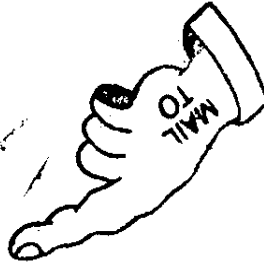


Document prepared by and after recording to be returned to:



0020212079



Daniel Kohn, Esq.  
Duane Morris LLC  
227 West Monroe Street, Suite 3400  
Chicago, Illinois 60606

**FIRST MODIFICATION OF CONSTRUCTION MORTGAGE,  
ASSIGNMENT OF RENTS, SECURITY AGREEMENT  
AND FIXTURE FINANCING STATEMENT**

This **FIRST MODIFICATION OF CONSTRUCTION MORTGAGE, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FINANCING STATEMENT** (the "Agreement") is entered into as of the 3rd day of January, 2002, by and between **SCHMIDT & ASSOCIATES CONSTRUCTION, INC.**, an Illinois corporation ("Borrower") and **CORUS BANK, N.A.** ("Lender").

**RECITALS**

WHEREAS, Borrower executed and delivered to Lender that certain Construction Mortgage Note dated November 17, 2000, in the original principal amount of Four Hundred Fifty-Five Thousand and No/100 Dollars (\$455,000.00) (the "Original Note"). The loan described in the Note (the "Loan") and Borrower's obligations thereunder are secured by, among other things, that certain Construction Mortgage, Assignment of Rents, Security Agreement and Fixture Financing Statement dated November 17, 2000, from Borrower in favor of Lender, and recorded with the Recorder of Deeds of Cook County, Illinois on November 22, 2000, as Document No. 00919002 (the "Mortgage"). The Mortgage secures the real property described on **Exhibit A** attached hereto; and

WHEREAS, Borrower, in connection with Borrower's execution of that certain Loan Restructure Agreement of even date herewith among Borrower, Lender, Bernard Schmidt and Marian Schmidt (the "Restructure Agreement"), the terms of such Restructure Agreement being incorporated herein by reference, has requested that Lender, among other things, (i) consolidate all of the loan facilities provided by Lender to Borrower (such loan facilities being more fully described in the Restructure Agreement) such that all said loan facilities are governed and controlled by the Restructure Agreement, (ii) replace the Original Note and all other notes evidencing the aforesaid loan facilities with a Consolidated Promissory Note of even date herewith in the maximum principal

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amount of Thirteen Million Five Hundred Seventy Thousand Dollars (\$13,570,000) from Borrower in favor of Lender (the "Note"), (iii) extend the maturity date of the subject credit facility to January 1, 2003, and (iv) allow for the release of certain of the Parcels (as defined in the Restructure Agreement) prior to the construction of Homes (as defined in the Restructure Agreement) thereon; and

WHEREAS, it is the intention of Lender and Borrower that this Agreement and the execution of the Note does not effect a novation of the obligations of Borrower to Lender under the Original Note, but merely a substitution of the terms governing and evidencing such obligations; and

WHEREAS, Lender is willing to make the accommodations requested by Borrower to provide the Note, effective on the date hereof, provided Borrower executes this Agreement; and

WHEREAS, Borrower acknowledges and agrees that it receives benefit from disbursements under the Note as consolidated; and

WHEREAS, Borrower now desires to modify the Mortgage to, among other things, (i) reflect that the Mortgage secures the Note, as consolidated, (ii) reflect that maximum principal amount of the Note, as consolidated, is Thirteen Million Five Hundred Seventy Thousand Dollars (\$13,570,000), (iii) reflect that the maturity date of the Note has been extended to January 1, 2003, and (iv) reflect that certain of the Parcels may be released prior to the construction of Homes; and

WHEREAS, Lender, the legal owner of the Note and of the liens securing the same, at the request of Borrower has agreed to modify the Mortgage as hereinafter provided.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, as well as other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Borrower and Lender hereby agree to modify and renew the Mortgage as follows:

1. Representations and Warranties.

- a. Financial Statements. Borrower represents and warrants that all financial statements of Borrower heretofore delivered to Lender are true and correct representations of the financial condition of Borrower as of the date thereof, and there has been no material adverse change thereto except as indicated by financial statements subsequently delivered to Lender.
- b. Violation of Laws. Borrower is not in violation of any laws (including, without limitation, environmental laws and regulations) which could have any effect whatsoever upon the validity, performance or enforceability of any of the terms, covenants and conditions of the Note, the Mortgage, this Agreement, or any

instrument executed in connection herewith or therewith. As used in this Agreement, the term "laws" shall include any and all laws, statutes, ordinances rules, regulations, orders, writs, injunctions and decrees.

- c. Taxes. Borrower has paid any and all federal, state, local and other taxes, assessments, fees and other governmental charges imposed upon Borrower or Borrower's assets which are due and payable.
  - d. Disclosure of Adverse Facts. Borrower represents and warrants that there are no material adverse facts or conditions relating to the finances and business of Borrower which have not been related in writing to Lender.
  - e. Lawful Authority. Borrower possesses all necessary and lawful authority and power to carry on its business and comply with the terms, covenants and conditions of the Note, the Mortgage, this Agreement, and any other instrument executed in connection herewith or therewith.
  - f. No Defaults, Offsets, etc. Borrower represents and warrants that: (i) there are no events or circumstances currently existing which constitute a default under any of the loan documents evidencing the Loan or which would, upon the giving of notice and expiration of any applicable cure period, constitute a default under any of the loan documents evidencing the Loan; and (ii) there are no offsets, counterclaims or defenses with respect to the Note, the Mortgage, as modified hereby, or any of the other loan documents evidencing the Loan
2. Default. Any default under or breach of the terms and provisions of this Agreement shall also constitute a default under the Mortgage, and any other security instrument executed in connection therewith or herewith.
  3. Consolidated Promissory Note. Borrower and Lender agree that notwithstanding anything to the contrary contained in the Mortgage, the Mortgage does and shall secure any and all liabilities and obligations under the terms of the Note, as consolidated.
  4. Maximum Principal Amount. Borrower and Lender agree that notwithstanding anything to the contrary contained in the Mortgage, the maximum principal amount of the Note is hereinafter Thirteen Million Five Hundred Seventy Thousand Dollars (\$13,570,000).
  5. Maturity Date. Borrower and Lender agree that notwithstanding anything to the contrary contained in the Mortgage, the maturity date under the Note is January 1, 2003.
  6. Releases. Borrower and Lender agree that notwithstanding anything to the contrary contained in the Mortgage, Borrower shall have the right to requires the release of certain of

the Parcels prior to the construction of Homes thereon, all in accordance with the terms of the Restructure Agreement.

- 7. Continuing Effect; Ratification. Except as expressly modified as contemplated herein, Borrower expressly ratifies the terms and provisions of the Mortgage and acknowledges and agrees that such terms and provisions shall continue in full force and effect and shall be binding on Borrower and Borrower's successors and assigns.
- 8. Costs and Expenses. Borrower shall pay any and all costs and expenses, including, without limitation, attorneys' fees and title charges, incurred by Lender in connection with or arising as a result of this Agreement, including, without limitation, the preparation and negotiation of this Agreement, and any other document required in connection herewith.
- 9. Final Agreement. THIS AGREEMENT REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.
- 10. Conflicts. In the event of any conflict between the terms of this Agreement and any other document evidencing, securing or relating to the loan evidenced by the Note, the terms of this Agreement shall control.

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

**BORROWER:**

**SCHMIDT & ASSOCIATES CONSTRUCTION, INC.,** an Illinois corporation

By: \_\_\_\_\_

Its: \_\_\_\_\_

**LENDER:**

**CORUS BANK, N.A.**

By: \_\_\_\_\_

Its: CO

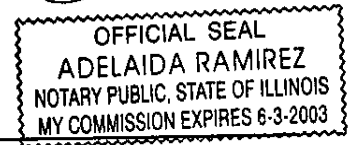
STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

I, Adelaida Ramirez, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Arnold Schmidt personally known to me to be the President of SCHMIDT & ASSOCIATES CONSTRUCTION, INC., as such President is the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he has signed and delivered the said instrument as his free and voluntary act as aforesaid, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 8th day of January, 2002.

Adelaida Ramirez  
Notary Public

My commission expires: \_\_\_\_\_



STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

I, Adelaida Ramirez, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that David A. Kiseckle, personally known to me to be the CEO of CORUS BANK, N.A., is the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he has signed and delivered the said instrument as his free and voluntary act as aforesaid, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 8th day of January, 2002.

Adelaida Ramirez  
Notary Public

My commission expires: \_\_\_\_\_

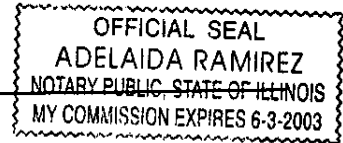


EXHIBIT A

LEGAL DESCRIPTION

LOT 5 IN BLOCK 6 IN GLENVIEW PARK MANOR, A SUBDIVISION IN THE SOUTHEAST ¼ OF SECTION 12, TOWNSHIP 41 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JULY 25, 1944 AS DOCUMENT 13326154, IN COOK COUNTY, ILLINOIS.

Permanent Real Estate Tax No: 09-12-428-002

Property Address: 3219 Birchwood Court, Glenview, Illinois

Property of Cook County Clerk's Office