

SECOND MORTGAGE



This Second Mortgage ("Mortgage") made September 19, 2002 by FONTENAY, LLC, an Illinois limited liability company ("Mortgagor"), located at 6639 Riverside Drive, Tinley Park, Illinois 60477, to LAKE COUNTY GRADING COMPANY, LLC, an Illinois limited liability company ("Mortgagee") located at Routes 120 and 21, P.O. Box L, Libertyville, Illinois 60048.

WHEREAS, Mortgagor and Mortgagee have entered into that certain Land Development Construction Agreement dated August 26, 2002 (the "Construction Agreement") whereby Mortgagee is providing land development work on the Real Property (as defined below); and

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WHEREAS, Mortgagor is justly indebted to Mortgagee for the Total Unit Payments and the Lump Sum Payment (collectively, the "Loan Amount") as evidenced by the Construction Agreement.

NOW, THEREFORE, in order to secure the payment of the Loan Amount and the performance of the covenants and agreements herein contained, Mortgagor does by these presents grant, bargain, sell, convey, and mortgage unto Mortgagee, its successors and assigns, the real estate and all of its estate, right, title, and interest therein situated in the Village of Palatine, County of Cook and State of Illinois, as more particularly described in Exhibit "A" attached hereto and made a part hereof (the "Real Property"), together with: (i) all buildings and improvements of every kind and description now or hereafter erected or placed thereon and all materials intended for construction, reconstruction, alteration, and repairs of such improvements, now or hereafter erected thereon, all of which materials shall be deemed to be included within the Premises immediately upon the delivery thereof to the Real Property, and all fixtures now or hereafter owned by Mortgagor and attached to or contained in and used in connection with the Real Property, including, but not limited to, all plumbing, heating, lighting, ventilating, air-conditioning, and sprinkler equipment and fixtures and appurtenances thereto, and all renewals or replacements thereof or articles in substitution therefor, whether or not the same are or shall be attached to said building or buildings in any manner, it being mutually agreed, intended, and declared that all the aforesaid property



3084
1st AMERICAN TITLE order # 123612

This Instrument Prepared by and, after recording, Return to:

Mr. Mark Reich
Lake County Grading Company, LLC
Routes 120 and 21
P.O. Box L
Libertyville, Illinois 60048

owned by said Mortgagor and placed by it on the Real Property shall, so far as permitted by law, be deemed to form a part and parcel of the Real Property and for the purpose of this Mortgage to be real estate, and covered by this Mortgage, it being further understood and agreed that the provisions hereof shall not apply or attach to any personal property of Mortgagor; and (ii) all rent, sub-rents, issues, profits, royalties, income, deposits and other benefits derived from the Real Property and all right, title and interest of Mortgagor in and to all leases or subleases covering all or any portion of the Real Property now or hereafter existing or entered into (hereinafter collectively referred to as the "Premises")

TO HAVE AND TO HOLD the same unto the Mortgagee and its successors and assigns forever, for the purposes and uses herein set forth;

PROVIDED, HOWEVER, that if the Mortgagor shall pay the Loan Amount as provided in the Construction Agreement, and shall pay all other sums herein provided for, or secured hereby, and shall well and truly keep and perform all of the covenants herein contained, then this Mortgage shall be released, otherwise to remain in full force and effect.

MORTGAGOR FURTHER COVENANTS and agrees as follows:

1. **Payment of Loan Amount.** Mortgagor shall pay promptly when due the Loan Amount evidenced by the Construction Agreement at the times and in the manner provided in the Construction Agreement.
2. **Taxes.** Mortgagor shall immediately pay, when first due and owing, all general taxes, special taxes, special assessments, water charges, sewer service charges, and all other charges of whatever kind, ordinary or extraordinary, which may be levied or imposed against the Premises.
3. **Compliance with Governmental, Insurance and Other Requirements.** Mortgagor shall comply with all statutes, ordinances, orders, requirements, or decrees relating to the Premises or the use thereof of any federal, state, or municipal authority. Mortgagor shall duly and punctually perform and comply with all covenants and conditions expressed as binding upon it under any recorded document or any other agreement of any nature whatsoever binding upon it which pertains to the Premises, including without limitation: (1) to pay when due in each year, all taxes and assessments against the Premises, and on demand to exhibit receipts therefor; (2) to keep the Premises insured in companies and in amounts acceptable to Mortgagee, and Mortgagor is hereby authorized to place such insurance in companies acceptable to the holder of the first mortgage indebtedness, with loss clause attached payable first, to the first mortgagee(s), and second, to Mortgagee, as their interests may appear; and (3) to pay all prior encumbrances, and the interest thereon, at the time or times when the same shall become due and payable.
4. **Mortgagee's Performance of Defaulted Acts.** In case of default herein Mortgagee may, but need not, make any payment or perform any act herein required of Mortgagor in any form and manner deemed expedient by Mortgagee. By way of illustration and not in limitation of the foregoing, Mortgagee may, but need not, make full or partial payments of principal or interest on prior encumbrances, if any, and purchase, discharge, compromise, or settle any tax lien or other prior or junior lien or title or claim thereof, or redeem from any tax sale or forfeiture affecting the Premises or contest any tax or assessment. Mortgagee is hereby authorized to make or advance, in the place and stead of the Mortgagor, any payment relating to taxes, assessments, water rates, sewer rentals, and other governmental or municipal charges, fines, impositions, or liens asserted against the Premises and may do so according to any bill, statement, or estimate procured from the appropriate public office without inquiry into the accuracy of the bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien, or title or claim thereof; and the Mortgagee is further authorized to make or advance in the place and stead of the Mortgagor any payment relating to any apparent or threatened adverse title, lien, statement of

lien, encumbrance, claim, or charge, or payment otherwise relating to any other purpose herein and hereby authorized, but not enumerated in this paragraph, and may do so whenever, in its judgment and discretion, such advance or advances shall seem necessary or desirable to protect the full security intended to be created by this instrument, and in connection with any such advance, Mortgagee, at its option, may and is hereby authorized to obtain a continuation report of title or title insurance policy prepared by a title insurance company of Mortgagee's choosing. All monies paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including reasonable attorneys' fees, and any other monies advanced by Mortgagee to protect the Premises and the lien hereof, shall be so much additional indebtedness secured hereby, and shall become immediately due and payable by Mortgagor to Mortgagee without notice. Inaction of Mortgagee shall never be considered as a waiver of any right accruing to it on account of any default on the part of Mortgagor. Notwithstanding anything to the contrary contained herein, in no event shall the indebtedness secured by this Mortgage exceed 125% of the Loan Amount.

5. **Eminent Domain.** Any and all awards heretofore or hereafter made or to be made to the present and all subsequent owners of the Premises, by any governmental or other lawful authority for taking, by condemnation or eminent domain, the whole or any part of the Premises or any improvement located thereon or any easement therein or appurtenant thereto (including any award from the United States Government at any time after the allowance of the claim therefor, the ascertainment of the amount thereof and the issuance of the warrant for payment thereof), are hereby assigned by Mortgagor to Mortgagee, which award Mortgagee is hereby authorized to collect and receive from the condemnation authorities, and Mortgagee is hereby authorized to give appropriate receipts and acquittance therefor. Mortgagor shall give Mortgagee immediate notice of the actual or threatened commencement of any such proceedings under condemnation or eminent domain, affecting all or any part of the said Premises or any easement therein or appurtenance thereof, including severance and consequential damage and change in grade of streets, and will deliver to Mortgagee copies of any and all papers served in connection with any such proceedings. Mortgagor shall make, execute, and deliver to Mortgagee, at any time or times upon request, free, clear, and discharged of any encumbrances of any kind whatsoever, any and all further assignments and instruments deemed necessary by Mortgagee for the purpose of validly and sufficiently assigning to Mortgagee all awards and other compensation heretofore and hereafter to be made to Mortgagor for any taking, either permanent or temporary, under any such proceeding. The proceeds of all such awards shall be paid to Mortgagee and may be applied by Mortgagee, at its option, after the payment of all of its expenses in connection with such proceedings, including reasonable costs and attorneys' fees, to the reduction of the indebtedness secured hereby or to restoring the improvements.

6. **Partial Invalidity.** Mortgagor and Mortgagee intend and believe that each provision in this Mortgage comports with all applicable local, state and federal laws and judicial decisions. However, if any provision or provisions, or if any portion of any provision or provisions, in this Mortgage is found by a court of law to be in violation of any applicable local, state or federal ordinance, statute, law, administrative or judicial decision, or public policy, and if such court should declare such portion, provision or provisions of this Mortgage to be illegal, invalid, unlawful, void or unenforceable as written, then it is the intent both of Mortgagor and Mortgagee that such portion, provision or provisions shall be given force to the fullest possible extent that it or they are legal, valid and enforceable, that the remainder of this Mortgage shall be construed as if such illegal, invalid, unlawful, void or unenforceable portion, provision or provisions were not contained therein, and that the rights, obligations and interest of Mortgagor and Mortgagee under the remainder of this Mortgage shall continue in full force and effect.

7. **Mortgagee's Right to Deal With Transferee.** In the event of the voluntary sale, or transfer by operation of law, or otherwise, of all or any part of the Premises, Mortgagee is hereby authorized and empowered to deal with such vendee or transferee with reference to the Premises, or the debt secured hereby, or with reference to any of the terms or conditions hereof, as fully and to the same

extent as it might with Mortgagor, without in any way releasing or discharging Mortgagor from Mortgagor's covenants and/or undertakings hereunder.

8. **Releases.** Mortgagee, without notice, and without regard to the consideration, if any, paid therefor, and notwithstanding the existence at that time of any inferior liens, may release any part of the Premises or any person liable for any indebtedness secured hereby, without in any way affecting the liability of any party to the Construction Agreement and this Mortgage, given as security for the indebtedness secured hereby and without in any way affecting the priority of the lien of this Mortgage, and may agree with any party obligated on said indebtedness herein to extend the time for payment of any part or all of the indebtedness secured hereby. Such agreement shall not, in any way, release or impair the lien created by this Mortgage, or reduce or modify the liability, if any, of any person or entity personally obligated for the indebtedness secured hereby, but shall extend the lien hereof as against the title of all parties having any interest in said security which interest is subject to the indebtedness secured by this Mortgage. Mortgagee agrees to subordinate its lien hereunder to a townhome declaration to be recorded against the Premises. Upon the closing of the sale of individual townhome units encumbered by this Mortgage, Mortgagee shall deliver to the title company at each such closing a payoff letter (consistent with the terms of the Construction Agreement) and/or a partial release, in recordable form, releasing such townhome unit from the lien of this Mortgage.

9. **Remedies on Default.**

(a) **Events of Default.** It shall constitute a default under this Mortgage when and if (i) any default occurs in the due and punctual payment of the Loan Amount secured hereby, or of any installment thereof, or (ii) any default occurs in the due and punctual performance of or compliance with any other term, covenant or condition in this Mortgage, or in the Construction Agreement.

(b) **Remedies.** In addition to any other remedy herein specified, if any default under this Mortgage shall occur, Mortgagee may, at its option, (i) declare the entire indebtedness secured hereby to be immediately due and payable, without notice or demand (each of which is hereby expressly waived by Mortgagor) whereupon the same shall become immediately due and payable, (ii) institute proceedings for the complete foreclosure of this Mortgage, (iii) institute proceedings to collect any delinquent installment or installments of the indebtedness secured hereby without accelerating the due date of the entire indebtedness by proceeding with foreclosure of this Mortgage with respect to any delinquent installment or installments of such indebtedness only and any sale of the Premises under such a foreclosure proceeding shall be subject to and shall not affect the unmatured part of the indebtedness and this Mortgage shall be and continue as a lien on the Premises securing the unmatured indebtedness, (iv) take such steps to protect and enforce its rights whether by action, suit or proceeding in equity or at law for the specific performance of any covenant, condition or agreement in the Construction Agreement or in this Mortgage, or in aid of the execution of any power herein granted, or for any foreclosure hereunder, or for the enforcement of any other appropriate legal or equitable remedy or otherwise as Mortgagee shall elect, or (v) enforce this Mortgage in any other manner permitted under the laws of the state in which the Premises are situated.

(c) **Expense of Litigation.** In any suit to foreclose the lien of this Mortgage or enforce any other remedy of Mortgagee under this Mortgage or the Note there shall be allowed and included, as additional indebtedness in the judgment or decree, all expenditures and expenses which may reasonably be paid or incurred by or on behalf of Mortgagee for attorneys' fees, appraiser's fees, outlays for documentary and expert evidence and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all abstracts of title, title searches and examinations, title insurance policies and similar data and assurances with respect to title as Mortgagee may deem reasonably

necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or value of the Premises.

(d) **Sale of Premises.** Any Premises or any interest or estate therein sold pursuant to any court order or decree obtained pursuant to the Mortgage shall be sold in one parcel, as an entirety, or in such parcels and in such manner or order as Mortgagee, in its sole discretion, may elect, to the maximum extent permitted by the laws of the state in which the Premises are situated. At any such sale, Mortgagee may bid for and acquire, as Purchaser, the Premises or any part thereof, and in lieu of paying cash therefor, may make settlement for the purchase price by crediting upon the indebtedness due the amount of Mortgagee's bid.

(e) **Application of Proceeds From Foreclosure Sale.** The proceeds of any foreclosure sale of the Premises shall be distributed and applied in the following order of priority: (i) on account of all costs and expenses incident to the foreclosure proceedings, including all such items as are mentioned in paragraph 9(c) hereof, (ii) all other items which, under the terms hereof, constitute secured indebtedness additional to that evidenced by Construction Agreement, (iii) any portion of the Loan Amount remaining unpaid, and (iv) any surplus to Mortgagor, its successors or assigns, as their rights may appear.

10. **Giving of Notice.** All notices to Mortgagor that are either required or contemplated in connection with this Mortgage shall be in writing, and shall be deemed given upon the earlier of the actual receipt thereof by Mortgagor and forty-eight (48) hours after mailing the same to Mortgagor at Mortgagor's address first above written with postage prepaid via certified first class mail, return receipt requested. By notice complying with the foregoing provisions of this section, Mortgagor may from time to time change its address for notice purposes, except that any such notice shall not be deemed delivered until actually received. Except as otherwise specifically required, notice of the exercise of any option granted to the Mortgagee herein is not required to be given.

11. **Time is of the Essence.** It is specifically agreed that time is of the essence of this Mortgage. The waiver of the options or obligations secured hereby shall not at any time thereafter be held to be abandonment of such rights.

12. **Modifications.** This Mortgage may not be changed, waived, discharged or terminated orally, but only by an instrument or instruments in writing, signed by the party against which enforcement of the change, waiver, discharge or termination is asserted.

13. **Covenants to Run with the Land.** All the covenants hereof shall run with the land.

14. **Captions.** The captions and headings of various paragraphs are for convenience only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

15. **Construction.** This Mortgage and the rights and indebtedness hereby secured shall be construed and enforced according to the laws of the State of Illinois.

16. **Binding on Successors and Assigns, etc.** This Mortgage and all provisions hereof shall extend and be binding upon Mortgagor's successors and assigns and all persons claiming under or through Mortgagor, and the word "Mortgagor" when used herein shall include and refer to (in addition to Mortgagor) all such persons and all persons liable for the payment of the indebtedness or any part thereof, whether or not such persons shall have executed this Mortgage. The word "Mortgagee" when used herein shall include the successors and assigns of the Mortgagee named herein, and the holder or holders, from

EXHIBIT "A"

LEGAL DESCRIPTION

PARTS OF THE SOUTHWEST ¼ OF SECTION 10 AND THE NORTHWEST ¼ OF SECTION 15, TOWNSHIP 42 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: COMMENCING AT A POINT ON THE EAST LINE OF THE NORTHWEST ¼ OF SAID SECTION 15 THAT IS 35.5 FEET SOUTH FROM THE NORTHEAST CORNER OF SAID NORTHWEST ¼ THEREOF FOR A POINT OF BEGINNING; THENCE WEST PARALLEL WITH NORTH LINE OF THE NORTHWEST ¼ OF SAID SECTION 15, 139.5 FEET; THENCE SOUTHWESTERLY ON A LINE FORMING AN ANGLE OF 124 DEGREES 30 MINUTES FROM EAST TO SOUTH AND SOUTHWESTERLY WITH THE LAST DESCRIBED LINE A DISTANCE OF 248.55 FEET TO THE NORTHERLY LINE OF NORTHWEST HIGHWAY (AS NOW DEDICATED); THENCE NORTHWESTERLY ON SAID NORTHERLY LINE OF HIGHWAY, 202.97 FEET; THENCE NORTH ON A LINE PARALLEL WITH THE EAST LINE OF THE NORTHWEST ¼ OF SECTION 15 AND THE SOUTHWEST ¼ OF SECTION 10 AFORESAID, 300.85 FEET; THENCE EAST ON A LINE PARALLEL WITH THE NORTH LINE OF THE NORTHWEST ¼ OF SECTION 15 (BEING THE LINE BETWEEN SECTIONS 10 AND 15 AFORESAID) 475 FEET MORE OR LESS TO A POINT ON THE EAST LINE OF THE SOUTHWEST ¼ OF SAID SECTION 10 LYING 124.5 FEET NORTH OF THE SOUTHEAST CORNER THEREOF; THENCE SOUTH ON THE EAST LINE OF THE SOUTHWEST ¼ OF SECTION 10 AND THE NORTHWEST ¼ OF SECTION 15 AFORESAID A DISTANCE OF 160.0 FEET TO THE POINT OF BEGINNING; (EXCEPT THAT PART CONVEYED TO THE PEOPLE OF THE STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION FOR HIGHWAY AS CONTAINED IN DOCUMENT NUMBER 0010186207), IN COOK COUNTY, ILLINOIS.

Common address: 500 Northwest Highway, Palatine, Illinois 60067

P.I.N. 02-15-101-008