



0010305398

RECORDATION REQUESTED BY:

Oak Brook Bank
1400 West Sixteenth Street
Oak Brook, IL 60523

WHEN RECORDED MAIL TO:

Oak Brook Bank
1400 West Sixteenth Street
Oak Brook, IL 60523

This Instrument prepared by

Crowley Barrett & Karaba
20 South Clark, Suite 231
Chicago, Illinois 60603



CONSTRUCTION MORTGAGE

THIS MORTGAGE is dated as of April 10, 2001 and is by and between HERITAGE CLUB VILLAS, LLC, an Illinois limited liability company ("Grantor"), and OAK BROOK BANK ("Lender").

FIRST AMERICAN TITLE order # IPC 9871-ST6

SECTION 1: GRANT OF MORTGAGE

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1.1 Grant of Mortgage. For valuable consideration, Grantor mortgages, warrants, and conveys to Lender all of Grantor's right, title, and interest in and to the real property described on the attached Exhibit A, together with all Improvements; all easements, rights of way, and appurtenances; all water, water rights, watercourses and ditch rights (including stock in utilities with ditch or irrigation rights); and all other rights, royalties, and profits relating to the real property, including without limitation all minerals, oil, gas, geothermal and similar matters (collectively, the "Real Property"). The Real Property is located at the northeast corner of 94th Avenue and 183rd Street in Tinley Park, Cook County, Illinois. The Real Property tax identification number is shown on the attached Exhibit A.

1.2 Construction Mortgage. To the fullest extent possible, this Mortgage shall be deemed a "construction mortgage" for the purposes of Section 9-313 of the Illinois Uniform Commercial Code, 810 ILCS 5/9-313.

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1.3 Leases and Rents. Grantor presently assigns to Lender all of Grantor's right, title, and interest in and to all leases of the Property and all Rents from the Property. In addition, Grantor grants to Lender a Uniform Commercial Code security interest in the Personal Property and Rents.

1.4 SCOPE. THIS MORTGAGE, INCLUDING THE ASSIGNMENT OF RENTS AND THE SECURITY INTEREST IN THE RENTS AND PERSONAL PROPERTY, IS GIVEN TO SECURE (1) PAYMENT OF THE INDEBTEDNESS AND (2) PERFORMANCE OF ALL OBLIGATIONS OF GRANTOR UNDER THIS MORTGAGE, THE LOAN AGREEMENT, THE NOTE AND THE RELATED DOCUMENTS. THIS MORTGAGE IS INTENDED TO AND SHALL BE VALID AND HAVE PRIORITY OVER ALL SUBSEQUENT LIENS AND ENCUMBRANCES, INCLUDING STATUTORY LIENS, TO THE EXTENT OF THE MAXIMUM AMOUNT SECURED HEREBY. THIS MORTGAGE IS GIVEN AND ACCEPTED ON THE TERMS SET FORTH HEREIN.

SECTION 2: GRANTOR'S AGREEMENTS AND COVENANTS

2.1 Payment and Performance. Except as otherwise provided in this Mortgage, Grantor shall pay to Lender all amounts secured by this Mortgage as they become due, and shall strictly perform all of Grantor's obligations under this Mortgage.

2.2 Possession and Maintenance of the Property. Grantor agrees that the following provisions shall govern Grantor's possession and use of the Property:

(a) **Possession and Use.** Until the occurrence of an Event of Default, Grantor may: (i) remain in possession and control of the Property; and (ii) use, operate or manage the Property. To the extent that Grantor has executed an Assignment of Rents in favor of Lender, Grantor's rights to collect any Rents from the Property shall be governed by said Assignment of Rents.

(b) **Duty to Maintain.** Grantor shall maintain the Property in tenantable condition and promptly perform all repairs, replacements, and maintenance necessary to preserve its value.

(c) **Duty to Protect.** Grantor agrees neither to abandon nor leave unattended the Property. Grantor 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 necessary to protect and preserve the Property.

(d) **Nuisance, Waste.** Grantor shall not cause, conduct or permit any nuisance nor 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, Grantor 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 Lender.

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(e) **Removal of Improvements.** Grantor shall not demolish or remove any Improvements from the Real Property without the prior written consent of Lender. As a condition to the removal of any Improvements, Lender may require Grantor to make arrangements satisfactory to Lender to replace such Improvements with Improvements of at least equal value.

(f) **Lender's Right to Enter.** Lender and its agents and representatives may enter upon the Real Property at all reasonable times to attend to Lender's interests and to inspect the Property for purposes of Grantor's compliance with the terms and conditions of this Mortgage.

(g) **Compliance with Governmental Requirements.** Grantor 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, including without limitation, the Americans With Disabilities Act. Grantor may contest in good faith any such law, ordinance, or regulation and withhold compliance during any proceeding, including appropriate appeals, so long as Grantor has notified Lender in writing prior to doing so and so long as, in Lender's opinion, Lender's interests in the Property are not jeopardized. Lender may require Grantor to post adequate security or a surety bond, reasonably satisfactory to Lender, to protect Lender's interest.

2.3 Taxes and Liens. Grantor agrees to comply with the following provisions regarding taxes and liens:

(a) **Payment.** Grantor shall pay when due (and in all events prior to delinquency) all taxes, payroll taxes, special taxes, assessments, water charges and sewer service charges levied against or on account of the Property, and shall pay when due all claims for work done on or for services rendered or material furnished to the Property. Grantor shall maintain the Property free of all liens having priority over or equal to the interest of Lender under this Mortgage, except for the lien of taxes and assessments not due; and except as otherwise provided in the following subsection.

(b) **Right To Contest.** Grantor may withhold payment of any tax, assessment, or claim in connection with a good faith dispute over the obligation to pay, so long as Lender's interest in the Property is not jeopardized. If a lien arises or is filed as a result of nonpayment, Grantor shall within fifteen (15) days after the lien arises or, if a lien is filed, within fifteen (15) days after Grantor has notice of the filing, secure the discharge of the lien, or if requested by Lender, deposit with Lender cash or a sufficient corporate surety bond or other security satisfactory to Lender in an amount sufficient to discharge the lien plus any costs and attorneys' fees or other charges that could accrue as a result of a foreclosure or sale under the lien. In any contest, Grantor shall defend itself and Lender and shall satisfy any adverse judgment before

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enforcement against the Property. Grantor shall name Lender as an additional obligee under any surety bond furnished in the contest proceedings.

(c) **Evidence of Payment.** Grantor shall upon demand furnish to Lender satisfactory evidence of payment of the taxes or assessments and shall authorize the appropriate governmental official to deliver to Lender at any time a written statement of the taxes and assessments against the Property.

(d) **Notice of Construction.** Grantor shall notify Lender at least fifteen (15) days before any work is commenced, any services are furnished, or any materials are supplied to the Property, if any mechanic's lien, materialmen's lien, or other lien could be asserted on account of the work, services, or materials. Grantor will upon request of Lender furnish to Lender advance assurances satisfactory to Lender that Grantor can and will pay the cost of such improvements.

2.4 Property Damage Insurance and Proceeds. Grantor agrees to comply with the provisions of the Loan Agreement relating to insurance and casualty and condemnation proceeds.

2.5 Tax and Insurance Reserves. Grantor agrees to establish a reserve account as per the Loan Agreement.

2.6 Expenditures by Lender. If Grantor fails to comply with any provision of this Mortgage, or if any action or proceeding is commenced that would materially affect Lender's interests in the Property, and Grantor refuses to take such actions as Lender may request, Lender on Grantor's behalf may, but shall not be required to, take any action that Lender deems appropriate. Any amount that Lender expends in so doing will bear interest at the Default Rate until paid. All such expenses, at Lender's option, will (a) be payable on demand, (b) be added to the balance of the Note and be apportioned among and be payable with any installment payments to become due during the remaining term of the Note, or (c) be treated as a balloon payment which will be due and payable at the Note's maturity. This Mortgage also will secure payment of these amounts. The rights provided for in this section shall be in addition to any other rights or any remedies to which Lender may be entitled on account of the default. Any such action by Lender shall not be construed as curing the default so as to bar Lender from any remedy that it otherwise would have had.

2.7 Warranty; Defense of Title; Compliance. Grantor makes the following warranties and agreements regarding title to the Property and compliance with applicable laws:

(a) **Title.** Grantor warrants that: (i) Grantor holds good and marketable title of record to the Property in fee simple, free and clear of all liens and encumbrances other than those to be paid off with the first disbursement of loan proceeds and those set forth in the Real Property description or in any title insurance policy, title report, or final title opinion issued in favor of, and accepted by, Lender in connection with

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this Mortgage, and (ii) Grantor has the full right, power, and authority to execute and deliver this Mortgage to Lender.

(b) **Defense of Title.** Subject to the exception in subsection (a) above, Grantor warrants and will forever defend the title to the Property against the lawful claims of all persons. In the event any action or proceeding is commenced that questions Grantor's title or the interest of Lender under this Mortgage, Grantor shall defend the action at Grantor's expense. Grantor may be the nominal party in such proceeding, but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of Lender's own choice, and Grantor will deliver, or cause to be delivered, to Lender such instruments as Lender may request from time to time to permit such participation.

(c) **Compliance With Laws.** Grantor warrants that the Property and Grantor's use of the Property complies with all existing applicable laws, ordinances, and regulations of governmental authorities.

2.8 Condemnation. Grantor agrees to comply with the following provisions regarding condemnation of the Property:

(a) **Application of Net Proceeds.** If all or any part of the Property is condemned by eminent domain proceedings or by any proceeding or purchase in lieu of condemnation, all proceeds shall be applied as per the Loan Agreement.

(b) **Proceedings.** If any proceeding in condemnation is filed, Grantor shall promptly notify Lender in writing, and Grantor shall promptly take such steps as may be necessary to defend the action and obtain the award. Grantor may be the nominal party in such proceeding, but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of its own choice, and Grantor will deliver or cause to be delivered to Lender such instruments as may be requested by it from time to time to permit such participation.

2.9 Imposition of Taxes, Fees and Charges by Governmental Authorities. Grantor agrees to comply with the following provisions regarding governmental taxes, fees and charges:

(a) **Current Taxes, Fees and Charges.** Upon request by Lender, Grantor shall execute such documents in addition to this Mortgage and take whatever other action is requested by Lender to perfect and continue Lender's lien on the Real Property. Grantor shall reimburse Lender for all taxes, as described below, together with all expenses incurred in recording, perfecting or continuing this Mortgage, including without limitation all taxes, fees, documentary stamps, and other charges for recording or registering this Mortgage.

(b) **Taxes.** The following shall constitute taxes to which this section applies: (i) a specific tax upon this type of Mortgage or upon all or any part of the Indebtedness

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secured by this Mortgage; (ii) a specific tax on Grantor which Grantor is authorized or required to deduct from payments on the Indebtedness secured by this type of Mortgage; (iii) a tax on this type of Mortgage chargeable against the Lender or the holder of the Note; and (iv) a specific tax on all or any portion of the Indebtedness or on payments of principal and interest made by Grantor.

(c) **Subsequent Taxes.** If any tax to which this section applies is enacted subsequent to the date of this Mortgage, this event shall have the same effect as an Event of Default, and Lender may exercise any or all of its available remedies for an Event of Default as provided below unless Grantor either (i) pays the tax before it becomes delinquent, or (ii) contests the tax as provided in Section 2.3(b) and deposits with Lender cash or a sufficient corporate surety bond or other security satisfactory to Lender.

SECTION 3: SECURITY AGREEMENT

3.1 Security Agreement. This instrument shall constitute a security agreement to the extent any of the Property constitutes fixtures or other personal property, and Lender shall have all of the rights of a secured party under the Uniform Commercial Code as amended from time to time.

3.2 Security Interest. Upon request by Lender, Grantor shall execute financing statements and take whatever other action is requested by Lender to perfect and continue Lender's security interest in the Rents and Personal Property. In addition to recording this Mortgage in the real property records, Lender may, at any time and without further authorization from Grantor, file executed counterparts, copies or reproductions of this Mortgage as a financing statement. Grantor shall reimburse Lender for all expenses incurred in perfecting or continuing this security interest. Upon default, Grantor shall assemble the Personal Property in a manner and at a place reasonably convenient to Grantor and Lender and make it available to Lender within three (3) days after notice from Lender.

3.3 Addresses. The mailing addresses of Grantor (debtor) and Lender (secured party), from which information concerning the security interest granted by this Mortgage may be obtained (each as required by the Uniform Commercial Code), are as stated in Section 7.2(k) of this Mortgage.

SECTION 4: FURTHER ASSURANCES; ATTORNEY-IN-FACT

4.1 Further Assurances. At any time, and from time to time, upon request of Lender, Grantor will make, execute and deliver, or will cause to be made, executed or delivered, to Lender or to Lender's designee, and when requested by Lender, cause to be filed, recorded, refiled, or rerecorded, as the case may be, at such times and in such offices and places as Lender may deem appropriate, any and all such mortgages, deeds of trust, security deeds, security agreements, financing statements, continuation statements, instruments of further assurance, certificates, and other documents as may, in the opinion of Lender, be necessary or desirable in order to effectuate, complete, perfect, continue, or

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preserve (a) the obligations of Grantor under the Loan Agreement, the Note, this Mortgage, and the Related Documents, and (b) the liens and security interests created by this Mortgage as first and prior liens on the Property, whether now owned or hereafter acquired by Grantor. Unless prohibited by law or agreed to the contrary by Lender in writing, Grantor shall reimburse Lender for all costs and expenses incurred in connection with the matters referred to in this Section.

4.2 Attorney-in-Fact. If Grantor fails to do any of the things referred to in Section 4.1, Lender may do so for and in the name of Grantor and at Grantor's expense. For such purposes, Grantor hereby irrevocably appoints Lender as Grantor's attorney-in-fact for the purpose of making, executing, delivering, filing, recording, and doing all other things as may be necessary or desirable, in Lender's opinion, to accomplish the matters referred to in Section 4.1.

SECTION 5. DUE ON SALE; FULL PERFORMANCE; PARTIAL RELEASE

5.1 Due on Sale - Consent by Lender. Lender may, at its option, declare immediately due and payable all sums secured by this Mortgage upon the sale or transfer, without the Lender's prior written consent, of all or any part of the Real Property, or any interest in the Real Property. A "sale or transfer" means the conveyance of Real Property or any right, title or interest therein; whether legal, beneficial or equitable; whether voluntary or involuntary; whether by outright sale, deed, installment sale contract, land contract, contract for deed, leasehold interest with a term greater than three (3) years, lease-option contract, or by sale, assignment, or transfer of any beneficial interest in or to any land trust holding title to the Real Property, or by any other method of conveyance of Real Property interest. If any Grantor is a corporation, partnership or limited liability company, transfer also includes any change in ownership of more than twenty-five percent (25%) of the voting stock, partnership interests or limited liability company interests, as the case may be, of Grantor. However, Lender shall not exercise this option if such exercise is prohibited by federal law or by Illinois law.

5.2 Full Performance. If Grantor pays all the Indebtedness, including without limitation all future advances, when due, and otherwise performs all the obligations imposed upon Grantor under this Mortgage, Lender shall execute and deliver to Grantor a suitable satisfaction of this Mortgage and suitable statements of termination of any financing statement on file evidencing Lender's security interest in the Rents and the Personal Property. Grantor will pay, if permitted by applicable law, any reasonable termination fee as determined by Lender from time to time.

5.3 Partial Release. In consideration of the Grantor making the mandatory prepayment (called for under the Loan Agreement) related to the sale of a particular Unit (as defined in the Loan Agreement) and the common elements related thereto, and otherwise performing all the obligations imposed upon Grantor under this Mortgage and all Related Documents, Lender shall execute and deliver to Grantor a suitable partial release of this Mortgage and suitable statements of termination of any financing statement on file evidencing Lender's security interest in the Rents and the Personal Property as it relates to

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the particular Unit and applicable of common elements related to said Unit as necessary to permit Grantor to convey clear title to the purchaser of the Unit with a applicable percentage of the common elements.

SECTION 6: EVENTS OF DEFAULT; REMEDIES

6.1 Events of Default. An Event of Default under the Loan Agreement shall constitute an "Event of Default" hereunder.

6.2 Rights and Remedies. Upon the occurrence of any Event of Default and at any time thereafter, Lender, at its option, may exercise any one or more of the following rights and remedies, in addition to any other rights or remedies provided by law:

(a) **Accelerate Indebtedness.** Lender shall have the right at its option without notice to Grantor to declare the entire Indebtedness immediately due and payable, including any prepayment fee which Grantor would be required to pay.

(b) **UCC Remedies.** With respect to all or any part of the Personal Property, Lender shall have all the rights and remedies of a secured party under the Uniform Commercial Code.

(c) **Collect Rents.** Lender shall have the right, without notice to Grantor, to take possession of the Property and collect the Rents, including amounts past due and unpaid, and apply the net proceeds, over and above Lender's costs, against the Indebtedness. In furtherance of this right, Lender may require any tenant or other user of the Property to make payments of rent or use fees directly to Lender. If Lender collects the Rents, then Grantor irrevocably designates Lender as Grantor's attorney-in-fact to endorse instruments received in payment thereof in the name of Grantor and to negotiate the same and collect the proceeds. Payments by tenants or other users to Lender in response to Lender's demand shall satisfy the obligations for which the payments are made, whether or not any proper grounds for the demand existed. Lender may exercise its rights under this subsection either in person, by agent, or through a receiver.

(d) **Mortgagee in Possession.** Lender shall have the right to be placed as mortgagee in possession or to have a receiver appointed without the requirement of the posting of any bond, to take possession of all or any part of the Property, with the power to protect and preserve the Property, to operate the Property preceding foreclosure or sale, and to collect the Rents from the Property and apply the proceeds, over and above the cost of the receivership, against the Indebtedness. The mortgagee in possession or receiver may serve without bond if permitted by law. Lender's right to the appointment of a receiver shall exist whether or not the apparent value of the Property exceeds the Indebtedness by a substantial amount. Employment by Lender shall not disqualify a person from serving as a receiver.

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(e) **Judicial Foreclosure.** Lender may obtain a judicial decree foreclosing Grantor's interest in all or any part of the Property.

(f) **Deficiency Judgment.** If permitted by applicable law, Lender may obtain a judgment for any deficiency remaining on the Indebtedness due to Lender after application of all amounts received from the exercise of the rights provided in this Section.

(g) **Other Remedies.** Lender shall have all other rights and remedies provided in this Mortgage, the Loan Agreement or the Note or available at law or in equity.

6.3 Sale of the Property. To the extent permitted by applicable law, Grantor hereby waives any and all right to have the property marshaled. In exercising its rights and remedies, Lender shall be free to sell all or any part of the Property together or separately, in one sale or by separate sales. Lender shall be entitled to bid at any public sale on all or any portion of the Property.

6.4 Notice of Sale. Lender shall give Grantor reasonable notice of the time and place of any public sale of the Personal Property or of the time after which any private sale or other intended disposition of the Personal Property is to be made. Reasonable notice shall mean notice given at least ten (10) days before the time of the sale or disposition.

6.5 Waiver; Election of Remedies. A waiver by any party of a breach of a provision of this Mortgage shall not constitute a waiver of or prejudice the party's rights otherwise to demand strict compliance with that provision or any other provision. Election by Lender to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or take action to perform an obligation of Grantor under this Mortgage after failure of Grantor to perform shall not affect Lender's right to declare a default and exercise its remedies under this Mortgage.

6.6 Attorneys' Fees; Expenses. If Lender institutes any suit or action to enforce any of the terms of this Mortgage, Lender shall be entitled to recover attorneys' fees at trial and on any appeal. Whether or not any court action is involved, all expenses incurred by Lender that in Lender's opinion are necessary at any time for the protection of its interest or the enforcement of its rights shall become a part of the Indebtedness payable on demand and shall bear interest from the date of expenditure until repaid at the Default Rate under the Note. Expenses covered by this Section include, without limitation, however subject to any limits under applicable law, Lender's attorneys' fees and Lender's legal expenses whether or not there is a lawsuit, including attorneys' fees for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals and any anticipated post-judgment collection services, the cost of searching records, obtaining title reports (including foreclosure reports), surveyors' reports, and appraisal fees, and title insurance, to the extent permitted by applicable law. Grantor also will pay any court costs, in addition to all other sums provided by law.

SECTION 7: DEFINITIONS; MISCELLANEOUS PROVISIONS.

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7.1 Definitions. The following words shall have the following meanings when used in this Mortgage. Terms not otherwise defined in this Mortgage shall have the meanings attributed to such terms in the Illinois Uniform Commercial Code (810 ILCS 1/1 et seq. as amended from time to time). All references to dollar amounts shall mean amounts in lawful money of the United States of America.

Event of Default. The words "Event of Default" has the meaning set forth in the Loan Agreement.

Grantor. The word "Grantor" means **HERITAGE CLUB VILLAS, LLC**, an Illinois limited liability company, its successors and permitted assigns. The Grantor is the mortgagor under this Mortgage.

Guarantor. The word "Guarantor" means and includes without limitation, each and all of the guarantors, sureties, and accommodation parties in connection with the Indebtedness.

Improvements. The word "Improvements" means and includes without limitation all existing and future improvements, fixtures, buildings, structures, mobile homes affixed on the Real Property, facilities, additions, replacements and other construction on the Real Property.

Indebtedness. The word "Indebtedness" means all principal and interest payable under the Note and any amounts expended or advanced by Lender to discharge obligations of Grantor or expenses incurred by Lender to enforce obligations of Grantor under this Mortgage, together with interest on such amounts as provided in this Mortgage. In addition to the Note, the word "Indebtedness" includes all obligations, debts and liabilities, plus interest thereon, of Grantor to Lender, or any one or more of them, as well as all claims by Lender against Grantor, or any one or more of them, whether now existing or hereafter arising, whether related or unrelated to the purpose of the Note, whether voluntary or otherwise, whether due or not due, absolute or contingent, liquidated or unliquidated and whether Grantor may be liable individually or jointly with others, whether obligated as guarantor or otherwise, and whether recovery upon such Indebtedness may be or hereafter may become barred by any statute of limitations, and whether such Indebtedness may be or hereafter may become otherwise unenforceable. Specifically, without limitation, this Mortgage secures, in addition to the amounts specified in the Note, all future amounts Lender in its discretion may loan to Grantor, together with all interest thereon; however, in no event shall such future advances (excluding interest) exceed in the aggregate five million six hundred thousand four hundred thirty-seven dollars (\$5,654,437.00). **The lien of this Mortgage shall not exceed the Maximum Amount Secured.**

Lender. The word "Lender" means **OAK BROOK BANK**, its successors and assigns. The Lender is the mortgagee under this Mortgage.

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Loan Agreement. The words "Loan Agreement" mean that certain Construction Loan Agreement dated as of even date herewith between Grantor and Lender, as it may be amended from time to time.

Maximum Amount Secured. The words "Maximum Amount Secured" mean the amount of twelve million dollars (\$12,000,000.00).

Mortgage. The word "Mortgage" means this Mortgage between Grantor and Lender, and includes without limitation all assignments and security interest provisions relating to the Personal Property and Rents.

Note. The word "Note" means the Promissory Note from Borrower to Lender dated of even date herewith in the principal amount of five million six hundred thousand four hundred thirty-seven dollars (\$5,654,437.00), together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for such promissory note. **The Note has a maturity date of April 10, 2003.**

Personal Property. The words "Personal Property" mean all equipment, fixtures, and other articles of personal property now or hereafter owned by Grantor, and now or hereafter attached or affixed to the Real Property; together with all accessions, parts, and additions to, all replacements of, and all substitutions for, any of such property; and together with all proceeds (including without limitation all insurance proceeds and refunds of premiums) from any sale or other disposition of the Property.

Property. The word "Property" means collectively the Real Property and the Personal Property.

Real Property. The words "Real Property" have the meaning set forth in Section 1.1.

Related Documents. The words "Related Documents" mean and include without limitation all promissory notes, credit agreements, loan agreements, guaranties, security agreements, mortgages, deeds of trust, financing statements, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Indebtedness.

Rents. The word "Rents" means all rents, revenues, income, issues, royalties, profits, and other benefits derived from the Property, whether due now or later.

7.2 Miscellaneous Provisions. The following miscellaneous provisions are a part of this Mortgage:

(a) **Entire Agreement; Amendments.** This Mortgage, together with any Related Documents, constitutes the entire understanding and agreement of the

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parties as to the matters set forth in this Mortgage. No alteration of or amendment to this Mortgage shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

(b) Applicable Law. This Mortgage and all acts, agreements, certificates, assignments, transfers and transactions hereunder, and all rights of the parties hereto, shall be governed as to validity, enforcement, interpretation, construction, effect and in all other respects by the internal laws and decisions of the State of Illinois, including, but not limited to, laws regulating interest, loan charges, commitment fees and brokerage commissions (without regard to conflicts of law principles). It is acknowledged and agreed by Grantor and Lender that the loan transaction evidenced hereby, bears a reasonable relationship to the State of Illinois.

(c) Consent to Jurisdiction. To induce Lender to accept this Mortgage, Grantor irrevocably agrees that, subject to Lender's sole and absolute election, ALL ACTIONS OR PROCEEDINGS IN ANY WAY ARISING OUT OF OR RELATED TO THIS AGREEMENT WILL BE LITIGATED IN COURTS HAVING SITUS IN COOK COUNTY, ILLINOIS. GRANTOR HEREBY CONSENTS AND SUBMITS TO THE JURISDICTION OF ANY COURT LOCATED WITHIN COOK COUNTY, ILLINOIS.

(d) Caption Headings. Caption headings in this Mortgage are for convenience purposes only and are not to be used to interpret or define the provisions of this Mortgage.

(e) Merger. There shall be no merger of the interest or estate created by this Mortgage with any other interest or estate in the Property at any time held by or for the benefit of Lender in any capacity, without the written consent of Lender.

(f) Multiple Parties; Corporate Authority. All obligations of Grantor under this Mortgage shall be joint and several, and all references to Grantor shall mean each and every Grantor. This means that each of the persons signing below is responsible for all obligations in this Mortgage. To the extent that Grantor is a corporation, partnership or limited liability company, it hereby represents and warrants to Lender that the execution of this Mortgage has been authorized by all necessary corporate, partnership or limited liability company action, as the case may be.

(g) Severability. If a court of competent jurisdiction finds any provision of this Mortgage to be invalid or unenforceable as to any person or circumstance, such finding shall not render that provision invalid or unenforceable as to any other persons or circumstances. If feasible, any such offending provision shall be deemed to be modified to be within the limits of enforceability or validity; however, if the offending provision cannot be so modified, it shall be stricken and all other provisions of this Mortgage in all other respects shall remain valid and enforceable.

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(h) **Successors and Assigns.** Subject to the limitations stated in this Mortgage on transfer of Grantor's interest in the Real Property or a change in ownership of Grantor, this Mortgage shall be binding upon and inure to the benefit of the parties, their successors and assigns. If ownership of the Property becomes vested in a person other than Grantor, Lender, without notice to Grantor, may deal with Grantor's successors with reference to this Mortgage and the Indebtedness by way of forbearance, extension or any other modification without releasing Grantor from the obligations of this Mortgage or liability under the Indebtedness.

(i) **Survival.** All warranties, representations, and covenants made by Grantor in this Mortgage or in any certificate or other instrument delivered by Grantor to Lender under this Mortgage shall be considered to have been relied upon by Lender and will survive the making of the loan secured hereby and delivery to Lender of the Related Documents, regardless of any investigation made by Lender or on Lender's behalf.

(j) **Time Is of the Essence.** Time is of the essence in the performance of this Mortgage.

(k) **Agency.** Nothing in this Mortgage shall be construed to constitute the creation of a partnership or joint venture between Lender and Grantor or any contractor. Lender is not an agent or representative of Grantor. This Mortgage does not create a contractual relationship with and shall not be construed to benefit or bind Lender in any way with or create any contractual duties by Lender to any contractor, subcontractor, materialman, laborer, or any other person.

(l) **Notices.** Except as otherwise provided herein, whenever it is provided herein that any notice, demand, request, consent, approval, declaration or other communication shall or may be given to or served upon any of the parties by another, or whenever any of the parties desires to give or serve upon another any communication with respect to this Mortgage, each such notice, demand, request, consent, approval, declaration or other communication shall be in writing and shall be delivered in person (by personal delivery, delivery service or reputable overnight courier service) with receipt acknowledged, or telecopied and confirmed immediately in writing by a copy mailed by registered or certified mail, return receipt requested, postage prepaid, addressed as hereafter set forth, or mailed by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

If to Lender, at
Oak Brook Bank
1400 West Sixteenth Street
Oak Brook, IL 60523
Attention: Molly Oelerich
Tel: 630-571-1050; Fax: 630-571-0256

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If to Grantor, at

Heritage Club Villas, LLC
c/o Sexton Development, LLC
1815 South Wolf Road
Hillside, Illinois 60162
Attention: Alan Scimeca, Director of Development & Construction
Tel: (708) 449-1250 Fax: (708) 449-0177

With a copy to:

Meltzer, Purtil & Stelle
1515 E. Woodfield Road, Suite 250
Schaumburg, Illinois 60173
Attention: Thomas V. Canepa
Tel: (847) 330-2400 Fax: (847) 330-1231

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or at such other address as may be substituted by notice given as herein provided. The party entitled to receive such notice may waive the giving of any notice required hereunder in writing. Every notice, demand, request, consent, approval, declaration or other communication hereunder shall be deemed to have been duly given or served on the date on which (i) personally delivered (whether in person, by delivery service, or by reputable overnight courier service, with receipt acknowledged, (ii) the date of the telecopy transmission (provided the confirmation mailing was sent as provided herein), or (iii) on the date of receipt if sent by the United States mail. Failure or delay in delivering copies of any notice, demand, request, consent, approval, declaration or other communication to the persons designed above to receive copies shall in no way adversely affect the effectiveness of such notice, demand, request, consent, approval, declaration or other communication.

(m) Waiver of Homestead Exemption. Grantor hereby releases and waives all rights and benefits of the homestead exemption laws of the State of Illinois as to all Indebtedness secured by this Mortgage.

(n) Waiver of Right of Redemption. NOTWITHSTANDING ANY OF THE PROVISIONS TO THE CONTRARY CONTAINED IN THIS MORTGAGE, GRANTOR HEREBY WAIVES, TO THE EXTENT PERMITTED UNDER 735 ILCS 5/15-1601(b) OR ANY SIMILAR LAW EXISTING AFTER THE DATE OF THIS MORTGAGE, ANY AND ALL RIGHTS OF REDEMPTION ON BEHALF OF GRANTOR AND ON BEHALF OF ANY OTHER PERSONS PERMITTED TO REDEEM THE PROPERTY.

(o) Waivers and Consents. Lender shall not be deemed to have waived any rights under this Mortgage (or under the Related Documents) unless such waiver is

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in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by any party of a provision of this Mortgage shall not constitute a waiver of or prejudice the party's right otherwise to demand strict compliance with that provision or any other provision of this Mortgage. No prior waiver by Lender, nor any course of dealing between Lender and Grantor, shall constitute a waiver of any of Lender's rights or any of Grantor's obligations as to any future transactions.

(q) **Lender's Discretion.** Whenever this instrument requires either Lender's consent, election, approval or similar action or otherwise vests in Lender the authority to make decisions and/or determinations, such actions shall be made or withheld in Lender's sole and absolute discretion, unless specifically provided otherwise and the granting of any consent, approval or similar action by Lender in any instance shall not constitute continuing consent or approval in subsequent instances where such is required.

(r) **Waiver of Jury Trial.** GRANTOR AND LENDER EACH WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS (i) UNDER THIS MORTGAGE OR ANY OTHER AGREEMENT DELIVERED IN CONNECTION HEREWITH OR UNDER ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION WITH THIS MORTGAGE OR (ii) ARISING FROM ANY BANKING RELATIONSHIP EXISTING IN CONNECTION WITH THIS MORTGAGE, AND AGREES THAT ANY SUCH ACTION OR PROCEEDING WILL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. GRANTOR AGREES THAT IT WILL NOT ASSERT ANY CLAIM AGAINST LENDER OR ANY OTHER PERSON INDEMNIFIED UNDER THIS MORTGAGE ON ANY THEORY OF LIABILITY FOR SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES.

GRANTOR ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS MORTGAGE, AND GRANTOR AGREES TO ITS TERMS.

GRANTOR:

Heritage Club Villas, LLC
an Illinois limited liability company
By: Sexton Development, LLC
Its: General Manager



Name: Arthur A. Daniels
Title: Authorized Signatory

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Exhibit **A**

Legal Description:

Parcel 1:

The North 218.0 feet of the South 436.0 feet of the South 1/2 of the West 3/4 of the East 1/2 of the Southwest 1/4 of Section 34, Township 36 North, Range 12, East of the Third Principal Meridian, in Cook County, Illinois.
PIN: 27-34-301-012

Parcel 2:

The South 218 feet of the South 1/2 of the West 3/4 of the East 1/2 of the Southwest 1/4 of Section 34, Township 36 North, Range 12, East of the Third Principal Meridian, in Cook County, Illinois.
PIN: 27-34-301-013

Parcel 3:

The North 195.00 feet of the South 654.00 feet of the West 443.26 feet of the South 1/2 of the West 3/4 of the East 1/2 of the Southwest 1/4 of Section 34, Township 36 North, Range 12, East of the Third Principal Meridian, in Cook County, Illinois.
PIN: 27-34-301-017

Parcel 4:

The North 218.0 feet of the South 654.0 feet (except the North 195 feet of the South 654 feet of the West 443.26 feet) of the South 1/2 of the West 3/4 of the East 1/2 of the Southwest 1/4 of Section 34, Township 36 North, Range 12, East of the Third Principal Meridian, in Cook County, Illinois.
PIN: 27-34-301-018

Property Address: Northeast corner of 94th Avenue and 183 rd Street
Tinley Park, Illinois 60477

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