

MARTHA A. WOLACKS

70829 MAY-98

Restrictive Covenants

SUBJECT TO THE DEED PLAT AND FOR TRANSFER

We, the undersigned Mainstay, Inc., ("Declarant") owner of the real estate shown and described on Exhibit A attached hereto (the "Property"), do hereby lay off, plat and subdivide the Property in accordance with the plat prepared by the Schneider Engineering Company under date of Sept 28th, 2002 and recorded in the office of the Marion County Recorder on May 9th, 2002³ as Instrument No. 2002-0096728 (the "Plat").

This subdivision shall be known and designated as Mansfield Village Townhomes, an addition to the City of Indianapolis, Marion County, State of Indiana.

The foregoing covenants are to run with the land and shall be binding on all parties and all persons claiming under them until July 1, 2021, at which time said covenants shall be automatically extended for successive periods of ten (10) years unless by vote of a majority of the then Owners of the Lots covered by these covenants, it is agreed to change such covenants in whole or in part.

Invalidation of any one of the foregoing covenants by judgment or court order shall in no way affect any of the other covenants which shall remain in full force and effect.

In order to afford adequate protection to all present and future Owners of Lots and Townhomes in Mansfield Village Townhomes, the undersigned Declarant hereby adopts and establishes the following protective covenants, each and all for the benefit of each and every Owner of any Lot or Townhome in Mansfield Village Townhomes, binding all the same, now and hereafter, and their grantees, their heirs and personal representatives, and where applicable, their successors and assigns:

1. Definitions. The following terms as used in this Declaration, unless the context clearly requires otherwise, shall mean the following:

(a) "Articles" or "Articles of Incorporation" means the Articles of Incorporation of the Corporation, as hereinafter defined. The Articles of Incorporation are incorporated herein by reference.

(b) "Board of Directors" means the governing body of the Corporation elected by the Members in accordance with the Bylaws of the Corporation.

(c) "Bylaws" shall mean the Bylaws of the Corporation and shall provide for the election of directors and officers and other governing officials of the Corporation.

(d) "Common Area" means the ground designated as such upon the recorded Plat of Mansfield Village Townhomes.

(e) "Common Expense" means expenses for administration of the Corporation, expenses for the upkeep, maintenance, repair and replacement of the Common Area and exterior items of the Townhomes and all sums lawfully assessed against the Members of the Corporation.

(f) "Declarant" means and refers to Mainstay, Inc., an Indiana corporation, and any successors and assigns of it whom it designates 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 Property pursuant to the exercise of rights under, or foreclosure of, a mortgage executed by Declarant.

(g) "Lot" means any plot of ground designated as such upon the Plat of and upon which one (1) Townhome is constructed. When Lot is used it shall be deemed to include the Townhome, if any, located thereon.

(h) "Member" means a member of the Corporation.

(i) "Owner" means a person, firm, corporation, partnership, association, trust or other legal entity, or any combination thereof, who owns the fee simple title to a Lot.

(j) "Townhome" means the living unit located upon a Lot.

2. Description of Mansfield Village Townhomes. Mansfield Village Townhomes consists of 36 Lots numbered 1 through 36 inclusive, together with the Common Area and easements as designated on the Plat. The Common Area, easements and the size of the Lots are as designated on the Plat. Each Lot shall be conveyed as a separately designated legally described freehold estate, subject to the terms, conditions and provisions in these covenants set forth. The Lots shall be delineated and described as a metes and bounds part of the Property, done at such time as the Townhomes are complete enough to establish the relationship of the party wall to the Lot's perimeter.

3. Lots designated in the Plat are hereby reserved for attached single-family residential use and will have erected thereon townhomes which shall share common wall(s) with other similar single-family townhomes on the Property, such common wall(s) comprising a part of the common property lines between such Lots. Each wall which is built as a part of the original construction of the Townhomes upon the Lots and connects two (2) dwelling units shall constitute a common wall or party wall, and to the extent not inconsistent with the provisions of these restrictions, the general rules of law regarding common walls or party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto. Hereafter, the terms common wall and party wall shall be used interchangeably.

4. The divisor wall between any Lots or Townhomes described herein and the Lot or Townhome immediately adjoining it shall be a common wall or party wall and the adjoining Owners

shall have cross easements in the wall, and the wall shall be used for the joint purposes of the Lots or Townhomes separated by it. To the extent not inconsistent with the provisions of this Paragraph 4, the general rules of law regarding party walls and liability for property damage due to negligent or intentional or willful acts or omissions shall apply thereto. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall, proportionately. If any party wall is destroyed or damaged by fire or other casualty, then, to the extent that such damage is not covered by insurance maintained by any of the Owners who make use of such party wall, and repaired out of the proceeds of same, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in equal proportions without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent, intentional or willful acts or omissions. Notwithstanding any other provision of these covenants, to the extent that such damage is not covered and paid by insurance proceeds, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements. The right of any Owner to contribution from any other Owner under this paragraph shall be appurtenant to the land and shall pass to such Owner's successors in title.

5. This common wall covenant and the covenants herein contained shall run with both parcels of land utilizing the common wall, but shall not operate to convey to either party the fee to any part of the land owned or to be acquired by the other party, the creation of rights to a common wall being the sole purpose hereof.

6. In the event of a dispute or controversy as to any matter within or arising out of these covenants, such dispute or controversy shall be submitted to the arbitration of the Homeowners

Association, and the arbitration of such matters shall be an express condition precedent to any legal or equitable action or proceeding of any nature whatsoever.

7. MAINSTAY, INC. will cause to be incorporated under the laws of the State of Indiana a not-for-profit corporation (the "corporation") (or "Homeowners Association") under the name "Mansfield Village Townhomes Homeowners Association, Inc." or a similar name, for the purpose of ownership and maintenance of all common areas as designated on the Plat, and to administer and enforce the recorded covenants, collecting and disbursing the assessments and charges imposed and created hereby and hereunder or by and under any other agreement to which the Property may at any time be subject, and promoting the health, safety and welfare of the owners of the Property, and all parts thereof, and that said association shall have the power to establish by-laws, duly recorded in the Office of the Recorder of Marion County, Indiana, establishing procedures and rules for the efficient execution of these covenants. Each owner of a Lot and Townhome shall automatically upon becoming an Owner be and become a Member of the Corporation and shall remain a Member until such time as his ownership ceases.

8. The following restrictions on the use and enjoyment of the Lots, Townhomes and Common Area shall be applicable to Mansfield Village Townhomes:

(A) All Townhomes shall be used exclusively for residential purposes. No more than five (5) persons may occupy any Townhome as a residence at any one time unless the Homeowners Association grants express written permission.

(B) No additional buildings shall be erected or located on the Property other than those shown on the Plat, without the consent of the Homeowners Association.

(C) Nothing shall be done or kept in any Lot, Townhome or in the Common Area which will cause an increase in the rate of insurance on any building or the contents thereof.

No Owner shall permit anything to be done or kept in his Lot, Townhome or in the Common Area which will result in a cancellation of insurance, or which would be in violation of any law or ordinance or the requirements of any insurance underwriting or rating bureau.

(D) No nuisance shall be permitted and no waste shall be committed to any Lot, Townhome or Common Area.

(E) No Owner shall cause or permit anything to be hung or displayed on the outside of the windows or placed on the outside walls of any building or Townhome, and no sign, awning, canopy, shutter, radio or television antenna, satellite dish, or other attachment or thing shall be affixed to or placed upon the exterior walls or roofs or any other parts of the building or the Lots without the prior consent of the Homeowners Association. Notwithstanding the foregoing, a satellite dish may be installed and maintained on a Lot without the written approval of the Homeowners Association if (i) it is not visible from neighboring Lots, streets or Common Area; or the Owner prior to installation has received the written consent of the Owners of all Lots who would have views of the satellite dish from their Lots and presented such consents to the Homeowners Association; (ii) it is a satellite dish two (2) feet or less in diameter; and (iii) the Homeowners Association has approved the method of installation and the company installing the satellite dish.

(F) No animals, livestock or poultry of any kind shall be raised, bred or kept in any Townhome, Lot, Common Area or on the Property, except that a maximum of two (2) pet dogs or cats or a combination thereof, each weighing no more than seventy-five (75) pounds, may be kept in a Townhome, provided that such pets are not kept, bred or maintained for any commercial purpose, and do not create a nuisance. An Owner shall be fully liable for any injury or damage to persons or Property including the Common Area, caused by his pets. The

Homeowners Association may adopt such rules and regulations regarding pets as it may deem necessary from time to time. Any pet which, in the judgment of the Homeowners Association, is causing or creating a nuisance or unreasonable disturbance or noise, shall be permanently removed from the Property within ten (10) days after written notice from the Homeowners Association to the respective owner to do so. No pets shall be chained or tethered outside the Townhome and must be attended on a leash at all times when outside the Townhome. An Owner shall be responsible for cleaning up after such household pet(s) at all times, on an Owner's Lot and within the Common Areas.

(G) Nothing shall be done or permitted in any Townhome which will impair the structural integrity of any building or which would structurally change any building or which would affect the exterior appearance of the building. No Townhome shall be used in any unlawful manner or in any manner which might cause injury to the reputation of Mansfield Village Townhomes or which might be a nuisance, annoyance, inconvenience or damaging to other Owners and occupants of Townhomes or neighboring Property, including without limiting the generality of the foregoing, noise by the use of any musical instruments, radio, television, loud speakers, electrical equipment, amplifiers, or other equipment or machines or loud persons.

(H) No clothes, sheets, blankets, rugs, laundry or other things shall be hung out or exposed on, or so as to be visible from, any part of the Common Area. The Common Area shall be kept free and clear of rubbish, debris and other unsightly materials.

(I) No industry, trade or other commercial or religious activity, educational or otherwise, designed for profit, altruism or otherwise, shall be conducted, practiced or permitted on the Property; provided, however, that home professional pursuits without

employees, public visits or non-residential storage, mail or other use of a Townhome shall be permissible.

(J) No "for sale," "for rent," or "for lease" signs or other signs or other window advertising display shall be maintained or permitted on any part of the Property or any Lot or Townhome without the prior written consent of the Homeowners Association; provided, however, that the right is reserved by Mainstay, Inc. and the Homeowners Association to place or allow to be placed "for sale," or "for lease," signs on or about the Property in connection with any unsold or unoccupied Townhomes.

(K) All Owners and members of their families, their guests, or invitees, and all occupants of any Townhome or other persons entitled to use the same and to use and enjoy the Lots, Common Area or any part thereof, shall observe and be governed by such rules and regulations as may from time to time be promulgated and issued by the Homeowners Association governing the operation, use and enjoyment of the Townhomes and Common Areas.

(L) No boats, campers, trailers of any kind, buses, mobile homes, motor homes, trucks (other than 3/4 ton or less pick-up trucks), motorcycles, minibikes, mopeds, or any other vehicles of any description other than normal passenger automobiles, shall be permitted, parked or stored anywhere within the Property; provided, however, that nothing herein shall prevent the parking or storage of such vehicles completely enclosed within a garage. No repair work shall be done on the Property on any vehicles, including passenger automobiles. No disabled or inoperative vehicles shall be permitted, parked or stored outside the garage or on the Common Area. No more than two (2) vehicles per Townhome may be regularly permitted, parked or stored on a Lot and other than for temporary, short-term periods of time, such

vehicles must be stored within the garage and parked within the garage or on the driveway of the Owner's Townhome. Notwithstanding any other provision in these covenants the common parking area located in Mansfield Village Townhomes shall be reserved for the guests and visitors of the Owners, who shall park there on a short term, temporary basis only. All Owners and members of Owners' families must park all vehicles in the garage or driveway of such Owner's Townhome. The Board of Directors shall have the right to tow any vehicle parked or kept in violation of these covenants contained within this paragraph at the vehicle owner's sole expense.

(M) No owner shall be allowed to plant trees, flowers or other plants, landscape or do any gardening on the exterior of Townhome, anywhere on any Lot or within any Common Area, except with express permission from the Homeowners Association, and if such permission is granted, such Owner, at his expense, shall be obligated to maintain any and all such trees or landscaping.

(N) No Owner shall construct any fence, of any type, any storage building or other building, any above ground pools, hot tubs, or any other structure or object that will change the exterior surfaces, the Lots or Common Areas, all of which are to be uniform and under the exclusive maintenance and control of the Homeowners Association.

(O) All rubbish, trash or garbage shall be stored in closed sanitary containers within the garage of a Townhome, shall be regularly removed from the Lot, and shall not be allowed to accumulate. No open fires shall be permitted on any part of the Property.

(P) Common Area shall be used only for the purposes for which it is designed and intended, and shall be used subject to the rules and regulations from time to time adopted by the Homeowners Association.

(Q) No Owner may rent or lease his Townhome for transient or hotel purposes.

(R) Any Owner who leases a Townhome shall lease the entire Townhome and shall have a written lease which shall provide that the lease is subject to the provisions of these covenants, the Bylaws and the rules and regulations as adopted by the Homeowners Association and any failure of the lessee to comply with the terms of such documents shall be a default under the lease.

(S) No boat docks, decks, rafts or similar structures or improvements shall be permitted on or near any retention pond without the prior written consent of the Homeowners Association, which consent, if granted, shall be subject to the terms and conditions required by the Homeowners Association. No Owner of any Lot shall do or permit to be done any action or activity which could result in the pollution of any retention pond, diversion of water, change in elevation of the water level, earth disturbance resulting in silting or any other conduct which could result in an adverse effect upon water quality, drainage or proper management or otherwise impair or interfere with the use of the retention pond for drainage and related purposes.

No swimming, boating, fishing, other recreational activities or activities of any kind shall be allowed on, in, near or around any retention pond without the prior consent of the Homeowners Association, which consent, if granted, shall be upon whatever terms and conditions the Homeowners Association requires.

(T) No Owner may erect or install any mailbox or other structure for the delivery of mail or newspapers. All such deliveries will take place at a central location on the Property, in a facility installed and maintained by the Homeowners Association.

9. All exteriors of the Townhomes including but not limited to the roofs, exterior walls, windows, exterior doors, porches, porch railings, patios, exterior brick, exterior siding, exterior

surface of garage doors, driveways, sidewalks, fences, yards (front and rear), shrubs, trees and other landscaping shall be maintained, repaired and replaced by the Corporation with the expense therefor to be part of the Common Expenses and nothing shall be done to modify, change or alter the appearance of the above without the written consent of the Homeowners Association.

The Corporation shall have a permanent and irrevocable easement from and for each Lot and Townhome to effect the maintenance, repair and replacement of the exterior items, as described above, of each Lot and Townhome.

10. No Owners shall make any change, alteration, addition or improvement to the exteriors of any Townhome nor in any manner alter the exterior appearance of a Townhome without the express written consent of the Homeowners Association.

11. Each Owner shall, at the Owner's expense, be responsible for the maintenance, repair and replacement within the Owner's Townhome. Each Owner shall repair any defect occurring in the Owner's Townhome, which, if not repaired, might adversely affect any other Townhome or Common Area or which might alter the exterior appearance of the Owner's or any other Townhome. In the event of an emergency, the Homeowners Association may enter a Townhome and repair the defect. The cost of such repairs shall be paid by the Owner or as otherwise determined by the Homeowners Association.

12. The Homeowners Association may adopt rules and regulations concerning maintenance, repairs, replacements, changes, alterations, improvements, appearance, and use of the exteriors of Townhomes and Lots and may amend and modify same from time to time.

The Homeowners Association may adopt rules and regulations concerning maintenance, repairs, replacements, changes, alterations, improvements, appearance, and use of the Common Area and may amend and modify same from time to time.

13. Real estate taxes are to be separately assessed and taxed to each Lot. In the event that for any year real estate taxes are not separately assessed and taxed to each Lot, but are assessed and taxed on the Property as a whole, then each Owner shall pay his proportionate share of such taxes to the extent attributable to the Property in accordance with his respective percentage interest (as determined by the Homeowners Association) or, at the discretion of the Homeowners Association, such taxes may be paid by the Homeowners Association and treated as a Common Expense. Real estate taxes for Common Area, if any, shall be treated and paid by the Homeowners Association as a Common Expense.

14. Each Owner shall pay for his own utilities which are separately metered. Utilities which are not separately metered shall be treated as and paid as part of the Common Expenses. If such utilities paid as a Common Expense serve less than all of the Townhomes, then the Homeowners Association shall divide and assess the Townhomes served by the utilities.

15. The Owners, through the Homeowners Association, shall purchase a master insurance policy affording fire and extended coverage insurance insuring the Property in an amount equal to the full replacement value of all of the building and improvements. If the Homeowners Association can obtain such coverage for reasonable amounts, they shall obtain "all risk" coverage. The Homeowners Association shall be responsible for reviewing at least annually the amount and type of such insurance and shall purchase such additional insurance as it deems necessary to provide the insurance required above. If deemed advisable by the Homeowners Association, the Homeowners Association may cause such full replacement value to be determined by a qualified appraiser. The cost of any such appraisal shall be a Common Expense. Such insurance coverage shall be for the benefit of each Owner, and, if applicable, the mortgagee of each Owner upon the following terms and conditions:

All proceeds payable as a result of losses sustained, which are covered by insurance purchased by the Homeowners Association as herein above set forth, shall be paid to the Homeowners Association, which shall act as the insurance trustee and hold such proceeds for the benefit of the individual Owners and mortgagees. The proceeds shall be used or disbursed by the Homeowners Association, as appropriate, only in accordance with the provisions of these covenants.

The interest of each damaged Owner in the trust fund of insurance proceeds shall be the ratio of the direct damage of each damaged Owner to the damages of all Owners directly damaged by any event insured under the said master insurance policy.

No Owner or any other party shall have priority over any rights of a mortgagee pursuant to its mortgage in the case of distribution to each Owner of insurance proceeds for losses to a Townhome.

Such master insurance policy, and "all risk" coverage if obtained, shall (to the extent the same are obtainable) contain provisions that the insurer (a) waives its right to subrogation as to any claim against the Homeowners Association, its Board of Directors, its officers, its agents and employees, Owners, their respective agents and guests, and (b) waives any defense based on the invalidity arising from the acts of the insured, and (c) contains an endorsement that such policy shall not be terminated for nonpayment of premiums without at least ten (10) days prior written notice to mortgagees and providing further, if the Homeowners Association is able to obtain such insurance upon reasonable terms, (i) that the insurer shall not be entitled to contribution against insurance which may be purchased by individual Owners as hereinafter permitted, and (ii) that notwithstanding any provision thereof giving the insurer an election to restore damage in lieu of a cash settlement, such option shall not be exercisable in the event the Owners do not elect to restore pursuant to these covenants.

The Owners, through the Homeowners Association, shall also purchase a master comprehensive public liability insurance policy in such amount or amounts as the Homeowners Association shall deem appropriate from time to time. Such comprehensive public liability insurance policy shall cover the Homeowners Association, the Board of Directors, any committee of the Homeowners Association or Board of Directors, any managing agent appointed or employed by the Homeowners Association, all persons acting or who may come to act as agents or employees of any of the foregoing with respect to Mansfield Village Townhomes, and all Owners of Townhomes.

The Owners, through the Homeowners Association, shall also obtain any other insurance required by law to be maintained, including but not limited to worker's compensation insurance, and such other insurance as the Homeowners Association shall, from time to time, deem necessary, advisable or appropriate. Such insurance shall inure to the benefit of each Owner, the Homeowners Association, the Board of Directors and any managing agent acting on behalf of the Homeowners Association.

In no event shall any distribution of proceeds be made by the Homeowners Association directly to an Owner where there is a mortgagee endorsement on the certificate of insurance. In such event any remittances shall be to the Owner and his mortgagee.

Each Owner shall be solely responsible for loss or damage to the contents of his Townhome however caused (including, but not limited to, all floor, ceiling and wall coverings and fixtures, betterments and improvements installed by him) and his personal Property wherever on the Property, and the Homeowners Association shall have no liability to the Owner for loss or damage to the personal Property or to the contents of any Townhome. Each Owner shall be solely responsible for obtaining his own insurance to cover any such loss and risk. Each Owner shall have the right to purchase such additional insurance at his own expense as he may deem necessary, including but not

limited to: (1) personal liability insurance; provided all such insurance shall contain the provisions for waiver of subrogation as referred to in the foregoing provisions for the master insurance policy to be obtained by the Homeowners Association, and (2) insurance upon his Townhome, but such insurance shall provide that it shall be without contribution as against the insurance purchased by the Homeowners Association. If a loss is sustained and there is a reduction in the amount of the proceeds which would otherwise be payable to this paragraph due to proration of insurance purchased by an Owner under this paragraph, the Owner agrees to assign the proceeds of this latter insurance, to the extent of the amount of such reduction, to the Homeowners Association to be distributed as herein provided. Each policy of insurance obtained by an Owner under this section shall, to the extent obtainable, include a waiver of subrogation by the insurer as to any claim against the Homeowners Association, its Board of Directors, its officers, its agents, and employees.

16. Except as hereinafter provided, damage to or destruction of any building due to fire or any other casualty or disaster shall be promptly repaired and reconstructed by the Homeowners Association and the proceeds of insurance, if any, shall be applied for that purpose; provided, however, that repair and reconstruction shall not be compulsory in the event of "complete destruction of all the buildings" (hereinafter defined) and shall only be done in accordance with the provisions hereinafter set forth. As used herein, the term "complete destruction of all of the buildings" means a determination, made by a vote of two-thirds (2/3) of the votes cast by the Owners at a special meeting of the Homeowners Association called for the purpose of making such determination, that the total destruction of all of the buildings has occurred. A special meeting of the Homeowners Association shall be called and held within thirty (30) days after any fire or any other casualty or disaster damaging or destroying any of the buildings for the purpose of making the determination of whether or not there has been a complete destruction of all of the buildings. If such

a special meeting is not called and held within such thirty (30) day period, or if the determination of whether or not there has been a complete destruction of all of the buildings has not been made within such thirty (30) day period, then it shall be conclusively presumed that the Owners determined that there was not a complete destruction of all the buildings, and the Homeowners Association shall proceed with repair and reconstruction as herein provided.

In the event of substantial damage to or destruction of any Townhome or any part of the Common Area, the affected mortgagee or mortgagees shall be given timely written notice of such damage or destruction.

Repair, reconstruction and restoration shall mean construction or rebuilding of the Townhomes to as near as possible to the same condition as they existed immediately prior to the damage or destruction and with the same type of architecture.

If it is determined by the Owners at the special meeting of the Homeowners Association referred to therein that there has been a complete destruction of all of the buildings, the Owners shall, at said same special meeting, vote to determine whether or not such complete destruction of the buildings shall be repaired and reconstructed. The buildings shall not be reconstructed or repaired if it is the determination of the Owners at said special meeting that there has been a complete destruction of all of the buildings, unless by a vote of two-thirds (2/3) of the votes cast by Owners a decision is made to rebuild, reconstruct and repair the buildings. If two-thirds (2/3) of the votes cast by Owners determine that the buildings are to be rebuilt, reconstructed and repaired, the insurance proceeds received by the Corporation shall be applied as herein above provided.

If, in any case of the complete destruction of all of the buildings, less than two-thirds (2/3) of the votes cast by Owners vote in favor of the rebuilding, reconstruction and repair of the buildings, the buildings shall not be rebuilt, reconstructed or repaired and in such event:

- (i) the Property shall be deemed to be owned in common by the Owners;
- (ii) the undivided interest in the Property owned in common which shall pertain to each Owner shall be the percentage of interest previously owned by such Owner in all the buildings;
- (iii) any liens affecting any of the Townhomes shall be deemed to be transferred in accordance with the existing priorities to the percentage of the undivided interest of the Owner in the Property; and
- (iv) the Property shall be subject to an action for partition at the suit of any Owner, in which event the net proceeds of sale, together with the net proceeds of the insurance on the Property, if any, shall be considered as one (1) fund and shall be divided among all the Owners in a percentage equal to the percentage of undivided interest owned by each Owner in the Property, after first paying out of the respective shares of the Owners, to the extent sufficient for the purpose, all liens on the undivided interest in the Property owned by each Owner.

Immediately after a fire or other casualty or disaster causing damage to any Property for which the Homeowners Association has the responsibility of maintenance and repair, the Homeowners Association shall obtain reliable and detailed estimates of the cost to place the damaged Property in condition as good as that before the casualty. Such costs may include professional fees and premiums for such bonds as the Homeowners Association deems appropriate.

The proceeds of insurance collected on account of any such casualty, shall constitute a construction fund which shall be disbursed, if the building or buildings are to be reconstructed and repaired, in payment of the costs of reconstruction and repair in the following manner:

- (i) If the amount of the estimated cost of reconstruction and repair is less than One Hundred Thousand Dollars (\$100,000.00), then the construction fund shall be disbursed in

payment of such costs upon order of the Homeowners Association; provided, however, that upon request of a mortgagee which is the beneficiary of an insurance policy, the proceeds of which are included in the construction fund, such fund shall be disbursed in the manner hereinafter provided in the following paragraph (ii).

(ii) If the estimated cost of reconstruction and repair of the building or other improvement is more than One Hundred Thousand Dollars (\$100,000.00), then the construction fund shall be disbursed in payment of such costs upon approval of an architect qualified to practice in Indiana and employed by the Homeowners Association to supervise such work, payment to be made from time to time as the work progresses. The architect shall be required to furnish a certificate giving a brief description of the services and materials furnished by various contractors, subcontractors, material men, the architect, or other persons who have rendered services or furnished materials in connection with the work, (1) that the sums required by them in payment are justly due and owing and that said sums do not exceed the value of the services and materials furnished; (2) that there is no other outstanding indebtedness known to the said architect for the services and materials described; and (3) that the costs are estimated by said architect for the work remaining to be done subsequent to the date of such certificate, does not exceed the amount of the construction fund remaining after payment of the sum so requested.

(iii) Encroachments upon or in favor of Townhomes which may be created as a result of such reconstruction or repair shall not constitute a claim or basis of proceeding or action by the Owner upon whose Property such encroachment exists, provided that such reconstruction was either substantially in accordance with the plans and specifications or as

the buildings were originally constructed. Such encroachments shall be allowed to continue in existence for so long as the buildings stand.

In the event that there is any surplus of monies in the construction fund after reconstruction or repair, such sums may be retained by the Homeowners Association as a reserve or may be used in the maintenance and operation of the Common Areas, or, in the discretion of the Homeowners Association may be distributed to the Owners of the Townhomes or buildings affected and their mortgagees who are the beneficial Owners of the fund. The action of the Homeowners Association to repair or reconstruct damage shall not constitute a waiver of any rights against another Owner for committing willful or malicious damage.

17. Each Owner of a Lot or Townhome by acceptance of a deed thereto, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay assessments by the Homeowners Association as the same become due in a manner herein provided.

At the discretion of the Board, the Board may establish a replacement reserve fund for capital expenditures and replacement and repair of the Common Area and exterior items of the Townhomes, which replacement reserve fund shall be used for those purposes and not for usual and ordinary repair expenses. If provided for, such replacement reserve fund for capital expenditures and replacement and repair of the Common Area and exterior items of the Townhomes shall be maintained by the Corporation in a separate interest bearing account or accounts with one or more banks or savings and loan associations authorized to conduct business in Marion or Johnson County, Indiana, selected from time to time by the Board.

The failure or delay of the Board of Directors to prepare a proposed annual budget and to furnish a copy thereof to the Owners shall not constitute a waiver or release in any manner of the obligations of the Owners to pay the Common Expenses as herein provided, whenever determined. Whenever, whether before or after the annual meeting of the Corporation, there is no annual budget approved by the Owners as herein provided for such current fiscal year, the Owners shall continue to pay assessments based upon the last approved budget or, at the option of the Board, based upon one hundred ten percent (110%) of such last approved budget, as a temporary budget.

The annual budget as adopted by the Owners, shall, based on the estimated cash requirements for the Common Expenses in the current fiscal year as set forth in said budget contain a proposed assessment against each Lot equal to the amount obtained by multiplying the estimated Common Expenses by a percentage equal to one divided by the total number of Lots on the Property. Immediately following the adoption of the annual budget each Owner shall be given written notice of the assessment against his respective Lot (herein called the "Regular Assessment"). In the event the Regular Assessment for a particular fiscal year is initially based upon a temporary budget, such Regular Assessment shall be revised, within fifteen (15) days following adoption of the final annual budget by the Owners, to reflect the assessment against each Lot based upon such annual budget as finally adopted by the Owners. The aggregate amount of the Regular Assessments shall be equal to the total amount of expenses provided and included in the final annual budget, including reserve funds, if any, as hereinabove provided. The Regular Assessment against each Lot shall be paid in advance in equal monthly installments. Payment of the monthly installments of the Regular Assessment shall be made to the Board of Directors or the Managing Agent, as directed by the Board of Directors; provided, however, Owners may elect to pay assessments annually, in advance.

Monthly installments of Regular Assessments shall be due and payable automatically on their respective due dates without any notice from the Board or the Corporation, and neither the Board nor the Corporation shall be responsible for providing any notice or statements to Owners for the same.

Payment of the assessments with respect to each Lot shall commence on the date of conveyance of such Lot by Declarant to the new Owner ("Commencement Date"). The first payment shall be payable on the Commencement Date prorated to the first day of the month when the next payment is due. Thereafter, payment of the assessments shall be paid monthly on the first day of the month.

From time to time Common Expenses of an unusual or extraordinary nature or not otherwise anticipated may arise. At such time and without the approval of the Owners, unless otherwise provided in the By-Laws or the Declaration, the Board of Directors shall have the full right, power and authority to make special assessments which, upon resolution of the Board, shall become a lien on each Lot, prorated in equal shares (herein called "Special Assessment"). Without limiting the generality of the foregoing provisions, Special Assessments may be made by the Board of Directors from time to time to pay for capital expenditures, to pay for the cost of any repair or reconstruction of damage caused by fire or other casualty or disaster to the extent insurance proceeds are insufficient therefor under the circumstances described in the Declaration.

All such assessments, together with the interest thereon and costs of collection thereof as herein provided, shall be a charge on the land and shall be a continuing lien upon the Lot or Townhome against which each such assessment is made until paid in full.

No Owner may exempt himself from contributing toward the Common Expenses or toward any other expense lawfully agreed upon, by waiver of the use or enjoyment of the Common Area or by abandonment of the Lot belonging to him.

Such assessments shall also be the personal obligation of the Owner of the Lot at the time when the assessment became due and payable. Any assessment not paid within thirty (30) days after the date the same becomes due and payable shall bear interest from the due date at a percentage rate not greater than twelve percent (12%) per annum. The Homeowners Association, or any Member thereof, shall be entitled to institute in any court of competent jurisdiction such procedures, at law or in equity, by foreclosure or otherwise, to collect the delinquent assessment, plus any expenses or costs, including attorneys fees, incurred by the Homeowners Association, or such Member, in collecting the same. If the Homeowners Association has provided for collection of any assessment in installments, upon default in the payment of any one or more installments, the Homeowners Association may accelerate payment and declare the entire balance of said assessment due and payable in full. No Owner may waive or otherwise escape liability for the assessments provided for herein by abandonment of his Lot or Townhome or otherwise. The lien of the assessments provided for herein shall be subordinate to the lien of any recorded first mortgage covering such Lot and Townhome and to any valid tax or special assessment lien on such Lot and Townhome in favor of any governmental taxing or assessing authority. Sale or transfer of any Lot and Townhome pursuant to mortgage foreclosure, or any proceeding lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Owner, Lot and Townhome from liability for any assessments thereafter becoming due or from the lien thereof. The Homeowners Association shall, upon demand, at any time, furnish a certificate in writing, signed by a member of the Board of Directors of the Homeowners Association, that the assessments on a Lot and Townhome have been paid, or that certain assessments remain unpaid, as the case may be. Such certificates shall be conclusive evidence of payment of any assessment therein stated to have been paid. Any easement granted herein or any Property shown on the within

easement granted herein or any Property shown on the within plat as dedicated and intended for acceptance by the local public authority and devoted for public use shall be exempt from the assessments, charges and liens created herein.

18. Declarant has constructed a private sanitary sewer system to serve the Property, which includes all sewer mains, pipes, conduits, auxiliary or feeder service mains, lift stations, manholes, laterals and other facilities, appliances, apparatus and structures necessary for the purpose of providing sewage disposal services ("Sewer Facilities") to and from the Property. The Sewer Facilities are delineated on Exhibit B attached hereto and incorporated herein. The Corporation shall maintain, repair, replace and provide for the general upkeep of the Sewer Facilities as part of its duties and the cost thereof shall constitute a Common Expense. The Corporation shall maintain and repair the Sewer Facilities in accordance with the rules and regulations from time to time imposed by the City of Greenwood and in accordance with the terms and conditions of that certain "Sewer Service Agreement" by and between Declarant and the City of Greenwood, Indiana recorded on Jan. 02, 2002 as Instrument No. 2002-000129 in the Office of the Recorder of Johnson County. The Corporation's obligations hereunder and under the Sewer Service Agreement shall continue unless and until such time as the Sewer Facilities are dedicated to and accepted by the City of Greenwood as part of its public sanitary sewer system.

19. All public and quasi public vehicles, including, but not limited to police, fire and other emergency vehicles, trash and garbage collection, post office vehicles and privately owned delivery vehicles, shall have the right to enter upon the streets and Common Areas of Mansfield Village Townhomes in the performance of their duties.

Each Owner shall have the right of ingress and egress from such Owner's Lot with such right being perpetual and appurtenant to the ownership of the Lot.

Included as part of the Common Areas are the roadways providing access to and from County Line Road and Mansfield Village commonly referred to as Manswood Drive and Mansford Place. Each Owner has the right to use Manswood Drive and Mansford Place for ingress and egress. The Corporation has the obligation to maintain Manswood Drive and Mansford Place. The costs of such maintenance shall be a Common Expense.

20. The right of enforcement of each of the foregoing restrictions by injunction, together with the right to cause the removal by due process of law of structures erected or maintained in violation thereof, is reserved to the Homeowners Association, and the Owners of the Lots and Townhomes, their heirs and personal representatives, their successors or assigns, who are entitled to such relief without being required to show any damage of any kind to the Homeowners Association, or to any other Owner(s). The right of enforcement of the covenants is hereby also granted to the City of Greenwood, the City of Indianapolis and the City of Indianapolis Department of Metropolitan Development.

21. The foregoing restrictions may be amended at any time of at least two-thirds (2/3) of the total Class A and Class B votes combined as provided in the By-Laws and cast by the Owners of the Lots and Townhomes. Each such amendment must be evidenced by a written instrument, signed and acknowledged by the Owner(s) concurring therein, setting forth facts sufficient to indicate compliance with this paragraph, and recorded in the Marion County Recorder's Office. Except as the same may be amended from time to time, the foregoing covenants will be in full force and effect until July 1, 2021, at which time they will be automatically extended for successive periods of ten (10) years, unless by a vote of the majority of the then Owners it is agreed that these covenants shall terminate in whole or in part.

EXHIBIT "A"

Land Description

A part of the South Half of the South Half of the Southwest Quarter of Section 24, Township 14 North, Range 3 East of the second principal meridian, being more particularly described as follows:

Commencing at the southeast corner thereof; thence North 00 degrees 15 minutes 15 seconds East (assumed bearing) along the east line of said Southwest Quarter a distance of 242.00 feet to the Point of Beginning; thence continuing North 00 degrees 15 minutes 15 seconds East along said east line a distance of 422.02 feet to the northeast corner of said Half Half Quarter Section; thence South 89 degrees 24 minutes 37 seconds West along the north line thereof a distance of 328.68 feet; thence South 00 degrees 15 minutes 15 seconds West parallel with the east line of said Quarter Section a distance of 619.06 feet to the north line of a tract of ground conveyed to the City of Indianapolis recorded as Instrument #98-98341 in the Office of the Recorder of Marion County, Indiana; thence North 89 degrees 24 minutes 13 seconds East along said north line and parallel with the south line of said Quarter Section a distance of 148.68 feet to a point on the west line of land described in Instrument #98-0194840 in said Recorder's Office (the next two courses being along the west and north lines of said land); thence North 00 degrees 15 minutes 15 seconds East parallel with the east line of said Quarter Section a distance of 197.00 feet; thence North 89 degrees 24 minutes 13 seconds East parallel with the south line of said Quarter Section a distance of 180.00 feet to the point of beginning, containing 3.86 acres, more or less.

25

9

EXHIBIT "B"

Recorded Johnson County, Indiana
Jean Harmon, Recorder
Date 01/02/2002 Time 15:12:10 1 of 9 Pgs
Inst # 2002-000129 OFF
Fee Amt: 26.00

SEWER SERVICE AGREEMENT

(Private Sewage Works)
(Proposed Plat Mansfield Village)

This Agreement is made and entered into this 18th day of DECEMBER, 2001, by and between Mainstay Inc., 3033 East Main Street, Greenwood, Indiana 46143 ("OWNER"), and the City of Greenwood, Indiana, acting by and through its Board of Public Works and Safety ("CITY"):

WITNESSETH THAT:

WHEREAS, the OWNER owns real estate described on Exhibit "A" attached hereto and incorporated herein (hereinafter the "Real Estate") and intends to develop the Real Estate as 36 Town home Units 18 Two-Bedroom and 18 Three-Bedroom Units to be known as Mansfield Village ("Mansfield Village System").

WHEREAS, the OWNER has requested permission to construct, under contract with the City, sewage works to serve Mansfield Village, and to connect those sewage works to the CITY'S public sanitary sewer system, all work to be done at the OWNER'S expense;

WHEREAS, after due consideration of this request, the CITY is willing to permit a connection to its public sanitary sewer system to serve Mansfield Village, provided that the OWNER agrees to pay all applicable charges including, but not limited to, sewer availability fees, for the privilege of connecting the sewage works serving Mansfield Village to the CITY'S public sanitary sewer system and provided further that the OWNER agrees to certain terms and conditions pertaining to that connection and sewer service;

WHEREAS, the CITY is willing to grant its permission to the OWNER for the construction and connection of the sewage works at the OWNER'S expense upon the terms and conditions hereinafter set forth.

THEREFORE, it is agreed between the parties as follows:

1. The OWNER may construct, at its sole expense, maintain, operate, and use a sanitary sewer system which shall connect Mansfield Village (the "Mansfield Village System"), to and with the CITY'S public sanitary sewer system (the "Greenwood System"). The Mansfield Village System shall remain a private system, and will not become part of the Greenwood System. The Mansfield Village System shall be maintained by the OWNER at its sole expense. (The Mansfield Village System will be constructed as shown on the approved plans attached hereto and incorporated herein as Exhibit "B").
2. The construction of the Mansfield Village System and its connection to the Greenwood System shall be made in strict accordance with the plans entitled Mansfield Village under date of May 4, 2000, with a final plan revision date of May 24, 2001, and the Sump Pump Discharge Details under date of (N/A), and approved by the CITY and in strict accordance with Chapter 9 of the Greenwood Municipal Code, as amended, the rules, regulations and conditions of the Greenwood Sewage Works and all other applicable laws, rules and regulations. Said plans, specifications, Code and all other applicable laws, rules and regulations are made a part of this Agreement by reference. Such construction and connection shall be subject at all times to the inspection, approval and acceptance of the CITY.
3. The Mansfield Village System, and any connection thereto, shall be used only for and as a sanitary sewer system. No storm water, run-off water, down spouts, footing drains (perimeter drains) or sub-soil drainage shall be connected to the Mansfield Village System. No sump pumps shall be connected to the Mansfield Village System. Any use of the Mansfield Village System by the OWNER or any subsequent OWNER of the REAL ESTATE, or any part thereof, as anything but a sanitary sewer shall constitute an event of default under this Agreement, enforceable against the defaulting party, and may constitute a violation of CITY ordinances.
4. The OWNER will pursue the construction of the Mansfield Village System without delay to final completion.
5. Unless OWNER has already provided the performance guarantees as set forth herein, OWNER, immediately upon execution of this Agreement, through its contractor, shall furnish a performance guarantee in a form acceptable to the CITY of either an irrevocable letter of credit, a certificate of deposit, a certified check, or a guarantee construction insurance bond made payable to the City of Greenwood, Indiana, Board of Public Works and Safety, with good and sufficient surety thereon (collectively "Performance Guarantees"), conditioned on the performance by OWNER of the obligations set forth under this Agreement in the amount of one hundred ten percent (110%) of the total cost of construction of any part of the Mansfield Village System not completed prior to the date of execution hereof. If for any reason the Performance Guarantee becomes invalid, the OWNER shall replace the Performance Guarantee within thirty (30) days. A Performance Guarantee in the form of a bond will not be acceptable unless the surety issuing that bond is subject to or agrees to submit itself to the jurisdiction of an Indiana court of competent jurisdiction and the bond includes a provision that it shall be governed and interpreted pursuant to the laws of the State of Indiana.

6. The requirements of a performance guarantee relating to the Mansfield Village System prior to commencement of construction as set forth in paragraph 5 may be waived by the CITY provided that the OWNER agrees to construct the proposed Mansfield Village System in accordance with all other provisions of this Agreement and agrees not to record the subdivision plat of the REAL ESTATE, or portion thereof, until the Mansfield Village System has been inspected, approved, and accepted by the CITY. Recording of the subdivision plat of the REAL ESTATE prior to the acceptance of the Mansfield Village System, if no performance guarantee has been furnished to and accepted by the CITY, shall constitute a material breach of this Agreement.

7. No liability of any kind for any part of the Mansfield Village System shall attach to the CITY. The OWNER shall indemnify and hold the CITY harmless against all claims, demands, actions, causes of action, losses and expenses (including attorneys' fees) suffered by or asserted against the CITY, for or on account of any person or property, arising out of, or in any way connected with, or related to the design, location, installation and construction of the Mansfield Village System, including, but not limited to, any actual or alleged breaches or violations relating to any easement or permit acquired or issued for said construction of the Mansfield Village System. This indemnity shall not be limited by reason of any insurance coverage required herein. Prior to the commencement of the construction authorized by this Agreement, the OWNER, or the OWNER through its contractor, shall furnish to the CITY evidence of the following insurance coverage or its equivalent, under which the CITY shall be identified as an additional insured: a) a general public liability insurance policy in the minimum amount of One Million Dollars (\$1,000,000.00) combined single limits for bodily injury and property damage; b) an automobile liability insurance policy in the minimum amount of One Million Dollars (\$1,000,000.00) each accident for any autos, owned autos, hired autos and non-owned autos; c) a workers compensation and employers' liability policy in the statutory amounts; and d) an excess liability umbrella policy in the minimum amount of One Million Dollars (\$1,000,000.00).

8. In the event any part of the Mansfield Village System is to be constructed across, over, on, through or under any public highway or right-of-way, the OWNER shall furnish the CITY suitable evidence of authority to do so, in a form acceptable to the CITY, procured from the proper governmental agency having jurisdiction and control over such public right-of-way. The OWNER, at OWNER'S expense, shall be responsible for repairing any damage to any public highway or right-of-way, or any other public improvement, which damage results from or is in any way related to construction of the Mansfield Village System. The OWNER shall submit a plan for repairs to the proper governmental agency having jurisdiction and control, for its approval, before any part of the Mansfield Village System is constructed within, across, over, on, through or under any public highway or right-of-way.

9. Construction of the Mansfield Village System shall be inspected in the following manner:

- a. The CITY shall provide Inspection and Testing Services by a separate contract with the OWNER and its contractor during the construction of the Mansfield Village System to determine whether the sewage works are constructed in accordance with approved plans and specifications and Chapter 9 of the

Greenwood Municipal Code, as amended, and the rules and regulations and conditions of the Greenwood Sewage Works;

- b. Such Inspection and Testing Services shall not include construction engineering or construction stake out, or the testing for compliance with the State Construction Permit. The OWNER or its designated representative shall be solely responsible for the performance of construction engineering and stake out and all construction work;
 - c. Persons working on or having control of the construction of the Mansfield Village System shall cooperate fully with the Inspector and shall have available on site a copy of the approved plans and specifications;
 - d. The OWNER shall thoroughly backfill, compact and maintain all trenches in a condition satisfactory to the CITY; the CITY is not responsible for construction means, methods and safety;
 - e. The OWNER must notify the CITY and is required to allow the CITY to observe all of the infiltration/exfiltration and deflection testing of the Mansfield Village System; said test results shall be as required by the Indiana Department of Environmental Management and presented to the CITY prior to acceptance of the Mansfield Village System;
 - f. The OWNER must submit the balance of the total actual cost of the Inspection and Testing Services to the CITY prior to acceptance of the Mansfield Village System by the CITY; and
 - g. Failure to follow the requirements of paragraph 9 may result in the CITY not approving the Mansfield Village System and denying building sewer connection permits.
10. If the REAL ESTATE, or any portion thereof, is to be platted, then following the recording of this Agreement and the CITY'S approval of the easement forms, but before the plat is recorded, the OWNER shall present the supplemental declaration plat (hereinafter "Supplemental Declaration" or "Plat") of the REAL ESTATE, or any portion thereof, to the CITY for its approval. If a plat of the REAL ESTATE, or any portion thereof, is to be recorded, the City Engineer shall receive a reproducible or Mylar copy of the said recorded Plat as soon as practicable thereafter. OWNER assumes the risk that all necessary easements may not be conveyed to the CITY in a form acceptable to the CITY. The CITY reserves the right not to approve the Mansfield Village System or allow its connection to the Greenwood System if all such easements are not conveyed in a manner acceptable to the CITY. In such an event, the CITY may not permit the Mansfield Village System to be connected to its public sanitary sewer system resulting in it being of no use to the OWNER or any subsequent owners of the REAL ESTATE. Any damages which may be sustained by the OWNER as a result of or in any way relating to all necessary easements not being conveyed to the CITY in acceptable form are

hereby assumed by the OWNER and OWNER hereby releases the CITY and waives all claims it may have or could assert against the CITY with regard thereto.

11. If the OWNER has sought to waive the performance guarantee requirements of paragraph 5 of this Agreement, then the presentation of the Marion County conditional final plat of the REAL ESTATE, or portion thereof, shall be made at the time of inspection and approval of the Mansfield Village System.

12. Upon completion of the proposed Mansfield Village System, a set of "as built" Mylar reproducible, including all lateral location measurements, shall be prepared by the OWNER and filed with the CITY, before such Mansfield Village System will be approved by the CITY and before any sewer connection permits are issued.

13. Upon completion, but before approval by the CITY, the OWNER, or the OWNER through its contractor, shall furnish or arrange to furnish in a suitable form to the CITY, an irrevocable letter of credit, a certified check, a certificate of deposit, or a guarantee maintenance insurance bond, made payable to the City of Greenwood, Indiana, Board of Public Works and Safety, with good and sufficient surety thereon in an amount equal to twenty percent (20%) of the total Performance Guarantee for the connection point facility of the Mansfield Village System (collectively the "Maintenance Guarantee"). The Maintenance Guarantee shall guarantee material and construction for a period of three (3) years from the date of final acceptance. If for any reason the Maintenance Guarantee becomes invalid, the OWNER shall replace the Maintenance Guarantee within thirty (30) days and the OWNER agrees the CITY may suspend issuance of sewer connection permits until the Maintenance Guarantee in a form acceptable to the CITY, is replaced. A Maintenance Guarantee in the form of a bond will not be acceptable unless the surety issuing that bond is subject to or agrees to submit itself to the jurisdiction of an Indiana court of competent jurisdiction and the bond includes a provision that it shall be governed and interpreted pursuant to the laws of the State of Indiana.

14. The OWNER shall furnish at the appropriate time and in a form acceptable to the CITY the items listed in Checklist "C", a copy of which is attached hereto and incorporated herein as Exhibit "C", before the CITY will approve the Mansfield Village System.

15. The OWNER hereby acknowledges that the CITY may be subject to a sewer ban or other regulatory action imposed by IDEM or other federal, state or local agencies which may prohibit the City from allowing connection of some or all of the Lots to be developed on the REAL ESTATE in the Greenwood System. The OWNER further acknowledges that no representatives of the CITY or its Board of Works have made any assurances or representations to the OWNER with regard to any such regulatory action, the likelihood that any such action may be taken, or the extent to which it may affect the OWNER or the REAL ESTATE. In the event that IDEM or any other agency imposes upon or against the CITY any regulatory action which, in any way, adversely affects the OWNER, the REAL ESTATE, or the separate Lots to be developed thereon, the OWNER hereby assumes all risk of loss or damage which may result from such regulatory action and releases and waives any and all claims the OWNER could assert against the CITY as a result thereof.

16. The OWNER agrees to pay at the time of execution of this Agreement, the sum of N/A (\$ N/A) in addition to the tap-on fees required by the CITY'S ordinance, the receipt of which is hereby acknowledged, the said sum being a fee fixed by the CITY and paid by OWNER for the privilege of connecting the REAL ESTATE to the CITY'S public sanitary sewer system in accordance with the following 15 year law agreements: N/A (The Applicable 15 Year Law Agreements) The OWNER agrees to pay such other recoupment fees as may be determined to be due. The tap-on fees for each user shall be in the amount and due as provided by the CITY ordinance at the time of connection of the building sewer(s) or individual laterals. The OWNER has reviewed or has had the opportunity to review the calculation of the amount owed by the OWNER to the CITY, as stated above, pursuant to the Applicable 15 Year Law Agreements. The OWNER hereby acknowledges, by virtue of its private agreement with the CITY, that it is legally obligated to pay and agrees and consents to the amount owed, pursuant to the Applicable 15 Year Law Agreements and hereby waives any and all right to contest or dispute that amount, the manner in which it was determined, and the terms of the Applicable 15 Year Law Agreements.
17. The OWNER agrees to pay the developer's share, one third (1/3), of the Sewer Availability Fee ("SAF") at the time of the issuance of the Conditional Final Plat and the builder's share of the SAF shall be paid at the time of the recording the supplemental declaration creating an individual lot(s).
18. Sewer service to be provided by the City, under this Agreement, is limited to Mansfield Village Apartments. The CITY acknowledges that capacity within the Greenwood System to serve Mansfield Village Apartments has been reserved.
19. The OWNER warrants that it is the sole owner of the REAL ESTATE, pursuant to a Deed delivered to OWNER recorded on October 13, 2000, as Instrument # 2000-0163966, in the Recorder's Office of Marion County, Indiana, and that it has taken all proper action by its Board of Directors to authorize entering into this Agreement.
20. This Agreement, and any Assignment thereof, shall be in recordable form and recorded.
21. The OWNER shall be responsible for all the recording fees necessitated by or connected with this Agreement.
22. It is the intent of the parties that this Agreement, and the covenants contained herein, shall run with the land, referred to here as the REAL ESTATE, and shall be binding upon the OWNER, its personal representative, purchasers, trustees, heirs, devisees, grantees, successors, and assigns so long as the Mansfield Village System or any part thereof or replacements thereto serves or otherwise benefits any of the REAL ESTATE owned by them. It is further agreed that the failure to specifically describe a covenant as one running with the land or as binding upon the OWNER, its purchasers, successors, trustees and assigns, or the failure to use any language at all indicating such, shall not be construed to mean that the Agreements provision is not a covenant that is to run with the land. If any such provision can be construed to touch and concern the land itself so that the benefit or obligation could pass with the ownership, then it is the parties intention that it be so construed.

23. This Agreement is null and void if the connection of Mansfield Village System to the CITY'S sanitary sewer system contemplated herein is not performed on or before December 31, 2002, or a later date agreed to by the CITY.

24. All modifications to this Agreement must be in writing and executed by both parties in substantially the same form and manner as this original Agreement.

25. Any waiver of any breach of an OWNER'S covenant or condition contained in the Agreement, or any amendment thereto, shall not be deemed or considered as a continuing waiver and shall not operate to bar or prevent the CITY from declaring a forfeiture for any succeeding breach either of the same covenant or otherwise.

26. Miscellaneous Provisions.

- a. **Additional Documentation.** The parties hereto shall execute and deliver any and all consents, releases, authorizations, transfers and other documents as may be reasonably required to carry out the provisions of this Agreement and to fully accomplish its purposes and intents.
- b. **Counterparts.** This Agreement may be executed in any number of counterparts, and each such counterpart shall be deemed to be an original instrument.
- c. **Applicable Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of Indiana.
- d. **Venue.** The parties hereto agree that the venue for any dispute arising out of or related to this Agreement shall be Johnson County, Indiana.
- e. **No Third-Party Benefit.** Nothing herein expressed or implied is intended to confer on any person other than the parties hereto or their respective successors, assigns, and legal representatives, any rights, remedies, obligations or liabilities under or by reason of this Agreement.
- f. **Successors and Assigns.** This Agreement shall inure to the benefit of and bind the parties and their purchasers, successors, assigns, heirs, executors and administrators.
- g. **Headings.** The paragraph headings herein are solely for the convenience of reference and shall be given no effect in the construction or interpretation of this Agreement.
- h. **Incorporation Recitals, Exhibits and Schedules.** All recitals herein and exhibits, schedules and related agreements attached hereto are incorporated herein by this reference and expressly made a part of this Agreement.

