGREEMENTS OF MORTGAGOR

Mortgagor hereby covenants and agrees:

1.01 Payment of Secured Obligations. To pay when due the principal of, and the interest on, the indebtedness evidenced by the Note, charges, fees and all other sums as provided in the Loan Instruments, and the principal of, and interest on, any future advances secured by this Mortgage.

1.02 Maintenance, Repair, Alterations. To keep the Mortgaged Property in good condition and repair; to complete promptly and in good and workmanlike manner any building or other improvement which may be constructed on the Property and promptly restore in like manner any Improvement which may be damaged or destroyed thereon, and to pay when due, all claims for labor performed and materials furnished therefor, to comply with all laws, ordinances, regulations, covenants, conditions and restrictions now or hereafter affecting the Mortgaged Property or any part thereof or requiring any alterations or improvements; not to commit or permit any waste or deterioration of the Mortgaged Property, to keep and maintain abutting grounds, sidewalks, roads, parking and landscape areas in good and neat order and repair; to comply with the provisions of any lease, if this Mortgage is on a leasehold; not to commit, suffer or permit any act to be done in or upon the Mortgaged Property in violation of any law, ordinance or regulation.

0111532

HANCOCK COUNTY RECORDER

1.03 **Required Insurance.** To at all times provide, maintain and keep in force the following policies of insurance:

a. Comprehensive public liability insurance (including coverage for elevators and escalators, if any, on the Mortgaged Property) on an "occurrence basis" against claims for "personal injury" including, without limitation, bodily injury, death or property damage occurring on, in or about the Mortgaged Property and the adjoining streets, sidewalks and passageways, such insurance to afford immediate minimum protection to a limit of not less than that required by Mortgagee with respect to personal injury or death to any one or more persons or damage to property;

b. During the course of any construction or repair of Improvements on the Property, worker's compensation insurance (including employer's liability insurance, if requested by Mortgagee) for all employees of Mortgagor engaged on or with respect to the Mortgaged Property in such amount as is reasonably satisfactory to Mortgagee, or, if such limits are established by law, in such amounts;

c. Insurance against loss or damage to the Improvements by fire and any of the risks covered by insurance of the type now known as "fire and extended coverage", in an amount not less than the full replacement cost of the Improvements (exclusive of the cost of excavations, foundations and footing below the lowest basement floor), whichever is greater; and with not more than One Thousand Dollars (\$1,000) deductible from the loss payable for any casualty. The policies of insurance carried in accordance with this subparagraph (a) shall contain the "Replacement Cost Endorsement";

d. Such other insurance, and in such amounts, as may from time to time be required by Mortgagee against the same or other hazards; and

e. The insurance required to be provided by the Loan Agreement;

Mortgagee shall be listed as an additional insured under the insurance required under paragraph 1.03(a) and (b) hereof. The insurance required by Paragraph 1.03 (c) and (d) shall include a standard mortgagee clause in favor of and in form acceptable to Mortgagee.

All policies of insurance required by the terms of this Mortgage shall contain an endorsement or agreement by the insurer that any loss shall be payable in accordance with the terms of such policy notwithstanding any act or negligence of Mortgagor which might otherwise result in forfeiture of said insurance and the further agreement of the insurer waiving all rights of set off, counterclaim or deductions against Mortgagor. All policies of insurance required by the terms hereof or the Loan Agreement shall contain the agreement of the Insures thereunder to give not less than thirty (30) days' prior notice to Mortgagee in the event of termination or cancellation.

0111532

01 APR 95

HANCOCK COUNTY RECORDER

George...

1.04 **Delivery of Policies, Payment of Premiums.** That all policies of insurance shall be issued by companies and in amounts in each company satisfactory to Mortgagee. All policies of insurance shall have attached thereto a lender's loss payable endorsement for the benefit of Mortgagee in form satisfactory to Mortgagee. Mortgagor shall furnish Mortgagee with an original policy of all policies of required insurance. If Mortgagee consents to Mortgagor providing any of the required insurance through blanket policies carried by Mortgagor and covering more than one location, then Mortgagor shall furnish Mortgagee with a certificate of insurance for each such policy setting forth the coverage, the limits of liability, the name of the carrier, the policy number, and the expiration date. At least thirty (30) days prior to the expiration of each such policy, Mortgagor shall furnish Mortgagee with evidence satisfactory to Mortgagee of the payment of premium and the reissuance of a policy continuing insurance in force as required by this Mortgage. All such policies shall contain a provision that such policies will not be cancelled, amended, altered, changed or modified, nor shall any coverage therein be reduced, deleted, amended, modified, changed or cancelled by either the party named as the insured, or the insurance company issuing the policy without at least thirty (30) days prior written notice to Mortgagee. In the event Mortgagor fails to provide, maintain, keep in force or deliver and furnish to Mortgagee the policies of insurance required by this Section, Mortgagee may procure such insurance or single-interest insurance for such risks covering Mortgagee's interest, and Mortgagor will pay all premiums thereon promptly upon demand by Mortgagee, and until such payment is made by Mortgagor the amount of all such premiums together with interest thereon at the Default Rate shall be secured by this Mortgage. At the request of Mortgagee, on the first (1st) day of each calendar month, until the Note is paid in full, Mortgagor shall deposit with Mortgagee in monthly installments, an amount equal to one-twelfth (1/12) of the estimated aggregate annual insurance premiums on all policies of insurance required by this Mortgage. Mortgagor further agrees, upon Mortgagee's request, to cause all bills, statements or other documents relating to the foregoing insurance premiums to be sent or mailed directly to Mortgagee. Upon receipt of such bills, statements or other documents, and providing Mortgagor has deposited sufficient funds with Mortgagee pursuant to this Section 1.04, Mortgagee shall pay such amounts as may be due thereunder out of the funds so deposited with Mortgagee. If at any time and for any reason the funds deposited with Mortgagee are or will be insufficient to pay such amounts as may then or subsequently be due, Mortgagee shall notify Mortgagor and Mortgagor shall immediately deposit an amount equal to such deficiency with Mortgagee. Notwithstanding the foregoing, nothing contained herein shall cause Mortgagee to be deemed a trustee of said funds or to be obligated to pay any amounts in excess of the amount of funds deposited with Mortgagee pursuant to this Section 1.04. Mortgagee may commingle said reserve with its own funds and Mortgagor shall be entitled to no interest thereon.

1.05 **Insurance Proceeds.** That after the happening of any casualty to the Mortgaged Property or any part thereof, Mortgagor shall give prompt written notice thereof to Mortgagee.

a. In the event of damage or destruction to the Improvements, Mortgagee shall receive the entire proceeds of any insurance payable on account thereof; provided, however, that so long as no uncured event of default exists under the terms of the Loan Instruments and such damage or destruction can be repaired prior to the maturity date set forth above, such proceeds shall, at the option of Mortgagor, be

made available to restore the Improvements to the same condition as they existed immediately prior to such casualty. In the event such proceeds are insufficient to effect such restoration, Mortgagee shall have no obligation to restore the Improvements unless Mortgagor furnishes satisfactory evidence of the availability of funds to complete such restoration. In the event that Mortgagor elects to apply such insurance proceeds to restoration of the Improvements and such insurance proceeds exceed the total cost of restoration, such excess proceeds shall be retained by Mortgagee and applied to reduce the then-outstanding indebtedness evidenced by the Note;

b. In the event of such loss or damage, all proceeds of insurance shall be payable to Mortgagee, and Mortgagor hereby authorizes and directs any affected insurance company to make payment of such proceeds directly to Mortgagee. Mortgagee is hereby authorized and empowered by Mortgagor to settle, adjust or compromise any claims for loss, damage or destruction under any policy or policies of insurance;

c. Except to the extent that insurance proceeds are received by Mortgagee and applied to payment in full of the indebtedness secured hereby, nothing herein contained shall be deemed to excuse Mortgagor from repairing or maintaining the Mortgaged Property as provided in Section 1.02 hereof or restoring all damage or destruction to the Mortgaged Property, regardless of whether or not there are insurance proceeds available or whether any such proceeds are sufficient in amount, and the application or release by Mortgagee of any insurance proceeds shall not cure or waive any default or notice of default under this Mortgage or invalidate any act done pursuant to such notice.

1.06 Assignment of Policies Upon Foreclosure. In the event of foreclosure of this Mortgage or other transfer of title or assignment of the Mortgaged Property in extinguishment in whole or in part, of the debt secured hereby, all right, title and interest of Mortgagor in and to all policies of insurance required by this Section shall inure to the benefit of and pass to the successor in interest to Mortgagor or the purchaser or grantee of the Mortgaged Property.

1.07 Indemnification; Subrogation; Waiver of Offset.

a. If Mortgagee is made a party defendant to any litigation concerning this Mortgage or the Mortgaged Property or any part thereof or interest therein, or the occupancy thereof by Mortgagor, then Mortgagor shall indemnify, defend and hold Mortgagee harmless from all liability by reason of said litigation, including reasonable attorneys' fees and expenses incurred by Mortgagee in any such litigation, whether or not any such litigation is prosecuted to judgment. If Mortgagee commences an action against Mortgagor to enforce any of the terms hereof or because of the breach by Mortgagor of any of the terms hereof, or for the recovery of any sum secured hereby, Mortgagor shall pay to Mortgagee reasonable attorneys'

0111532

0111532
JAN 15 7 41 AM '03

HANCOCK COUNTY RECORDS

Confidential

fees and expenses, and the right to such attorneys' fees and expenses shall be deemed to have accrued on the commencement of such action, and shall be enforceable whether or not such action is prosecuted to judgment. If Mortgagor breaches any term of this Mortgage, Mortgagee may employ an attorney or attorneys to protect its rights hereunder, and in the event of such employment following any breach by Mortgagor, Mortgagor shall pay Mortgagee reasonable attorneys' fees and expenses incurred by Mortgagee, whether or not an action is actually commenced against Mortgagor by reason of breach;

b. Mortgagor waives any and all right to claim or recover against Mortgagee, its officers, employees, agents and representatives, for loss of or damage to Mortgagor, the Mortgaged Property, Mortgagor's property or the property of others under Mortgagor's control from any cause insured against or required to be insured against by the provisions of this Mortgage;

c. All sums payable by Mortgagor hereunder shall be paid without notice, demand, counterclaim, setoff, deduction or defense and without abatement, suspension, deferment, diminution or reduction, and the obligations and liabilities of Mortgagor hereunder shall in no way be released, discharged or otherwise affected (except as expressly provided herein) by reason of: (i) any damage to or destruction of or any condemnation or similar taking of the Mortgaged Property or any part thereof; (ii) any restriction or prevention of or interference with any use of the Mortgaged Property or any part thereof; (iii) any title defect or encumbrance or any eviction from the Property or the Improvements or any part thereof by title paramount or otherwise; (iv) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceeding relating to Mortgagor, or any action taken with respect to this Mortgage by any trustee or receiver of Mortgagor, or by any court, in any such proceeding; (v) any claim which Mortgagor has or might have against Mortgagee; (vi) any default or failure on the part of Mortgagee to perform or comply with any of the terms hereof or of any other agreement with Mortgagor; or (vii) any other occurrence whatsoever, whether similar or dissimilar to the foregoing; whether or not Mortgagor shall have notice or knowledge of any of the foregoing. Except as expressly provided herein, Mortgagor waives all rights now or hereafter conferred by statute or otherwise to any abatement, suspension, deferment, diminution or reduction of any sum secured hereby and payable by Mortgagor.

1.08 Taxes and Impositions.

a. Mortgagor agrees to pay, at least ten (10) days prior to delinquency, all real property taxes and assessments, general and special, and all other taxes and assessments of any kind or nature whatsoever, including without limitation, non-governmental levies or assessments such as maintenance charges, owner association dues or charges or fees, levies or charges resulting from covenants, conditions and

0111532

01 AUG 16 10:10:09

HAMCOCK COUNTY RECORDS

Carly J. Hines

restrictions affecting the Mortgaged Property, which are assessed or imposed upon the Mortgaged Property, or become due and payable, and which create, may create or appear to create a lien upon the Mortgaged Property, or any part thereof, or upon any Personal Property, equipment or other facility used in the operation or maintenance thereof (all of which taxes, assessments and other governmental charges of like nature are hereinafter referred to as "Impositions"); provided, however, that if, by law, any such Imposition is payable, or may at the option of the taxpayer be paid, in installments, Mortgagor may pay the same together with any accrued interest on the unpaid balance of such Imposition in installments as the same become due and before any fine, penalty, interest or cost may be added thereto for the nonpayment of any such installment and interest;

b. If at any time after the date hereof there shall be assessed or imposed (i) a tax or assessment on the Mortgaged Property in lieu of or in addition to the Impositions payable by Mortgagor pursuant to subparagraph (a) hereof, or (ii) a license fee, tax or assessment imposed on Mortgagee and measured by or based in whole or in part upon the amount of the outstanding obligations secured hereby, then all such taxes, assessments or fees shall be deemed to be included within the term "Impositions" as defined in subparagraph (a) hereof, and Mortgagor shall pay and discharge the same as herein provided with respect to the payment of Impositions or, at the option of Mortgagee, all obligations secured hereby together with all accrued interest thereon, shall immediately become due and payable. Anything to the contrary herein notwithstanding, Mortgagor shall have no obligation to pay any franchise, estate, inheritance, intangibles, income, excess profits or similar tax levied on Mortgagee or on the obligations secured hereby;

c. Subject to the provisions of subparagraph (d) of this Section 1.08, Mortgagor covenants to furnish Mortgagee within thirty (30) days after the date upon which any such Imposition is due and payable by Mortgagor, official receipts of the appropriate taxing authority, or other proof satisfactory to Mortgagee, evidencing the payments thereof;

d. Mortgagor shall have the right before any delinquency occurs to contest or object to the amount or validity of any such Imposition by appropriate legal proceedings, but this shall not be deemed or construed in any way as relieving, modifying or extending Mortgagor's covenant to pay any such Imposition at the time and in the manner provided in this Section 1.08, unless Mortgagor has given prior written notice to Mortgagee of Mortgagor's intent to so contest or object to an Imposition, and unless, at Mortgagee's sole option, (i) Mortgagor shall demonstrate to Mortgagee's satisfaction that the legal proceedings shall conclusively operate to prevent the sale of the Mortgaged Property, or any part thereof, to satisfy such Imposition prior to final determination of such proceedings; or (ii) Mortgagor shall furnish a good and sufficient bond or surety as requested by and satisfactory to

0111532

01 AUG 16 2010 03

HANCOCK COUNTY RECORDER

Carly J. Stover

Mortgagee; or (iii) Mortgagor shall have provided a good and sufficient undertaking as may be required or permitted by law to accomplish a stay of such proceedings;

e. At the request of Mortgagee, Mortgagor shall pay to Mortgagee, on the first (1st) day of each calendar month, until the Note is paid in full, an amount equal to one-twelfth (1/12) of the annual Impositions reasonably estimated by Mortgagee to pay the installment of taxes next due on the Mortgaged Property. In such event, Mortgagor further agrees to cause all bills, statements or other documents relating to Impositions to be sent or mailed directly to Mortgagee. Upon receipt of such bills, statements or other documents, and providing Mortgagor has deposited sufficient funds with Mortgagee pursuant to this Section 1.08, Mortgagee shall pay such amounts as may be due thereunder out of the funds so deposited with Mortgagee. If at any time and for any reason the funds deposited with Mortgagee are or will be insufficient to pay such amounts as may then or subsequently be due, Mortgagee shall notify Mortgagor and Mortgagor shall immediately deposit an amount equal to such deficiency with Mortgagee. Notwithstanding the foregoing, nothing contained herein shall cause Mortgagee to be deemed a trustee of said funds or to be obligated to pay any amounts in excess of the amount of funds deposited with Mortgagee pursuant to this Section 1.08. Mortgagee shall not be obliged to pay or allow any interest on any sums held by Mortgagee pending disbursement or application hereunder, and Mortgagee may impound or reserve for future payment of Impositions such portion of such payments as Mortgagee may in its absolute discretion deem proper, applying the balance on the principal of or interest on the obligations secured hereby. Should Mortgagor fail to deposit with Mortgagee (exclusive of that portion of said payments which has been applied by Mortgagee on the principal of or interest on the indebtedness secured by the Loan Instruments) sums sufficient to fully pay such Impositions at least thirty (30) days before delinquency thereof, Mortgagee may, at Mortgagee's election, but without any obligation so to do, advance any amounts required to make up the deficiency, which advances, if any, shall be secured hereby and shall be repayable to Mortgagee as herein elsewhere provided, or at the option of Mortgagee the latter may, without making any advance whatever, apply any sums held by it upon any obligation of Mortgagor secured hereby. Should any default occur or exist on the part of Mortgagor in the payment or performance of any of Mortgagor's and/or any guarantor's obligations under the terms of the Loan Instruments, Mortgagee may, at any time at Mortgagee's option, apply any sums or amounts in its hands received pursuant hereto, or as rents or income of the Mortgaged Property or otherwise, upon any indebtedness or obligation of Mortgagor secured hereby in such manner and order as Mortgagee may elect. The receipt, use or application of any such sums paid by Mortgagor to Mortgagee hereunder shall not be construed to affect the maturity of any indebtedness secured by this Mortgage or any of the rights or powers of Mortgagee under the terms of the Loan Instruments or any of the obligations of Mortgagor and/or any guarantor under this Loan Instrument;

0111532

01 AUG 16 AM 10:00

HANCOCK COUNTY RECORDER

Carlyle

f. Mortgage covenants and agrees not to suffer, permit or initiate the joint assessment of the real and personal property, or any other procedure whereby the lien of the real property taxes and the lien of the personal property taxes shall be assessed, levied or charged to the Mortgaged Property as a single lien.

1.09 **Utilities.** To pay when due all utility charges which are incurred by Mortgagor for the benefit of the Mortgaged Property or which may become a charge or lien against the Mortgaged Property for gas, electricity, water or sewer services furnished to the Mortgaged Property and all other assessments or charges of a similar nature, whether public or private, affecting the Mortgaged Property or any portion thereof, whether or not such taxes, assessments or charges are liens thereon.

1.10 **Actions Affecting Mortgaged Property.** To appear in and contest any action or proceeding purporting to affect the security hereof or the rights or powers of Mortgagee; and to pay all costs and expenses, including costs of evidence of title and attorney's fees, in any such action or proceeding in which Mortgagee may appear.

1.11 **Actions by Mortgagee to Preserve Mortgaged Property.** That should Mortgagor fail to make any payment or to do any act as and in the manner provided in any of the Loan Instruments, Mortgagee in its own discretion, without obligation so to do and without notice to or demand upon Mortgagor and without releasing Mortgagor from any obligation, may make or do the same in such manner and to such extent as may be deemed necessary to protect the security hereof. In connection therewith (without limiting its general powers), Mortgagee shall have and is hereby given the right, but not the obligation, (i) to enter upon and take possession of the Mortgaged Property, (ii) to make additions, alterations, repairs and improvements to the Mortgaged Property which it may consider necessary or proper to keep the Mortgaged Property in good condition and repair; (iii) to appear and participate in any action or proceeding affecting or which may affect the security hereof or the rights or powers of Mortgagee; (iv) to pay, purchase, contest or compromise any encumbrance, claim, charge, lien or debt which in the judgment of it may affect or appears to affect the security of this Mortgage or be prior or superior hereto; and (v) in exercising such powers to pay necessary expenses, including employment of counsel or other necessary or desirable consultants. Mortgagor shall, immediately upon demand therefor by Mortgagee, pay all costs and expenses incurred by Mortgagee in connection with the exercise by Mortgagee of the foregoing rights, including, without limitation, costs of evidence of title, court costs, appraisals, surveys and attorneys' fees.

1.12 **Survival of Warranties.** To fully and faithfully satisfy and perform the obligations of Mortgagor contained in each agreement of Mortgagor incorporated by reference herein, and any modification or amendment thereof. All representations, warranties and covenants of Mortgagor contained therein or incorporated by reference shall survive the closing and funding of the loans evidenced by the Note and shall remain continuing obligations, warranties and representations of Mortgagor during any time when any portion of the obligations secured by this Mortgage remain outstanding.

01
15
2010-09-09
HANCOCK COUNTY RECORDS
Cody J. Moore

1.13 **Eminent Domain.** That should the Mortgaged Property, or any part thereof or interest therein, be taken or damaged by reason of any public improvement or condemnation proceeding, or in any other manner ("Condemnation"), or should Mortgagor receive any notice or other information regarding such proceeding, Mortgagor shall give prompt written notice thereof to Mortgagee.

a. Mortgagee shall be entitled to all compensation, awards and other payments or relief therefor, and shall be entitled at its option to commence, appear in and prosecute in its own name any action or proceedings. Mortgagee shall also be entitled to make any compromise or settlement in connection with such taking or damage. All such compensation, awards, damages, rights of action and proceeds awarded to Mortgagor (the "Proceeds") are hereby assigned to Mortgagee and Mortgagor agrees to execute such further assignments of the Proceeds as Mortgagee may require;

b. In the event any portion of the Mortgaged Property is so taken or damaged, Mortgagee shall have the option, in its sole and absolute discretion, to apply all such Proceeds, after deducting therefrom all costs and expenses (regardless of the particular nature thereof and whether incurred with or without suit), including attorneys' fees, incurred by it in connection with such Proceeds, upon any indebtedness secured hereby, or to apply all such Proceeds, after such deductions, to the restoration of the Mortgaged Property upon such conditions as Mortgagee may determine. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

1.14 **Additional Security.** That in the event Mortgagee at any time holds additional security for any of the obligations secured hereby, it may enforce the sale thereof or otherwise realize upon the same, at its option, either before or concurrently herewith or after a sale is made hereunder.

1.15 **Successors and Assigns.** That this Mortgage applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns.

1.16 **Inspections.** That Mortgagee, or its agents, representatives or workmen, are authorized to enter at any reasonable time upon or in any part of the Mortgaged Property for the purpose of inspecting the same and for the purpose of performing any of the acts it is authorized to perform under the terms of any of the Loan Instruments.

1.17 **Liens.** To pay and promptly discharge, at Mortgagor's cost and expense, all liens, encumbrances and charges upon the Mortgaged Property, or any part thereof or interest therein; provided that the existence of any inchoate mechanic's, laborer's, materialman's, supplier's, or vendor's lien shall not constitute a violation of this Section if payment is not yet due under the contract which is the foundation thereof and if such contract does not postpone payment for more

0111532

01 MAY 15 1975

CHICAGO TITLE
HANCOCK COUNTY RECORDER
George J. Starnes

than fifty-five (55) days after the performance thereof. Mortgagor shall have the right to contest in good faith the validity of any such lien, encumbrance or charge, provided Mortgagee shall first deposit with Mortgagee a bond or other security satisfactory to Mortgagee in such amounts as Mortgagee shall reasonably require, but not more than one and one-half of the amount of the claim, and provided further, that Mortgagor shall thereafter diligently proceed to cause such lien, encumbrance or charge to be removed and discharged. If Mortgagor shall fail to discharge any such lien, encumbrance or charge, then, in addition to any other right or remedy of Mortgagee, Mortgagee may, but shall not be obligated to, discharge the same, either by paying the amount claimed to be due, or by procuring the discharge of such lien by depositing in court a bond for the amount claimed or otherwise giving security for such claim, or in such manner as is or may be prescribed by law.

1.18 **Mortgagee's Powers.** Without affecting the liability of any other person liable for the payment of any obligation herein mentioned, and without affecting the lien or charge of this Mortgage upon any portion of the Property not then or theretofore released as security for the full amount of all unpaid obligations, Mortgagee may, from time to time and without notice (i) release any person so liable, (ii) extend the maturity or alter any of the terms of any such obligation, (iii) grant other indulgences, (iv) release or reconvey, or cause to be released or reconveyed at any time at Mortgagee's option any parcel, portion or all of the Mortgaged Property, (v) take or release any other or additional security for any obligation herein mentioned, or (vi) make compositions or other arrangements with debtors in relation thereto.

1.19 **Financial Statements.** Mortgagor will cause to be delivered to Mortgagee the financial statements provided for in the Loan Agreement.

1.20 **Tradenames.** At the request of Mortgagee, Mortgagor shall execute a certificate in form satisfactory to Mortgagee listing the tradenames under which Mortgagor intends to operate the Mortgaged Property, and representing and warranting that Mortgagor does business under no other tradenames with respect to the Mortgaged Property. Mortgagor shall immediately notify Mortgagee in writing of any change in said tradenames, and will, upon request of Mortgagee, execute any additional financing statements and other certificates revised to reflect the change in tradenames.

CHICAGO TITLE

ARTICLE II

ASSIGNMENT OF RENTS, ISSUES AND PROFITS

2.01 **Assignment of Rents.** Mortgagor hereby assigns and transfers to Mortgagee all the rents, issues and profits of the Mortgaged Property, and hereby gives to and confers upon Mortgagee the right, power and authority to collect such rents, issues and profits. Mortgagor irrevocably appoints Mortgagee its true and lawful attorney-in-fact, at the option of Mortgagee at any time and from time to time, to demand, receive and enforce payment, to give receipts, releases and satisfactions, and to sue, in the name of Mortgagor or Mortgagee, for all such rents, issues and profits and apply the same to the indebtedness secured hereby; provided, however, that Mortgagor shall

153
AUG 15 AM 10:00

HANCOCK COUNTY RECORDER

Handwritten signature

have the right to collect such rents, issues and profits (but not more than two months in advance) prior to or at any time there is not an event of default under any of the Loan Instruments. The assignment of the rents, issues and profits of the Mortgaged Property in this Article II is intended to be an absolute assignment from Mortgagor to Mortgagee and not merely the passing of a security interest. Mortgagee shall not have the right to collect the same until there has been a default by Mortgagor under any of the covenants of the loan documents continuing upon expiration of any applicable grace periods.

2.02 Collection Upon Default. Upon any event of default under any of the Loan Instruments, Mortgagee may, at any time without notice, either in person, by agent or by a receiver appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of the Mortgaged Property, or any part thereof, in its own name sue for or otherwise collect such rents, issues and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including attorneys' fees, upon any indebtedness secured hereby, and in such order as Mortgagee may determine. The collection of such rents, issues and profits, or the entering upon and taking possession of the Mortgaged Property, or the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done in response to such default or pursuant to such notice of default.

2.03 Assignment of Leases. Mortgagor hereby assigns and transfers to Mortgagee as additional security for the payment of the indebtedness secured hereby, all present and future leases (subleases) upon all or any part of the Mortgaged Property and agrees to execute and deliver, at the request of Mortgagee, all such further assurances and assignments in the Mortgaged Property as Mortgagee shall from time to time require. In the event Mortgagor, as such additional security is sold, transferred and assigned, or may hereafter sell, transfer and assign, to Mortgagee, its successors and assigns, any interest of Mortgagor as lessor in any lease or leases, Mortgagor expressly covenants and agrees that if Mortgagor, as lessor under said lease or leases so assigned shall fail to perform and fulfill any term, covenant, condition or provision in said lease or leases, or any of the on its part to be performed or fulfilled, at the times and in the manner in said lease or leases provided, or if Mortgagor shall suffer or permit to occur any breach or default under the provisions of any such assignment of any lease or leases, then and in any such event, such breach or default shall constitute an event of default hereunder as such term is defined in Section 3.01 hereof.

2.04 Mortgagee's Right of Possession in Case of Default. In any case in which under the provisions of this Mortgage Mortgagee has a right to institute foreclosure proceedings, whether before or after the whole principal sum secured hereby is declared to be immediately due, or whether before or after the institution of legal proceedings to foreclose the lien hereof or before or after sale thereunder, forthwith, upon demand of Mortgagee, Mortgagor shall surrender to Mortgagee and Mortgagee shall be entitled to take actual possession of the Mortgaged Property or any part thereof personally, or by its agent or attorneys, as for condition broken. In such event Mortgagee in its discretion may, with or without process of law, enter upon and take and maintain possession of all or any part of said Mortgaged Property, together with all documents, books, records, papers, and accounts of Mortgagor or then owner of the Mortgaged Property relating thereto, and may exclude

153
11:05 AM
11:10 AM
HANCOCK COUNTY RECORDER

Garth J. Chase

Mortgagor, its agents or servants, wholly therefrom and may as attorney in fact or agent of Mortgagor, or in its own name as Mortgagee and under the powers herein granted, hold, operate, manage and control the Mortgaged Property and conduct the business, if any, thereof, either personally or by its agents, and with full power to use such measures, legal or equitable, as in its discretion or in the discretion of its successors or assigns, may be deemed proper or necessary to enforce the payment or security of the avails, rents, issues, and profits of the Mortgaged Property, including actions for the recovery of rent, actions in forcible detainer and actions in distress for rent, and with full power: (a) to cancel or terminate any lease or sublease for any cause or on any ground which would entitle Mortgagor to cancel the same; (b) to elect to disaffirm any lease or sublease which is then subordinate to the lien hereof; (c) to extend or modify any then existing leases and to make new leases, which extensions, modifications and new leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the indebtedness hereunder and beyond the date of the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon Mortgagor and all persons whose interests in the Mortgaged Property are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the mortgage indebtedness, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any purchaser; (d) to make all necessary or proper repairs, decorating, renewals, replacements, alterations, additions, betterments and improvements to the Mortgaged Property as to it may seem judicious; (e) to insure and reinsure the same and all risks incidental to Mortgagee's possession, operation and management thereof; and (f) to receive all of such avails, rents, issues and profits; hereby granting full power and authority to exercise each and every of the rights, privileges and powers herein granted at any and all times hereafter, without notice to Mortgagor.

Mortgagee shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under any leases. Mortgagor shall and does hereby agree to indemnify and hold Mortgagee harmless of and from any and all liability, loss or damage which it may or might incur under said leases or under or by reason of the assignment thereof and of and from any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in said leases. Should Mortgagee incur any such liability, loss or damage, under said leases or under or by reason of the assignment thereof, or in the defense of any claims or demands, the amount thereof, including costs, expenses and reasonable attorneys' fees, shall be secured hereby, and Mortgagor shall reimburse Mortgagee therefor immediately upon demand.

2.05 Application of Income Received by Mortgagee. Mortgagee, in the exercise of the rights and powers hereinabove conferred upon it by Section 2.01 and Section 2.04 hereof shall have full power to use and apply the avails, rents, issues and profits of the Mortgaged Property to the payment of or on account of the following, in such order as Mortgagee may determine:

a. to the payment of the operating expenses of Mortgaged Property, including cost of management and leasing thereof (which shall include reasonable

compensation to Mortgagee 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 Mortgaged Property;

c. to the payment of all repairs, renewals, replacements, alterations, additions, betterments, and improvements of the Property and the expenses of placing the Mortgaged Property in such condition as Mortgagee from time to time may deem necessary; and

d. to the payment of any indebtedness secured hereby or any deficiency which may result from any foreclosure sale.

**ARTICLE III
SECURITY AGREEMENT**

3.01 Creation of Security Interest. Mortgagor hereby grants to Mortgagee a security interest in the Personal Property located on or at the Property, including without limitation, any all property of similar type or kind hereafter located on or at the Property for the purpose of securing all obligations of Mortgagor contained in any of the Loan Instruments.

3.02 Warranties, Representations and Covenants of Mortgagor. Mortgagor hereby warrants, represents and covenants as follows:

a. Except for the security interest granted hereby, Mortgagor is, and as to portions of the Personal Property to be acquired after the date hereof will be, the sole owner of the Personal Property, free from any adverse lien, security interest, encumbrance or adverse claims thereon of any kind whatsoever. Mortgagor will notify Mortgagee of, and will defend the Personal Property against, all claims and demands of all persons at any time claiming the same or any interest therein;

b. Mortgagor will not lease, sell, convey or in any manner transfer the Personal Property without the prior written consent of Mortgagee;

c. The Personal Property is not used or bought for personal, family or household purposes;

d. The Personal Property will be kept on or at the Property and Mortgagor will not remove the Personal Property from the Property without the prior

0111532

2011 AUG 26 AM 10:00

MANCOCK COUNTY RECORDER

Carol S. Hayes

written consent of Mortgagee, except such portions or items of Personal Property which are consumed, sold or worn out in ordinary usage, all of which shall be promptly replaced by Mortgagor;

e. Mortgagor maintains a place of business in the State of Indiana and Mortgagor will immediately notify Mortgagee in writing of any change in its place of business as set forth in the beginning of this Mortgage;

f. At the request of Mortgagee, Mortgagor will join Mortgagee in executing one or more financing statements and renewals and amendments thereof pursuant to the Uniform Commercial Code of Indiana in form satisfactory to Mortgagee, and will pay the cost of filing the same in all public offices wherever filing is deemed by Mortgagee to be necessary or desirable;

g. All covenants and obligations of Mortgagor contained herein relating to the Mortgaged Property shall be deemed to apply to the Personal Property whether or not expressly referred to herein; and

h. This Mortgage constitutes a Security Agreement as that term is used in the Uniform Commercial Code of Indiana.

ARTICLE IV

REMEDIES UPON DEFAULT

4.01 Events of Default. Any of the following events shall be deemed an event of default hereunder:

a. Mortgagor has, except for the sale of developed lots in Mortgagor's ordinary course of business, sold, assigned, conveyed, disposed of or otherwise transferred, any part of its ownership in the Mortgaged Property (whether legal or equitable) or the general partner of Mortgagor has sold, assigned, pledged, hypothecated, disposed of, encumbered or otherwise transferred all or any part of its interest in Mortgagor; or

b. The Mortgaged Property is further encumbered by a Mortgage or other security instruments, without the consent of Mortgagee; or

c. Any other "Event of Default" shall occur under the Loan Agreement.

0111532

01 AUG 16 AM 10: 01

HANCOCK COUNTY RECORDER

Carly Schaefer

4.02 **Acceleration Upon Default, Additional Remedies.** Upon the occurrence of any event of default Mortgagee may declare all indebtedness secured hereby to be due and payable and the same shall thereupon become due and payable without any presentment, demand, protest or notice of any kind. Thereafter, Mortgagee may:

a. Either in person or by agent, with or without bringing any action or proceeding, enter upon and take possession of the Mortgaged Property, or any part thereof, in its own name, and do any acts which it deems necessary or desirable to preserve the value, marketability or rentability of the Mortgaged Property or part thereof or interest therein, increase the income therefrom or protect the security hereof and, with or without taking possession of the Mortgaged Property, sue for or otherwise collect the rents, issues and profits thereof, including those past due and unpaid, and apply the same in accordance with Section 2.05 hereof. The entering upon and taking possession of the Mortgaged Property, the collection of such rents, issues and profits and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done in response to such default or pursuant to such notice of default and notwithstanding the continuance in possession of the Mortgaged Property or the collection, receipt and application of rents, issues or profits, Mortgagee shall be entitled to exercise every right provided for in any of the Loan Instruments or by law upon occurrence of any event of default;

b. Commence an action to foreclose this Mortgage, appoint a receiver, or specifically enforce any of the covenants hereof; and

c. Exercise any or all of the remedies available to a secured party under the Indiana Uniform Commercial Code, including, but not limited to:

i. Either personally or by means of a court appointed receiver, take possession of all or any of the Personal Property and exclude therefrom Mortgagor and all others claiming under Mortgagor, and thereafter hold, store, use, operate, manage, maintain and control, make repairs, replacements, alterations, additions and improvements to and exercise all rights and powers of Mortgagor in respect to the Personal Property or any part thereof. In the event Mortgagee demands or attempts to take possession of the Personal Property in the exercise of any rights under any of the Loan Instruments, Mortgagor promises and agrees to promptly turn over and deliver complete possession thereof to Mortgagee;

ii. Without notice to or demand upon Mortgagor, make such payments and do such acts as Mortgagee may deem necessary to protect its security interest in the Personal Property, including without limitation, paying, purchasing, contesting, or compromising any encumbrance, charge or lien which is prior to or superior to the

0111532

01 AUG 16 AM 10:01

HANCOCK COUNTY RECORDER

Paul J. Shaw

security interest granted hereunder, and in exercising any such powers or authority to pay all expenses incurred in connection therewith;

iii. Require Mortgagor to assemble the Personal Property or any portion thereof, at a place designated by Mortgagee and reasonably convenient to both parties, and promptly to deliver such Personal Property to Mortgagee, or an agent or representative designated by it. Mortgagee, and its agents and representatives shall have the right to enter upon any or all of Mortgagor's premises and property to exercise Mortgagee's rights hereunder;

iv. Sell, lease or otherwise dispose of the Personal Property at public sale, with or without having the Personal Property at the place of sale, and upon such terms and in such manner as Mortgagee may determine. Mortgagee may be a purchaser at any such sale.

4.03 **Foreclosure; Expense of Litigation.** When the indebtedness hereby secured, or any part thereof, shall become due, whether by acceleration or otherwise, Mortgagee shall have the right to foreclose the lien hereof for such indebtedness or part thereof. In any suit to foreclose the lien hereof or enforce any other remedy of Mortgagee under this Mortgage or the Note, there shall be allowed and included as additional indebtedness in the decree for sale or other judgment or decree all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for attorneys' costs and fees (including the fees and costs of paralegals), survey charges, appraiser's fees, inspecting engineer's and/or architect's fees, fees for environmental studies and assessments and all additional expenses incurred by Mortgagee with respect to environmental matters, 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, Torrens certificates, and similar data and assurances with respect to 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, or the environmental condition of, the Mortgaged Property. All expenditures and expenses of the nature in this paragraph mentioned, and such expenses and fees as may be incurred in the protection of the Mortgaged Property and the maintenance of the lien of this Mortgage, including the fees of any attorney employed by Mortgagee in any litigation or proceeding affecting this Mortgage (including the fees and costs of paralegals), the Note or the Mortgaged Property, 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.

4.04 **Application of Proceeds of Foreclosure Sale.** The proceeds of any foreclosure sale of the Mortgaged Property shall be distributed and applied in the following order of priority: First, on account of all costs and expenses incident to the foreclosure proceedings, including all such items

0111532

HANCOCK COUNTY RECORDER

Carlye Thomas

as are mentioned in the preceding paragraph hereof; second, all other items which under the terms hereof constitute secured indebtedness additional to that evidenced by the Note, with interest thereon as herein provided; third, all principal and interest remaining unpaid on the Note; and fourth, any overplus to Mortgagor, its successors or assigns, as their rights may appear.

4.05 **Appointment of Receiver.** Upon, or at any time after the filing of a complaint to foreclose this Mortgage, Mortgagee shall be entitled to the appointment of a receiver of the Mortgaged Property by the court in which such complaint is filed, and Mortgagor hereby consents to such appointment. 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 then value of the Mortgaged Property or whether the same shall be then occupied as a homestead or not and Mortgagee hereunder or any Holders may be appointed as such receiver. Such receiver shall have power: (a) to collect the rents, issues and profits of the Mortgaged Property during the pendency of such foreclosure suit and, in case of a sale and a deficiency, during the full statutory period of redemption, whether there be redemption or not, as well as during any further times when Mortgagor, except for the intervention of such receiver, would be entitled to collect such rents, issues and profits; (b) to extend or modify any then existing leases and to make new leases, which extensions, modifications and new leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the indebtedness hereunder and beyond the date of the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon Mortgagor and all persons whose interests in the Mortgaged Property are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the mortgage indebtedness, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any purchaser; and (c) all other powers which may be necessary or are usual in such cases for the protection, possession, control, management, and operation of the Mortgaged Property during the whole of said period. The court from time to time may authorize the receiver to apply the net income in his hands in payment in whole or in part 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; (b) the deficiency in case of a sale and deficiency.

4.06 **Remedies Not Exclusive.** Mortgagee shall be entitled to enforce payment and performance of any indebtedness or obligations secured hereby and to exercise all rights and powers under this Mortgage or under any Loan Instrument or other agreement or any laws now or hereafter in force, notwithstanding some or all of the said indebtedness and obligations secured hereby may now or hereafter be otherwise secured, whether by mortgage, deed of trust, pledge, lien, assignment or otherwise. Neither the acceptance of this Mortgage nor its enforcement whether by court action or other powers herein contained, shall prejudice or in any manner affect Mortgagee's right to realize upon or enforce any other security now or hereafter held by Mortgagee, it being agreed that Mortgagee shall be entitled to enforce this Mortgage and any other security now or hereafter held by Mortgagee in such order and manner as Mortgagee may, in its absolute discretion determine. No remedy herein conferred upon or reserved to Mortgagee is intended to be exclusive of any other

0111532

01 AUG 16 4:16:01

HARCOCK COUNTY RECORDER

Christine

CHICAGO TITLE

remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy given by any of the Loan Instruments to Mortgagee may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by Mortgagee and Mortgagee may pursue inconsistent remedies.

ARTICLE V

MISCELLANEOUS

5.01 Governing Law. This Mortgage shall be governed by the laws of the State of Indiana. In the event that any provision or clause of any of the Loan Instruments conflicts with applicable laws, such conflicts shall not affect other provisions of such Loan Instruments which can be given effect without the conflicting provision, and to this end the provisions of the Loan Instruments are declared to be severable. This instrument cannot be waived, changed, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of any waiver, change, discharge or termination is sought.

5.02 Mortgagor Waiver of Rights. Mortgagor waives the benefit of all laws now existing or that hereafter may be enacted providing for (i) any appraisal before sale of any portion of the Mortgaged Property, and (ii) the benefit of all laws that may be hereafter enacted in any way extending the time for the enforcement of the collection of the Note or the debt evidenced thereby, or creating or extending a period of redemption from any sale made in collecting said debt. In the full extent Mortgagor may do so, Mortgagor agrees that Mortgagor will not at any time insist upon, plead, claim or take the benefit or advantage of any law now or hereafter in force providing for any appraisal, valuation, stay, extension or redemption, and Mortgagor, for Mortgagor, Mortgagor's heirs, devisees, representatives, successors and assigns, and for any and all persons ever claiming any interest in the Mortgaged Property, to the extent permitted by law, hereby waives and releases all rights of redemption, valuation, appraisal, stay of execution, notice of election to mature or declare due the whole of the secured indebtedness and marshaling in the event of foreclosure of the liens hereby created. If any law referred to in this Section and now in force, of which Mortgagor, Mortgagor's heirs, devisees, representatives, successors and assigns or other person might take advantage despite this Section, shall hereafter be repealed or cease to be in force, such law shall not thereafter be deemed to preclude the application of this Section. Mortgagor expressly waives and relinquishes any and all rights and remedies which Mortgagor may have or be able to assert by reason of the laws of the State of Indiana pertaining to the rights and remedies of sureties.

5.03 Limitation of Interest. It is the intent of Mortgagor and Mortgagee in the execution of this Mortgage and the Note and all other instruments securing the Note to contract in strict compliance with the usury laws of the State of Indiana governing the loan evidenced by the Note. In furtherance thereof, Mortgagee and Mortgagor stipulate and agree that none of the terms and provisions contained in the Loan Instruments shall ever be construed to create a contract for the use, forbearance or detention of money requiring payment of interest at a rate in excess of the maximum

interest rate permitted to be charged by the laws of the State of Indiana governing the loan evidenced by the Note. Mortgagor or any guarantor, endorser or other party now or hereafter becoming liable for the payment of the Note shall never be liable for unearned interest on the Note and shall never be required to pay interest on the Note at a rate in excess of the maximum interest that may be lawfully charged under the laws of the State of Indiana and the provisions of this Section shall control over all other provisions of the Note and any other instrument executed in connection herewith which may be in apparent conflict herewith. In the event any holder of the Note shall collect monies which are deemed to constitute interest in excess of the maximum rate allowed by the laws of the State of Indiana, all such sums deemed to constitute interest in excess of the legal rate shall be immediately returned to Mortgagor upon such determination.

5.04 **Statements by Mortgagor.** Mortgagor, within ten (10) days after being given notice by mail, will furnish to Mortgagee a written statement stating the unpaid principal of and interest on the Note and any other amounts secured by this Mortgage and stating whether any offset or defense exists against such principal and interest.

5.05 **Notices.** Whenever Mortgagee or Mortgagor shall desire to give or serve any notice, demand, request or other communication with respect to this Mortgage, each such notice, demand, request or other communication shall be in writing and shall be effective only if the same is delivered by personal service or mailed by registered mail, postage prepaid, return receipt requested, addressed to the address set forth at the beginning of this Mortgage. Any party may at any time change its address for such notices by delivering or mailing to the other parties hereto, as aforesaid, a notice of such change.

5.06 **Captions.** The captions or headings at the beginning of each Section hereof are for the convenience of the parties and are not a part of this Mortgage.

5.07 **Invalidity of Certain Provisions.** If the lien of this Mortgage is invalid or unenforceable as to any part of the debt, or if the lien is invalid or unenforceable as to any part of the Mortgaged Property, the unsecured or partially secured portion of the debt shall be completely paid prior to the payment of the remaining and secured or partially secured portion of the debt, and all payments made on the debt, whether voluntary or under foreclosure or other enforcement action or procedure, shall be considered to have been first paid on and applied to the full payment of that portion of the debt which is not secured or fully secured by the lien of this Mortgage.

5.08 **No Merger.** If both the lessor's and lessee's estates under any lease or any portion thereof which constitutes a part of the Mortgaged Property shall at any time become vested in one owner, this Mortgage and the lien created hereby shall not be destroyed or terminated by application of the doctrine of merger and, in such event, Mortgagee shall continue to have and enjoy all of the rights and privileges of Mortgagee as to the separate estates. In addition, upon the foreclosure of the lien created by this Mortgage on the Mortgaged Property pursuant to the provisions hereof, any leases or subleases then existing and created by Mortgagor shall not be destroyed or terminated by application of the law of merger or as a matter of law or as a result of such foreclosure unless

HANCOCK COUNTY RECORDS
RECORDS SECTION
11-16-02
Carpenter

Mortgagee or any purchaser at any such foreclosure sale shall so elect. No act by or on behalf of Mortgagee or any such purchaser shall constitute a termination of any lease or sublease unless Mortgagee or such purchaser shall give written notice thereof to such tenant or subtenant.

5.09 **Subrogation.** To the extent that proceeds of the Note are used to pay any outstanding lien, charge or prior encumbrance against the Mortgaged Property, such proceeds have been or will be advanced by Mortgagee at Mortgagor's request and Mortgagee shall be subrogated to any and all rights and liens owned or held by any owner or holder of such outstanding liens, charges and prior encumbrances, irrespective of whether said liens, charges or encumbrances are released.

5.10 **Construction Mortgage.** This Mortgage is a construction mortgage and it secures a loan a portion of the proceeds of which will be used to finance the development of the Property and the construction of improvements thereon including the acquisition cost of the Property and certain costs incurred in planning, architectural and engineering studies, zoning and similar expenses. It is understood and agreed a portion of that funds to be advanced upon the Note are to be used in the development of the Property in accordance with the Loan Agreement, which Loan Agreement is incorporated herein by reference to the same extent as if fully set forth herein and made a part of this Mortgage.

5.11 **Environmental Matters.** Mortgagor represents, warrants and covenants that:

a. Mortgagor has not used Hazardous Materials (as defined hereafter) on, from or affecting the Mortgaged Property in any manner which violates federal, state or local laws, ordinances, rules, regulations or policies governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials and, to the best of Mortgagor's knowledge, no prior owner of the Mortgaged Property or any existing or prior tenant, subtenant or occupant of the Mortgaged Property has used Hazardous Materials on, from or affecting the Mortgaged Property in any manner which violates federal, state or local laws, ordinances, rules, regulations or policies governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials;

b. Mortgagor has never received any notice of any violations (and is not aware of any existing violations) of federal, state or local laws, ordinances, rules, regulations or policies governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials at the Mortgaged Property and, to the best of Mortgagor's knowledge, there have been no actions commenced or threatened by any party for noncompliance which affects the Mortgaged Property;

c. Mortgagor shall keep or cause the Mortgaged Property to be kept free of Hazardous Materials and, without limiting the foregoing, Mortgagor shall not cause or permit the Mortgaged Property to be used to generate, manufacture, refine,

01115337
01 AUG 16 11 00 AM '08
RECORDED

HANCOCK COUNTY RECORDER

Boyd, Chae

transport, treat, store, handle, dispose of, transfer, produce or process Hazardous Materials, except in compliance with all applicable federal, state and local laws and regulations, nor shall Mortgagor cause or permit, as a result of any intentional or unintentional act or omission, a release of Hazardous Materials onto the Mortgaged Property or onto any other property; and.

d. Mortgagor shall:

i. conduct and complete all investigations, studies, sampling and testing, and all remedial removal and other actions necessary to clean up and remove all Hazardous Materials on, under, from or affecting the Mortgaged Property in accordance with all applicable federal, state and local laws, ordinances, rules, regulations and policies, to the reasonable satisfaction of Mortgagee and in accordance with the orders and directives of all federal, state and local governmental authorities; and

ii. defend, indemnify and hold harmless Mortgagee, its employees, agents, officers and directors from and against any claims, demands, penalties fines, liabilities, settlements, damages, costs or expenses of whatever kind or nature, including attorneys' fees, fees of environmental consultants and laboratory fees, known or unknown, contingent or otherwise arising out of or in any way related to:

A. the presence, disposal, release or threatened release of any Hazardous Materials on, over, under, from or affecting the Mortgaged Property or the soil, water, vegetation, buildings, personal property, persons or animals thereon;

B. any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Materials;

C. any lawsuit brought or threatened, settlement reached or governmental order relating to such Hazardous Materials; and/or

D. any violation of laws, orders, regulations, requirements or demands of government authorities, which are based upon or in any way related to such Hazardous Materials;

0111532

01 AUG 16 AM 10:02

HANCOCK COUNTY RECORDER

Christy Stearns

e. the Mortgaged Property:

1. does not contain any facility that is subject to reporting under Section 312 of the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11022);

2. is not the site of one (1) or more underground storage tanks for which notification is required under 42 U.S.C. 6991a and IC 13-23-1-2(C)(8)(A); and

3. is not listed on the Comprehensive Environmental Response, Compensation and Liability Information System (CERCLIS) in accordance with Section 116 of CERCLA (42 U.S.C. 9616).

f. Borrower has complied with the Responsible Property Transfer Law of Indiana (Ind. Code 13-25-3-1 et seq.) in all respects in connection with its execution of this Mortgage.

In the event the Mortgage is foreclosed or Mortgagor tenders a deed in lieu of foreclosure, Mortgagor shall deliver the Mortgaged Property to Mortgagee free of any and all Hazardous Materials so that the condition of the Mortgaged Property shall conform with all applicable federal, state and local laws, ordinances, rules or regulations affecting the Mortgaged Property. For purposes of this Mortgage, "Hazardous Materials" includes, without limitation, any flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, and related materials defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 USC §9601, et seq.), the Hazardous Materials Transportation Act, as amended (49 USC §1801 et seq.), the Resource Conservation and Recovery Act, as amended (42 USC § 6901 et seq.) and in the regulations adopted and publications promulgated pursuant thereto, or any other applicable federal, state or local governmental law, ordinance, rule or regulation. The provisions of this paragraph shall be in addition to any and all other obligations and liabilities Mortgagor may have to Mortgagee at common law and shall survive the repayment of all sums due under the Note and the other Loan Instruments and the satisfaction of all of the other obligations of Mortgagor hereunder and under the other Loan Instruments.

5.12 Revolving Credit. This Mortgage secures the indebtedness of Mortgagor to Mortgagee under and pursuant to the revolving mortgage loan evidenced by the Note, and it is expressly agreed that the lien of this Mortgage shall continue, despite the fact that the indebtedness evidenced by the Note may, from time to time, be fully paid, until the obligation of Mortgagee to make further advances under the Note is terminated and all the indebtedness hereby secured is fully paid. This Mortgage is given to secure the "revolving" loan evidenced by the Note and secures not only the indebtedness from the Mortgagor to the Mortgagee existing on the date hereof but all such

0111532

HANDCRAFTED
BY
01/11/15
1532

future advances, whether such advances are obligatory or to be made at the option of the Mortgagee, or otherwise, to the same extent as if such future advances were made on the date of the execution of this Mortgage; although there may be no advance made at the time of execution of this Mortgage, and although there may be no indebtedness outstanding at the time any advance is made. The total amount of indebtedness under the Note secured by this Mortgage may increase or decrease from time to time, but the total unpaid balance under the Note so secured at any time shall not exceed a maximum principal amount of Forty Million Dollars (\$44,000,000), together with interest thereon, and any disbursements made by Mortgagee by the payment of taxes, special assessments, or insurance on the Property, with interest on such disbursements.

5.13 **Partial Releases.** Mortgagor shall be entitled to have the lien of this Mortgage and the other Loan Instruments released from portions of the Property upon payment to Mortgagee of the proper release fees and compliance with certain other requirements as provided in the Loan Agreement. Mortgagee, by acceptance of this Mortgage, agrees to execute such releases and deliver the same to Mortgagor upon satisfaction by Mortgagor of the requirements set forth in the Loan Agreement.

5.14 **Dedicated Right-of-Ways.** The lien of this Mortgage shall be deemed released with respect to dedicated right-of-ways located within the Property upon the recordation of a final plat of the Property.

ARTICLE VI

FIXTURE FILING

It is intended that this Mortgage shall be effective as a financing statement filed as a fixture filing from the date of the filing of this Mortgage for record with the Recorder of the county in which the Property is located. The information provided in this Article VI is provided in order that this Mortgage shall comply with the requirements of the Uniform Commercial Code as enacted in the State of Indiana, for a mortgage instrument to be filed as a financing statement. Mortgagor is the "Debtor" and its name and a mailing address are set forth in the preamble of this Mortgage. The "Secured Party" is Mortgagee and its name and mailing address from which information concerning the security interest granted herein are set forth in the preamble of this Mortgage.

0115

01 AUG 16 AM 10:02

HANCOCK COUNTY RECORDER

Erin J. Shaver

TRACT A (Hampton Place - 22.659 acres)

A part of the East Half of the Northeast Quarter of Section 33, Township 16 North, Range 7 East in Center Township, Hancock County, Indiana, said part being more particularly described as follows:

Commencing at a brass monument marking the Northeast corner of said Northeast Quarter; thence South 00 degrees 09 minutes 38 seconds West (assumed bearing) along the East line of said Northeast Quarter a distance of 1017.71 feet to the Southeast corner of Lexington Run as per plat thereof recorded as Instrument No. 92-12799 in the Office of said Recorder, said point being the Southeast corner of a 25.00 acre tract of land conveyed to Cricket Real Corporation per Instrument No. 91-7068 in the Office of said Recorder and being the POINT OF BEGINNING of this description; thence South 89 degrees 54 minutes 51 seconds West along the Southerly boundary of said 25.00 acre tract of land a distance of 1351.59 feet to the Southwest corner of said 25.00 acre tract of land and to the West line of said East Half Quarter Section; thence South 00 degrees 04 minutes 51 seconds West along said West line 578.54 feet to a point that is 1037.59 feet Northerly of the Southwest corner of the East Half of said Northeast Quarter; thence South 75 degrees 28 minutes 21 seconds East a distance of 103.35 feet; thence South 87 degrees 03 minutes 53 seconds East a distance of 96.97 feet; thence North 00 degrees 07 minutes 15 seconds East a distance of 114.97 feet to a curve having a radius of 50.00 feet, the radius point of which bears North 32 degrees 37 minutes 53 seconds West; thence northeasterly along said curve an arc distance of 28.37 feet to a point which bears South 88 degrees 03 minutes 45 seconds East from said radius point; thence South 89 degrees 55 minutes 09 seconds East a distance of 138.28 feet; thence North 72 degrees 59 minutes 01 seconds East a distance of 46.41 feet; thence South 00 degrees 09 minutes 38 seconds West, parallel with the East line of said Northeast Quarter, a distance of 174.53 feet; thence North 89 degrees 50 minutes 09 seconds West a distance of 120.00 feet; thence South 00 degrees 09 minutes 38 seconds West, parallel with the East line of said Northeast Quarter, a distance of 125.22 feet to a curve having a radius of 50.00 feet, the radius point of which bears South 41 degrees 50 minutes 41 seconds East; thence southwesterly along said curve an arc distance of 37.41 feet to a point which bears North 84 degrees 42 minutes 57 seconds West from said radius point; thence North 84 degrees 42 minutes 57 seconds West a distance of 39.47 feet; thence South 72 degrees 57 minutes 03 seconds West a distance of 74.16 feet; thence South 18 degrees 26 minutes 40 seconds East a distance of 179.09 feet; thence North 78 degrees 41 minutes 01 seconds East a distance of 320.55 feet to a curve having a radius of 375.00 feet, the radius point of which bears North 79 degrees 36 minutes 11 seconds East; thence northerly along said curve an arc distance of 60.79 feet to a point which bears North 89 degrees 50 minutes 10 seconds West from said radius point; thence South 89 degrees 53 minutes 10 seconds East a distance of 50.00 feet; thence South 89 degrees 50 minutes 22 seconds East a distance of 122.50 feet; thence South 25 degrees 48 minutes 28 seconds East a distance of 122.84 feet; thence South 81 degrees 11 minutes 22 seconds West a distance of 2.88 feet; thence South 28 degrees 48 minutes 28 seconds East a distance of 73.89 feet; thence South 70 degrees 14 minutes 38 seconds East a distance of 93.87 feet; thence South 89 degrees 50 minutes 22 seconds East a distance of 113.95 feet; thence North 00 degrees 09 minutes 38 seconds East, parallel with the East line of said Northeast Quarter, a distance of 405.40 feet; thence North 69 degrees 42 minutes 26 seconds East a distance of 199.94 feet to the Southwest corner of a 0.81 acre tract of land conveyed to Robert L. West per Instrument No. 94-12960 in the Office of said Recorder (the next two (2) calls are along the Westerly and the Northerly boundaries of said 0.81 acre tract); North 00 degrees 09 minutes 38 seconds East 195.00 feet; South 89 degrees 50 minutes 22 seconds East 182.00 feet to the East line of said Northeast Quarter Section; thence North 00 degrees 09 minutes 38 seconds East along said East line a distance of 365.72 feet to the point of beginning.

EXHIBIT A

07 13 6

EXHIBIT B

PERMITTED ENCUMBRANCES

1. Lien for real estate taxes not yet due and payable; and
2. Other encumbrances reasonably acceptable to Mortgagee.



CHICAGO TITLE

CAROLYN GRASS
HANCOCK COUNTY RECORDER
9 E MAIN STREET ROOM 204
GREENFIELD IN 46140

0111532

01 AUG 16 AM 10:02

HANCOCK COUNTY RECORDER

Carolyn Grass

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

C.P. MORGAN COMMUNITIES, L.P.,
an Indiana limited partnership

By: C.P. MORGAN INVESTMENT CO., INC.,
an Indiana corporation, Its General Partner

By: [Signature]
Jay L. Collins, Vice-President/Treasurer

STATE OF INDIANA)
)SS:
COUNTY OF HAMILTON)

Before me, a Notary Public in and for said County and State, personally appeared Jay L. Collins, known to me to be the Vice-President/Treasurer of C.P. Morgan Investment Co., Inc., the General Partner of C.P. Morgan Communities, L.P., and acknowledged the execution of the foregoing for and on behalf of said corporation for and on behalf of said limited partnership.

Witness my hand and Notarial Seal, this 31 day of July, 2001.

[Signature]
Notary Public - Signature

Vicki L. Masterson
Notary Public - Printed

My County of Residence:

Marion

My Commission Expires:

08



011
01 AUG 16 AM 10:02
Hancock County Recorder
[Signature]

This instrument prepared by John B. Baxter, Attorney at Law, Barnes & Thornburg, 11 South Meridian Street, Indianapolis, Indiana 46204.

0202697

Carlye Jones

HANCOCK COUNTY RECORDER

0202697

02 FEB -8 AM 11:43

**SUPPLEMENTAL DECLARATION FOR
HAMPTON PLACE**

THIS SUPPLEMENTAL DECLARATION, dated January 14, 2002 is made by C.P. Morgan Communities, L.P., an Indiana limited partnership (the "Developer").

Recitals:

A. Developer recorded a document entitled "Declaration of Covenants, Conditions and Restrictions for Hampton Place" dated March 12, 2001, and recorded on March 13, 2001, as Instrument No. 0102926 (the "Declaration"), in the Office of the Recorder of Hancock County, Indiana.

B. Section 2.3 of the Declaration provides that the Developer has the right and option, to be exercised in its sole discretion and without further approval by any party, to submit at any time and from time to time during the Development Period, as defined in the Declaration, additional real estate to the provisions of the Declaration.

C. The Developer desires to submit additional real estate to the provisions of the Declaration.

Terms:



NOW THEREFORE, the Developer hereby supplements the Declaration as follows:

1. The real estate in Hancock County, Indiana, more particularly described in Exhibit "A" attached hereto, shall be, and hereby is, submitted and made subject to the provisions of the Declaration, and the Declaration shall hereafter be construed as embracing such real estate and all improvements located thereon, whether now or hereafter constructed.

2. Except as provided in Section 1, above, the Declaration shall remain in full force and effect in accordance with its terms.

msmilton

Carlisle & Thross
HANCOCK COUNTY RECORDER

0202697

02 FEB -8 AM 11:43

IN WITNESS WHEREOF, the undersigned has caused this Supplemental Declaration to be executed as of the date written above.

C.P. MORGAN COMMUNITIES, L.P.

By: C.P. MORGAN INVESTMENT CO., INC.,
its general partner

By: *Mark W. Boyce*
Mark W. Boyce, Vice President

STATE OF INDIANA)
) SS:
COUNTY OF HAMILTON)

Before me, a Notary Public in and for said County and State, personally appeared Mark W. Boyce, the Vice President of C.P. Morgan Investment Co., Inc., the general partner of C.P. Morgan Communities, L.P., an Indiana limited partnership, who, having been duly sworn, executed the foregoing Supplemental Declaration for Hampton Place for and on behalf of said partnership and stated that the representations contained therein are true.

Witness my hand and Notarial Seal this 14 day of January, 2008

Jim Johnson) Notary Public

My Commission Expires:
November 15 2009

My County of Residence is:
Hamilton

This Instrument prepared by and upon recording should be returned to:

Michelle Cooper
C.P. Morgan Communities
301 East Carmel Drive
Suite E-300
Carmel, Indiana 46032



LAND DESCRIPTION

A part of the East half of the Northeast Quarter of Section 33, Township 16 North, Range 7 East in Center Township, Hancock County, Indiana, said part being more particularly described as follows:

Commencing at a brass monument marking the Northeast corner of said Northeast Quarter; thence South 00 degrees 09 minutes 38 seconds West (assumed bearing) along the East line of said Northeast Quarter a distance of 1017.71 feet to the Southeast corner of Lexington Run as per plat thereof recorded as Instrument No. 92-12799 in the Office of the Recorder of said Hancock County, Indiana; thence continuing South 00 degrees 09 minutes 38 seconds West along the East line of said Northeast Quarter a distance of 385.72 feet to the Northeast corner of a 0.81 acre tract of land conveyed to Robert L. West per Instrument No. 94-12960 in the Office of said Recorder (the next three (3) calls are along the Northernly, the Westerly and the Southernly boundaries of said 0.81 acre tract); thence North 89 degrees 50 minutes 22 seconds West a distance of 182.00 feet; thence South 00 degrees 09 minutes 38 seconds West a distance of 195.00 feet to the POINT OF BEGINNING; thence South 89 degrees 50 minutes 22 seconds East a distance of 182.00 feet to the East line of said Northeast Quarter; thence South 00 degrees 09 minutes 38 seconds West along the East line of said Northeast Quarter a distance of 1072.34 feet to a brass monument marking the Southeast corner of said Northeast Quarter; thence North 89 degrees 22 minutes 03 seconds West along the South line of said Northeast Quarter a distance of 1349.37 feet to the Southwest corner of the East half of said Northeast Quarter; thence North 00 degrees 04 minutes 51 seconds East along the West line of said East half a distance of 1037.59 feet; thence South 75 degrees 28 minutes 21 seconds East a distance of 103.35 feet; thence South 87 degrees 03 minutes 53 seconds East a distance of 96.97 feet; thence North 00 degrees 07 minutes 15 seconds East a distance of 114.97 feet to a curve having a radius of 50.00 feet, the radius point of which bears North 32 degrees 37 minutes 53 seconds West; thence northeasterly along said curve an arc distance of 48.37 feet to a point which bears South 88 degrees 03 minutes 45 seconds East from said radius point; thence South 89 degrees 55 minutes 09 seconds East a distance of 138.28 feet; thence North 72 degrees 30 minutes 01 seconds East a distance of 46.41 feet; thence South 00 degrees 09 minutes 38 seconds West, parallel with the East line of said Northeast Quarter, a distance of 174.53 feet; thence North 89 degrees 51 minutes 22 seconds West a distance of 120.00 feet; thence South 00 degrees 09 minutes 38 seconds West, parallel with the East line of said Northeast Quarter, a distance of 125.22 feet to a curve having a radius of 50.00 feet, the radius point of which bears South 41 degrees 50 minutes 41 seconds East; thence southwesterly along said curve an arc distance of 37.41 feet to a point which bears North 84 degrees 42 minutes 57 seconds West from said radius point; thence North 84 degrees 42 minutes 57 seconds West a distance of 39.47 feet; thence South 72 degrees 57 minutes 03 seconds West a distance of 74.16 feet; thence South 18 degrees 28 minutes 40 seconds East a distance of 179.09 feet; thence North 78 degrees 41 minutes 01 seconds East a distance of 320.58 feet to a curve having a radius of 375.00 feet, the radius point of which bears North 79 degrees 36 minutes 11 seconds East; thence northerly along said curve an arc distance of 68.79 feet to a point which bears North 89 degrees 53 minutes 10 seconds West from said radius point; thence South 89 degrees 53 minutes 10 seconds East a distance of 50.00 feet; thence South 89 degrees 50 minutes 22 seconds East a distance of 122.50 feet; thence South 27 degrees 48 minutes 28 seconds East a distance of 122.84 feet; thence South 61 degrees 11 minutes 32 seconds East a distance of 2.88 feet; thence South 27 degrees 48 minutes 28 seconds East a distance of 73.59 feet; thence South 70 degrees 14 minutes 38 seconds East a distance of 93.87 feet; thence South 89 degrees 50 minutes 22 seconds East a distance of 113.95 feet; thence North 00 degrees 09 minutes 38 seconds East, parallel with the East line of said Northeast Quarter, a distance of 405.15 feet; thence North 68 degrees 42 minutes 26 seconds East a distance of 133.94 feet to the POINT OF BEGINNING, containing 26.892 acres more or less.

EXHIBIT "A"
(Page 1 of 2)

0202697

02 FEB - 8 AM 11:11

HANCOCK COUNTY REC'D

Robert L. West

LAND DESCRIPTION

A part of the East half of the Northeast Quarter of Section 33, Township 16 North, Range 7 East in Center Township, Hancock County, Indiana; said part being more particularly described as follows:

Commencing at a brass monument marking the Northeast corner of said Northeast Quarter, thence South 00 degrees 09 minutes 38 seconds West (assumed bearing) along the East line of said Northeast Quarter a distance of 1017.71 feet to the Southeast corner of Lexington Run as per plat thereof recorded as Instrument No. 92-12799 in the Office of the Recorder of said Hancock County, Indiana, said point being the Southeast corner of a 25.00 acre tract of land conveyed to Cricket Reel Corporation per Instrument No. 91-7088 in the Office of said Recorder, also being the POINT OF BEGINNING; thence continuing South 00 degrees 09 minutes 38 seconds West, continuing along the East line of said Northeast Quarter a distance of 365.72 feet to the Northeast corner of a 0.81 acre tract of land conveyed to Robert L. West per Instrument No. 94-12960 in the Office of said Recorder (the next three (2) calls are along the Northerly and the Westerly boundaries of said 0.81 acre tract); thence North 89 degrees 50 minutes 22 seconds West a distance of 182.00 feet; thence South 00 degrees 09 minutes 38 seconds West a distance of 185.00 feet to a point on the Northerly line of Hampton Place Section 1 as per plat thereof recorded as Instrument No. _____ in the Office of said Recorder (the next twenty four (24) calls are along said Northerly line); thence South 68 degrees 42 minutes 26 seconds West a distance of 193.94 feet; thence South 00 degrees 09 minutes 38 seconds West, parallel with the East line of said Northeast Quarter, a distance of 406.40 feet; thence North 89 degrees 50 minutes 22 seconds West a distance of 113.95 feet; thence North 70 degrees 14 minutes 38 seconds West a distance of 93.87 feet; thence North 28 degrees 48 minutes 28 seconds West a distance of 122.84 feet; thence North 61 degrees 11 minutes 32 seconds East a distance of 2.88 feet; thence North 28 degrees 48 minutes 28 seconds West a distance of 122.50 feet; thence North 89 degrees 53 minutes 10 seconds West a distance of 50.00 feet to a curve having a radius of 375.00 feet, the radius point of which bears South 89 degrees 53 minutes 10 seconds East; thence southerly along said curve an arc distance of 68.79 feet to a point which bears South 79 degrees 36 minutes 11 seconds West from said radius point; thence South 78 degrees 41 minutes 11 seconds West a distance of 320.58 feet; thence North 18 degrees 26 minutes 40 seconds West a distance of 172.09 feet; thence North 72 degrees 57 minutes 33 seconds East a distance of 74.16 feet; thence South 84 degrees 42 minutes 07 seconds East a distance of 50.00 feet to a curve having a radius of 50.00 feet, the radius point of which bears South 84 degrees 42 minutes 07 seconds East; thence northeasterly along said curve an arc distance of 37.41 feet to a point which bears North 89 degrees 50 minutes 41 seconds West from said radius point; thence North 00 degrees 09 minutes 38 seconds East, parallel with the East line of said Northeast Quarter, a distance of 121.22 feet; thence South 89 degrees 50 minutes 22 seconds East a distance of 120.00 feet; thence North 00 degrees 09 minutes 38 seconds East, parallel with the East line of said Northeast Quarter Section, a distance of 174.53 feet; thence South 72 degrees 30 minutes 01 seconds West a distance of 48.41 feet; thence North 89 degrees 55 minutes 13 seconds West a distance of 138.28 feet to a curve having a radius of 50.00 feet, the radius point of which bears South 88 degrees 03 minutes 45 seconds West; thence southwesterly along said curve an arc distance of 48.37 feet to a point which bears South 32 degrees 37 minutes 53 seconds East from said radius point; thence South 00 degrees 09 minutes 38 seconds West a distance of 103.35 feet; thence North 87 degrees 03 minutes 53 seconds West a distance of 96.97 feet; thence North 75 degrees 21 minutes 21 seconds West a distance of 103.35 feet to the West line of the East Half of said Northeast Quarter Section; thence North 00 degrees 04 minutes 51 seconds East along the West line of said East Half a distance of 578.91 feet to the Southwest corner of said 25.00 acre tract of land; thence North 89 degrees 54 minutes 51 seconds East along the southerly boundary of said 25.00 acre tract of land a distance of 1351.59 feet to the POINT OF BEGINNING. Containing 22.59 acres more or less.

02697

EXHIBIT "A"
(Page 1 of 2)

02 FEB - 8 AM 11:14

HANCOCK COUNTY REC'D

County Clerk

DULY ENTERED
FOR TAXATION

JUN 15 2001

Joseph D. Settles
Notary of Hancock County

0107982

Carlyle S. Lucas
HANCOCK COUNTY RECORDER

01 JUN 15 AM 10:35

Parcel No. _____

CORPORATE WARRANTY DEED

Order No. 294157A

THIS INDENTURE WITNESSETH, That East Gate Developers, Inc. (Grantor)

a corporation organized and existing under the laws of the State of INDIANA CONVEYS
AND WARRANTS to C.P. Morgan Communities, L.P. (Grantee)

of Hancock County, in the State of INDIANA, for the sum of
ONE AND 00/100 Dollars \$1.00
and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the following
described real estate in Hancock County, State of Indiana:
See Exhibit A attached hereto and made a part hereof.

Subject to real estate taxes payable May 2002 and all subsequent taxes.

Grantors certify under oath that no Indiana Gross Income Tax is due or payable in respect to the transfer made by this Deed.

Subject to any and all easements, agreements and restrictions of record. The address of such real estate is commonly known as Hampton Place Tract A, Greenfield, IN 46140

The undersigned persons executing this deed on behalf of Grantor represent and certify that they are duly elected officers of Grantor and have been fully empowered, by proper resolution of the Board of Directors of Grantor, to execute and deliver this deed; that Grantor has full corporate capacity to convey the real estate described herein; and that all necessary corporate action for the making of such conveyance has been taken and done.

IN WITNESS WHEREOF, Grantor has executed this deed this 5TH day of June, 2001.
East Gate Developers, Inc. (Name of Corporation)

(SEAL) ATTEST:

By _____ By *TJS*

Printed Name, and Office

Timmy J. ShROUT, Secretary Treasurer
Printed Name, and Office

STATE OF Indiana
COUNTY OF Marion SS:

Before me, a Notary Public in and for said County and State, personally appeared _____
Timmy J. ShROUT and _____
the Secretary Treasurer and _____, respectively of
East Gate Developers, Inc., who acknowledged
execution of the foregoing Deed for and on behalf of said Grantor, and who, having been duly sworn, stated that
the representations therein contained are true.
Witness my hand and Notarial Seal this 5TH day of June, 2001.

My commission expires: _____ Signature: *Donna L. Wheeler*
Notary Public
DONNA L. WHEELER, Notary Public
My Commission Expires: 11-19-2001
Residing in Marion County Resident of _____ County, Indiana.

This instrument prepared by Everett G. Kuhns, Attorney-At-Law

Return Document to:

Send Tax Bill To: 300 E. CARMEL DR., SUITE F300, CARMEL, IN 46032

Carly J. Chase
HANCOCK COUNTY RECORDER

0107982

01 JUN 15 AM 10:35

EXHIBIT "A"

Order No. 294167A
TRACT A

A part of the East Half of the Northeast Quarter of Section 33, Township 18 North, Range 7 East in Center Township, Hancock County, Indiana, said part being more particularly described as follows:

Commencing at a brass monument marking the Northeast corner of said Northeast Quarter; thence South 00 degrees 09 minutes 38 seconds West (assumed bearing) along the East line of said Northeast Quarter a distance of 1017.71 feet to the Southeast corner of Lexington Run as per plat thereof recorded as Instrument No. 92-12799 in the Office of said Recorder, said point being the Southeast corner of a 25.00 acre tract of land conveyed to Cricket Real Corporation per Instrument No. 91-7068 in the Office of said Recorder and being the POINT OF BEGINNING of this description; thence South 89 degrees 54 minutes 51 seconds West along the Southerly boundary of said 25.00 acre tract of land a distance of 1351.59 feet to the Southwest corner of said 25.00 acre tract of land and to the West line of said East Half Quarter Section; thence South 00 degrees 04 minutes 51 seconds West along said West line 578.54 feet to a point that is 1037.59 feet Northerly of the Southwest corner of the East Half of said Northeast Quarter; thence South 75 degrees 28 minutes 21 seconds East a distance of 103.35 feet; thence South 87 degrees 03 minutes 53 seconds East a distance of 96.87 feet; thence North 00 degrees 07 minutes 15 seconds East a distance of 114.97 feet to a curve having a radius of 60.00 feet, the radius point of which bears North 32 degrees 37 minutes 53 seconds West; thence northeasterly along said curve an arc distance of 48.37 feet to a point which bears South 88 degrees 03 minutes 45 seconds East from said radius point; thence South 89 degrees 55 minutes 09 seconds East a distance of 138.28 feet; thence North 72 degrees 30 minutes 01 seconds East a distance of 46.41 feet; thence South 00 degrees 09 minutes 38 seconds West, parallel with the East line of said Northeast Quarter, a distance of 174.53 feet; thence North 89 degrees 50 minutes 22 seconds West a distance of 120.00 feet; thence South 00 degrees 09 minutes 38 seconds West, parallel with the East line of said Northeast Quarter, a distance of 125.22 feet to a curve having a radius of 50.00 feet, the radius point of which bears South 41 degrees 50 minutes 41 seconds East; thence southwesterly along said curve an arc distance of 37.41 feet to a point which bears North 84 degrees 42 minutes 57 seconds West from said radius point; thence North 84 degrees 42 minutes 57 seconds West a distance of 74.16 feet; thence South 72 degrees 57 minutes 03 seconds West a distance of 39.47 feet; thence North 78 degrees 41 minutes 01 seconds East a distance of 179.09 feet; thence North 78 degrees 41 minutes 01 seconds East a distance of 320.58 feet to a curve having a radius of 375.00 feet, the radius point of which bears North 79 degrees 36 minutes 11 seconds East; thence northerly along said curve an arc distance of 68.79 feet to a point which bears North 89 degrees 53 minutes 10 seconds West from said radius point; thence South 89 degrees 53 minutes 10 seconds East a distance of 50.00 feet; thence South 89 degrees 50 minutes 22 seconds East a distance of 122.50 feet; thence South 28 degrees 48 minutes 28 seconds East a distance of 122.84 feet; thence South 61 degrees 11 minutes 32 seconds West a distance of 2.89 feet; thence South 28 degrees 48 minutes 28 seconds East a distance of 73.59 feet; thence South 70 degrees 14 minutes 38 seconds East a distance of 93.87 feet; thence South 89 degrees 50 minutes 22 seconds East a distance of 113.95 feet; thence North 00 degrees 09 minutes 38 seconds East, parallel with the East line of said Northeast Quarter, a distance of 406.40 feet; thence North 68 degrees 42 minutes 26 seconds East a distance of 193.94 feet to the Southwest corner of a 0.81 acre tract of land conveyed to Robert L. West per Instrument No. 94-12960 in the Office of said Recorder (the next two (2) calls are along the Westerly and the Northerly boundaries of said 0.81 acre tract); North 00 degrees 09 minutes 38 seconds East 195.00 feet; South 89 degrees 50 minutes 22 seconds East 182.00 feet to the East line of said Northeast Quarter Section; thence North 00 degrees 09 minutes 38 seconds East along said East line a distance of 385.72 feet to the point of beginning.

Subject to real estate taxes payable May 2002, and all subsequent taxes.

22,659 acres

30 May 2010

**AMENDMENT TO THE
DECLARATION OF COVENANTS,
CONDITIONS
AND RESTRICTIONS FOR
HAMPTON PLACE**

This Amendment is being made pursuant to Section 9.2 of the Declaration of Covenants, Conditions and Restrictions for Hampton Place which was originally recorded in the Office of the Hancock County Recorder on March 13, 2001, as Instrument Number 0102926. This Amendment was approved at a general meeting of the Members of Hampton Place Homeowners' Association, Inc., and then circulated to the Members and approved by the written consent of at least 75% of the Members/Lot Owners of Hampton Place. The Amendment pertains solely to the subject of storage sheds and amends Section 7.11 of the Covenants by deleting it in its entirety and substituting a new section 7.11 as set forth on the attached Exhibit "A".

The undersigned, holding the office of President in Hampton Place Homeowners' Association, Inc., and being a Member/Lot Owner in Hampton Place Subdivision, hereby certifies that to his/her best knowledge and belief the amended storage shed section attached hereto as Exhibit "A" is true and accurate, and further certifies that the signatures attached hereto as Exhibit "B" represent more than 75% of the Members of Hampton Place Homeowners' Association, Inc. and Lot Owners in Hampton Place Subdivision.

HAMPTON PLACE HOMEOWNERS'
ASSOCIATION, INC. ®

By: [Signature]
Signature
KENNETH E. HOWE
Printed
PRESIDENT
Title

CHICAGO TITLE

Subscribed and sworn to before me, a Notary Public, this 29th day of May, 2003

My Commission Expires:
30 May 2010

State of Indiana
County of Hancock

[Signature]
Notary Public - Signature
KRISTINA L. WILHE
Printed
Resident of Hancock County, Indiana

Prepared by: Eric N. Allen
ALLEN WELLMAN McNEW
Five Courthouse Plaza
Greenfield, Indiana 46140
(317) 462-3455
Fax (317) 467-6109
ena@awmlaw.com

000001

AWM

EXHIBIT "A"

Section 7.11 Storage Sheds and Temporary Structures.

(a) Storage Sheds. Storage sheds can aesthetically affect both the individual property and the neighborhood by concealing many cluttered objects such as garden tools, trashcans, bicycles, etc. Thus, an inconsistently placed or poorly designed storage shed can visually negate an otherwise desirable residential area. As a result, all storage sheds must be compatible with both the architecture and landscape surrounding the house. Therefore, it is important to remember in choosing and locating a shed that there are needs other than for storage which must be considered.

Design Criteria.

1. The design of a storage shed is directly related to its location. As the relationship between the house and the shed changes, so does the type of shed to be used.
2. The shed must be designed to appear as part of the house/landscaping/ fence theme and may be part of a deck.
3. The shed must be designed to respect the "visual rights" and aesthetic interests of neighborhood properties.

Type 1 - Free Standing Sheds.

1. Design. The architectural design of the shed must be compatible with the design of the house: i.e., same materials, color scheme, roof pitch, detailing, etc.
2. Materials. The finish materials used for the shed must be the same as the exterior finish of the house.
3. Colors. The color scheme must be the same as that on the house.
4. Roof. The roof slope and the type and color of the roofing material (shingles, etc.) must match those of the house.
5. Size. While sheds must provide sufficient volume for their intended use, they must be of a size which is appropriate for the size of the property and which is architecturally compatible with the applicant's house. Maximum size being 10w x 12d x 12h, minimum being 6 x 6 x 8h.

Building Location. Location must be approved by Committee.

Lakefront property must be 25 ft. from shoreline.

Application Contents.

1. Site plan or plat sheet of the home showing the relationship of the proposed shed to the adjacent house and property lines.
2. Picture and/or detailed drawing of the shed that includes all dimensions.
3. Description of material used.
4. Color of shed and house.
5. Estimated start date and estimated completion date in term of days after start.

Notification to the four neighbors most affected by the change, by means of their signatures.

(b) Temporary Structures. Party tents or other similar temporary structures may be erected for special events with prior written approval of the Committee, and children's overnight camping tents will be allowed as long as they are not up longer than 48 hours.

EXHIBIT "B"

CERTIFICATE OF APPROVAL OF STORAGE SHED AMENDMENT

The undersigned Members of Hampton Place Homeowners' Association, Inc. and Lot Owners in Hampton Place Subdivision, Greenfield, Indiana, hereby certify that they approve the amendment to the Covenants and authorize their signature below to be recorded with the Office of the Hancock County Recorder, along with the Amended Section 7.11 of the Covenants pertaining to storage sheds. Each person signing below understands and acknowledges that the Amendments they are making to the Covenants will "run with the land" and be binding upon all current and future Lot Owners in Hampton Place Subdivision. These Amendments will not be effective until at least 75% of the Lot Owners have approved the Amendments and they have been recorded with the Hancock County Recorder. Any signature may be withdrawn or deleted at any time prior to recording with the Hancock County Recorder, but thereafter shall become final. This instrument shall be null and void if not recorded with the Hancock County Recorder by August 1, 2003.

Address: 955 Rosemary Circle Christine E. Pione
Greenfield, Indiana 46140 Signature
Lot Number 29 CHRISTINE E. PIONE
Printed Christine E. Pione

Subscribed and sworn to before me, a Notary Public, this 19th day of May, 2003

My Commission Expires: 30 May 2010
Resident of Hancock County, Indiana Kristina L. Dingo
Notary Public - Signature
KRISTINA L. DINGO
Printed

Address: 1299 Lemon Grass Gregory A. Warner
Greenfield, Indiana 46140 Signature
Lot Number 105 GREGORY A. WARNER
Printed Gregory A. Warner

Subscribed and sworn to before me, a Notary Public, this 19th day of May, 2003

My Commission Expires: 30 May 2010
Resident of Hancock County, Indiana Kristina L. Dingo
Notary Public - Signature
KRISTINA L. DINGO
Printed

Address: 984 Rosemary Circle Rachel Colclaz
Greenfield, Indiana 46140 Signature
Lot Number 31 Rachel L. Colclaz
Printed Rachel Colclaz

Subscribed and sworn to before me, a Notary Public, this 20th day of May, 2003

My Commission Expires: 30 May 2010
Resident of Hancock County, Indiana Kristina L. Dingo
Notary Public - Signature
KRISTINA L. DINGO
Printed

Address: 954 Rosemary Circle Missa G. Sawyer
Greenfield, Indiana 46140 Signature
Lot Number 34 Missa G. Sawyer
Printed Missa G. Sawyer

Subscribed and sworn to before me, a Notary Public, this 20th day of May, 2003

My Commission Expires: 30 May 2010
Resident of Hancock County, Indiana Kristina L. Dingo
Notary Public - Signature
KRISTINA L. DINGO
Printed

EXHIBIT "B"

CERTIFICATE OF APPROVAL OF STORAGE SHED AMENDMENT

The undersigned Members of Hampton Place Homeowners' Association, Inc. and Lot Owners in Hampton Place Subdivision, Greenfield, Indiana¹, hereby certify that they approve the amendment to the Covenants and authorize their signature below to be recorded with the Office of the Hancock County Recorder, along with the Amended Section 7.11 of the Covenants pertaining to storage sheds. Each person signing below understands and acknowledges that the Amendments they are making to the Covenants will "run with the land" and be binding upon all current and future Lot Owners in Hampton Place Subdivision. These Amendments will not be effective until at least 75% of the Lot Owners have approved the Amendments and they have been recorded with the Hancock County Recorder. Any signature may be withdrawn or deleted at any time prior to recording with the Hancock County Recorder, but thereafter shall become final. This instrument shall be null and void if not recorded with the Hancock County Recorder by August 1, 2003.

Address: 948 Rosemary Circle
Greenfield, Indiana 46140
Lot Number 3

[Signature]
Signature
Matt Arthur
Printed

Subscribed and sworn to before me, a Notary Public, this 30th day of May, 2003

My Commission Expires:
30 May 2010
Resident of Hancock County, Indiana

[Signature]
Notary Public - Signature
KEISTINA L. WILSON
Printed

Address: 1366 Jasmine Dr
Greenfield, Indiana 46140
Lot Number 40

[Signature]
Signature
Steve Evans
Printed

Subscribed and sworn to before me, a Notary Public, this 30th day of May, 2003

My Commission Expires:
30 May 2010
Resident of Hancock County, Indiana

[Signature]
Notary Public - Signature
KEISTINA L. WILSON
Printed

Address: 1358 Jasmine Dr
Greenfield, Indiana 46140
Lot Number 41

[Signature]
Signature
Caroline Dama
Printed

Subscribed and sworn to before me, a Notary Public, this 30th day of May, 2003

My Commission Expires:
30 May 2010
Resident of Hancock County, Indiana

[Signature]
Notary Public - Signature
KEISTINA L. WILSON
Printed

Address: 1334 Jasmine Dr
Greenfield, Indiana 46140
Lot Number 44

[Signature]
Signature
Leann Mckerlin
Printed

Subscribed and sworn to before me, a Notary Public, this 30th day of May, 2003

My Commission Expires:
30 May 2010
Resident of Hancock County, Indiana

[Signature]
Notary Public - Signature
KEISTINA L. WILSON
Printed

EXHIBIT "B"

CERTIFICATE OF APPROVAL OF STORAGE SHED AMENDMENT

The undersigned Members of Hampton Place Homeowners' Association, Inc. and Lot Owners in Hampton Place Subdivision, Greenfield, Indiana¹, hereby certify that they approve the amendment to the Covenants and authorize their signature below to be recorded with the Office of the Hancock County Recorder, along with the Amended Section 7.11 of the Covenants pertaining to storage sheds. Each person signing below understands and acknowledges that the Amendments they are making to the Covenants will "run with the land" and be binding upon all current and future Lot Owners in Hampton Place Subdivision. These Amendments will not be effective until at least 75% of the Lot Owners have approved the Amendments and they have been recorded with the Hancock County Recorder. Any signature may be withdrawn or deleted at any time prior to recording with the Hancock County Recorder, but thereafter shall become final. This instrument shall be null and void if not recorded with the Hancock County Recorder by August 1, 2003.

Address: 1303 Lavender Dr.
Greenfield, Indiana 46140
Lot Number 48

[Signature]
Signature
SHENIA SCHLUSSEK
Printed

Subscribed and sworn to before me, a Notary Public, this 20th day of May, 2003.

My Commission Expires:
30 May 2010
Resident of Hancock County, Indiana

[Signature]
Notary Public - Signature
KRISTINA L. WINDGARD
Printed

Address: 1323 Lavender Dr
Greenfield, Indiana 46140
Lot Number 49

[Signature]
Signature
Julius P. Madari
Printed

Subscribed and sworn to before me, a Notary Public, this 20th day of May, 2003.

My Commission Expires:
30 May 2010
Resident of Hancock County, Indiana

[Signature]
Notary Public - Signature
KRISTINA L. WINDGARD
Printed

Address: 1341 LAVENDER DR.
Greenfield, Indiana 46140
Lot Number 50

[Signature]
Signature
KRISTINA PAJIC
Printed

Subscribed and sworn to before me, a Notary Public, this 20th day of May, 2003.

My Commission Expires:
30 May 2010
Resident of Hancock County, Indiana

[Signature]
Notary Public - Signature
KRISTINA L. WINDGARD
Printed

Address: 1359 Lavender Dr
Greenfield, Indiana 46140
Lot Number 51

[Signature]
Signature
KRISTIAN SUNTAR
Printed

Subscribed and sworn to before me, a Notary Public, this 20th day of May, 2003.

My Commission Expires:
30 May 2010
Resident of Hancock County, Indiana

[Signature]
Notary Public - Signature
KRISTINA L. WINDGARD
Printed