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THIS MORTGAGE made and entered into this the 18th day of October, 1997, by and between LARRY R. MANNING and CATHY M. MANNING, his wife, of 7502 Foxwood Drive, Schererville, IN 46375, Parties of the First Part, and the COMMUNITY TRUST BANK, N.A., a banking corporation organized and existing under the laws of the United States Of America, with its principal offices and place of business located in Flemingsburg, Fleming County, Kentucky, Party of the Second Part.

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**W I T N E S S E T H:**

THAT for and in consideration of the indebtedness of the Parties of the First Part unto the Party of the Second Part in the principal amount of FORTY-TWO THOUSAND DOLLARS (\$42,000.00), as evidenced by a promissory note dated October 10, 1997, due and payable on or before October 10, 1998, and bearing interest in accordance with the promissory note, and payable pursuant to the terms of the promissory note, all payments to be applied first to advanced funds, then to interest, then to principal. In addition to the foregoing, this mortgage further secures all renewals and extensions of said loan and the note(s) evidencing it, and any additional indebtedness thereto, whether direct, indirect, existing, future, contingent, or otherwise, of Parties of the First Part to Party of the Second Part, said additional indebtedness in no event to exceed the principal sum of \$0.00 in addition to the principal amount of the mortgage note. Now in order to secure payment of said note(s) and interest, and/or any renewals and/or extensions thereof, the Parties of the First Part have bargained, granted and sold and do by these presents hereby sell and convey unto the Party of the Second Part, its successors and assigns forever, the following described real estate, to wit:

Lot 30, Unit 1, Foxwood Estates to the town of Schererville, as recorded in Plat Book 68, Page 23, in the office of the Recorder, Lake County, Indiana.

Being the same property conveyed Larry R. Manning and Cathy Manning, husband and wife, from C.M.S. Developers, Inc., by deed dated September 30, 1991, and recorded in the Office of the Recorder of Lake County, Indiana, as Document Number 91049923. Cathy Manning and Cathy M. Manning referred to herein are one and the same person.

This mortgage is **THIRD** and **INFERIOR** to the following mortgages: (a) Mortgage for \$143,650.00 from Larry R. Manning and Cathy Manning, husband and wife, to Indiana Federal Bank for Savings, dated December 9, 1993, and recorded December 16, 1993, in the Office of the Recorder of Lake County, Indiana, as Document No. 93085072; (b) Mortgage for \$215,000.00 from Larry C. Manning and Cathy M. Manning, his wife, to Farmers Deposit Bank, dated September 3, 1996, and recorded September 20, 1996, in the Office of the Recorder of the Lake County, Indiana, as Document No. 96062850.

**TO HAVE AND TO HOLD** the above described real estate with all and singular the privileges and appurtenances thereunto belonging to the Party of the Second Part, its successors and assigns forever, with **COVENANTS OF GENERAL WARRANTY**.

(1) **Insurance**. The Parties of the First Part are to insure and keep insured the buildings and improvements on said premises against damage by fire and/or wind (and flood insurance, if applicable) in companies and amounts satisfactory to the Party of the Second Part, not to be less than the sum of \$ 125,000.00, until said indebtedness and interest shall have been paid. Parties of the First Part will properly assign the said insurance policy to the Party of the Second Part, its successors and

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assigns, as its interest may appear, and all policies evidencing such insurance shall have attached thereto a standard mortgage rider making such insurance payable to the Party of the Second Part, as its interest may appear. Said policies are to be deposited with the Party of the Second Part, and in case of loss to cause the proceeds therefrom to be properly applied to the payment of the said indebtedness and interest.

(2) **Default.** The entire principal indebtedness secured by this mortgage, with any interest accrued thereon, shall immediately become due and payable at the option of Second Party upon First Parties' failure to pay any sums or perform any covenants required under this Mortgage or under any Promissory Note secured hereby. Provided, that First Parties shall have thirty (30) days, after service by Second Party to First Parties of notice of such default, within which to cure such default by payment in full, or in the event of default other than in payment of money to commence the cure of such default and thereafter to diligently complete same. If any such default is not cured, Second Party may, without further notice, proceed to enforce the mortgage lien hereby granted, and may enter upon and rent the Property, and collect the rents, issues and profits therefrom, applying same first to the payment of the expenses of entry and rental, and next to the satisfaction of all indebtedness hereby secured. In the event of foreclosure, Second Party shall be entitled to the appointment of a receiver to take charge of the Property, to collect the rents and profits, to keep the same in good repair, and to apply the rents and profits to the payment of the indebtedness secured hereby. There shall be a late charge of 5.00% on any amount of principal and/or interest not paid within fifteen (15) days after due or demand by Second Party.

(3) **Acceleration.** In the event of default in payment of said principal and interest, or which default is in duration of Thirty (30) days or more, the Party of the Second Part may, at its option, declare the balance of the note and interest immediately due and payable without notice, and the lien hereof may be enforced as though the entire indebtedness had matured in accordance with the terms and conditions hereof.

(4) **Taxes And Premiums.** The Parties of the First Part covenant to keep all taxes, assessments, insurance premiums and the like whatever against said property paid, and in default thereof, the Party of the Second Part shall have the right to pay the same and the lien of this mortgage shall extend to and embrace all sums until paid by it together with the maximum interest rate thereon.

(5) **Release.** It is agreed and understood that if the Parties of the First Part shall well and duly pay said note and interest in accordance with the terms thereof, then this mortgage and the note evidencing it shall be null and void. Otherwise, the same shall be and remain in full force and effect.

(6) **Attorney Fees.** The Parties of the First Part agree to pay reasonable attorney fees incurred by the Party of the Second Part as a result of any default by the Parties of the First Part in accordance with the laws of the Commonwealth of Kentucky.

(7) **Non-Assumability.** This mortgage is not assumable by any third party, and in violation of this, the Party of the Second Part has the privilege to declare the amount of indebtedness immediately due and payable. The Party of the Second Part reserves the right to assign said mortgage.

(8) **Duty to Maintain.** Parties of the First Part shall maintain the property in tenantable condition and promptly perform all repairs, replacements, and maintenance necessary to preserve its value.

(9) **Hazardous Substances.** The terms "hazardous waste", "hazardous substance", "disposal", "release", and "threatened release", as used in this Mortgage, shall have the same meanings as set forth in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. ("CERCLA"), the superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Resource Conservation and Recovery Act, 49 U.S.C. Section 6901, et seq., or other applicable state or Federal laws, rules, or regulations adopted pursuant to any of the foregoing. The terms "hazardous waste" and "hazardous substance" shall also include, without limitation, petroleum and petroleum by-products or any fraction thereof and asbestos. Parties of the First Part represent and warrant to Second Party that: (a) During the period of First Parties' ownership of the property, there has been no use, generation, manufacture, storage, treatment, disposal, release or threatened release of any hazardous waste or substance by any person on, under, or about the property; (b) First Parties have no knowledge of, or reason to believe that there has been, except as previously disclosed to and acknowledged by Second Party in writing, (i) any use, generation, manufacture, storage, treatment, disposal, release, or threatened release of any hazardous waste or substance by any prior owners or occupants of the property or (ii) any actual or threatened litigation or claims of any kind by any person relating to such matters; (c) Except as previously disclosed to and acknowledged by Second Party in writing, (i) neither First Parties nor any tenant, contractor, agent or other authorized user of the property shall use, generate, manufacture, store, treat, dispose of, or release any hazardous waste or substance on, under, or about the property and (ii) any such activity shall be conducted in compliance with all applicable federal, state, and local laws, regulations and ordinances, including without limitation those laws, regulations, and ordinances described above. First Parties authorize Second Party and its agents to enter upon the property to make such inspections and tests as Second Party may deem appropriate to determine compliance of the property with this section of the Mortgage. Any inspections or tests made by Second Party shall be for Second Party's purposes only and shall not be construed to create any responsibility or liability on the part of Second Party to First Parties or to any other person. The representations and warranties contained herein are based on First Parties' due diligence in investigating the property for hazardous waste. First Parties hereby (a) release and waive any future claims against Second Party for indemnity or contribution in the event First Parties become liable for cleanup or other costs under any such laws, and (b) agree to indemnify and hold harmless Second Party against any and all claims, losses, liabilities, damages, penalties, and expenses which Second Party may directly or indirectly sustain or suffer resulting from a breach of this section of the mortgage or as a consequence of any use, generation, manufacture, storage, disposal, release or threatened release occurring prior to First Parties' ownership or interest in the property, whether or not the same was or should have been known to First Parties. The provisions of this section of the Mortgage, including the obligation to indemnify, shall survive the payment of the indebtedness and the satisfaction and reconveyance of the lien of this Mortgage and shall not be affected by Second Parties' acquisition of any interest in the property, whether by foreclosure or otherwise.

(10) **Nuisance, Waste.** First Parties shall not cause, conduct or permit any nuisance or commit, permit, or suffer any stripping of or waste on or to the property or any portion of the property. Without limiting the generality of the foregoing, First Parties will not remove, or grant to any other party the right to remove, any timber, minerals (including oil and gas), soil, gravel or rock products without the prior written consent

of Second Party or lease or convey any tobacco base without the written consent of the Second Party.

(11) Removal of Improvements. First Parties shall not demolish or remove any improvements from the Real property without the prior written consent of Second Party. As a condition to the removal of any improvements, Second Party may require First Parties to make arrangements satisfactory to Second Party to replace such improvements with improvements of at least equal value.

(12) Second Party's Right to Enter. Second Party and its agents and representatives may enter upon the real property at all reasonable times to attend to Second Party's interests and to inspect the property for purposes of First Parties' compliance with the terms and conditions of this Mortgage.

(13) Compliance with Governmental Requirements. First Parties shall promptly comply with all laws, ordinances, and regulations, now or hereafter in effect, of all governmental authorities applicable to the use or occupancy of the property. First Parties may contest in good faith any such law, ordinance, or regulation and withhold compliance during any proceeding, including appropriate appeals, so long as First Parties have notified Second Party in writing prior to doing so and so long as, in Second Party's sole opinion, Second Party's interests in the property are not jeopardized. Second Party may require First Parties to post adequate security or a surety bond, reasonably satisfactory to Second Party, to protect Second Party's interest.

(14) Duty to Protect. First Parties agree neither to abandon nor leave unattended the property. First Parties shall do all other acts, in addition to those acts set forth above in this section, which from the character and use of the property are reasonably necessary to protect and preserve the property.

(15) Non-Waiver. Failure of Second Party to exercise any of its options provided for herein in the event of any violation of the warranties, covenants, and agreements herein contained shall not constitute a waiver of its right to exercise such option because of any subsequent violation.

(16) Successors. This mortgage shall be binding upon and inure to the benefit of the respective heirs, executors, administrators, successors, and assigns of the parties hereto.

(17) Rents, Issues and Profits. All rents, issues, and profits from the mortgaged property are hereby assigned to Party of the Second Part, and in the event Parties of the First Part shall fail to pay the mortgage note or any installment thereon when the same shall become due and payable or in any manner fail to keep and perform any of the covenants, stipulations, and agreements set out herein or in the mortgage note on its part to be performed, all such rents, issues, and profits shall be paid directly to Party of the Second Part by the person obligated therefor, or mortgagee may, at its option, have a receiver appointed to take charge of the mortgaged property and to collect such rents, issues, and profits, all without consideration of the value of the mortgaged property, as security for the amount of indebtedness secured hereby. All such rents, issues, and profits paid to Second Party or collected by such receiver shall be first applied to the cost of collection thereof (including the cost of such receivership, if any) and then to the payment of the interest on and principal of the mortgage note.

IN TESTIMONY WHEREOF, Witness the hands of the Parties of the First Part, this the day and date first above written.

Larry R. Manning  
LARRY R. MANNING

Cathy M. Manning  
CATHY M. MANNING

STATE OF Indiana  
COUNTY OF Lake

The foregoing instrument was acknowledged before me by Larry R. Manning and Cathy M. Manning, his wife, this 10<sup>th</sup> day of October, 1997.

Paul Stearns  
NOTARY PUBLIC, STATE AT LARGE  
MY COMM. EXPIRES: 5/31/98

PREPARED BY:

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