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DECLARATION OF EASEMENTS, COVENANTS, AND RESTRICTIONS

LINCOLN PARK

A subdivision in White River Township,
Johnson County, Indiana

August, 1999

Developed by:
Bay Communities, LLC
10415 N. College Avenue
Indianapolis, IN 46280

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**DECLARATION OF EASEMENTS, COVENANTS, AND
RESTRICTIONS OF LINCOLN PARK**

THIS DECLARATION OF EASEMENTS, COVENANTS, AND RESTRICTIONS FOR LINCOLN PARK ("Declaration"), is made this 24 day of August, 1999, by BAY COMMUNITIES, LLC (hereinafter referred to as "Declarant"),

WITNESSETH THAT:

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

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

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

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

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

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

GENERAL PURPOSE OF THIS DECLARATION

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

ARTICLE 1

Definitions For All Purposes Of This Declaration

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

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

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

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

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

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

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

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

Section 1.8. Declaration. "Declaration" means the Declaration of Covenants, Conditions and Restrictions of Lincoln Park as recorded in Book _____, Page _____, as Instrument

No. _____ in the office of the Recorder of Johnson County, Indiana (as the same may be amended or supplemented from time to time). Reference is made to the Declaration for a description of the rights, restrictions and obligations associated with the Easements identified on any Plat.

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

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

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

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

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

Section 1.14. Mortgagee. "Mortgagee" means any holder, insurer, or guarantor of any first mortgage on any Lot.

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

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

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

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

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

ARTICLE 2

Easements and Restrictions

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

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

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

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

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

(v) the terms and provisions of this Declaration.

Neither Declarant nor the Association shall be responsible for any loss, damage or injury to property or injury or death to persons arising out of the use of the Common Areas or any

improvements or facilities installed by Declarant or the Association therein or thereon. The Common Areas and all such equipment and facilities, if any, shall be used at the sole risk of the user.

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

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

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

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

Section 2.5. Restrictions.

A. **Lot Use.** Except as specifically permitted herein, all Lots shall be used exclusively for residential purposes and for occupancy by a Single Family. No non-residential building shall be erected on any Lot. An Owner may maintain an office in such Owner's residence provided that

business meetings and transactions with members of the public shall be prohibited. No signs in connection with an Owner's business shall be erected on the Lot and no employees of the Owner's business shall work out of the Owner's residence or anywhere on the Lot. No residence or any part of a Lot may be leased or rented except for a total of six (6) months during any five (5) year period except where: (i) the Owner leases the Lot and the residence located thereon to a parent or child or (ii) the Owner, as a requirement of Owner's employment or business, establishes a temporary residence which is more than ninety (90) miles from the Owner's Lot, in which case the Owner may lease his Lot and the improvements thereon to a tenant for up to a total of twelve (12) months during any five (5) year period.

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

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

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

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

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

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

H. Street Right-of-Way and Width. The minimum public street right-of-way within Lincoln Park shall be fifty feet (50').

I. **Cul-De-Sac Right-of-Way Radius.** The minimum public cul-de-sac right-of-way shall be fifty-five feet (55').

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

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

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

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

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

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

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

O. **Mail Boxes.** Mailboxes and the posts on which they are mounted shall be of uniform size, height, design, and color as specified by the Design Review Committee. Owners shall be prohibited from altering the appearance of their mailboxes or the posts on which they are mounted, except to make repairs to and maintain or replace the mailboxes or the posts on which they are mounted in a manner which is consistent with the uniform appearance as specified by the Design Review Committee. Owners shall install and thereafter keep their mailboxes in a good state of repair at all times.

P. Driveways. All driveways shall be paved with a hard surface material as specified and approved by the Declarant and/or the Design Review Committee from the point of connection with the abutting street to the point of connection with the garage apron and shall be totally completed prior to occupancy of the residence.

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

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

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

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

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

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

Association shall have the right to collect all such additional amounts from the Owners of the various Lots in Lincoln Park in the same manner that the Association may collect Regular and Special Assessments as provided herein. Specifically, the Association shall:

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

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

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

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

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

X. Nuisances. No noxious or offensive activities shall be permitted on any Lot; nor shall anything be done on any Lot which may be or become an unreasonable annoyance or nuisance to the Owner of any other Lot. Any violation of this paragraph shall constitute a nuisance which may be abated by the Association in any manner provided at law or in equity. The cost or expense of abatement, including court costs and attorneys' fees, shall constitute a Special Assessment against such Lot and the Owner thereof, to be collected and enforced in the manner provided in this Declaration for the collection and enforcement of assessments in general. Neither the Association nor any of its agents, employees or contractors shall be liable to the Owner for any damage which may result from any work performed hereunder.

Y. Occupancy of Partially Completed Residence Prohibited. No residence constructed on any Lot shall be occupied or used for residential purposes until it shall have been substantially completed. The determination of whether the residence shall have been substantially completed shall be made by the Design Review Committee, and such decision shall be binding on all parties.

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

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

- a. Only one (1) sign advertising the Lot and related improvements for sale shall be located on the Lot at any given time.
- b. Any such sign shall be located only in the front yard of the Lot.
- c. Any such sign shall be no more than six square feet in size.

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

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

(iii) **Animals.** No animals, livestock, or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats, or other household pets may be kept, provided that they are not bred, kept or maintained for any commercial use and are confined, at all times, within the boundaries of their Owner's Lot, unless restrained by a leash and attended by their Owner. No outdoor kennels, doghouses, or other structures designed or used as a shelter for any such pets shall be permitted on any Lot. In every case, dogs, cats, and other household pets which are excepted under this section, shall be kept in a manner that does not constitute an annoyance to the Owners of other Lots, and does not adversely affect their use and enjoyment of their property.

(iv) **Passenger Vehicles.** No more than two (2) passenger vehicles shall be permitted to be parked in a driveway for more than a continuous twenty-four (24) hour period of time. No vehicles, of any kind, shall be parked on the streets, within the road rights-of-way or in front of the building setback line of any Lot, except on a casual and temporary basis when Lot owners are entertaining guests. In no event shall any vehicle be permitted to remain parked over night on the street, within the road rights-of-way, or in front of the building setback line of any Lot.

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

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

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

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

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

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

(xi) **Temporary Structures.** No trailers or temporary storage sheds shall be erected or situated on any Lot, except those used by a builder during the construction of a residence on a Lot or for marketing of the Real Estate.

(xii) **Satellite Dishes and Outside Speakers.** No satellite dishes or outside speakers shall be installed or permitted on any Lot, except satellite dishes one meter or less in diameter.

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

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

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

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

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

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

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

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

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

(xxiii) **Firearms and Fireworks.** The discharge of firearms and use of fireworks is prohibited on any part of the Real Estate.

(xxiv) **Open Fires.** Open fires, leaf burning, trash burning or the like shall be strictly prohibited. This provision shall not prohibit the use of outside grills, stoves, smokers, and other similar appliances designed for personal homeowner use.

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

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

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

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

ARTICLE 3

ASSOCIATION

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

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

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

(ii) **Class B Members.** The Class B member shall be the Declarant. The Class B membership shall cease and terminate and be converted to Class A

membership upon the "Applicable Date" (as such term is defined in Section 1.2 hereof).

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

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

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

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

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

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

(i) The administration and enforcement of the covenants and restrictions contained in this Declaration.

(ii) The maintenance and upkeep of all of the Lots, pursuant to Section 2.5(U) and all other relevant sections of this Declaration, and the Common Areas.

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

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

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

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

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

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

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

ARTICLE 4

DESIGN REVIEW COMMITTEE

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

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

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

exterior elevations of all buildings proposed to be constructed upon such Lot, (c) a list of all exterior surface materials to be utilized (with samples), (d) a grading and drainage plan for the Lot, if applicable, and (e) a landscaping plan, and, if applicable, a tree removal plan showing existing trees which will be required to be removed in connection with the proposed construction, together with any information that the Design Review Committee may request.

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

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

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

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

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

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

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

Section 4.3. Duties of Committee. The Design Review Committee shall approve or disapprove all matters submitted to it for approval within thirty (30) days after all required information is reviewed by it. One copy of the submitted material shall be maintained by the Design Review Committee for its permanent files. All notifications to applicants shall be in writing. In the event that any plans or parts thereof are disapproved, the Design Review Committee shall specify the reason or reasons for such disapproval.

Section 4.4. Liability of Committee. Neither the Design Review Committee nor any member thereof nor the Declarant, the Association nor any office, director, agent or employee of any of the foregoing shall be liable in any way for (i) any defects in any plans, specifications or other materials submitted to it, (ii) any defects in any work done according thereto or (iii) any damages arising out of or in connection with the approval or disapproval of any matter by the Design Review Committee.

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

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

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

December of the year preceding the year in which the delay occurred. This payment shall be in addition to any other remedies at law or equity and shall not be exclusive thereof.

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

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

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

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

ARTICLE 5

ASSESSMENTS

Section 5.1. Creation of Lien and Personal Obligation. Each Owner of a Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree, to pay to the Association (i) regular assessments for Common Expenses ("Regular Assessments"), (ii) special assessments for capital improvements and operating deficits and for special maintenance and repairs ("Special Assessments"), and (iii) any separate amounts assessed by the Association for costs incurred by the Association to maintain the yard, landscaped areas, trees, and shrubs of any Owner's separate Lot. The Regular Assessments may include an amount to be set aside or otherwise allocated in a reserve fund for the purpose of providing repair and replacement of any capital improvements which the Association is required to maintain. Each initial purchaser of a Lot (whether from Declarant or a successor or assignee of Declarant) shall, at the time of the closing of the purchase of the Lot, contribute to the Association the sum of Two Hundred Dollars (\$200.00) which shall be deposited and held by the Association in such a reserve fund. This contribution shall be nonrefundable and shall not be in lieu of a credit against any other

assessments provided herein. All such assessments shall be established, shall commence upon such dates and shall be collected as hereinafter provided and shall be due and payable without relief from valuation and appraisal laws. Such assessments, together with interest, costs of collection and reasonable attorneys' fees, shall be a continuing lien upon the Lot against which such assessment is made prior to all other liens except only (i) tax liens on any Lot in favor of any unit of government or special taxing district and (ii) the lien of any first mortgage of record. Each such assessment, together with interest, costs of collection and reasonable attorneys' fees, shall also be the personal obligations of the Owner of the Lot at the time such assessment becomes due and payable. Where the Owner constitutes more than one person, the liability of such persons shall be joint and several. The personal obligation for delinquent assessments (as distinguished from the lien upon the Lot) shall not pass to such Owner's successors in title unless expressly assumed by them. The Association shall, upon request of a proposed Mortgagee or proposed purchaser having a contractual right to purchase a Lot, furnish to such Mortgagee or purchaser a statement setting forth the amount of any unpaid assessments or other charges against the Lot. Such statement shall be binding upon the Association as of the date of such statement.

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

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

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

any Special Assessments, and such other assessment notices as the Board of Directors shall deem appropriate shall be sent to each Owner subject thereto. All assessments shall be due and payable in such manner and on such schedule as the Board of Directors may provide. The Board of Directors may provide for reasonable interest and late charges on past due assessments.

Section 5.5. Failure of Owner to Pay Assessments

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

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

ARTICLE 6

INSURANCE

Section 6.1. Insurance. The Association shall maintain in force adequate public liability insurance protecting the Association against liability for property damage and personal injury with the amount of such coverage in no event less than One Million Dollars (\$1,000,000.00) for any single occurrence, occurring on or in connection with any and all Common Areas. The Association shall also maintain in force adequate fire and extended coverage insurance, insuring all Common

Property against fire, and extended coverage insurance, insuring all Common Areas against fire, windstorm, vandalism, and such other hazards as may be insurable under standard "extended coverage" provisions in an amount equal to the full replacement value of such Common Area improvements. The Association shall notify all 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 all rights of subrogation on any claim against the Association, its officers, Board members, the Declarant, any property manager, their respective employees and agents, the Lot Owners and occupants, and also waives any defenses based on co-insurance or on invalidity arising from acts of the insured, and shall cover claims of one or more insured parties against other insured parties.

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

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

ARTICLE 7

DAMAGE TO COMMON AREAS

Section 7.1. Damage to Common Areas. In the event of damage to or destruction of any part of the Common Areas, the Association shall repair or replace the same from the insurance proceeds available. If such insurance proceeds are insufficient to cover the costs of repair or replacement of the property damaged or destroyed, the Association may make a special Assessment to cover the additional cost of repair or replacement not covered by the insurance proceeds. Notwithstanding any obligation or duty of the Association hereunder to repair or maintain the Common Areas, if, due to the willful, intentional or negligent acts or omissions of an Owner or of a member of his family or of a guest, tenant, invitee or other occupant or visitor of such Owner, damage shall be caused to the Common Areas or if maintenance, repairs or replacements shall be required thereby which would otherwise be a Common Expense, then such Owner shall pay for such damage and such maintenance, repairs and replacements, as may be determined by the Association,

unless such loss is covered by the Association's insurance. If not paid by such Owner upon demand by the Association, the cost of repairing such damage shall be added to and constitute a special assessment against such Owner and his Lot to be collected and enforced in the manner provided in this Declaration for the collection and enforcement of assessments in general.

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

ARTICLE 8

MORTGAGES

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

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

Section 8.3. Mortgagees' Rights. The Mortgagees shall have the right, at their option, jointly or severally, to pay taxes or other charges which are in default or which may or have become

a charge against the Common Area to pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy for the Common Area, and Mortgagees making such payment shall be owed immediate reimbursement therefor from the Association.

ARTICLE 9

AMENDMENT

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

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

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

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

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

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

- (a) changes or reduces the voting rights of the Class A members;

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

(c) changes the procedure for imposing Special Assessments;

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

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

(f) changes the boundaries of any Lot;

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

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

(i) changes hazard insurance requirements;

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

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

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

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

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

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

ARTICLE 10

GENERAL PROVISIONS

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

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

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

Section 10.4. Failure to Enforce Not a Waiver of Rights. The failure of Declarant, the Association, or any Owner to enforce any term, Covenant, or condition, herein contained shall in no event be deemed to be a waiver of the right to do so thereafter, nor of the right to enforce any other such term, Covenant or condition.

Section 10.5. Effect of Invalidation. If any provision of this Declaration is held to be invalid by any Court, the invalidity of such provision shall not affect the validity of the remaining provisions thereof.

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

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

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

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

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

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

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

Section 10.11. Governing Law. This Declaration of Covenants shall be governed and interpreted pursuant to the laws of the State of Indiana.

In Witness Whereof, the Declarant has caused this Declaration to be executed on the date first above written.

BAY COMMUNITIES, LLC

By: *Bruce Sklare*
Printed: BRUCE SKLARE

STATE OF INDIANA)
)SS:
COUNTY OF JOHNSON)

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

My Commission Expires:
2/23/2008

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

This document prepared by: J. Lee Robbins, Attorney at Law, WILLIAMS HEWITT & ROBBINS, LLP, 300 S. Madison Ave., Suite 400, P.O. Box 405, Greenwood, IN 46142, (317) 888-1121.

T:\SSKLARE.BRUZONING\COVENANT-AG4.wpd

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

EXHIBIT "A"

14.00

Recorded Johnson County, Indiana
Jean Harmon, Recorder
Date 09/10/1999 Time 15:07:47 1 of 3 Pgs
Inst # 1999-026800 OFF
15.00

**FIRST AMENDMENT TO THE DECLARATION OF
EASEMENTS, COVENANTS, AND RESTRICTIONS
FOR LINCOLN PARK**

This First Amendment to the Declaration of Easements, Covenants, and Restrictions for Lincoln Park amends the original Declaration dated August 24, 1999 and recorded with the Johnson County Recorder's Office on August 30, 1999 under Instrument Number 1999-25514 ("Original Declaration").

WITNESSETH THAT:

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

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

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

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

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

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

EXHIBIT A

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

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COMMITMENTS RELATED TO THE REZONING, PLATTING AND DEVELOPMENT OF LINCOLN PARK

The undersigned, being all of the Owners of the real estate described on Exhibit "A", attached hereto and incorporated herein (the "Real Estate") as a condition of the rezoning, platting and developing of that Real Estate, make the following commitments:

A. With regard to the single-family subdivision:

DEFINITIONS.

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

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

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

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

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

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

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

both legal and equitable title thereto.

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

COMMITMENTS.

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

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

3. **Minimum Living Space.** Except as provided for herein, the minimum square footage of living space of dwellings within Lincoln Park, shall be 1,375 square feet exclusive of porches, garages, or basements. The minimum square footage of living space of dwellings on up to 20 lots within Lincoln Park may be reduced to 1,132 square feet exclusive of porches, garages, or basements.

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

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

6. **Minimum Front Building Setback.** The minimum front building setback (from the right-of-way) for each lot within Lincoln Park shall be 20 feet.

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

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

9. **Street Right-of-Way and Width.** The minimum public street right-of-way within Lincoln Park shall be fifty feet (50').

10. **Cul-De-Sac Right-of-Way Radius.** The minimum public cul-de-sac right-of-way shall be fifty feet (50').

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

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

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

14. **Building Height.** No residence erected on a Lot shall exceed two stories, exclusive of basements and crawl spaces. The maximum building height of any accessory structures, which may be erected only after approval by the Design Review Committee, shall not exceed 20 feet which shall be the vertical distance from the Lot ground level to the mean height between eaves and ridges, for a gable, hip or gambrel roof. The Lot ground level shall be selected by either of the following, whichever yields a greater building height:

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

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

15. **Mail Boxes.** Mailboxes and the posts on which they are mounted shall be of uniform size, height, design, and color as specified by the Design Review Committee. Owners shall be prohibited from altering the appearance of their mailboxes or the posts on which they are mounted, except to make repairs to and maintain or replace the mailboxes or the posts on which they are mounted in a manner which is consistent with the uniform appearance as specified by the Design Review Committee. Owners shall install and thereafter keep their mailboxes in a good state of repair at all times.

16. **Driveways.** All driveways shall be paved with a hard surface material as specified and approved by the Declarant and/or the Design Review Committee from the point of connection with the abutting street to the point of connection with the garage apron and shall be totally completed prior to occupancy of the residence.

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

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

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

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

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

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

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

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

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

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

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

24. **Nuisances.** No noxious or offensive activities shall be permitted on any Lot; nor shall anything be done on any Lot which may be or become an unreasonable annoyance or nuisance to the

Owner of any other Lot. Any violation of this paragraph shall constitute a nuisance which may be abated by the Association in any manner provided at law or in equity. The cost or expense of abatement, including court costs and attorneys' fees, shall constitute a Special Assessment against such Lot and the Owner thereof, to be collected and enforced in the manner provided in this Declaration for the collection and enforcement of assessments in general. Neither the Association nor any of its agents, employees or contractors shall be liable to the Owner for any damage which may result from any work performed hereunder.

25. **Occupancy of Partially Completed Residence Prohibited.** No residence constructed on any Lot shall be occupied or used for residential purposes until it shall have been substantially completed. The determination of whether the residence shall have been substantially completed shall be made by the Design Review Committee, and such decision shall be binding on all parties.

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

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

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

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

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

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

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

c. **Animals.** No animals, livestock, or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats, or other household pets may be kept, provided that they are not bred, kept or maintained for any commercial use and are confined, at all times, within the boundaries of their Owner's Lot, unless restrained by a leash and attended by their Owner. No outdoor kennels, doghouses, or other structures designed or used as a shelter for

any such pets shall be permitted on any Lot. In every case, dogs, cats, and other household pets which are excepted under this section, shall be kept in a manner that does not constitute an annoyance to the Owners of other Lots, and does not adversely affect their use and enjoyment of their property.

d. **Passenger Vehicles.** No more than two (2) passenger vehicles shall be permitted to be parked in a driveway for more than a continuous twenty-four (24) hour period of time. No vehicles, of any kind, shall be parked on the streets except on a casual and temporary basis when Lot owners are entertaining guests. In no event shall any vehicle be permitted to remain parked on the street overnight.

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

f. **Inoperative Parked Vehicles.** At no time shall any unlicensed or inoperative vehicle be permitted on any Lot or Common Area, street, easement or right-of-way, unless kept entirely within a garage or permitted storage area.

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

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

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

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

k. **Temporary Structures.** No trailers or temporary storage sheds shall be erected or situated on any Lot, except those used by a builder during the construction of a residence on a Lot or for marketing of the Real Estate.

- l. **Satellite Dishes and Outside Speakers.** No satellite dishes or outside speakers shall be installed or permitted on any Lot, except satellite dishes one meter or less in diameter.
- m. **Antennas and Solar Panels.** Except as approved by the Design Review Committee, no exposed antennas or solar panels or other apparatus shall be installed or permitted on any Lot.
- n. **Awnings.** No metal, fiberglass or similar type material awnings or patio covers shall be permitted on any Lot, except as may be approved by the Design Review Committee.
- o. **Fences, Walls, Barriers.** No fences, walls, barriers or like structures shall be permitted on any Lot with the exception of such fences, walls, screens or similar structures which are located in close proximity to the residence and are specifically approved by the Declarant and/or the Design Review Committee. A boundary fence may be installed and maintained by the Declarant or the Association along the perimeter boundary of the Real Estate.
- p. **Lot Access.** All Lots shall be accessed from the interior street areas of the subdivision.
- q. **Tree Preservation.** Established live trees around the perimeter of the Real Estate shall be preserved to the extent possible. All dead and diseased trees around the perimeter of the property shall be removed. Upon a Lot being developed and occupied, no trees, other than dead or diseased trees, shall be removed from any Lot without the prior written approval of the Design Review Committee.
- r. **Field Tiles.** Any field tile or underground drain which is on any Lot must be allowed to perpetuate.
- s. **Wells And Septic Tanks.** Water wells and septic tanks shall be prohibited on all Lots.
- t. **Sump Pumps and Drains.** Sump pumps, gravity drains and other drains serving individual residences on Lots shall outfall only into drainage swales or storm structures included in the storm drainage system for the subdivision.
- u. **Hunting, Fishing and Trapping.** Hunting, fishing and trapping are prohibited on any part of the Real Estate.
- v. **Firearms and Fireworks.** The discharge of firearms and use of fireworks is prohibited on any part of the Real Estate.

w. **Open Fires.** Open fires, leaf burning, trash burning or the like shall be strictly prohibited. This provision shall not prohibit the use of outside grills, stoves, smokers, and other similar appliances designed for personal homeowner use.

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

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

B. With regard to the business/commercial property located on the northeast corner of the Real Estate:

COMMITMENTS.

1. Uses shall be limited to the following: retail businesses, offices and banks, personal and professional services, libraries and museums, public parks and playgrounds, accessory uses, essential services, private clubs, veterinary hospitals (excluding outdoor kennels). Uses shall not include any 24 hour uses, the sale of beer, wine, liquor or any other alcoholic beverages, free standing restaurants, gas stations, auto repair businesses, retail strip centers or convenience stores.

2. The design and construction of any structure shall be residential in character with gabled roofs and masonry on 50% of the exterior. No structure shall exceed two stories exclusive of basements and crawl spaces.

3. No part of any structure shall be closer than 50 feet from the south property line or 60 feet from the edge of the curb of the access road along the west side of the property.

4. The property will have no direct access to County Line Road and will have no more than two (2) curb cuts on the access road to the west.

5. A ten foot (10') landscape buffer between the residential development to the south will be maintained and will include evergreens of at least eight feet (8') in height, spaced every ten feet (10') along the entire south boundary of the property. The area shall consist of Austrian Pine and/or Norway Spruce trees or approved equals.

6. Parking on the property shall comply with all relevant state and local ordinances.

7. No pole sign structure will be erected anywhere on the property. Building signs may be installed on the north and west facade of any structures on the property as permitted by all relevant state and local ordinances.

8. Upon request by Johnson County, the property owner will donate, without consideration, additional right-of-way along the frontage of County Line Road for the entire width of the real estate, not to exceed a depth of fifteen feet (15'). All improvements located within that right-of-way will be removed, altered, and/or relocated by the owner at the owner's sole expense.

C. With regard to the assisted living facility to be constructed on the northwest corner of the Real Estate:

COMMITMENTS.

1. The design and construction of the facility will be residential in character with 50% of the exterior being masonry.

2. The facility will be a closed/restricted access facility providing limited care to private pay residents.

3. The property will have no direct access to County Line Road and will have no more than two (2) curb cuts on the access road to the west.

4. The facility will be one story and will be limited to no more than 40 separate units.

5. The building setback line along the south boundary of the property will be at least fifty feet (50'). The building setback line along the east boundary line of the property, from the street curb will be at least fifty feet (50').

6. A ten foot (10') landscape buffer between the residential development to the south and west will be maintained. Evergreens of at least eight feet (8') in height, spaced every ten feet (10'), will be placed along the entire south boundary of the property. The evergreens shall consist of either Austrian Pine and/or Norway Spruce trees or approved equals. A wooden fence at least eight feet (8') in height shall be erected along the entire west boundary of the property.

7. Upon request by Johnson County, the property owner will donate, without consideration, additional right-of-way along the frontage of County Line Road for the entire width of the real estate, not to exceed a depth of fifteen feet (15'). The additional right-of-way, if requested by Johnson County, will be donated without consideration. All improvements located within that right-of-way will be removed, altered, and/or relocated by the owner at the owner's sole expense.

These commitments shall be conditions of all rezoning and platting approvals of Johnson County and/or the City of Greenwood. These commitments may be enforced by any current or future owner of any part of the Real Estate, by the State of Indiana, Johnson County, the City of Greenwood, the Carefree Homeowner's Association and the owners of lots in the Subdivisions of Meridian Meadows and Sable Ridge. These commitments shall be covenants that run with the land,

enforceable against all subsequent owners, tenants and occupants thereof including their personal representatives, successors and assigns. These covenants shall be recorded with the Johnson County Recorder and shall be referenced on all deeds of conveyance of any interest in the Real Estate.

In Witness Whereof, these commitments are being executed on this 10 day of AUGUST 1999.

Bay Communities LLC

Bruce Sklare

Printed: BRUCE SKLARE

Title: V.P.

STATE OF INDIANA)
) SS:
COUNTY OF ~~JOHNSON~~)
Hamilton

Before me, a Notary Public in and for said County and State, personally appeared Bruce Sklare, who acknowledged the execution of the foregoing, and who, having been duly sworn, stated that any representations therein contained are true.

Witness my hand and Notarial Seal this 10 day of August, 1999.

My Commission Expires:

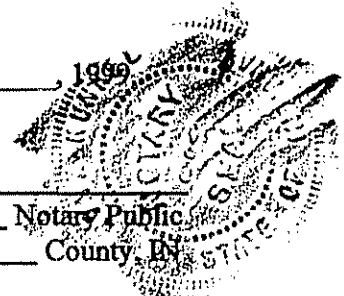
3-9-2001

Signature: Roni Kunkel

Printed: Roni Kunkel

Resident of HEB 102

Notary Public
County, IN



This document prepared by: J. Lee Robbins, Attorney at Law, WILLIAMS HEWITT & ROBBINS, LLP, 300 South Madison Ave., Suite 400, P.O. Box 405, Greenwood, Indiana 46142, (317) 888-1121.

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

EXHIBIT "A"

19-3

Recorded Johnson County, Indiana
Jean Harmon, Recorder
Date 11/29/1999 Time 14:31:50 1 of 5 Pgs
Inst # 1999-033980 OFF
Plat: 21.00

**FIRST AMENDMENT TO THE COMMITMENTS
RELATED TO THE REZONING, PLATTING
AND DEVELOPMENT OF LINCOLN PARK**

The undersigned being all of the owners of the real estate that is included as a part of the Lincoln Park PUD are executing this First Amendment for the reasons as set forth herein:

WHEREAS, the Johnson County Commissioners adopted Ordinance No. 99-11, an Ordinance to amend Ordinance No. 84-7 for Johnson County to rezone from R-2 Residential District to a PUD Planned Unit Development zoning classification, the real estate described as follows:

A part of the Northeast Quarter of Section 26, Township 14 North, Range 3 East, Johnson County, Indiana, described as follows: Commencing at the Harrison-type marker found at the northeast corner of said quarter section, said corner being North 01 degree 38 minutes 33 seconds East 2,659.50 feet, measured along the east line of said quarter section, from the Harrison-type marker found at the southeast corner of said quarter section; thence North 89 degrees 40 minutes 00 seconds West 2,167.49 feet along the north line of said quarter section to the northeast corner of Carefree Subdivision, Eleventh Section, the plat of which is recorded in Plat Cabinet B, Slides 363-364, in the Office of the Recorder of Johnson County, said corner being South 89 degrees 40 minutes 00 seconds East 500.49 feet, measured along the north line of said quarter section, from the PK nail found at the northwest corner of said quarter section; thence South 01 degree 53 minutes 15 seconds West 50.02 feet along the east line of said Carefree Subdivision to an iron pin found at the northeast corner of Lot 311 in said Carefree Subdivision and the POINT OF BEGINNING of this description; thence South 89 degrees 40 minutes 00 seconds East 691.05 feet along the south line of the land described in the Warranty Deed to the Johnson County Commissioners recorded in Deed Record 252, page 676, in said Recorder's office, to an iron pin with Woolpert LLP Cap set on the prolonged west line of Meridian Meadows Subdivision, the plat of which is recorded in Plat Cabinet B, Slide 533, in said Recorder's office; thence South 01 degree 49 minutes 33 seconds West 1,521.55 feet along said prolonged west line and along the west line of said Meridian Meadows Subdivision and along said west line prolonged to the iron pin with Woolpert LLP Cap set on the north line of Sable Ridge Subdivision, Section II, the plat of which is recorded in Plat Cabinet C, Slide 407, in said Recorder's office; thence North 89 degrees 41 minutes 56 seconds West 692.70 feet along the north line of said Sable Ridge Subdivision to the iron pin with Woolpert LLP Cap set at the northwest corner of said Sable Ridge Subdivision, said corner coinciding with the east line of Carefree Subdivision, Twelfth Section, the plat of which is recorded in Plat Cabinet B, Slide 369, in said Recorder's office; thence North 01 degree 53 minutes 15 seconds East 1,521.99 feet along the east line of said Carefree Subdivisions to the POINT OF BEGINNING and containing 24.162 acres, more or

less. The bearings in this description are based upon the plats of said Carefree Subdivisions.

(the "Real Estate");

WHEREAS, the Johnson County Commissioners, on or about September 13, 1999, approved the Master Plan of the Real Estate which has been entitled "Lincoln Park";

WHEREAS, as a condition of the rezoning and platting of Lincoln Park, Bay Development Corporation made various commitments which were reduced to writing, executed by Bay Communities, LLC and recorded with the Johnson County Recorder on August 30, 1999, as Instrument Number 99-025513 ("Original Commitments");

WHEREAS, since recording the Original Commitments, it has been discovered that Bay Communities, LLC was not the owner of all of the Real Estate which is a part of Lincoln Park PUD and, accordingly, the other owners of the Real Estate needed to execute the Commitments in order to make them binding and enforceable; and

WHEREAS, the purpose of this First Amendment is to include the other owners of real estate that is a part of the Lincoln Park PUD as signatories to the Original Commitments to bind them and their real estate, respectively, to the Original Commitments and to describe, specifically, the sections of Lincoln Park PUD to which the various commitments relate.

IN WITNESS WHEREOF, the Original Commitments are hereby amended as follows:

1. Those commitments as stated in the Original Commitments that were made "with regard to the single-family subdivision" shall relate only to the real estate described on Exhibit "A" attached hereto and incorporated herein which is owned by Bay Communities, LLC and which shall be developed as a single-family, age restricted subdivision.
2. Those commitments as stated in the Original Commitments that were made "with regard to



the business/commercial property located at the northeast corner of the Real Estate" shall relate only to the Lot shown as Commercial/Professional Use Block "A" on the Final Plat for Lincoln Park recorded on September 13, 1999 in Plat Book D, page 232 A, B, C, D, and E and Instrument No. 99-026928 ("Plat").

3. Those commitments as stated in the Original Commitments that were made "with regard to the assisted living facility to be constructed on the northwest corner of the Real Estate" shall relate only to the Lot shown as Lot 82 on the Plat.

IN WITNESS WHEREOF, this Amendment is being executed on this 29th day of

OCTOBER, 1999.

BAY COMMUNITIES, LLC

By: *Bruce Selare*
Printed: BRUCE SELARE
Title: MEMBER
Dated: 11/17/99

Carl E. Busart
Carl E. Busart

Dated: 10/29/99

Mary F. Busart
Mary F. Busart

Dated: 10-29-99

William J. Altman
William J. Altman

Dated: 10-29-99

Lois A. Altman
Lois A. Altman

Dated: 10/28/99

Bixler W. Howland
Bixler W. Howland

Dated: 10/29/99

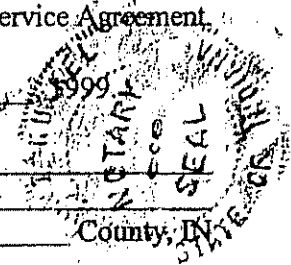
STATE OF INDIANA)
) SS:
COUNTY OF JOHNSON)

BEFORE ME, the undersigned, a Notary Public in and for said County and State, personally appeared Bruce Skell, an authorized representative of the BAY COMMUNITIES, LLC, and acknowledged the execution of the foregoing Sewer Service Agreement.

WITNESS my hand and Notarial Seal this 17 day of NOV, 1999.

My Commission Expires:
3-9-2001

Don Kunkel
Notary Public Don Kunkel
Resident of Marion County, IN



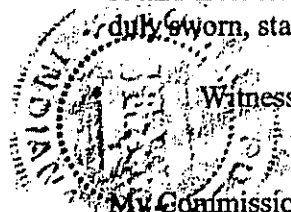
STATE OF INDIANA)
) SS:
COUNTY OF JOHNSON)

Before me, a Notary Public in and for said County and State, personally appeared **William J. and Lois A. Altman**, who acknowledged the execution of the foregoing, and who, having been duly sworn, stated that any representations therein contained are true.

Witness my hand and Notarial Seal this 29th day of OCTOBER, 1999.

My Commission Expires:
01-17-2008

Signature: Diana K. Mundy
Printed: DIANA K. MUNDY Notary Public
Resident of MARION County, IN



STATE OF INDIANA)
) SS:
COUNTY OF JOHNSON)

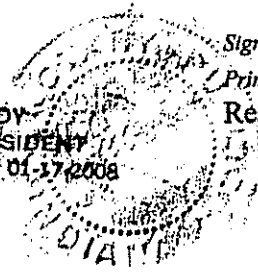
Before me, a Notary Public in and for said County and State, personally appeared **Carl E. and Mary F. Busart**, who acknowledged the execution of the foregoing, and who, having been duly sworn, stated that any representations therein contained are true.

Witness my hand and Notarial Seal this 29th day of OCTOBER, 1999.

My Commission Expires:

Signature: Diana K. Mundy
Printed: _____ Notary Public
Resident of _____ County, IN

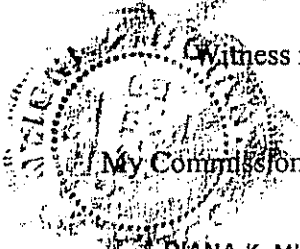
DIANA K. MUNDY
MARION COUNTY RESIDENT
MY COMMISSION EXPIRES 01-17-2008



STATE OF INDIANA)
) SS:
COUNTY OF JOHNSON)

Before me, a Notary Public in and for said County and State, personally appeared **Bixler W. Howland**, who acknowledged the execution of the foregoing, and who, having been duly sworn, stated that any representations therein contained are true.

Witness my hand and Notarial Seal this 29th day of OCTOBER, 1999.



My Commission Expires:

DIANA K. MUNDY
MARION COUNTY RESIDENT
MY COMMISSION EXPIRES: 01-17-2008

Signature Diana K. Mundy
Printed: _____ Notary Public
Resident of _____ County, IN

This document prepared by:
J. Lee Robbins, Attorney at Law
WILLIAMS HEWITT & ROBBINS, LLP
300 South Madison Ave., Suite 400
P.O. Box 405
Greenwood, Indiana 46142
(317) 888-1121