

UNOFFICIAL COPY

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2001-10-02 11:25:19  
Cook County Recorder 37.00

THIS DOCUMENT PREPARED BY  
AND AFTER RECORDING RETURN  
TO:



Bell, Boyd & Lloyd LLC  
70 West Madison Street  
Suite 3100  
Chicago, Illinois 60602  
Attn: Terrence E. Budny, Esq.

*This space reserved for Recorder's use only*

**MODIFICATION OF LOAN DOCUMENTS**

THIS MODIFICATION OF LOAN DOCUMENTS (this "Agreement") is made as of the 18<sup>th</sup> day of September, 2001, by and among CONCORD AT THE GLEN L. L. C., an Illinois limited liability company ("Borrower"), CONCORD DEVELOPMENT CORPORATION OF ILLINOIS, a Delaware corporation ("Guarantor"), and LASALLE BANK NATIONAL ASSOCIATION, a national banking association, its successors and assigns ("Lender").

**Recitals**

A. Lender has made a loan to Borrower in the principal amount of THIRTY FOUR MILLION TWO HUNDRED THOUSAND DOLLARS (\$34,200,000) (the "Loan") pursuant to a Construction Loan Agreement between Lender and Borrower dated as of June 22, 2000 (the "Loan Agreement"). Initially capitalized terms used in this Amendment and not expressly defined herein have the respective meanings given them in the Loan Agreement.

B. The Loan is evidenced by a Mortgage Note dated as of June 22, 2000 in the principal amount of \$34,200,000 from Borrower to Lender (the "Note"), and is secured by, among other things, the following documents, both of which are dated as of June 22, 2000:

1. Construction Mortgage, Security Agreement and Financing Statement recorded June 27, 2000, with the Cook County Recorder of Deeds as document no. 00478284; and

2. Assignment of Rents and Leases recorded June 27, 2000, with the Cook County Recorder of Deeds as document no. 00478285.

The Mortgage and Assignments of Rents and Leases encumber the real estate legally described in EXHIBIT A attached hereto and made a part hereof.

**BOX 333-CT1**

DI  
1504 Dunbar Court  
7768755  
O.I.

C. The Loan is also secured by (1) that certain Environmental Indemnity Agreement dated June 22, 2000, from Borrower and Guarantor to Lender (the "Indemnity Agreement"), (2) that certain Payment Guaranty dated June 22, 2000, from Guarantor to Lender (the "Payment Guaranty"), (3) that certain Completion Guaranty dated June 22, 2000, from Guarantor to Lender (the "Completion Guaranty"), and (4) certain other loan documents (the Note, the Mortgage, the Assignment of Leases, the Indemnity Agreement, the other documents evidencing, securing and guarantying the Loan, in their original form and as amended, are sometimes collectively referred to herein as the "Loan Documents").

D. Borrower desires to amend the Loan Documents in order to increase the maximum principal amount of the Residential Revolving Funds from \$6,000,000 to \$8,000,000.

### Agreements

NOW, THEREFORE, in consideration of (i) the facts set forth hereinabove (which are hereby incorporated into and made a part of this Agreement), (ii) the agreements by Lender to modify the Loan Documents, as provided herein, (iii) the covenants and agreements contained herein, and (iv) for other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Increase in Residential Revolving Funds.** The maximum principal amount of Residential Revolving Funds that may be outstanding at any time is hereby increased by \$2,000,000 from \$6,000,000 to \$8,000,000. Such increase shall not require an increase in the maximum principal amount of the Loan, because more than \$2,000,000 of the principal amount of A&D Funds has already be repaid.

2. **Amendment to Loan Agreement.** The Loan Agreement is amended as follows:

a. By inserting the following as the definition of "Borrower's Engineer" in Section 1.1:

**"Borrower's Engineer. Cowhey Gudmundson Leazer, Ltd."**

b. By inserting the following as the definition of "Loan Opening Date" in Section 1.1:

**"Loan Opening Date. June 23, 2000."**

c. By deleting the defined term "Sold Units" in the definition of Spec Units, and in Sections 2.7(a) and 4.4(a), and inserting the defined term "***Closed Units***" in its place.

d. By deleting the amount "SIX MILLION DOLLARS (\$6,000,000)" in Section 2.1(a)(2), and inserting the amount "***EIGHT MILLION DOLLARS (\$8,000,000)***" in its place.

3. Amendment to Note. The Note is amended as follows:

a. By deleting the amount "SIX MILLION DOLLARS (\$6,000,000)" in Paragraph 1(b)(2), and inserting the amount "**EIGHT MILLION DOLLARS (\$8,000,000)**" in its place.

b. By deleting the phrase "in this paragraph 14" in the last sentence of Paragraph 12, and inserting the phrase "**in this paragraph 12**" in its place.

c. By deleting the phrase "in paragraph 16 below" in the last sentence of Paragraph 12, and inserting the phrase "**in paragraph 14 below**" in its place.

4. Amendment to Mortgage. Section 40 of the Mortgage is amended by deleting the amount "\$6,000,000" wherever it appears in such Section, and inserting the amount "**\$8,000,000**" in its place.

5. Amendment to Completion Guaranty. Paragraph 1(b) of the Completion Guaranty is amended by deleting the word "Commenced" where it appears before the word "Development."

6. Representations and Warranties of Borrower. Borrower hereby represents, covenants and warrants to Lender as follows:

a. The representations and warranties in the Loan Agreement, the Mortgage and the other Loan Documents are true and correct as of the date hereof.

b. There is currently no Event of Default (as defined in the Loan Agreement) under the Note, the Mortgage or the other Loan Documents and Borrower does not know of any event or circumstance which with the giving of notice or passing of time, or both, would constitute an Event of Default under the Note, the Mortgage or the other Loan Documents.

c. The Loan Documents are in full force and effect and, following the execution and delivery of this Agreement, they continue to be the legal, valid and binding obligations of Borrower enforceable in accordance with their respective terms, subject to limitations imposed by general principles of equity.

d. There has been no material adverse change in the financial condition of Borrower, Guarantor or any other party whose financial statement has been delivered to Lender in connection with the Loan from the date of the most recent financial statement received by Lender.

e. As of the date hereof, Borrower has no claims, counterclaims, defenses, or set-offs with respect to the Loan or the Loan Documents as modified herein.

f. Borrower is validly existing under the laws of the State of its formation or organization and has the requisite power and authority to execute and deliver this Agreement and

to perform the Loan Documents as modified herein. The execution and delivery of this Agreement and the performance of the Loan Documents as modified herein have been duly authorized by all requisite action by or on behalf of Borrower. This Agreement has been duly executed and delivered on behalf of Borrower.

7. **Title Policy.** As a condition precedent to the agreements contained herein, Borrower shall, at its sole cost and expense, cause Chicago Title Insurance Company to issue an endorsement to Lender's title insurance policy No. 7768755 (the "Title Policy"), as of the date this Agreement is recorded, reflecting the recording of this Agreement and insuring the first priority of the lien of the Mortgage, subject only to the exceptions set forth in the Title Policy as of its date of issuance and any other encumbrances expressly agreed to by Lender.

8. **Reaffirmation of Guaranties.** Guarantor ratifies and affirms the Indemnity Agreement, the Payment Guaranty and the Completion Guaranty (collectively, the "Guaranties"), and agrees that the Guaranties are in full force and effect following the execution and delivery of this Agreement. The representations and warranties of Guarantor in the Guaranties are, as of the date hereof, true and correct and Guarantor does not know of any default thereunder. The Guaranties continue to be the valid and binding obligation of Guarantor, enforceable in accordance with their respective terms, and Guarantor has no claims or defenses to the enforcement of the rights and remedies of Lender thereunder, except as provided in the Guaranties. Guarantor represents and warrants to Lender that (a) Guarantor is validly existing under the laws of the State of its formation or organization and has the requisite power and authority to execute and deliver this Agreement and to perform the Loan Documents as modified herein, (b) the execution and delivery of this Agreement and the performance of the Loan Documents as modified herein have been duly authorized by all requisite action by or on behalf of Guarantor, and (c) this Agreement has been duly executed and delivered on behalf of Guarantor.

9. **Expenses.** As a condition precedent to the agreements contained herein, Borrower shall pay Lender a loan modification fee in the amount of \$5,000, and all out-of-pocket costs and expenses incurred by Lender in connection with this Agreement, including, without limitation, title charges, recording fees, appraisal fees and attorneys' fees and expenses.

10. **Miscellaneous.**

a. This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.

b. This Agreement shall not be construed more strictly against Lender than against Borrower or Guarantor merely by virtue of the fact that the same has been prepared by counsel for Lender, it being recognized that Borrower, Guarantor and Lender have contributed substantially and materially to the preparation of this Agreement, and Borrower, Guarantor and Lender each acknowledges and waives any claim contesting the existence and the adequacy of the consideration given by the other in entering into this Agreement. Each of the parties to this Agreement represents that it has been advised by its respective counsel of the legal and practical effect of this Agreement, and recognizes that it is executing and delivering this Agreement,

intending thereby to be legally bound by the terms and provisions thereof, of its own free will, without promises or threats or the exertion of duress upon it. The signatories hereto state that they have read and understand this Agreement, that they intend to be legally bound by it and that they expressly warrant and represent that they are duly authorized and empowered to execute it.

c. Notwithstanding the execution of this Agreement by Lender, the same shall not be deemed to constitute Lender a venturer or partner of or in any way associated with Borrower or Guarantor nor shall privity of contract be presumed to have been established with any third party.

d. Borrower, Guarantor and Lender each acknowledges that there are no other understandings, agreements or representations, either oral or written, express or implied, that are not embodied in the Loan Documents and this Agreement, which collectively represent a complete integration of all prior and contemporaneous agreements and understandings of Borrower, Guarantor and Lender; and that all such prior understandings, agreements and representations are hereby modified as set forth in this Agreement. Except as expressly modified hereby, the terms of the Loan Documents are and remain unmodified and in full force and effect.

e. This Agreement shall bind and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

f. Any references to the "Note", the "Mortgage" or the "Loan Documents" contained in any of the Loan Documents shall be deemed to refer to the Note, the Mortgage and the other Loan Documents as amended hereby. The paragraph and section headings used herein are for convenience only and shall not limit the substantive provisions hereof. All words herein which are expressed in the neuter gender shall be deemed to include the masculine, feminine and neuter genders. Any word herein which is expressed in the singular or plural shall be deemed, whenever appropriate in the context, to include the plural and the singular.

g. This Agreement may be executed in one or more counterparts, all of which, when taken together, shall constitute one original Agreement.

h. Time is of the essence of each of Borrower's and Guarantor's respective obligations under this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

**LENDER:**

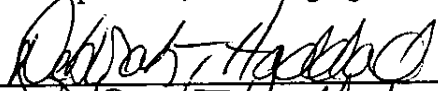
**LASALLE BANK NATIONAL ASSOCIATION**, a national banking association

By:   
Name: CHRISTOPHER A. THANGARAJ  
Title: COMMERCIAL BANKING OFFICER

**BORROWER:**

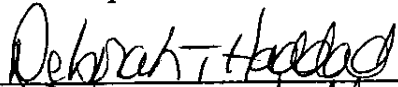
**CONCORD AT THE GLEN L.L.C.**, an Illinois limited liability company

By: A. C. Homes Corporation VII, an Illinois corporation, its managing member

By:   
Name: Deborah T. Haddad  
Title: Vice President

**GUARANTOR:**

**CONCORD DEVELOPMENT CORPORATION OF ILLINOIS**, a Delaware corporation

By:   
Name: Deborah T. Haddad  
Title: Vice President

Property of Cook County Clerk's Office



STATE OF ILLINOIS )  
 ) ss.  
COUNTY OF COOK )

I RAE RIVERO, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that CHRISTOPHER A. THANGARAJ, COMMERCIAL BANKING OFFICER of LaSalle Bank National Association, is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered said instrument as his own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 19th day of SEPTEMBER, 2001.



Rae Rivero  
Notary Public

My Commission Expires: 6/05/04

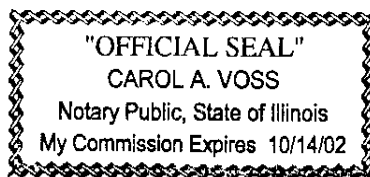
STATE OF ILLINOIS )  
 ) ss.  
COUNTY OF Cook )

I Carol A. Voss, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Deborah T. Haddad Vice President of A. C. Homes Corporation VII, an Illinois corporation (the "Managing Member"), the managing member of Concord at the Glen L.L.C., an Illinois limited liability company (the "Company"), is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered said instrument as his own free and voluntary act, and as the free and voluntary act of the Managing Member and the Company, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 18th day of September, 2001.

Carol A. Voss  
Notary Public

My Commission Expires: 10-14-02



STATE OF ILLINOIS )  
 ) ss.  
COUNTY OF Cook )

I Carol A. Voss, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Deborah T. Haddad, Vice President of Concord Development Corporation of Illinois, a Delaware corporation, is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered said instrument as his own free and voluntary act, and as the free and voluntary act of such corporation, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 18th day of September, 2001.

Carol A. Voss  
Notary Public

My Commission Expires: 10-14-02

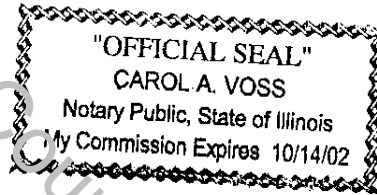




Exhibit A

Lots 3, 7, 36, 41, 53 and 62 in Concord at the Glen, Unit 1, being a subdivision of that portion of Lot 37 in Glenview Naval Air Station Subdivision No. 2, being a subdivision of part of Sections 15, 21, 22, 23, 26, 27, 28 and 34, in Township 42 North, Range 12 East of the Third Principal Meridian, in Cook County, Illinois, pursuant to the Plat thereof recorded in Cook County, Illinois as document no. 0010004437.

Lots 25, 26, 81, 87, 91, 130, 131, 132, 133, 134, 135, 136 and 137 in Concord at the Glen, Unit 2, being a subdivision of that portion of Lot 37 in Glenview Naval Air Station Subdivision No. 2, being a subdivision of part of Sections 15, 21, 22, 23, 26, 27, 28 and 34, in Township 42 North, Range 12 East of the Third Principal Meridian, in Cook County, Illinois, pursuant to the Plat thereof recorded in Cook County, Illinois as document no. 0010004438.

Address: Glenview Naval Air Station  
Chestnut and Lehigh Avenues  
Glenview, IL 60025

PIN: 04-27-301-014-0000  
04-27-400-030-0000