

This instrument was prepared
by,
and, after recording, return to:

David J. O'Keefe
Schain, Burney, Ross &
Citron, Ltd.
222 North LaSalle Street
Suite 1910
Chicago, Illinois 60601



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Property of Cook County Clerk's Office

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**CONSTRUCTION MORTGAGE,
ASSIGNMENT, AND SECURITY AGREEMENT**

THIS CONSTRUCTION MORTGAGE, ASSIGNMENT, AND SECURITY AGREEMENT (the "Mortgage") is made as of this 22nd day of April, 2002 by NEUMANN HOMES, INC., an Illinois corporation ("Borrower"), with an address of 4355 Weaver Parkway, Warrenville, Illinois 60555, to and for the benefit of BANK OF AMERICA, N.A., a national banking association ("Bank"), with an address of 2625 Butterfield Road, Suite 209W, Oak Brook, Illinois 60521.

Amount of Initial
Loan Secured Hereby: **Twenty Five Million and 00/100 Dollars
(\$25,000,000.00)**

Maximum possible principal
debt, including future advances,
that may be secured hereby: **Forty Million and 00/100 Dollars
(\$40,000,000.00)**

Land: Those certain parcels of land described in **Exhibit A** attached hereto and incorporated herein by reference, together with all land, if any, subsequently described and included by written modification referencing this Mortgage.

1. MORTGAGE. In consideration of Ten Dollars (\$10.00) and other valuable consideration received by Borrower, the receipt and sufficiency of which are hereby

BOX 333-CTI

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acknowledged, Borrower hereby grants, bargains, sells, assigns, transfers, conveys and mortgages to Bank, its successors and assigns, to its own proper use and benefit forever, subject to the terms and conditions of this Mortgage, the real estate described above as the Land, together with:

- (a) Appurtenances. The benefit of all tenements, hereditaments, easements and other rights of any nature whatsoever, if any, appurtenant to the Land or the Improvements, or both, the benefit of all rights-of-way, strips and gores of land, streets, alleys, passages, drainage rights, sanitary sewer and potable water rights, stormwater drainage rights, rights of ingress and egress to the Land and all adjoining property, and any improvements of Borrower now or hereafter located on any of such real property interests, water rights and powers, oil, gas, mineral and riparian and littoral rights, whether now existing or hereafter arising, together with the reversion or reversions, remainder or remainders, rents, issues, incomes and profits of any of the foregoing (the "Appurtenances").
- (b) Improvements. All buildings, structures, betterments and other improvements of any nature now or hereafter situated in whole or in part upon the Land or on the Appurtenances, regardless of whether physically affixed thereto or severed or capable of severance therefrom (the "Improvements").
- (c) Tangible Property. All of Borrower's right, title and interest, if any, in and to all fixtures, equipment and tangible personal property of any nature whatsoever that is now or hereafter (i) attached or affixed to the Land, the Appurtenances, or the Improvements; or (ii) situated upon or about the Land, the Appurtenances and/or the Improvements, regardless of whether physically affixed thereto or severed or capable of severance therefrom; or (iii) used, regardless of where situated, if used, usable or intended to be used, in connection with any present or future use or operation of or upon the Land. The foregoing includes all goods and inventory, all heating, air conditioning, lighting, incinerating and power equipment; all engines, compressors, pipes, pumps, tanks, motors, conduits, wiring, and switchboards; all plumbing, lifting, cleaning, fire prevention, fire extinguishing, refrigerating, ventilating, and communications and public address apparatus; all stoves, ovens, ranges, disposal units, dishwashers, water heaters, exhaust systems, refrigerators, cabinets, and partitions; all rugs, draperies and carpets; all laundry equipment; all building materials; all furniture (including, without limitation, any outdoor furniture), furnishings, office equipment and office supplies (but not including furniture, furnishings or office equipment in units used as models or sales offices); and all additions,

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accessions, renewals, replacements and substitutions of any or all of the foregoing. The property interests encumbered and described by this paragraph are called the "Tangible Property" in this Mortgage.

- (d) Rents. All rents, issues, incomes and profits in any manner arising from the Land, Improvements, Appurtenances or Tangible Property, or any combination thereof, including Borrower's interest in and to all leases of whatsoever kind or nature, licenses, franchises and concessions of or relating to all or any portion of the Land, Appurtenances, Improvements or Tangible Property, or the operation thereof, whether now existing or hereafter made, including all amendments, modifications, replacements, substitutions, extensions, renewals or consolidations thereof. The property interests encumbered and described in this subparagraph are called the "Rents" in this Mortgage.
- (e) Secondary Financing. All of Borrower's right, power or privilege to further encumber any of the Collateral described in this paragraph 1, it being intended by this provision to divest Borrower of the power to encumber or to grant a security interest in any of the Collateral as security for the performance of an obligation, except for "Permitted Encumbrances" as defined in paragraph 5 herein.
- (f) Proceeds. All proceeds of the conversion, voluntary or involuntary, of any of the property encumbered by this Mortgage into cash or other liquidated claims, or that are otherwise payable for injury to or the taking or requisitioning of any such property, including all judgments, settlements and insurance and condemnation proceeds as provided in this Mortgage.
- (g) Contract Rights. All of Borrower's right, title and interest in and to any and all contracts or leases, written or oral, express or implied, now existing or hereafter entered into or arising, in any matter related to the improvement, use, operation, sale, conversion or other disposition of any interest in the Land, Appurtenances, Improvements, Tangible Property or the Rents, or any combination thereof, including all tenant leases, sales contracts, reservation deposit agreements, Borrower's right, title and interest in and to any and all deposits, prepaid items, and payments due and to become due thereunder, and including, without limitation, contracts pertaining to maintenance, on-site security service, elevator maintenance, landscaping services, building or project management, marketing, leasing, sales and janitorial services; Borrower's interests as lessee in equipment leases, including telecommunications, computers, vending machines, model furniture, televisions, laundry equipment; and Borrower's interests in construction contracts or documents (including

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architectural drawings and plans and specifications relating to the Improvements), service contracts, use and access agreements, advertising contracts and purchase orders. The property interests encumbered and described in this paragraph are called the "Contract Rights" in this Mortgage. Notwithstanding the foregoing, Bank will not be bound by any of Borrower's obligations under any of the foregoing contracts unless and until Bank elects to assume any of such contracts or leases in writing.

- (h) Name. All right, title and interest of Borrower in and to all trade names, project names, logos, service marks, trademarks, goodwill, and slogans now or hereafter exclusively used in connection with the operation of the Mortgaged Property.
- (i) Other Intangibles. All contract rights, commissions, money, deposits, certificates of deposit, letters of credit, documents, instruments, chattel paper, accounts, and general intangibles as such terms from time to time are defined in the Uniform Commercial Code as adopted by the State of Illinois (the "Uniform Commercial Code", in any manner related to the construction, use, operation, sale, conversion or other disposition (voluntary or involuntary) of the Land, Appurtenances, Improvements, Tangible Property or Rents, including all construction plans and specifications, architectural plans, engineering plans and specifications, permits, governmental or quasi-governmental approvals, licenses, utility reservations and rights to receive utility services and all rights to and under fees or charges paid by or credits granted to Borrower or on its behalf in connection with the Land, Improvements and Appurtenances, developer rights, vested rights under any Planned Unit Development or other project, zoning, or land use approval, insurance policies, rights of action and other choses in action; provided, however, with respect to reservation deposits, earnest money deposits and down payments made by purchasers or potential purchasers of any or all of the Land, this assignment and Bank's security interest shall be limited to the right, title and interest of Borrower, if any, in such reservation deposits, earnest money deposits and down payments.

The Land, Appurtenances, Improvements and Tangible Property are collectively referred to as the "Mortgaged Property" in this Mortgage. The portion of the property encumbered by this Mortgage that from time to time consists of intangible personal property, except for the Rents, is called the "Intangible Property" in this Mortgage. The Mortgaged Property, Rents, Intangible Property and any other property interests encumbered hereby are hereinafter referred to collectively as the "Collateral". Wherever used in this Mortgage, the use of the terms, "Mortgaged Property", "Rents", "Intangible Property", and "Collateral" means and includes all or any portion thereof

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applicable to the context.

Notwithstanding the grant of Borrower's interest in the Rents and Contract Rights above, so long as no Default shall exist hereunder or under any of the other Loan Documents, Borrower shall have a license to collect and receive all incomes arising from the operation, ownership, and maintenance of the Mortgaged Property, Rents and Contract Rights.

2. SECURITY AGREEMENT. To the extent any of the Collateral encumbered by this Mortgage from time to time constitutes personal property subject to the provisions of the Uniform Commercial Code, this Mortgage constitutes a "Security Agreement" for all purposes under the Uniform Commercial Code. Without limitation, Bank, at its election, upon the occurrence of a Default under this Mortgage, will have all rights, powers, privileges and remedies from time to time available to a secured party under the provisions of the Uniform Commercial Code with respect to the Collateral. The names and addresses of debtor and secured party are as shown for Borrower and Bank, respectively, on the first page hereof. The remedies for any violation of the covenants, terms, and conditions of the security agreement herein contained shall be (i) as prescribed herein; or (ii) as prescribed by general law; or (iii) as prescribed by the specific statutory provisions now or hereafter enacted and specified in the Uniform Commercial Code, all at Bank's sole election. Borrower and Bank agree that the filing of financing statement(s) in the records normally having to do with personal property shall never be construed as in anywise derogating from or impairing this declaration and hereby stated intention of Borrower and Bank that everything used in connection with the production of income from the Collateral or adapted for use therein or which is described or reflected in this Mortgage, is, and at all times and for all purposes and in all proceedings both legal or equitable shall be, regarded as part of the real estate irrespective of whether (i) any such item is physically attached to the Improvements; (ii) serial numbers are used for the better identification of certain items capable of being thus identified in a recital contained herein; or (iii) any such item is referred to or reflected in any financing statement(s) so filed at any time. Similarly, the mention in any financing statement of the rights in, or the proceeds of, any fire, hazard or liability insurance policy, or any award in eminent domain proceedings for a taking or for loss of value, or Borrower's interest as lessor in any present or future lease, or rights to income growing out of the use of the Mortgaged Property, whether pursuant to a lease or otherwise, shall not be construed as altering any of Bank's rights as determined by this Mortgage, or otherwise available at law or in equity, or impugning the priority of this Mortgage or the Loan Documents, or both, but such mention in any financing statement is declared to be for Bank's protection if, as, and when any court holds that notice of Bank's priority of interest, to be effective against a particular class of persons, including the federal government and any subdivisions or entities of the federal government, must be perfected in the manner required by the Uniform Commercial Code.

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Borrower covenants and agrees that Borrower will furnish Bank with notice of any change in name, identity, organizational structure, mailing address, residence, or principal place of business thirty (30) days prior to the effective date of any such change. Borrower will promptly execute any financing statements or other instruments deemed necessary by Bank to prevent any filed financing statement from becoming misleading or losing its perfected status or to reinstate any lapsed financing statement.

3. AFTER-ACQUIRED PROPERTY. Without the necessity of any further act of Borrower or Bank, the lien of and security interest created by this Mortgage automatically will extend to and include (i) any and all renewals, replacements, substitutions, accessions, proceeds, products, additions or after-acquired property for or to the Collateral, and (ii) any and all monies, proceeds and other property that from time to time, either by delivery to Borrower or by any instrument (including this Mortgage) may be subjected to such lien and security interest by Borrower or by anyone on behalf of Borrower, or with the consent of Borrower, or which otherwise may come into the possession or otherwise be subjected to the control of Bank or Borrower pursuant to this Mortgage or the other Loan Documents.

4. DEBT. Borrower is justly indebted to Bank in the principal amount indicated above (or so much as may be advanced to Borrower by Bank from time to time), as evidenced by that certain Acquisition, Development and Construction Mortgage Note in the stated principal amount of **Twenty Five Million and 00/100 Dollars (\$25,000,000.00)** dated February 19, 2001 (the Note) made by Borrower, payable to the order of Bank and maturing as stated in said Note, unless such maturity is accelerated or extended (as provided in said Note), which Note, together with any and all renewals, replacements, extensions, modifications, substitutions, future advances, and any and all other certificates or evidence of indebtedness evidenced by said note, are herein collectively called the "Note".

Borrower's obligations are secured, among other things, by the collateral described in this Mortgage, which term includes any and all amendments, extensions, renewals, replacements, substitutions, modifications and consolidations of this Mortgage, and may also from time to time be secured by other collateral described in written documents. The Mortgage and such other documents as may exist on the date hereof or may exist hereafter are referred to as the "Security Documents", which term includes any and all financing statements, assignments, other collateral agreements and all supplements and riders thereto made and delivered in connection with the Note and this Mortgage, and any and all amendments, modifications, extensions, renewals, replacements, substitutions and consolidations thereof or thereto. The Loan evidenced by the Note and secured by this Mortgage is to be disbursed in accordance with the terms and provisions of a certain Acquisition, Development and Construction Loan Agreement of even date herewith between Borrower and Bank (the "Loan Agreement").

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The Note, the Mortgage and the Loan Agreement shall always be taken and read together as constituting part of one transaction. All sums disbursed pursuant to the terms of the Loan Agreement shall be secured by this Mortgage with the same priority as if advanced on the date hereof. The Security Documents, the Note, the Loan Agreement and the Hazardous Substance Certification and Indemnification Agreement of even date herewith between Borrower and Bank (the "Indemnity") are referred to collectively as the "Loan Documents".

The obligations of Borrower secured by the Security Documents arising pursuant to the Loan Documents are as follows and are called the "Debt" in this Mortgage and either "Debt" or "Indebtedness" or "Senior Indebtedness" in the other Loan Documents:

- (a) Note. Borrower's payment of all sums due from time to time as evidenced by the Note;
- (b) Loan Documents. Borrower's payment or performance of all obligations imposed upon Borrower by the Loan Documents;
- (c) Advances. All sums advanced by Bank to or for the benefit of Borrower in the manner provided in the Loan Documents, or for the protection of the security of the Collateral, including, without limitation, all sums advanced pursuant to this Mortgage, including advances for repairs, maintenance, insurance, taxes, or assessments;
- (d) Costs. All costs, expenses, losses, damages and other charges sustained or incurred by Bank because of (i) Borrower's default in payment or performance, as the case may be, of any provision contained in the Loan Documents; (ii) defense of actions instituted by Borrower or a third party against Bank arising out of or related to the Loan, or in the realizing upon, protecting, perfecting, defending; or (iii) actions brought or defended by Bank enforcing Bank's security interest in the Collateral. All of these costs and expenses include reasonable attorneys' fees, paralegals' fees, or legal assistants' fees, whether incurred with respect to collection, litigation, arbitration, bankruptcy proceedings, interpretation, dispute, negotiation, trial, appeal, defense of actions instituted by a third party against Bank, or enforcement of any judgment based on the Loan Documents, whether or not suit is brought to collect such amounts or to enforce such rights or, if brought, is prosecuted to judgment;
- (e) Letters of Credit. All sums advanced by Bank for the benefit of Borrower under any other instrument or otherwise, including, without limitation,

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any amounts paid by Bank under any letters of credit issued by Bank for the benefit of Borrower;

- (f) Miscellaneous Expenses. All costs and expenses incurred by Bank in connection with the Loan, whether prior to or at closing or during the term thereof, including, without limitation, loan origination fees, commitment fees, extension fees, title insurance search fees, premiums and endorsement fees, hazard and other insurance required by the Loan Documents, pre-closing and post-closing appraisals, appraisal reports or opinions of value, surveys, brokerage commissions and claims of brokerage, ad valorem and personal property taxes, documentary stamp taxes and intangible taxes, attorneys' fees, consultant fees, architect's fees, construction consultant's fees, environmental surveys or assessments, and recording charges; and
- (g) Indemnities. All costs, expenses, and amounts arising under or pursuant to any indemnity contained within the Loan Documents or in any separate agreement executed by Borrower in favor of Bank including, without limitation, the Indemnity.

5. TITLE WARRANTIES. Subject to the Permitted Encumbrances (as hereinafter defined), Borrower covenants with Bank that (i) Borrower is indefeasibly seized of the Land and Improvements in fee simple, has good and marketable title to the Collateral and has full power, lawful right and authority to convey the same in fee simple and to grant Bank a perfected first lien security interest in the Collateral, and (ii) the Collateral is free and clear of all liens, encumbrances, restrictions, and security interests of any nature except for those permitted encumbrances which Bank has previously approved, as set out in Schedule B of the title insurance policy and endorsements insuring this Mortgage, which are referred to as "Permitted Encumbrances" in this Mortgage.

6. LIENS. Borrower will not create or permit to be created, or to remain, and will promptly discharge (or obtain an endorsement to the Title Policy, in form and substance reasonably satisfactory to Bank, pursuant to which the issuer thereof insures over such lien, encumbrance or security interest, as the case may be) at Borrower's expense any and all liens or encumbrances upon, or security interests in, the Collateral, or any combination thereof, whether consensual, common law, statutory, voluntary, involuntary, or arising by operation of law, except Permitted Encumbrances. Notwithstanding the foregoing, and except for any mechanics' or construction liens, Borrower may contest the amount, validity and enforceability of any involuntary or nonconsensual lien, encumbrance or security interest, including those arising by operation of law, in the manner provided in paragraph 8 below. If any mechanics' or construction lien is filed against the Mortgaged Property, Borrower agrees to discharge

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(or obtain an endorsement to the Title Policy, in form and substance reasonably satisfactory to Bank, pursuant to which the issuer thereof insures over such lien, encumbrance or security interest, as the case may be) or otherwise remove such lien by bond or otherwise, within fifteen (15) days of imposition of same, but may thereafter contest the amount or validity of such lien as provided in paragraph 8 below.

7. TAXES AND OTHER IMPOSITIONS. Borrower will pay or cause to be paid, when due (i) all property taxes, assessments, water, sewer, utility and other rents, rates and charges, including all excises, taxes, levies, license fees, permit fees, impact fees, connection fees, and other fees and charges, whether general or special, ordinary or extraordinary, foreseen or unforeseen, that may be assessed, levied or imposed upon the Collateral, or otherwise arising with respect to the occupancy, use, possession or disposition thereof, whether or not the failure to pay the same might result in the creation of a lien upon the Collateral, or any combination thereof; (ii) all franchise, excise and other taxes, fees and charges assessed, levied or imposed with respect to Borrower's right to do business in the State of Illinois and the political subdivisions thereof; (iii) all taxes and fees (except for Bank's state and federal income taxes and any Bank-specific fees or taxes) that may be levied by the United States of America or any state or political subdivision thereof, upon Borrower in connection with or upon the Loan Documents, or the Debt or its payment, or collection, or any combination thereof (including all documentary stamp taxes and intangible taxes plus any penalties and interest charged for the late payment of any such taxes); and (iv) all lawful claims and demands of contractors, subcontractors, mechanics, laborers, materialmen and other lienors which, if unpaid, might result in the creation of a lien upon the Collateral. The sums payable under this paragraph are called "Impositions". Nothing contained in this paragraph will require the payment of any Imposition so long as the amount, validity or enforceability thereof is contested by appropriate proceedings as provided in paragraph 8 below. With respect to all other Impositions, Borrower will furnish Bank with proof of such payment upon demand. If any payment required to be made by Borrower by this paragraph is prohibited by law, with the result that Bank becomes liable for its payment, then the Debt will immediately become due and payable, at Bank's option.

8. CONTESTS. Borrower may contest, by any and all appropriate administrative, trial or appellate proceedings, or any combination thereof, and in Bank's name, if required by law, the amount, validity, enforceability or application of any Imposition that Borrower is required to pay or perform to any person or entity other than Bank by any provision of this Mortgage or the other Loan Documents if and only for so long as (i) Borrower notifies Bank in writing of its intent to contest the Imposition; (ii) such contest suspends the collection or enforcement of the item(s) contested; (iii) no part of the Collateral will be subject to loss, sale or forfeiture before final determination of any such contest; (iv) neither Borrower nor Bank will be subject to any criminal liability; (v) Borrower furnishes such security as may be required by law in connection

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with each such contest; (vi) the value, usefulness and marketability of the Collateral will not be adversely impaired by any such contest; (vii) Borrower otherwise continues to pay and perform, as the case may be, the Debt and Borrower's obligations under this Mortgage; (viii) Borrower otherwise is not in default under any provision of the Loan Documents; (ix) each such contest is continuously prosecuted diligently to final determination; (x) Borrower pays or causes to be paid, and defends, indemnifies and holds Bank harmless of and from any and all losses, judgments, decrees and costs (including all reasonable attorneys' fees) incurred in connection with each such contest; (xi) Borrower, promptly following final determination of each such contest, fully pays and discharges all amounts that may be levied, assessed, charged, imposed or otherwise determined to be payable, together with all penalties, fines, interests, costs and expenses, and otherwise complies with such final determination, at Borrower's sole cost and expense; (xii) Borrower furnishes Bank with such security as Bank reasonably may require to assure Borrower's compliance with all of the foregoing requirements; and (xiii) such liens are not filed against the Mortgaged Property pursuant to the Mechanics' Lien Act, 770 ILCS 60/1, et seq., in which event such liens must be discharged or transferred to bond pursuant to paragraph 6 above before Borrower contests such liens. So long as Borrower complies with the foregoing and Bank is promptly reimbursed for all costs and expenses incurred, Bank will cooperate with Borrower in connection with any such contest.

9. INSURANCE. Until the Debt shall have been discharged by Borrower, Borrower shall maintain, at Borrower's cost and expense, the following insurance coverages in full force and effect at all times:

- (a) Hazard Insurance. Borrower shall keep the Tangible Property and Improvements which now or hereafter may constitute part of the Mortgaged Property insured at all times against loss or damage by fire and other hazards included within the term "all risk" or "extended coverage" and against such other hazards as Bank may require in the full insurable value thereof (or such lesser amount as Bank may authorize in writing), with an insurer satisfactory to Bank. Such policy shall include a Replacement Cost Endorsement, if deemed necessary by Bank.
- (b) Liability Insurance. Borrower will obtain and keep in full force "Broad Form Comprehensive General Liability" insurance coverage for both Borrower and any contractor performing services to the Mortgaged Property in the minimum coverage amount of One Million Dollars (\$1,000,000.00) per occurrence.
- (c) Flood Insurance. If at any time the Land or any portion thereof is located in a "Flood Hazard Area" pursuant to the Flood Disaster Protection Act of 1973 or any successor or supplemental act thereto, flood insurance in the

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maximum amount available or such other amount as Bank may reasonably request.

- (d) Builder's Risk Insurance. An "All risk", completed value or full value reporting form builder's risk insurance policy, which policy shall include a Replacement Cost Endorsement.
- (e) Other Insurance. Worker's compensation insurance, wind damage insurance, and other insurance coverages as Bank may reasonably require.

The policy or policies of insurance shall (i) be from companies and in coverage amounts acceptable to Bank; (ii) contain a standard mortgagee clause in favor of Bank naming Bank as a mortgagee and including a lender's loss payee clause in such policy, as applicable; (iii) not be terminable or modified without thirty (30) days' prior written notice to Bank; and (iv) be evidenced by original policies or certified copies of policies deposited with Bank, as Bank may elect, to be held by Bank until the Debt shall have been fully paid and discharged.

Each insurance policy or endorsement required herein shall be written by an insurer having a rating not less than "A-X" Best's Rating according to the most current edition of Best's Key Rating Guide as determined at the time of the initial policy and at all times during the term hereof. All policies shall indicate that notices related to such insurance shall be sent to Bank at:

Bank of America
2625 Butterfield Road
Suite 209W
Oak Brook, Illinois 60523
Attention: Roberts K. Byrne

- (f) Attorney-in-Fact. If any loss occurs with respect to the Mortgaged Property, Bank is hereby appointed attorney-in-fact for Borrower to make proof of loss if Borrower fails to make the same punctually, and to give a receipt for any proceeds collected under such policies. Borrower will promptly give written notice to Bank of any loss or damage to the Mortgaged Property, and will not adjust or settle any such loss without Bank's prior written consent, which consent shall not be unreasonably withheld or delayed. Upon any Default by Borrower under this Mortgage, all right, title and interest of Borrower in and to all such insurance policies then in force, including any and all unearned premiums and existing claims, will inure to Bank, which, at its option, and as

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attorney-in-fact for Borrower, may then make, settle and give binding acquittances for claims under all such policies, and may assign and transfer such policies or cancel or surrender them, applying any unearned premium in such manner as Bank may elect. The foregoing appointment of Bank as attorney-in-fact for Borrower is coupled with an interest, and is irrevocable. Notwithstanding the occurrence of any casualty or the availability of any insurance proceeds, Borrower will pay the Debt in the manner required by the Loan Documents.

- (g) Illinois Collateral Protection Act. Unless Borrower provides Bank with evidence of the insurance coverage required by this Mortgage or any other Loan Document, Bank may purchase insurance at Borrower's expense to protect Bank's interests in the Collateral. This insurance may, but need not, protect Borrower's interest. The coverage that Bank purchases may not pay any claim that Borrower may make or any claim that is made against Borrower in connection with the Property. Borrower may later cancel any insurance purchased by Bank, but only after providing Bank with evidence that Borrower has obtained insurance as required by this Mortgage and the other Loan Documents. If Borrower is entitled to so cancel any such coverage, and does in fact cancel such coverage, any unearned premium which is refunded from the issuer of such coverage shall be delivered to Bank to be applied to the obligation of Borrower provided in the following sentence or to the payment of Borrower's Debt. If Bank purchases insurance for the Property, Borrower will be responsible for the costs of such insurance, including interest and other charges that may be imposed in connection with the placement of such insurance, until the effect date of the cancellation or expiration of such insurance. Without limitation of any other provision of this Mortgage, the cost of such insurance shall be added to the Debt.

10. CONDEMNATION. If all or any part of the Collateral, or any interest therein or right accruing thereto, is taken as a result of, or in lieu or in anticipation of, the exercise of the right of condemnation or eminent domain, or by reason of the temporary requisition of the use or occupancy of the Mortgaged Property, in any event by any government or quasi-governmental authority, civil or military, or any other party entitled to exercise such powers by law, general or special, or is devalued or otherwise adversely affected by any of the foregoing actions, all proceeds payable with respect to any such action are assigned to Bank and shall be paid to Bank. Bank shall be under no obligation to question the amount of any such award or compensation and may accept the same in the amount in which the same shall be paid. The proceeds of any award or compensation so received shall, at the option of the Bank, either be applied to the payment of the Debt or be paid over to the Borrower for the restoration of the Improvements. Borrower, immediately upon obtaining knowledge of the

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institution, or threatened institution, of any proceedings for the Mortgaged Property, or any part thereof, by condemnation or eminent domain, will notify the Bank of the pending of such proceedings. Bank shall have the right to intervene and participate in any proceedings for and in connection with any taking referred to in this section. Borrower shall not enter into any agreement for the taking of the Mortgaged Property or any part thereof with any person or persons authorized to acquire the same by condemnation or eminent domain, unless the Bank shall have consented thereto in writing. Any of the foregoing actions are sometimes called a "condemnation" or "taking" in this Mortgage and the other Loan Documents. Such proceeds include, without limitation, severance damages, damages arising from the change of grade of any street or the access thereto, the taking of air rights and damages caused by noise, pollutants and other emissions. Notwithstanding any such taking or other injury or decrease in value, or the availability of any proceeds for any of the foregoing, Borrower shall continue to pay the Debt in the manner required by the Loan Documents. Bank's rights under this paragraph will survive the foreclosure or other enforcement of this Mortgage, and Bank will have the right to receive and retain all proceeds to the extent of any deficiency which exists upon such foreclosure or other enforcement, together with legal interest thereon, and to the extent of the reasonable counsel fees, costs and disbursements incurred by Bank in connection with the collection of such proceeds. Such right shall exist whether or not a deficiency judgment shall have been sought or recovered or denied upon the Note. The remaining balance of such proceeds, if any, will inure to the benefit of the party entitled thereto by applicable law.

11. APPLICATION OF INSURANCE PROCEEDS AND AWARDS. The Borrower will promptly give the Bank written notice of any damage to or destruction of the Mortgaged Property or any part thereof, generally describing the nature and extent of such damage or destruction and the Borrower's best estimate of the cost of restoring the Mortgaged Property. The Bank shall be entitled to all insurance proceeds payable on account of such damage or destruction and the Borrower hereby irrevocably assigns, transfers and sets over to the Bank all rights of the Borrower to any such proceeds or payments and, with respect to any claim in excess of \$50,000.00, irrevocably authorizes and empowers the Bank, at its option and in its sole and absolute discretion, in the name of the Borrower or otherwise, to file and prosecute what would otherwise be the Borrower's claim for any such proceeds or payment and to collect, receipt for and retain the same for disposition in accordance with this Section. The Bank shall have the right to approve the settlement of any claim less than \$50,000.00, as well as any claim in excess of \$50,000.00 which Bank elects to allow Borrower to file and prosecute. The Bank may, at its sole option, apply all amounts recovered under any insurance policy required to be maintained by the Borrower hereunder in any one or more of the following ways: (a) to the payment of the reasonable costs and expenses incurred by the Bank in obtaining such insurance proceeds, including the fees and expenses of attorneys and insurance and other experts and consultants, the costs of litigation, arbitration, mediation, investigations and other judicial, administrative or other

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proceedings and all other out-of-pocket expenses; (b) to the payment of any of the Debt other than indebtedness with respect to the Note at the time outstanding; (c) to the payment of the principal of the Note and any interest accrued and unpaid thereon, without regard to whether any portion or all of such amounts shall be matured or unmatured, together with interest at the Default Rate (as defined in the Note) on any overdue principal and (to the extent permitted by applicable law) interest; and, in case such amount shall be insufficient to pay in full all such amounts, then such amounts shall be applied, first, to the payment of all amounts of interest accrued on the Note and unpaid, and, second, to the payment of all amounts of principal at the time outstanding, without preference or priority of any installment or amount of principal over any other installment or amount of principal or of any Note over any other Note, but otherwise in such manner and order as the Bank shall in its sole discretion determine; (d) to fulfill any of the other covenants contained herein as the Bank may determine; (e) release to the Borrower for application to the cost of restoring the Mortgaged Property; or (f) release to the Borrower. In the event of a foreclosure of this Mortgage, the purchaser of the Mortgaged Property shall succeed to all the rights of the Borrower, including any right to unearned premiums, in and to all policies of insurance assigned and delivered to the Bank.

12. MAINTENANCE, REPAIRS, AND RECONSTRUCTION.

- (a) Maintenance and Repairs. Borrower, at its sole cost and subject to Bank's satisfaction, shall make all repairs, renewals, replacements, servicing and reconstruction that are necessary to maintain the Mortgaged Property in good order, condition and repair. Borrower shall establish (and set aside in segregated deposits) reserve funds in amounts acceptable to Bank for replacements, repairs and capital expenditures. Immediately following the occurrence of any casualty or other loss, Borrower promptly will undertake all restoration required or desirable and will pursue it diligently to completion. Borrower shall (i) not strip, waste, remove or demolish any portion of the Mortgaged Property, nor suffer or permit any such action; (ii) promptly comply with all laws, governmental regulations and public or private restrictions or easements, or both, of any kind affecting the Mortgaged Property or requiring any alterations or improvements to be made thereon; and (iii) not commit, suffer or permit any act upon the Mortgaged Property in violation of any law, subject to Borrower's right to contest the same in good faith to conclusion, as provided in paragraph 8 of this Mortgage. If any public agency or authority requires or commences any proceedings for the demolition or removal, or both, of any improvements or portions thereof included in the Plans and comprising the Mortgaged Property due to non-compliance with health, safety, fire or building codes, then, unless Borrower undertakes to contest such action in the manner provided in paragraph 8

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above and pursues such contest to a successful conclusion, such action will constitute a Default under this Mortgage. Borrower will not, without Bank's prior written consent (not to be unreasonably withheld), and except as provided for in the approved land plan for the Mortgaged Property, (i) make any material alterations, additions or improvements of or to the Mortgaged Property; (ii) make any material change in the general nature of the use or occupancy of the Mortgaged Property; (iii) institute or join or acquiesce in any action to change the existing zoning or land use classification of the Mortgaged Property; or (iv) grant easements or licenses affecting the use or operation of the Mortgaged Property. Bank and any persons authorized by Bank may enter the Mortgaged Property at all reasonable times without prior notice for inspections or for any other lawful purpose. If Borrower fails to comply with the requirements of this paragraph, then Bank, without waiving the option to foreclose, may take some or all measures Bank reasonably deems necessary or desirable for the maintenance, repair, preservation or protection of the Mortgaged Property, and any expenses reasonably incurred by Bank in so doing shall become part of the Debt secured hereby, and shall, at the option of Bank, become immediately due and payable, and shall bear interest at the Default Rate specified in the Note. Bank shall have no obligation to care for or maintain the Mortgaged Property, or, having taken some measures therefor, to continue same or take other measures.

- (b) Reconstruction. Borrower shall promptly repair, restore, replace or rebuild any part of the Mortgaged Property now or hereafter encumbered by this Mortgage which may be affected by any condemnation proceeding or which may otherwise become damaged, destroyed, lost or unsuitable for use. In the event the Mortgaged Property or any part thereof is damaged or destroyed by fire or other casualty, the Borrower shall immediately notify the Bank, in writing, of such damage or destruction. Borrower shall not cause or permit anything to be done which would or could increase the risk of fire or other hazard to the Mortgaged Property, or any part thereof, or which would or could result in an increase in any insurance premiums payable with respect to the Mortgaged Property, or which would or could result in the cancellation of any insurance policy carried with respect to the Mortgaged Property. No part of the Mortgaged Property, including, but not limited to, any building, structure, water system, sewer system, parking lot, driveway, landscape scheme, timber or other ground improvement, equipment or other property, now or hereafter mortgaged, shall be removed, demolished or materially altered without the prior written consent of the Bank and except as provided for in the approved land plan for the Mortgaged Property. No top soil, sand, sod, loam, clay or gravel shall be mined, stripped, or removed from the

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Mortgaged Property without the written consent of the Bank. However, this shall not prevent or restrict removal of any such materials taken for excavation necessary to construct a basement, cellar or foundation footings for the erection of a building or buildings for which a building permit or permits has or have first been issued by the governmental authority having jurisdiction thereof; or for the construction of roadways constructed in accordance with plans approved by the governmental authorities having jurisdiction thereof in accordance with the Loan Agreement; provided, nevertheless, that in the event the required removals become so extensive, as determined by the Bank, as to create profit by sale of the removed portion of the Mortgaged Property, said sums shall inure to the benefit of the Bank to be applied as the Bank so directs to the reduction of the Debt.

13. ADVANCES. If Borrower defaults in the observance or performance of any of the provisions of the Loan Documents, including but not limited to obtaining and maintaining insurance pursuant to paragraph 9, paying Impositions pursuant to paragraph 7, and maintaining the Mortgaged Property pursuant to paragraph 12, then Bank, without waiving or otherwise impairing any other of its rights or remedies, at its sole option and without obligation to do so, and without demand upon Borrower, may make any such payment or take such action as Bank deems necessary or appropriate to correct such Default, or to protect the security of the Collateral encumbered by the Loan Documents. All payments so made, together with all costs and expenses so incurred, will be added to the principal amount due under the Construction Note and thereafter will bear interest at the rate then payable as provided for in the Construction Note, and will be secured by the lien and security interest granted by the Security Documents. For the foregoing purposes, Bank is authorized to (a) enter upon the Mortgaged Property; (b) appear in and defend any action or proceeding purporting to affect the security of this Mortgage or the rights or powers of Bank hereunder; (c) pay, purchase, contest or compromise any encumbrance, charge or lien that in the reasonable judgment of Bank appears to adversely affect the Collateral; and (d) take whatever action Bank, in its discretion, deems necessary or appropriate in exercising any such powers. Notwithstanding the foregoing, Borrower immediately, upon Bank's demand, will pay all sums so expended by Bank with interest as stated above.

14. BOOKS AND RECORDS. Borrower, at all times, will keep proper books of record and account in which full, true and correct entries will be made of its transactions with respect to the Collateral in accordance with generally accepted accounting principles, consistently applied, and which will properly and correctly reflect all items of income and expense in connection with the operation of the Collateral, regardless of whether such income or expense is realized by Borrower or any other person or entity whatsoever. Bank will have the right from time to time during normal business hours to examine all such books, records and accounts at Borrower's

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office or at the office of such other person as maintains them, and to make such copies or extracts as Bank may desire, at Borrower's expense.

15. SUBORDINATION. Borrower shall not permit any interest in any lease of the Mortgaged Property to be subordinated to any encumbrance on the Debt other than the Loan Documents and any such subordination shall be null and void. Borrower agrees that in the event the ownership of the Collateral, any interest therein or any part thereof becomes vested in a person other than Borrower, Bank may, without notice to Borrower, deal in any way with such successor or successors in interest with reference to this Mortgage, the Note, the Loan Documents and the Debt without in any way vitiating or discharging Borrower's liability hereunder or the Debt. No sale of the Debt, no forbearance to any person with respect to this Mortgage, and no extension to any person of the time for payment of the Note or Debt given by Bank shall operate to release, discharge, modify, change or affect the original liability of Borrower, either in whole or in part, except to the extent specifically agreed in writing by Bank.

16. TAXATION OF MORTGAGE. In the event of the passage after the date of this Mortgage of any federal, state or local law deducting from the value of real property for the purpose of ad valorem taxation any lien thereon or changing in any way the laws for the taxation of mortgages or debts secured by mortgages for federal, state or local purposes, or the manner of the collection of any such taxes, and imposing a tax, either directly or indirectly, on any or all of the Loan Documents, Bank shall have the right to declare the Debt due on a date to be specified by not less than sixty (60) days' written notice given to Borrower by Bank; provided, however, that such election shall be ineffective if Borrower is permitted by law to pay the whole of such tax in addition to all other payments required hereunder, and if Borrower, prior to such specified date, does pay such tax and agrees to pay any such tax (excluding, however, all taxes on the income of Bank) when thereafter levied or assessed, and such agreement shall constitute a modification of this Mortgage.

17. ASSIGNMENT OF RENTS, LEASES, PROFITS AND CONTRACT RIGHTS. Pursuant to paragraph 1 of this Mortgage, Borrower has irrevocably assigned and set over unto Bank all right, title, and interest of Borrower in and to the Rents and Contract Rights (including all leases and sales contracts now or hereafter existing relating to the Mortgaged Property) as security for the Debt, together with the right to collect and enforce the same; provided, however, so long as there shall be no Default under the Loan Documents, Borrower has been granted a license to collect and receive all Rents assigned hereunder in accordance with paragraph 1. Neither these assignments nor Bank's enforcement of the provisions of these assignments (including the receipt of the Rents) will operate to subordinate the lien of this Mortgage to any of the rights of any lessee or purchaser under any lease or sales contract of the Mortgaged Property, or to subject Bank to any liability to any such lessee or purchaser for the performance of any obligations of Borrower under any such lease or sales contract

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unless and until Bank agrees to such subordination or assumes such liability by an appropriate written instrument. All right, title and interest of each such lessee or purchaser in and to the Mortgaged Property, whether arising by virtue of any such lease, contract or otherwise, at all times will be and remain subject, subordinate and inferior to the lien of this Mortgage and all rights, remedies, powers and privileges of Bank arising under or by virtue of any of the Loan Documents. The assignments of Rents and Contract Rights (including leases) contained in this Mortgage are intended to provide Bank with all the rights and remedies of mortgagees pursuant to applicable Illinois law. However, in no event shall this reference diminish, alter, impair, or affect any other rights and remedies of Bank. Notwithstanding the foregoing, if Borrower shall have executed an Assignment of Rents constituting one of the Loan Documents, such Assignment of Rents is hereby incorporated herein by reference and shall control if in conflict with the provisions of this Mortgage.

18. DEFAULT The occurrence of any of the events listed in Section 8.1 of the Loan Agreement, the occurrence of any event identified as a Default under any provision of this Mortgage, or Borrower's failure to perform any other obligation imposed upon Borrower by this Mortgage within thirty (30) days after written notice from Bank, shall constitute a "Default" by Borrower under this Mortgage and, at the option of Bank, under the other Loan Documents.

19. ACCELERATION AND OTHER REMEDIES. Upon the occurrence of any Default (regardless of the pendency of any proceeding which has or might have the effect of preventing Borrower from complying with the terms of this Mortgage and of the adequacy of the security for the Note), and in addition to such other rights as Bank may have under applicable law, Bank may, at its option, exercise any one or more of the following remedies:

- (a) Acceleration. Bank, at its option, may declare all or any portion of the Debt to be immediately due and payable without further notice, whereupon the same shall be and shall become due and payable forthwith without any presentment, demand, protest, or notice of any kind, all of which are expressly waived by Borrower.
- (b) Uniform Commercial Code. Bank shall, with respect to any part of the Collateral constituting property of the type in respect of which realization on a lien or security interest granted therein is governed by the Uniform Commercial Code, have all the rights, options and remedies of a secured party under the Uniform Commercial Code as adopted in the State where the Collateral is situated (the "Code"), including, without limitation, the right to the possession of any such property, or any part thereof, and the right to enter without legal process any property where any such property may be found. Any requirements of the Code for reasonable notification

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shall be met by mailing written notice sent by overnight service such as Federal Express or Purolator Courier or the like to Borrower at least five (5) days prior to the sale or other event for which such notice is required. The expenses of retaking, selling, and otherwise disposing of said property, including, without limitation, reasonable attorneys' fees and legal expenses incurred in connection therewith, shall constitute so much additional Debt and shall be payable to Bank upon demand with interest thereon at the Default Rate (as defined in the Note).

- (c) Foreclosure. Bank shall have the right, in one or several concurrent or consecutive proceedings, to foreclose the lien hereof upon the Collateral or any part thereof, for the Debt, or any part thereof, by any proceedings appropriate under applicable law. Bank or its nominee may bid and become the purchaser of all or any part of the Collateral at any foreclosure or other sale hereunder, and the amount of Bank's successful bid may be credited on the Debt.
- (d) Lawsuits. Without limitation of subparagraph (c) above, Bank may proceed by a suit or suits in equity or at law, whether for the specific performance of any covenant or agreement herein contained or in aid of the execution of any power herein granted, in any court or courts of competent jurisdiction.
- (e) Appointment of Receiver. Bank shall, as a matter of right, without notice and without giving bond to Borrower or anyone claiming by, under or through it, and without regard to the solvency or insolvency of Borrower or the then value of the Collateral, to the extent permitted by applicable law, be entitled to have a receiver appointed for all or any part of the Collateral, and the proceeds, issues and profits thereof, with the rights and powers referenced below and such other rights and powers as the court making such appointment shall confer, and Borrower hereby consents to the appointment of such receiver and shall not oppose any such appointment. Any such receiver may, to the extent permitted under applicable law, without notice, enter upon and take possession of the Collateral or any part thereof by force, summary proceedings, ejectment or otherwise, and may remove Borrower or other persons and any and all property therefrom, and may hold, operate and manage the same and receive all earnings, income, rents, issues and proceeds accruing with respect to the Collateral or any part thereof, whether during the pendency of any foreclosure or until any right of redemption shall expire or otherwise, and, without limitation of the foregoing, any such receiver shall have any and all rights and powers as Bank would have, upon entering and taking possession of the Collateral, under subparagraph (f) below.

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- (f) Taking Possession, Collecting Rents, Etc. Bank shall have the right, at its option, to enter the Collateral and take possession thereof in its name or in the name of its nominee (and Borrower agrees to surrender the Collateral to Bank promptly upon demand therefor); Bank may, but shall not be obligated to, perform any one or more of the covenants, agreements, terms and conditions hereunder and under the Loan Documents which Bank deems proper to protect the security hereof; Bank may manage and operate the Collateral or any part thereof itself or through agents appointed by Bank; Bank may enter leases and subleases of the Collateral upon such terms and with such tenants and subtenants as Bank deems advisable; Bank may modify or amend existing leases upon such terms as Bank deems advisable; Bank may make repairs and alterations and do any acts which Bank deems proper to protect or enhance the value of the Collateral; and Bank may sue for or otherwise collect or enforce all Rents, rights of contract and other proceeds of and from the Collateral, including, without limitation, those past due and unpaid, may deduct from such income from the Collateral all costs of entry, of collection, of administration and reasonable management, consultant and attorneys' fees, and apply the remainder, if any, first, to the payment of all attorneys' fees, costs, charges and other sums paid, expended or incurred by Bank pursuant to covenants, agreements, terms, conditions and warranties contained herein or in the Loan Documents; then to any late charges due and payable under the Note; then to the payment of all accrued interest on the Note; and the balance, if any, in any order or amount as the Bank shall determine, in its sole and absolute discretion. Such exercise by Bank of the remedy provided for hereunder shall not affect the right of Bank to maintain and continue any action theretofore instituted, or to bring any action thereafter, to enforce the payment of the Note or the terms and conditions of the Note, this Mortgage or any other Loan Document. Notwithstanding anything to the contrary contained herein, Bank will not be and shall not be deemed to be a "mortgagee in possession" for any purpose unless Bank agrees in writing. All costs incurred in the exercise of the remedies provided in this subparagraph (f) or any other remedies provided pursuant to this Mortgage shall be secured by this Mortgage and shall be paid, together with interest at the Default Rate, by Borrower to Bank upon demand.
- (g) Other Remedies. Bank may exercise all rights and remedies contained in any other instrument, document, agreement or other writing heretofore, concurrently herewith or in the future executed by Borrower or any other person or entity in favor of Bank in connection with the transactions resulting in the Debt or any part thereof, including, without limitation, the

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right from time to time to sue for any sums, whether interest, principal or any installment of either or both, taxes, penalties, or any other sums required to be paid under the terms of the Note or this Mortgage, as the same become due, without regard to whether all of the Debt shall be due on demand, and without prejudice to the right of Bank thereafter to enforce any appropriate remedy against Borrower, including, without limitation, an action of foreclosure, or any other action, for a default or Default by Borrower existing at the time such earlier action was commenced.

- (h) Rights at Law. Bank may, at its option, exercise any and all other rights and remedies against Borrower and the Collateral as are permitted under applicable law, including, without limitation, any and all other rights and remedies in equity, by virtue of common law, statute or otherwise; provided, however, that, subject to paragraph 27 hereof, Bank, in its sole and absolute discretion, whether before or after exercise of any of the foregoing remedies, may by a written instrument waive any Default, in which event, subject to the contrary terms of any such waiver instrument, the rights of the Borrower and Bank hereunder shall be reinstated as if no Default had occurred hereunder.

20. WAIVER OF RIGHT TO REDEEM FROM SALE; WAIVER OF APPRAISEMENT, REINSTATEMENT, VALUATION, ETC. Borrower shall not and will not apply for or avail itself of any appraisal, valuation, stay, extension or exemption laws, or any so called "Moratorium Laws", now existing or hereafter enacted, in order to prevent or hinder the enforcement of any rights or remedies of Bank under this Mortgage, but hereby waives the benefit of such laws and the benefit of any homestead or other exemptions which it may now or hereafter from time to time have with respect to the Collateral or the Debt. Borrower for itself and all creditors, mortgagees, trustees, lienholders and other persons or entities who may claim through or under it waives any and all right to have the property and estates comprising the Collateral, or any part thereof, marshaled upon any foreclosure or other disposition (whether or not the entire Collateral be sold as a unit, and whether or not any parcels thereof be sold as a unit or separately) of any kind or nature of the Collateral, or any part thereof, or interest therein, and agrees that any court having jurisdiction to foreclose or otherwise enforce the liens granted and security interests created by this Mortgage may order the Collateral sold as an entirety. On behalf of Borrower, and each and every person acquiring any interest in, or title to the Collateral described herein subsequent to the date of this Mortgage, and on behalf of all other persons to the maximum extent permitted by applicable law, Borrower hereby waives any and all rights (x) of redemption from any foreclosure, or other disposition of any kind or nature of the Collateral, or any part thereof, or interest therein, under or pursuant to rights herein granted to Bank, and (y) to reinstatement of the Debt, including, without

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limitation, any right to reverse any acceleration of such Debt pursuant to Section 15-1602 of the Act (as hereinafter defined). Borrower further waives and releases (a) all errors, defects, and imperfections in any proceedings instituted by Bank under the Note, this Mortgage or any of the other Security Documents; (b) all benefits that might accrue to the Borrower by virtue of any present or future laws exempting the Collateral, or any part of the proceeds arising from any sale thereof, from attachment, levy, or sale under execution, or providing for any stay of execution, exemption from civil process, or extension of time for payment; and (c) all notices not specifically required by the Note, this Mortgage or any of the other Security Documents, of default, or of Bank's exercise, or election to exercise, any option under this Mortgage. All waivers by Borrower in this Mortgage have been made voluntarily, intelligently and knowingly by Borrower, after Borrower has been afforded an opportunity to be informed by counsel of Borrower's choice as to possible alternative rights. Borrower's execution of this Mortgage shall be conclusive evidence of the making of such waivers and that such waivers have been voluntarily, intelligently and knowingly made.

21. COMPLIANCE WITH ILLINOIS MORTGAGE FORECLOSURE LAW. In the event that any provision in this Mortgage shall be inconsistent with any provision of the Illinois Mortgage Foreclosure Law (735 Illinois Compiled Statutes 5, Sections 15-1101, et seq.) (herein called the "Act"), the provisions of the Act shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the Act. Furthermore, if any provision of this Mortgage shall grant to Bank any rights or remedies upon default of Borrower which are more limited than the rights that would otherwise be vested in Bank under the Act in the absence of said provision, Bank shall be vested with the rights granted in the Act to the full extent permitted by law. Without limiting the generality of the foregoing, all expenses incurred by Bank to the extent reimbursable under Sections 15-1510 and 15-1512 of the Act, whether incurred before or after any decree or judgment of foreclosure, and whether enumerated in this Mortgage, shall be added to the Debt or by the judgment of foreclosure.

22. COSTS AND EXPENSES OF FORECLOSURE. Without limitation of any other right of Bank hereunder relating to reimbursement of costs and expenses incurred by Bank, with respect to every foreclosure or other sale, there shall be allowed and included as additional indebtedness in the decree for sale all expenditures and expenses which may be paid or incurred by or on behalf of Bank for reasonable attorneys' fees, (including, without limitation, attorneys' fees in litigation and administrative and bankruptcy proceedings and any appeals thereof) appraiser's fees, outlays for documentary and expert evidence, stenographic charges, publication costs and costs (which may be estimated as to items to be expended after the entry of the decree) of procuring all such abstracts of title, title searches and examination, environmental assessments and studies, guarantee policies, and similar data and assurances with

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respect to title as Bank may deem to be reasonably necessary to effect such foreclosure or other sale hereunder, or to evidence to the bidder at any such sale pursuant thereto the true condition of the title to or the value of the Collateral, all of which expenditures shall become so much additional Debt and be immediately due and payable with interest thereon at the Default Rate from the date of expenditure until paid.

23. REVOLVING CREDIT. The Loan secured by the Note constitutes "revolving credit" as defined in 815 Illinois Compiled Statutes 205, Section 4.1. All future advances made from the date hereof will have the same priority as the original Loan evidenced by the Note secured by, among other things, this Mortgage. All future advances must be made within twenty (20) years from the date hereof.

24. APPLICATION OF PROCEEDS. The proceeds of any foreclosure sale of the Collateral or of any sale of property pursuant to paragraph 19 hereof shall be distributed in the following order of priority:

First, on account of all costs and expenses incident to the foreclosure or other proceedings or other sale of property including, without limitation, all such items as are mentioned in paragraphs 19 and 22 hereof;

Second, to all other items which under the terms hereof constitute Debt in addition to that evidenced by the Note, the Loan Agreement or any other Security Document, with interest on such items as herein provided;

Third, to all principal of and interest on the Note and to all other obligations evidenced by the Note, the Loan Agreement or any other Security Document; and

Fourth, to the payment of the surplus, if any, to whosoever may be lawfully entitled to receive the same.

No application to the indebtedness evidenced by the Note shall entitle Borrower to any right, title or interest in the Note or the security therefor, whether by subrogation or otherwise, unless and until the Note and all other Debt has been fully paid and satisfied.

25. DEFICIENCY DECREE. Without limitation of any other rights of Bank, if in any foreclosure or other sale hereunder, the Collateral shall be sold for a sum less than the total amount of indebtedness for which judgment is therein given, the judgment creditor shall be entitled to the entry of a deficiency decree against Borrower and against the property of Borrower for the amount of such deficiency; and, to the maximum extent permitted by law, Borrower does hereby irrevocably consent to the appointment of a receiver for the Collateral and the property of Borrower and of the

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rents, issues, avails, and profits thereof after such sale and until such deficiency decree is satisfied in full.

26. FURTHER ASSURANCES. Borrower, from time to time, will execute, acknowledge, subscribe and deliver to or at the direction of Bank such documents and further assurances as Bank may reasonably require for the purpose of evidencing, perfecting or confirming the lien and security interest created by this Mortgage, or the security intended to be afforded by the Loan Documents, or both. Without limitation of the foregoing, Borrower will defend, indemnify and hold Bank harmless with respect to any suit or proceeding in which the validity, enforceability or priority of the lien or security interest, or both, is endangered or contested, directly or indirectly, and will provide Bank with such security for the defense of any such suit or proceeding as Bank reasonably may require. If Borrower fails to undertake the defense of any such claim in a timely manner, or fails to furnish Bank with reasonable security for such defense, or, in Bank's sole but reasonable determination, fails to prosecute such defense with due diligence, then Bank is authorized to take, at the expense of Borrower, all necessary and proper action in defense of any such claim, including the retention of legal counsel, the prosecution or defense of litigation and the compromise or discharge of claims, including payment of all costs and reasonable attorneys' fees. All costs, expenses and losses, if any, so incurred by Bank, including reasonable attorneys' fees, regardless of whether suit is brought and, if suit is brought, for all administrative, trial and appellate proceedings, if any, will constitute advances by Bank as provided in paragraph 13.

27. CUMULATIVE RIGHTS AND NON-WAIVER. No right or remedy conferred upon or reserved to Bank by this Mortgage or in any of the other Loan Documents is intended to be exclusive of any other right or remedy; and each and every right and remedy is cumulative and in addition to any other right or remedy otherwise available. Every right, power, privilege and remedy granted Bank by this Mortgage or any of the other Loan Documents, or both, or otherwise available at law or in equity may be exercised by Bank from time to time as often as Bank deems expedient until the Debt is paid in full. Bank's failure to insist at any time upon the strict observance or performance by Borrower of any of the provisions of this Mortgage or in any of the other Loan Documents, or to exercise any right or remedy provided for in this Mortgage or in any of the other Loan Documents, will not impair any such right or remedy or be construed as a waiver or relinquishment thereof for the future. Receipt by Bank of any payment required to be made pursuant to any of the Loan Documents with knowledge of the breach of any provision of any of the Loan Documents will not constitute a waiver of such breach. In addition to all other remedies provided in this Mortgage, Bank will be entitled, to the extent permitted by applicable law, to injunctive relief in the case of a violation or attempted or threatened violation of any of the provisions of the Loan Documents or to a decree ordering performance of any of the provisions of any of the foregoing.

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28. JUDGMENT. Bank may seek and recover a judgment for all amounts due and payable in accordance with the Note or under this Mortgage either before, after or during the pendency of any other proceedings or action to obtain relief under or with respect to any of the Loan Documents. Bank's right to seek and recover any such judgment will not be affected by obtaining any other such relief. Bank will continue to be entitled to enforce payment of, and to seek and recover a judgment for, any portion of the Debt remaining due and payable after the application of any proceeds of any sale of the Collateral pursuant to law. Neither the lien nor security interest of this Mortgage, nor any rights or remedies of Bank hereunder or under any of the Loan Documents, will be impaired in any way by the recovery of any judgment by Bank against Borrower, or by the levy of an execution under such judgment upon any portion of the Collateral, until the Debt is paid in full. Any such judgment against Borrower shall bear interest at the Default Rate (as defined in the Note).

29. RELEASES AND EXTENSIONS BY BANK. Bank, from time to time, without notice to any person and without affecting the liability of Borrower (other than any person expressly released by Bank in writing) for the payment of any of the Debt, and without affecting the priority or extent of the lien and security interest of this Mortgage (except as to property specifically released by Bank in writing), may do any or all of the following: (i) release in whole or in part any person liable for payment of any or all of the Debt; or (ii) extend the time or otherwise alter the terms of payment of the Debt, in whole or in part; or (iii) accept additional or substitute security of any kind; or (iv) release or otherwise deal with all or any portion of the Collateral.

At Borrower's request, Bank will release the lien of this Mortgage and the related security documents upon individual lots/units within the Mortgaged Property, upon the terms and conditions set forth in the Loan Agreement.

30. NOTICES. Any notice or demand that must or may be given or made in connection with this Mortgage must be in writing and, unless receipt is expressly required, will be deemed given, delivered or made, as the case may be, when delivered by personal delivery or when mailed by Express Mail, by overnight delivery service of a nationally-recognized company, or by certified or registered mail, return receipt requested, in any event, with sufficient postage affixed, and addressed to the parties at the addresses written on the first page of this Mortgage or on the signature pages of this Mortgage. Such addresses may be changed by notice-pursuant to this paragraph. Notice of change of address is effective only upon receipt. All of the persons executing this Mortgage as Borrower severally agree that a single notice to Borrower in the manner provided in this paragraph will be effective to bind each such person for all purposes.

31. ESTOPPEL LETTERS. As and when, from time to time, requested by Bank, and within ten (10) days after any such request, Borrower will execute and deliver to or at the direction of Bank such estoppel letters certifying such matters

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relating to this Mortgage or the Loan Documents, or both, as may be reasonably required by Bank.

32. TRANSFERS. Except as to sales of Homes (as defined in the Loan Agreement) in the ordinary course of business, Borrower may not sell, convey, assign, transfer or otherwise dispose of any interest in all or any portion of the Collateral, or any ownership interest in Borrower, without Bank's prior written consent, which consent may be withheld in Bank's reasonable discretion. At Borrower's request, Bank will release the lien of this Mortgage and the related security documents upon individual lots/homes within the Mortgaged Property, upon Borrower's compliance with the requirements set forth in the Loan Agreement. Whether such transfer described in the first sentence of this Section 32 is voluntary or involuntary, or by operation of law, any such transfer will be void as to Bank, and constitute an immediate Default under this Mortgage, without notice, in the sole discretion of Bank.

Bank's consent to any transfer, sale, or conveyance hereunder shall not be deemed a consent to any subsequent transfer, sale, or conveyance for which Bank's prior written approval has not been obtained. All sales or, if permitted pursuant to the prior written consent of Bank, leasing, of lots or Homes or other property which is part of the Collateral shall be conducted on a basis which is fully consistent with the letter and spirit of all State, Federal, and local Equal Credit Opportunity and Equal Housing Opportunity statutes, ordinances, and regulations. It is further understood and agreed that the Debt was created solely due to the financial sophistication, creditworthiness, background and business sophistication of the Borrower and Bank continues to rely upon same as the means of maintaining the value of the Collateral. It is further understood and agreed that any secondary or junior financing placed upon the Collateral, the improvements located thereon or any beneficial or other interest in the Collateral, or incurred by the Borrower may divert funds which would otherwise be used to pay the Debt, and could result in acceleration and/or foreclosure by any such junior lienor. Any such action would force the Bank to take measures, and incur expenses, to protect its security, and would detract from the value of the Collateral, and impair the rights of the Bank granted hereunder. Therefore, the further encumbering of the Collateral or any interest therein or portion thereof without the Bank's prior written consent, or any other breach of the provisions of this paragraph 32, shall be a Default hereunder.

33. REPLACEMENT OF NOTE. Upon receipt of evidence reasonably satisfactory to Borrower of the loss, theft, destruction or mutilation of the Note, or any amendment or modification thereto, including without limitation any renewal note or additional note, and in the case of any such loss, theft, or destruction, upon delivery of an indemnity agreement, reasonably satisfactory to Borrower or, in the case of any such mutilation, upon surrender of such mutilated note, Borrower will execute and deliver, in lieu thereof, a replacement Note, identical in form and substance to the Note and

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dated as of the date of the Note and upon such execution and delivery all references in any of the Loan Documents to the Note shall be deemed to refer to the replacement Note.

34. FUTURE ADVANCES. This Mortgage is given to secure not only the existing Debt, but also such future advances, whether such advances are obligatory or are to be made at the option of Bank, or otherwise, as are made within twenty (20) years from the date hereof, to the same extent as if such future advances were made on the date of the execution of this Mortgage. The total amount of Debt that may be so secured may decrease or increase from time to time, but the maximum possible principal debt so secured at one time shall not exceed the amount stated above, plus interest thereon, and any disbursements made for the payment of taxes, levies or insurance on the Mortgaged Property, with interest on such disbursements at the rate then in effect pursuant to the terms of the Note. The provisions of this paragraph shall not be construed to imply any obligation on Bank to make any future advances, it being the intention of the parties that any future advances shall be solely at the discretion and option of the Bank. Any reference to the "Note" in this Mortgage shall be construed to include any future advances made pursuant to this paragraph 34.

35. GENERAL. The provisions of this Mortgage inure to the benefit of Bank and its successors and assigns, and bind all persons executing this Mortgage as Borrower and their respective heirs, legal representatives, successors and assigns, jointly and severally, and all persons now or hereafter claiming any right, title and interest in and to any of the property, real, personal or mixed, tangible or intangible, now or hereafter existing or any substitutions or replacements thereof and described in this Mortgage as the Collateral. Time is of the essence to this Mortgage and each of its provisions. The provisions of this Mortgage are to be interpreted, construed, applied and enforced in accordance with the laws of the State of Illinois, regardless of where this Mortgage is executed, delivered or breached, or where any payment or other performance required by this Mortgage is made, where any action or other proceeding involving this Mortgage is instituted, or whether the laws of the State of Illinois otherwise would apply the laws of another jurisdiction; the foregoing choice of law provisions will apply to the Loan Documents. The provisions of the Loan Documents are severable at Bank's option so that if any provision is declared by a court of competent jurisdiction to be invalid or unenforceable, no other provision will be affected by such invalidity or unenforceability, but will remain in force and effect according to its original terms, if Bank so elects. Wherever used in this Mortgage or the other Loan Documents, or both, and unless expressly provided otherwise, (i) use of the singular includes the plural, and vice versa; (ii) use of one gender includes all genders; (iii) use of the term "include" or "including" is always without limitation; (iv) use of the words, "should", "must" and "will" has the same legal effect as the use of the word "shall"; (v) the term "day" means a banking day which shall be a day on which Bank and other banks are open for the transaction of business, excluding any national

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holidays, and any performance which would otherwise be required on a day other than a banking day shall be timely performed in such instance, if performed on the next succeeding banking day; (vi) any definition herein incorporating one or more documents or items shall refer to such items "singularly and collectively", and (vii) "person" means any natural person or artificial entity having legal capacity. Paragraph headings and subheadings are for indexing purposes only and are not to be used to interpret, construe, apply or enforce the provisions of this Mortgage. Borrower and Bank intend the provisions of this Mortgage and the other Loan Documents to be interpreted, construed, applied and enforced so as to avoid inconsistencies or conflicting results; but if any such inconsistency or conflict necessarily occurs, Borrower and Bank intend that the provisions of the Loan Agreement control unless otherwise provided therein. This Mortgage may be amended only by a written instrument executed by Borrower and Bank with the same formalities as this Mortgage.

36. SATISFACTION. Except as provided in Section 32, the lien and security interest provided by the Loan Documents will continue unimpaired and in full force and effect unless and until the Debt is paid in full, whereupon such lien and security interest will be without further force or effect, except that the Indemnity shall survive until and unless expressly released in writing.

37. BORROWER AS TENANT HOLDING OVER. In the event of a foreclosure sale of the Mortgaged Property, Borrower shall be deemed a tenant holding over and shall forthwith deliver possession to Bank or any purchaser or purchasers at such sale or be summarily dispossessed according to provisions of the law of the State of Illinois applicable to tenants holding over.

38. TIME OF THE ESSENCE. Time is of the essence with respect to each and every covenant, agreement, and obligation of Borrower under this Mortgage and the other Loan Documents, and any and all other instruments now or hereafter evidencing, securing or otherwise relating to the Loan.

39. ORAL MODIFICATION INEFFECTIVE. No term of this Mortgage or any other of the Loan Documents, or such documents, may be waived, changed, modified, discharged, or terminated except by an instrument in writing signed by the party against which enforcement of the waiver, change, modification, discharge, or termination is sought.

40. HAZARDOUS SUBSTANCES. Borrower hereby affirms and incorporates by reference herein the representations, warranties, terms, conditions, and indemnities contained in the Indemnity, a copy of which is attached hereto as Exhibit B.

41. LEASING AND MANAGEMENT AGREEMENTS. Borrower covenants and agrees that all agreements to pay leasing commissions (a) shall provide that the

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obligation to pay such commissions will not be enforceable against any party other than the party who entered into such agreement; (b) shall be subordinate to the lien of this Mortgage; and (c) shall not be enforceable against Bank. Borrower shall furnish Bank with evidence of the foregoing which is in all respects satisfactory to Bank. Borrower further covenants and agrees that all agreements to manage the Collateral (i) shall provide that the obligation to pay any amount thereunder will not be enforceable against any party other than the party who entered into such agreement; (ii) shall provide that such agreement, together with any and all liens and claims for lien that any manager or other person or entity performing the duties of a manager thereunder has or may thereafter have thereunder or for managing the Collateral or any part thereof, shall be in all respects subordinate to the lien of this Mortgage; and (iii) shall not be enforceable against Bank. Nothing in this paragraph 41 shall limit Bank's rights under any of the Loan Documents, including, without limitation, the Loan Agreement. Borrower shall furnish Bank with evidence of the foregoing which is in all respects satisfactory to Bank.

42. GOVERNING LAW FORUM. This Mortgage and the other Loan Documents and all matters relating thereto shall be governed by and construed and interpreted in accordance with the internal laws of the State of Illinois (including, without limitation, its usury laws and the Uniform Commercial Code as adopted in Illinois). Borrower irrevocably (a) agrees that any suit, action or other legal proceeding relating to the Loan may be brought only in the Circuit Court of Cook County or in the Northern District of Illinois, at Bank's option; (b) consents to the jurisdiction of each such court in any such suit, action or proceeding; and (c) waives any objection which such Borrower may have to the laying of venue in any such suit, action or proceeding in either such court.

43. MANDATORY ARBITRATION. Any controversy or claim between or among the parties hereto including but not limited to those arising out of or relating to this Mortgage or any related agreements or instruments, including any claim based on or arising from an alleged tort, shall be determined by binding arbitration in accordance with the Federal Arbitration Act (or if not applicable, the applicable state law), the Rules of Practice and Procedure for the Arbitration of Commercial Disputes of Judicial Arbitration and Mediation Services, Inc. (J.A.M.S.), and the "Special Rules" set forth below. In the event of any inconsistency, the Special Rules shall control. Judgment upon any arbitration award may be entered in any court having jurisdiction. Any party to this Mortgage may bring an action, including a summary or expedited proceeding, to compel arbitration of any controversy or claim to which this Mortgage applies in any court having jurisdiction over such action.

- (a) Special Rules. The arbitration shall be conducted in Cook County, Illinois (or such other county where Bank shall have its current principal place of business) and administered by Endispute, Inc., d/b/a J.A.M.S., who will

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appoint an arbitrator; if J.A.M.S./Endispute is unable or legally precluded from administering the arbitration, then the American Arbitration Association will serve. All arbitration hearings will be commenced within ninety (90) days of the demand for arbitration; further, the arbitrator shall only, upon a showing of cause, be permitted to extend the commencement of such hearing for up to an additional sixty (60) days.

- (b) Reservation of Rights. Nothing in this Mortgage shall be deemed to (i) limit the applicability of any otherwise applicable statutes of limitation or repose and any waivers contained in this Agreement; or (ii) be a waiver by the Bank of the protection afforded to it by 12 U.S.C. Section 91, or any substantially equivalent state law; or (iii) limit the right of the bank hereto (A) to exercise self help remedies such as (but not limited to) setoff; or (B) to foreclose against or take a deed in lieu of foreclosure for any real or personal property collateral; or (C) to obtain from a court provisional or ancillary remedies such as (but not limited to) injunctive relief or the appointment of a receiver. The Bank may exercise such self help rights, foreclose upon such property, or obtain such provisional or ancillary remedies before, during or after the pendency of any arbitration proceeding brought pursuant to this Mortgage. At Bank's option, foreclosure under a deed of trust or mortgage may be accomplished by any of the following: the exercise of a power of sale under the deed of trust or mortgage, or by judicial sale under the deed of trust or mortgage, or by judicial foreclosure. Neither this exercise of self help remedies nor the institution or maintenance of an action for foreclosure or a deed in lieu of foreclosure or provisional or ancillary remedies shall constitute a waiver of the right of any party, including the claimant in any such action, to arbitrate the merits of the controversy or claim, occasioning resort to such remedies.

44. CONSTRUCTION LOAN; VARIABLE RATE LOAN. The Note evidences a debt created by one or more disbursements made by Bank to Borrower to finance the cost of the construction of certain improvements upon the Land in accordance with the provisions of the Loan Agreement, and this Mortgage is a construction mortgage as such term is defined in Section 9-313(1)(c) of the Uniform Commercial Code. The Note provides for the payment of interest at a variable rate.


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IN WITNESS WHEREOF, Borrower has executed and delivered this Mortgage as of the date stated above.

BORROWER:

NEUMANN HOMES, INC., an Illinois corporation

By: 
Name: B. J. Johnson
Title: CFU

DJO\LOANS\BA\NEUMANN\RACESTREET\MORTGAGE-FINAL

Property of Cook County Clerk's Office

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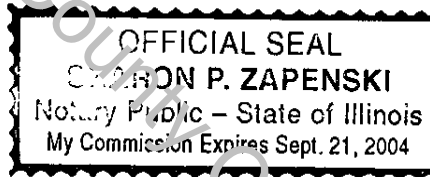
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STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that A.J. Nixon, the CEO of NEUMANN HOMES, INC., an Illinois corporation, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such she, appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 24th day of April, 2002.

Stavon Zapenski
NOTARY PUBLIC



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LIST OF EXHIBITS

Exhibit A	Legal Description of Land
Exhibit B	Hazardous Substance Certificate and Indemnification Agreement

Property of Cook County Clerk's Office

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EXHIBIT A

LEGAL DESCRIPTION

PARCEL 1:

LOTS 60 THROUGH 68, BOTH INCLUSIVE, IN C.J. HULL'S SUBDIVISION OF BLOCK 19 IN THE CANAL TRUSTEES' SUBDIVISION OF SECTION 7, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

PERMANENT INDEX NUMBERS:

17-07-219-006-0000; 17-07-219-007-0000; 17-07-219-008-0000; 17-07-219-009-0000;
17-07-219-010-0000; 17-07-219-013-0000; 17-07-219-046-0000

STREET ADDRESS:

1819-37 WEST RACE STREET, CHICAGO, ILLINOIS

PARCEL 2:

LOT 34 IN COCHRAN AND OTHERS SUBDIVISION OF PART OF BLOCK 21 IN CANAL TRUSTEES' SUBDIVISION OF SECTION 7, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

PERMANENT INDEX NUMBER:

17-07-121-033-0000

STREET ADDRESS:

2038 WEST RACE STREET, CHICAGO, ILLINOIS

PARCEL 3:

LOTS 65 AND 66 IN MARY ANN BAYLEY'S SUBDIVISION OF BLOCK 8 IN WRIGHT & WEBSTER'S SUBDIVISION OF THE NORTHEAST 1/4 OF SECTION 12 TOWNSHIP 39 NORTH RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

PERMANENT INDEX NUMBERS:

16-12-214-009-000; 16-12-214-010-0000

STREET ADDRESS:

2425-27 WEST ERIE STREET, CHICAGO, ILLINOIS

PARCEL 4:

LOTS 1 AND 2 IN C.J. HULL'S SUBDIVISION OF BLOCK 19 IN THE CANAL TRUSTEE'S SUBDIVISION OF SECTION 7, TOWNSHIP 39 NORTH RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

PERMANENT INDEX NUMBERS:

17-07-217-001-0000; 17-07-217-002-0000

STREET ADDRESS:

1857 WEST OHIO STREET, CHICAGO, ILLINOIS

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EXHIBIT B

HAZARDOUS SUBSTANCE CERTIFICATE AND INDEMNIFICATION AGREEMENT

THIS HAZARDOUS SUBSTANCE CERTIFICATE AND INDEMNIFICATION AGREEMENT (the "Indemnity") is made as of the ____ day of _____, 20__ by NEUMANN HOMES, INC., an Illinois corporation ("Borrower" or "Indemnitor"), in favor of BANK OF AMERICA, N.A., a national banking association (the "Bank"), whose address is 2625 Butterfield Road, Suite 209W, Oak Brook, Illinois 60523.

RECITALS:

A. Bank has heretofore made a loan to Borrower in the maximum principal amount of **Twenty Five Million and 00/100 Dollars (\$25,000,000.00)** (the "Loan"). The Loan is to be secured by a mortgage on certain real property in _____ County, Illinois legally described on attached Exhibit A (all of which property is referred to herein as the "Property").

B. The Loan is evidenced by a Revolving Acquisition, Development and Construction Mortgage Note dated as of February 19, 2001, executed and delivered by Borrower in favor of Bank in the stated principal amount of **Twenty Five Million and 00/100 Dollars (\$25,000,000.00)** (the "Note"). The Loan is to be made pursuant to the terms of a Revolving Acquisition, Development and Construction Loan Agreement dated as of February 19, 2001, by and between Borrower and Bank (the "Loan Agreement"). The Note and the Loan Agreement are secured by (i) a Construction Mortgage, Assignment and Security Agreement of even date herewith encumbering the Property, and (ii) other documents described in the Loan Agreement. The Note, Loan Agreement, Mortgage and all other documents evidencing or securing the Loan are hereinafter referred to collectively as the "Loan Documents".

C. To induce Bank to make disbursements of the Loan to Borrower for the Property, Indemnitor is executing and delivering this Indemnity; and Bank has requested this Indemnity as a condition of Bank's entering into the Loan.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged by all parties, the parties hereto agree as follows:

1. Recitals; Definitions.

(a) The parties agree the recitals are true and correct, and the recitals are incorporated herein by this reference. All exhibits attached hereto or referred to herein are hereby incorporated by this reference.

(b) The term "Hazardous Substances" means and includes, without limitation, any toxic or hazardous substances or materials, petroleum or other pollutants and substances,

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whether or not naturally occurring, including, without limitation, asbestos, radon, and methane gas, generated, treated, stored or disposed of, or otherwise deposited in or located on or under the Property, including without limitation, the surface and subsurface waters of the Property. For purposes of this Indemnity, "Hazardous Substances" shall also include any activity undertaken or hereafter undertaken on the Property which would cause (i) the Property to become a hazardous waste treatment, storage, or disposal facility within the meaning of, or otherwise bring the Property within the ambit of, the Resource Conservation and Recovery Act of 1976 ("RCRA"), 42 U.S.C., section 6901, et seq., or any similar state law or local ordinance; (ii) a release or threatened release of hazardous waste from the Property within the meaning, or otherwise bring the Property within the ambit of, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C., sections 9601-9657, the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), or any similar state law or local ordinance or any other environmental law; (iii) the discharge of pollutants or effluent into any water source or system, or the discharge into the air of any emissions, which would require a permit under the Federal Water Pollution Control Act, 33 U.S.C., section 1251, et seq., or the Clean Air Act, 42 U.S.C., section 7401, et seq., the Toxic Substances Control Act, or any similar state law or local ordinance; or (iv) any substances or conditions in, on, or under the Property which may support a claim or cause of action under RCRA, CERCLA, SARA, or any other federal, state, or local environmental statutes, regulations, ordinances, orders, decrees, or other environmental regulatory requirements relating to health, safety, or the environment, including, without limitation, the Illinois Environmental Protection Act and the Uniform Hazardous Substance Act of Illinois (collectively, the "Statutes"), including the presence of any underground storage tanks or underground deposits located on the Property. Indemnitor assumes all obligations of compliance with all environmental requirements related to health, safety, or the environment imposed by federal, state, and local authorities that affect the Property or any business or other activity conducted thereon or therewith.

2. Presence of Hazardous Substances.

(a) Indemnitor has no knowledge after due investigation of (i) the presence of any Hazardous Substances on the Property; or (ii) any spills, releases, discharges, or disposal of Hazardous Substances that have occurred or are presently occurring on or onto the Property or any adjacent properties; or (iii) any spills or disposal of Hazardous Substances that have occurred or are presently occurring off the Property as a result of any construction or operation and use of the Property.

(b) In connection with the construction on or operation and use of the Property, Indemnitor represents as to itself, its contractors, subcontractors, and any other of its agents, that, as of the date of this Indemnity, it has no knowledge of any failure to comply with all applicable local, state, and federal environmental laws, regulations, ordinances, and administrative and judicial orders relating to the generation, recycling, reuse, sale, storage, handling, transport, and disposal of any Hazardous Substances.

3. Future Presence of Hazardous Substances. Indemnitor agrees to immediately notify Bank if Indemnitor becomes aware of (a) any Hazardous Substances or other environmental problem or liability with respect to the Property, or any adjacent property, or (b) any lien, action, or notice of the nature described in paragraph 2 above. At its own cost,

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Indemnitor will take all actions which are necessary or desirable to clean up any Hazardous Substances affecting the Property to the standard required for residential use of the Property by the Statutes, and if no such residential standard is established by the Statutes, to the standard reasonably determined by Bank, including removal, containment, or any other remedial action required by applicable governmental or regulatory authorities.

4. Indemnification. Indemnitor hereby agrees, jointly and severally, unconditionally, absolutely, and irrevocably, to indemnify, defend, and hold harmless Bank, its affiliates, successors, assigns, and the officers, directors, employees, and agents of Bank, against and in respect of:

(a) any loss, liability, cost, injury, expense, or damage of any and every kind whatsoever (including without limitation, court costs and attorneys' fees and expenses) which at any time or from time to time may be suffered or incurred in connection with any inquiry, charge, claim, cause of action, demand, or lien made or arising directly or indirectly or in connection with, with respect to, or as a direct or indirect result of the presence on or under, or the escape, seepage, leakage, spillage, discharge, injection, disposal, emission, or release from, the Property into or upon any land, the atmosphere, or any watercourse, body of water, or wetland, of any Hazardous Substances including, without limitation, any losses, liabilities, damages, injuries, costs, expenses, or claims asserted or arising under the statutes, whether now known or unknown, including without limitation:

(i) any costs, fees or expenses incurred in connection with the removal, encapsulation, or other treatment of Hazardous Substances from or on the Property;

(ii) any loss or damage resulting from a loss of priority of any of the Loan Documents due to the imposition of a lien against the Property; and

(iii) any reasonable attorneys' fees, engineer's fees, and/or charges of any contractor or expert retained or consulted in connection with any inquiry, claim, or demand, including without limitation any costs incurred in connection with compliance with such inquiry, claim, or demand;

(b) any loss, liability, cost, expense, or damage (including without limitation, reasonable attorneys' fees) suffered or incurred as a result of or arising out of or in connection with any failure of the Property to comply with all applicable environmental protection laws, ordinances, rules, and regulations relating to health, safety, or the environment, and any litigation, proceeding, or governmental investigation relating to such compliance or non-compliance;

(c) any loss, liability, cost, expense, or damage directly or indirectly arising from any claim, action, demand, cause of action, or damage relating to or in connection with any personal injury concerning or relating to the presence of asbestos or other Hazardous Substances on the Property;

(d) any loss, liability, cost, expense, or damage of any and every kind

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whatsoever (including without limitation, fees and expenses of attorneys, engineers, and experts) which at any time or from time to time may be suffered or incurred in connection with any environmental assessment undertaken at any time deemed necessary by Bank, in its reasonable and absolute discretion, to evaluate or confirm (i) whether any Hazardous Substances are present in the soil or water at the Property, and (ii) whether the use and operation of the Property comply with all applicable Statutes relating to air quality, environmental control, release of oil, hazardous materials, hazardous wastes and hazardous substances, and any and all other applicable environmental requirements. Environmental assessments may include detailed visual inspections of the Property including, without limitation, any and all storage areas, storage tanks, drains, dry wells, and leaching areas, and the taking of soil samples, surface water samples, and ground water samples, as well as such other investigations or analyses as are necessary or appropriate; provided, however, that Indemnitor's indemnity shall not extend to any such loss liability, cost, expense or damage directly and solely (i) arising from the gross negligence and/or willful misconduct of Bank and/or (ii) arising from any discharge, seepage, leakage, spillage, injection, disposal, emission or release from, into or upon the Property of Hazardous Materials caused by Bank from and after such time, if any, as Bank, through foreclosure or otherwise, has taken possession and control of the Property, which Hazardous Materials were not on the Property prior to the date that Bank acquired possession and control of the Property.

5. Survival.

(a) The provisions of and undertakings and indemnification set out in this Indemnity shall survive the satisfaction and release of the Mortgage and the other Loan Documents, and shall continue to be the personal liability, obligation, and indemnification of the Indemnitor, binding upon the Indemnitor, forever.

(b) This Indemnity shall be continuing, irrevocable, and binding on the Indemnitor and its respective successors and assigns and shall inure to the benefit of Bank and Bank's successors and assigns. Indemnitor's obligations hereunder may not be assigned. The dissolution of the Indemnitor shall not affect this Indemnity or any of Indemnitor's obligations hereunder.

(c) The representations, warranties, and covenants of Indemnitor set forth in this Indemnity shall continue in effect and, to the extent permitted by law, shall survive the transfer of the Property pursuant to the foreclosure proceedings (whether judicial or non-judicial), by deed in lieu of foreclosure or otherwise.

6. Indemnification Procedure.

(a) Indemnitor shall notify Bank promptly upon receipt of any inquiry, notice, claim, charge, cause of action, or demand pertaining to the matters indemnified hereunder, including without limitation any notice of inspection, abatement, or noncompliance, stating the nature and basis of such inquiry or notification. Indemnitor shall promptly deliver to Bank any and all documentation or records as Bank may request in connection with such notice or inquiry, and shall keep Bank advised of any subsequent developments.

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(b) Bank shall give written notice to Indemnitor of any claim against Bank which might give rise to a claim by Bank against Indemnitor under this Indemnity stating the nature and basis of the claim, the amount thereof, and reasonable best estimate of the amount of the Indemnitor's liability to Bank in connection therewith.

(c) If any action shall be brought against Bank, then after Bank notifies Indemnitor thereof as provided in paragraph 6(b), Indemnitor shall be entitled to participate therein, and to assume the defense thereof at the expense of Indemnitor with counsel selected by Indemnitor in consultation with Bank and reasonably satisfactory to Bank, and to settle and compromise any such claim or action; provided, however, that Bank may elect to be represented by separate counsel, at Bank's expense, and if Bank so elects, such settlement or compromise shall be effected only with the consent of Bank, which consent shall not be unreasonably withheld.

(d) Indemnitor shall make any payment required to be made under this Indemnity upon demand by Bank, and shall make such payment in cash in the amount thereof. In the event that such payment is not made upon any such demand, Bank, at its sole election and in its sole discretion, may proceed to suit against Indemnitor. Any payment not made within ten (10) days of written demand shall bear interest at the Default Rate (as defined in the Note) from the date of demand until paid.

7. Conflict With Loan Documents. The provisions of this Indemnity shall govern and control over any inconsistent provisions of any of the Loan Documents, including without limitation, any exculpatory or non-recourse provisions or limitations contained in any guaranty for the Loan or in any other Loan Document.

8. Attorneys' Fees. If at any time or times hereafter Bank employs counsel for advice or other representation (i) in the connection with the enforcement of Lender's rights or any breach by Indemnitor under this Indemnity; (ii) except as otherwise expressly provided herein, to represent Bank in any negotiation, litigation, trial, appeal, bankruptcy, contest, dispute, suit, or proceeding (whether instituted by Bank, Indemnitor, or any other party) in any way or respect relating to this Indemnity; or (iii) to enforce Indemnitor's obligations hereunder, then, in any of the foregoing events, all of the reasonable attorneys' fees, paralegals' fees, legal assistants' fees, and expenses arising from such services and all expenses, costs, and charges in any way or respect arising in connection therewith or relating thereto shall be paid by Indemnitor to Bank, on demand whether or not suit is brought, or if brought, is prosecuted to judgment.

9. Waiver. No consent or waiver, expressed or implied, by a party of any breach or default by any other party in the performance by that other party of its obligations hereunder shall be deemed or construed to be a consent or waiver to any other breach or default in the performance by such other party of the same or any other obligations of such other party hereunder. Failure on the part of any party to complain of any act or failure to act of another party or to declare that other party in default, irrespective of how long such failure continues, shall not constitute a waiver of such party of its rights hereunder. Indemnitor's obligations hereunder shall in no way, manner, or respect be impaired, affected, reduced, or released by reason of Bank's failure to delay to do or take any of the acts, actions, or things described herein

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or in any of the Loan Documents.

10. Delivery of Notice. Any notice required to be given hereunder shall be in writing and addressed to the address set forth above, and shall be delivered by hand, by United States certified or registered mail, return receipt requested, or by overnight express delivery. Notice shall be deemed received on the date of receipt if delivered by hand; on the day after delivery to an overnight express delivery service, charges prepaid, if service is by overnight courier; and on the third (3rd) day following posting if delivery by United States mail, at the addresses set forth in the preamble of this Indemnity, or at such other addresses as the parties may respectively designate from time to time and give notice of to the other party pursuant to this paragraph.

11. Governing Law and Jurisdiction, Forum. This Indemnity and the other Loan Documents and all matters relating thereto shall be governed by and construed and interpreted in accordance with the internal laws of the State of Illinois (including, without limitation, its usury laws and the Uniform Commercial Code as adopted in Illinois). Indemnitor irrevocably (a) agrees that any suit, action or other legal proceeding relating to the Loan may be brought only in the Circuit Court of DuPage County or in the Northern District of Illinois, at Bank's option; (b) consents to the jurisdiction of each such court in any such suit, action or proceeding; (c) waives any objection which such Indemnitor may have to the laying of venue in any such suit, action or proceeding in either such court; and (d) agrees to join Bank in any petition for removal to either such court.

12. Separate Covenant. Indemnitor acknowledges and agrees that its covenants and obligations hereunder are separate and distinct from its obligations under the Loan and the Loan Documents.

13. Severability. In case any one or more provisions contained in this Indemnity shall, for any reason, be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof and this Indemnity shall be construed as if such invalid, illegal, or unenforceable provision had not been contained herein.

14. Entire Agreement. This Indemnity contains the entire understanding among the parties and supersedes any prior written or oral agreement between them respecting the subject matter of this Indemnity. There are no representations, agreements, arrangements, or understandings, oral or written, between the parties hereto relating to the subject matter of this Indemnity which are not fully expressed herein.

15. Construction. The section headings, captions, or abbreviations are used for convenience only and shall not be resorted to for interpretation of this Indemnity.

16. Mandatory Arbitration. Any controversy or claim between or among the parties hereto including but not limited to those arising out of or relating to this Indemnity or any related agreements or instruments, including any claim based on or arising from an alleged tort, shall be determined by binding arbitration in accordance with the Federal Arbitration Act (or if not applicable, the applicable state law), the Rules of Practice and Procedure for the Arbitration of Commercial Disputes of Judicial Arbitration and Mediation Services, Inc. (J.A.M.S.), and the

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"Special Rules" set forth below. In the event of any inconsistency, the Special Rules shall control. Judgment upon any arbitration award may be entered in any court having jurisdiction. Any party to this Indemnity may bring an action, including a summary or expedited proceeding, to compel arbitration of any controversy or claim to which this Indemnity applies in any court having jurisdiction over such action.

(a) Special Rules. The arbitration shall be conducted in Cook County, Illinois (or such other county where Bank shall have its current principal place of business) and administered by Endispute, Inc., d/b/a J.A.M.S./Endispute who will appoint an arbitrator; if J.A.M.S./Endispute is unable or legally precluded from administering the arbitration, then the American Arbitration Association will serve. All arbitration hearings will be commenced within 90 days of the demand for arbitration; further, the arbitrator shall only, upon a showing of cause, be permitted to extend the commencement of such hearing for up to an additional sixty (60) days.

(b) Reservation of Rights. Nothing in this Indemnity shall be deemed to (i) limit the applicability of any otherwise applicable statutes of limitation or repose and any waivers contained in this Indemnity; or (ii) be a waiver by the Bank of the protection afforded to it by 12 U.S.C., Section 91, or any substantially equivalent state law; or (iii) limit the right of the bank hereto (A) to exercise self help remedies such as (but not limited to) setoff; or (B) to foreclose against or take a deed in lieu of foreclosure for any real or personal property collateral; or (C) to obtain from a court provisional or ancillary remedies such as (but not limited to) injunctive relief or the appointment of a receiver. The Bank may exercise such self help rights, foreclose upon such property, or obtain such provisional or ancillary remedies before, during or after the pendency of any arbitration proceeding brought pursuant to this Indemnity. At Bank's option, foreclosure under a deed of trust or mortgage may be accomplished by any of the following: the exercise of a power of sale under the deed of trust or mortgage, or by judicial sale under the deed of trust or mortgage, or by judicial foreclosure. Neither this exercise of self help remedies nor the institution or maintenance of an action for foreclosure or deed in lieu of foreclosure or provisional or ancillary remedies shall constitute a waiver of the right of any party, including the claimant in any such action, to arbitrate the merits of the controversy or claim occasioning resort to such remedies.

17. This Indemnity may be signed in multiple counterparts, which counterparts when taken together shall be deemed one instrument. The liability of Indemnitor hereunder shall be joint and several.

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IN WITNESS WHEREOF Indemnitor has executed this Indemnity as of the date set forth above.

INDEMNITOR:

NEUMANN HOMES, INC. an Illinois corporation

By: _____

Name: _____

Its: _____

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STATE OF ILLINOIS)
)
COUNTY OF _____) SS.

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that _____, the _____ of NEUMANN HOMES, INC. an Illinois corporation ("Borrower"), who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such _____, appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial seal, this _____ day of _____, 2001.

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