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Cook County Recorder 67.00



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MORTGAGE, ASSIGNMENT OF RENTS AND SECURITY AGREEMENT

THIS MORTGAGE, ASSIGNMENT OF RENTS AND SECURITY AGREEMENT (this "Mortgage") is made as of the 17TH day of April, 2000, by CONCORD CITY CENTRE L.L.C., an Illinois limited liability company ("Borrower"), to WELLS FARGO BANK, NATIONAL ASSOCIATION, a national banking association ("Lender");

WITNESSETH:

WHEREAS, Borrower has executed and delivered to Lender a Note Secured by Mortgage, of even date herewith, payable to the order of Lender in the principal amount of Forty Million Five Hundred Ninety Thousand Eight Hundred Nineteen Dollars (\$40,590,819) or such lesser amount as may be disbursed thereon, which note bears interest and is payable to Lender as more fully described therein (such note, together with any note issued in substitution or exchange therefor, as any of the foregoing may from time to time be amended, is hereinafter referred to as the "Note"); and

WHEREAS, Borrower and Lender desire to enter into this Mortgage in order to secure Borrower's obligations under the Note, and under any and all documents or instruments securing the indebtedness evidenced by the Note; and

WHEREAS, Lender is desirous of securing the prompt payment of the Note together with interest and any premium thereon in accordance with the terms of the Note, and any additional indebtedness accruing to Lender on account of any future payments, advances or expenditures made by Lender pursuant to, or any other obligation of Borrower arising under, any of the following documents (collectively, the "Loan Documents"): (i) the Note, (ii) this Mortgage, (iii) the Loan Agreement (Senior Loan) of even date herewith between Borrower and Lender (the "Loan Agreement"), and (iv) any and all other documents or instruments securing the indebtedness evidenced by the Note;

THIS DOCUMENT PREPARED BY
AND AFTER RECORDATION SHOULD
BE RETURNED TO:

Marc M. Jacobs, Esq.
Barack Ferrazzano Kirschbaum Perlman & Nagelberg
333 West Wacker Drive, Suite 2700
Chicago, Illinois 60606

BOX 333-CT1

JCM/JF ① 7850121

Handwritten signature/initials

NOW, THEREFORE, to secure the payment, performance and observance by Borrower of all of the terms, covenants and conditions contained herein and in the Note, the Loan Agreement and the other Loan Documents, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged hereby, Borrower has executed and delivered this Mortgage and does hereby grant a security interest in, and grant, convey, assign, mortgage and confirm, to Lender and its successors and assigns forever, all of the property now or hereafter owned by Borrower described in the following GRANTING CLAUSES (the "Mortgaged Property"):

A. All those certain tracts, pieces or parcels of land legally described in Exhibit A attached hereto and hereby made a part hereof and all surface and subsurface soils, minerals and water located thereon and thereunder (the "Land"); and

B. All buildings, structures and improvements of every nature whatsoever now or hereafter situated on the Land, and all furnishings, furniture, fixtures, machinery, equipment, appliances, systems, building materials, vehicles and personal property of every kind and nature whatsoever (but excluding any sales trailer to be located on the Land during Borrower's marketing period) including, without limitation, all gas and electric fixtures, radiators, heaters, engines and machinery, boilers, ranges, elevators and motors, plumbing and heating fixtures and systems, carpeting and other floor coverings, washers, dryers, water heaters, mirrors, mantels, air conditioning apparatus and systems, refrigerating plant, refrigerators, computers and all hardware and software therefor, cooking apparatus and appurtenances, window screens, awnings and storm sashes, which are or shall be attached to said buildings, structures or improvements, or which are or shall be located in, on or about the Land, or which, wherever located (including, without limitation, in warehouses or other storage facilities or in the possession of or on the premises of vendors or manufacturers thereof), are used or intended to be used in or in connection with the construction, fixturing, equipping, furnishing, use, operation or enjoyment of the Land or the improvements thereon, now or hereafter owned by Borrower, including all extensions, additions, improvements, betterments, renewals and replacements of any of the foregoing, together with all warehouse receipts or other documents of title relating to any of the foregoing and the benefit of any deposits or payments now or hereafter made by Borrower in connection with any of the foregoing; and

C. All easements, rights-of-way, strips and gores of land, vaults, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, and all estates, rights, titles, interests, licenses, privileges, liberties, tenements, hereditaments and appurtenances whatsoever in any way belonging, relating or appertaining to the Mortgaged Property, or any part thereof, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by Borrower and the reversion and reversions, remainder and remainders thereof, and all the estate, right, title, interest, property, possession, claim and demand whatsoever at law, as well as in equity, of Borrower of, in and to the same; and

D. Each and every lease, license and other document or instrument, including, without limitation, those described in Granting Clause C above, granting to any person or entity any right to use or occupy, and any other agreement with respect to the use or occupancy of, all or any portion of the Land or the improvements of any type or nature located thereon (the "Improvements"), whether heretofore, now or hereafter entered into (the "Leases"); and

E. The rents, issues, profits, proceeds, revenues, awards and other benefits of the Mortgaged Property from time to time accruing (including, without limitation, all payments under the leases, licenses and documents described in Granting Clause D above, proceeds of insurance, condemnation awards and payments in lieu thereof, tenant security deposits and escrow funds, and all the estate, right, title, interest, property, possession, claim and demand whatsoever at law, as well as in equity, of Borrower of, in and to the same) (the "Rents"); and

F. All of the aforementioned personal property and any and all other personal property, whether tangible or intangible, not otherwise described herein and now or at any time hereafter owned by Borrower and now or at any time hereafter located in or on or otherwise utilized in any one or more of the ownership, use, enjoyment, construction, occupancy, management, maintenance, repair and operation of the Land, the Improvements or the equipment located thereon, including, without limitation, trade names, trademarks, service marks, copyrights, patents and other intellectual property and any and all funds of Borrower from time to time in Lender's possession, all of which shall constitute proceeds of collateral pursuant to Section 9-306 of the Uniform Commercial Code, as adopted in Illinois (the "Personalty"); and

G. All of the aforementioned contracts and agreements and any and all other contracts or agreements, whether written or oral, to which Borrower is or hereafter becomes a party, including, without limitation, purchase contracts for the sale of all or any portion of the Land, contracts pertaining to architectural services, contracts pertaining to engineering services, and contracts relating in any manner to the ownership, use, enjoyment, construction, occupancy, management, maintenance, operation or repair of all or any portion of the Land, the Improvements, the equipment located thereon or the Personalty or otherwise related to all or any part of the real and personal property described elsewhere herein (the "Contracts"); and

H. All franchises, permits, licenses, entitlements and rights therein respecting the ownership, use, enjoyment, occupation, management, maintenance, repair and operation of any of the foregoing, to the extent permitted by applicable law; and

I. Any and all rights, titles, interests, estates and other claims, at law or in equity, that Borrower now has or may hereafter acquire in or to any proceeds from the sale, assignment, conveyance, hypothecation, grant, pledge or other transfer of any or all of the foregoing real or personal property, except as otherwise provided in Article 2 of the Loan Agreement specifying the extent of Borrower's obligation to pay to Lender a portion of the proceeds from the closing of sales of Homes (as defined in the Loan Agreement); and

J. Any and all refunds, rebates, reimbursements, reserves, deferred payments, deposits, cost savings, governmental subsidy payments, governmentally registered credits (such as emissions reduction credits) and payments of any kind due from or payable by any governmental authority or any insurance or utility company relating to any or all of the Mortgaged Property; and

K. Any and all refunds, rebates, reimbursements and payments of any kind due from or payable by any governmental authority for any taxes (other than income taxes), assessments or governmental or quasi-governmental charges or levies imposed upon Borrower with respect to the Mortgaged Property or upon any or all of the Mortgaged Property; and

L. All monies relating to the Mortgaged Property held in any cash collateral or operating account maintained with Lender or any Affiliate (as defined in the Loan Agreement) of Lender now or at any time hereafter, including any project account relating to upgrades; and

M. All rights, titles, interests and other claims, at law or in equity, that Borrower now has or may hereafter acquire pursuant to any condominium declaration or amendment thereto.

TO HAVE AND TO HOLD the Mortgaged Property and all parts thereof unto Lender, its successors and assigns, to its own proper use, benefit and advantage forever, subject, however, to the terms, covenants and conditions herein contained.

WITHOUT LIMITATION OF THE FOREGOING, Borrower hereby further grants unto Lender, pursuant to the provisions of the Uniform Commercial Code, as adopted in Illinois, a security

interest in all of the Mortgaged Property, which property includes, without limitation, goods which are or are to become fixtures.

THIS MORTGAGE IS GIVEN TO SECURE payment of the principal and interest evidenced by the Note, and performance of each and every of the covenants, conditions and agreements contained in this Mortgage or in any of the other Loan Documents (all of which obligations are referred to collectively herein as the "indebtedness secured hereby" or the "indebtedness").

THE INDEBTEDNESS SECURED HEREBY will in no event exceed an amount equal to three (3) times the total of the face amount of the Note set forth above.

PROVIDED, HOWEVER, THE FOREGOING PRESENTS are made upon the condition that, if Borrower (i) shall pay or cause to be paid to Lender the principal and interest payable pursuant to the Note, at the times and in the manner stipulated therein and herein, all without any deduction or credit for taxes or other similar charges paid by Borrower, (ii) shall pay or cause to be paid all amounts to be paid by Borrower under this Mortgage, and (iii) shall keep, perform and observe each and every one of the covenants and promises in this Mortgage or in any of the other Loan Documents expressed to be kept, performed and observed by and on the part of either of Borrower, then this Mortgage shall cease, terminate and be void; however, if such conditions are not all satisfied, this Mortgage shall otherwise remain in full force and effect.

BORROWER FURTHER COVENANTS AND AGREES WITH LENDER AS FOLLOWS:

ARTICLE 1

BORROWER'S COVENANTS, REPRESENTATIONS AND WARRANTIES

1.1 Performance under the Loan Documents. Borrower shall perform, observe and comply with all of the provisions hereof and of the Note, and shall duly and punctually pay to Lender the principal sum of money expressed in the Note with interest thereon at the times and in the manner provided in the Note and in the Loan Agreement and all other sums required to be paid by Borrower pursuant to the provisions of this Mortgage, all without any deductions or credit for taxes or other similar charges paid by Borrower. In addition, Borrower shall perform or cause to be performed all of the terms, covenants and conditions of the other Loan Documents to be kept and performed by Borrower.

1.2 Warranty of Title. At the time of the recordation of this Mortgage, Borrower is well seized of an indefeasible estate in fee simple in the Mortgaged Property, subject only to the Permitted Exceptions (as defined in the Loan Agreement), and Borrower has good right, full power and lawful authority to convey, mortgage and grant a security interest in all of the same in the manner and form contemplated and provided under the Loan Documents. Said title of Borrower in the Mortgaged Property is free and clear of all liens, charges, easements, covenants, conditions, restrictions and encumbrances whatsoever, other than the Permitted Exceptions, including, as to the personal property and fixtures, security agreements, conditional sales contracts and anything of a similar nature. Borrower shall and will forever defend the title to the Mortgaged Property against the claims of all persons whomsoever.

1.3 Taxes. Borrower shall pay, or cause to be paid, all taxes, assessments and other similar charges which are assessed, levied, confirmed, imposed, or which become a lien upon or against the Mortgaged Property, or any portion thereof, or which become payable with respect thereto or with respect to the occupancy, use or possession of the Mortgaged Property before the same become delinquent, and shall promptly deliver to Lender receipt therefor. In the event Borrower desires to contest the validity of any such taxes or assessments, Borrower shall (i) prior to the due date thereof, notify Lender in writing that Borrower intends to so contest the same, (ii) pay

the entire amounts of such taxes or assessments when due or, if a contest is permitted by law without such payment on or before the due date thereof, either deposit with Lender security in form and content and amounts satisfactory to Lender for the payment of one hundred twenty-five percent (125%) of such tax or assessment or provide to Lender such indemnity or assurance of timely payment as may be acceptable to Lender, which shall include causing the Title Company (as defined in the Loan Agreement) to insure over such taxes or assessments to the satisfaction of Lender, and (iii) deposit additional security or indemnity, from time to time, so that, at all times, adequate security or indemnity will be available for the payment of the full amount of the taxes or assessments together with all interest, penalties, costs and charges accrued or accumulated thereon. If the foregoing deposits are made and Borrower continues, in good faith, to contest the validity of such taxes or assessments by appropriate legal proceedings which shall operate to prevent the collection thereof and the sale of the Mortgaged Property, or any part thereof, to satisfy the same, Borrower shall be under no obligation to pay such tax or assessment until such time as the same has been decreed, by court order, to be a valid lien on the Mortgaged Property. Lender shall have full power and authority to reduce any such security or indemnity to cash and apply the amount so received to the payment of any unpaid tax or assessment to prevent the sale or forfeiture of the Mortgaged Property, without any liability on Lender's part for any failure to apply the security or indemnity so deposited, unless Borrower requests, in writing, the application thereof to the payment of the particular tax or assessment for which such deposit was made. Any surplus deposit retained by Lender, after the payment of the tax or assessment for which the same was made, shall be repaid to Borrower, unless an Event of Default (as hereinafter defined) exists, in which event such surplus shall be applied by Lender to the Note and in such order and manner as Lender may determine.

1.4 Mortgage Taxes. In the event of the passage of any federal, state or local governmental law, order, rule or regulation subsequent to the date hereof which changes or modifies in any material manner the laws now in force governing the taxation of mortgages or debts secured by mortgages or the manner of collecting taxes so as to adversely affect Lender, all sums secured by this Mortgage and all interest accrued thereon shall, without notice, become due forthwith at the option of Lender and be payable ninety (90) days after notice to Borrower. Notwithstanding the foregoing, instead of paying all the sums secured by this Mortgage and all interest accrued thereon as provided above, Borrower shall have the right to pay to Lender an amount, determined by Lender, which will place Lender in exactly the same position Lender would have been in had the events outlined above not occurred, provided, however, if such payment may, in Lender's judgment, be considered unlawful by a court of competent jurisdiction, then such payment may not be made and all sums secured by this Mortgage and all interest accrued thereon shall become due forthwith at the option of Lender and payable ninety (90) days after notice to Borrower as aforesaid.

1.5 No Tax Credits. Borrower shall not claim or demand or be entitled to receive any credit or credits on the principal or interest payable under the terms of the Note or on any other sums secured hereby, for so much of the taxes, assessments or similar charges assessed against the Mortgaged Property, or any part thereof, as are applicable to the indebtedness secured hereby or to Lender's interest in the Mortgaged Property. No deduction shall be claimed from the taxable value of the Mortgaged Property or any part thereof by reason of the Note or this Mortgage.

1.6 Utilities. Borrower shall pay when due any and all charges for utilities, whether public or private, with respect to the Mortgaged Property or any part thereof, and all license fees, rents or other charges for the use of any appurtenance to the Mortgaged Property.

1.7 Liens. The Mortgaged Property shall be kept free and clear of all liens and encumbrances (unless the same are bonded or insured over in a manner satisfactory to Lender) of every nature or description, including, without limitation, liens and encumbrances arising from past

due taxes or assessments and from charges for labor, materials, supplies or services, other than the Permitted Exceptions.

1.8 Subrogation. Lender shall be subrogated to the claims and liens of all parties whose claims or liens are discharged or paid with the proceeds of the indebtedness secured hereby.

1.9 Insurance. Borrower shall, at its expense, maintain insurance policies in accordance with the terms and conditions of the Loan Agreement.

1.10 Casualty. Borrower shall give immediate notice to Lender of any damage to or loss of the Mortgaged Property or any portion thereof. In case of damage or loss which is covered by any of the insurance policies maintained by Borrower, Lender is hereby authorized to adjust, collect and compromise all claims thereunder in excess of Two Hundred Fifty Thousand Dollars (\$250,000); in such case, Borrower shall sign immediately upon demand by Lender, or, in the event Borrower fails to do so, Lender may sign or endorse on Borrower's behalf, all necessary proofs of loss, receipts, releases and other papers required by the insurance companies to be signed by Borrower. Lender may deduct from such insurance proceeds any reasonable expenses incurred by Lender in the settlement and collection thereof, including, without limitation, reasonable attorneys' fees and expenses. The remaining proceeds are referred to herein as the "Net Insurance Proceeds".

1.11 Condemnation. If all or any part, other than an area affected solely by a road or street widening or another immaterial portion (as reasonably determined by Lender) of the Mortgaged Property shall be damaged or taken through condemnation (which term, when used herein, shall include any damage or taking by any governmental authority and any transfer by private sale in lieu thereof), either temporarily, if in Lender's reasonable judgment such taking causes a material, adverse impact on the Mortgaged Property, or permanently, the entire indebtedness secured hereby shall, at the option of Lender, become immediately due and payable. Lender shall be entitled to all compensation, awards and other payments or relief therefor and all such compensation, awards, damages, claims, rights, actions and proceedings, and the right thereto, are hereby assigned by Borrower to Lender. Borrower agrees to execute such further assignments of any compensations, awards, damages, claims, rights, actions and proceedings as Lender may require. Lender may deduct from such compensation, awards and other payments any reasonable expenses incurred by Lender in the collection and settlement thereof, including, without limitation, attorneys' fees and expenses. The remaining amount is referred to herein as the "Net Award Proceeds". Lender is hereby authorized, at its option, to commence, appear in and prosecute, in its own name or in the name of Borrower, any action or proceeding relating to any condemnation, and to settle or compromise any claim in connection therewith. Lender shall not be liable to Borrower for any failure to collect any amount in connection with any such proceeding regardless of the cause of such failure.

1.12 Restoration. If all or any part of the Mortgaged Property shall be damaged or destroyed by fire or other casualty or shall be damaged or taken through the exercise of the power of eminent domain or other cause, and if Lender makes the Net Insurance Proceeds or the Net Award Proceeds (in either event, the "Proceeds") available to Borrower pursuant to clause (ii) of Section 1.13, Borrower shall promptly and with all due diligence restore and repair the Mortgaged Property whether or not the Proceeds are sufficient to pay the cost of such restoration or repair, provided that, in the event of a taking, if the portion of the Mortgaged Property taken is so extensive as to make restoration impractical, as reasonably determined by Lender, Borrower shall not be obligated to restore. Lender may require that all plans and specifications for such restoration or repair be submitted to and approved by Lender in writing prior to commencement of the work, but said plans and specifications shall be deemed acceptable to Lender if they are substantially the same as the original plans and specifications. Lender may require evidence of the estimated cost of completion of such restoration or repair satisfactory to Lender and, thereafter, such architect's certificates, waivers of lien, contractors' sworn statements, title insurance endorsements, plats of

survey and other evidence of cost, payment and performance relating to such restoration or repair work which is satisfactory to Lender.

1.13 Application of Insurance Proceeds. At Lender's election, to be exercised by written notice to Borrower within thirty (30) days following Lender's unrestricted receipt in cash or the equivalent thereof of the Proceeds, the entire amount of the Proceeds shall be either (i) applied to the amounts outstanding under the Note and in such order and manner as Lender may elect, or (ii) made available to Borrower on the terms and conditions set forth in this Section to finance the cost of restoration or repair, with any excess to be applied to the amounts outstanding under the Note in the inverse order of their maturity. Notwithstanding the foregoing, if there is sufficient time, as reasonably determined by Lender, to substantially complete restoration or repair prior to the Maturity Date (as defined in the Loan Agreement) and the aggregate amount of the Proceeds shall not exceed the lesser of Four Million Dollars (\$4,000,000.00) or ten percent (10%) of the outstanding principal balance under the Note, and if no Event of Default exists at the time of Lender's election, then Lender must elect the option set forth in clause (ii) of the preceding sentence. If the amount of the Proceeds to be made available to Borrower pursuant to this Section is less than the cost of the restoration or repair as estimated by Lender at any time prior to completion thereof, Borrower shall cause to be deposited with Lender or an Affiliate of Lender, as designated by Lender, the amount of such deficiency within thirty (30) days after Lender's written request therefor (but in no event later than the commencement of the work) and Borrower's deposited funds shall be disbursed prior to the Proceeds. If Borrower is required to deposit funds under this Section, the deposit of such funds shall be a condition precedent to Lender's obligation to disburse the Proceeds held by Lender hereunder. The amount of the Proceeds which is to be made available to Borrower, together with any deposits made by Borrower hereunder, shall be held by Lender to be disbursed from time to time to pay the cost of repair or restoration either, at Lender's option, to Borrower or directly to the contractors, subcontractors, material suppliers and other persons entitled to payment in accordance with and subject to such reasonable conditions to disbursement as Lender may impose to assure that the work is fully completed in a good and workmanlike manner and paid for fully so that no liens or claims may arise by reason thereof. If Lender requires mechanics' and materialmen's lien waivers, such waivers shall be deposited with an escrow trustee acceptable to Lender pursuant to a construction loan escrow agreement satisfactory to Lender. No payment made to a contractor, subcontractor or materialman prior to final completion of the repair or restoration shall exceed ninety percent (90%) of the value of the work or materials performed or supplied by such contractor, subcontractor or materialman from time to time. Lender may commingle any such funds held by it with its other general funds. Lender shall not be obligated to pay interest in respect of any such funds held by it, nor shall Borrower be entitled to a credit against any amounts outstanding under the Note except and to the extent the funds are applied thereto pursuant to this Section. Without limitation of any of the foregoing, Lender shall have the right at all times to apply such funds to the cure of any Event of Default or the performance of any obligations of Borrower hereunder or under any of the other Loan Documents.

1.14 Governmental Authority Payments. Borrower agrees with respect to the collateral described in Granting Clauses J and K hereof (the "Governmental Authority Payments") as follows: (i) that Borrower shall, at Borrower's sole expense, promptly take all actions necessary to obtain all proceeds to which Borrower is entitled in connection with the Governmental Authority Payments, including, without limitation, the filing of applications or claims and the prosecution of appeals or litigation, if reasonably necessary and cost effective, (ii) that, in the event of an Event of Default by Borrower under this Mortgage, Borrower shall direct the payor with regard to any of the Governmental Authority Payments to remit same directly to Lender when due, (iii) that Borrower shall forward promptly to Lender all notices and correspondence relating in any manner to any of the Governmental Authority Payments and any proceeds received by Borrower in connection with any of the Governmental Authority Payments, (iv) that the proceeds of any of the Governmental Authority Payments received by Lender shall be applied toward the repayment of the Note in a

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manner determined by Lender in its sole discretion or, at the request of Borrower and with the consent of Lender, said proceeds shall be deposited by Borrower in a secured deposit account maintained with Lender or an Affiliate of Lender, as designated by Lender, and applied from time to time toward the payment of any expenses relating to the Mortgaged Property, in a manner determined by Lender in its sole discretion, and (v) that, in the event of an Event of Default by Borrower under this Mortgage, Lender shall be and hereby is appointed as Borrower's agent with respect to any of the Governmental Authority Payments, and in that capacity Lender shall have the right to take all such actions that Lender deems necessary and expedient in order to obtain all proceeds to which Borrower is entitled with respect to any of the Governmental Authority Payments.

1.15 General Care of the Property. Borrower shall preserve and maintain the Mortgaged Property in good condition and repair, shall not commit or suffer any waste thereof, and shall keep the same in a clean, orderly and attractive condition. Borrower shall not do or suffer to be done anything which will increase the risk of fire or of any other hazard to the Mortgaged Property or any part thereof. Except as contemplated by the Loan Documents, no buildings, structures, improvements, fixtures, personal property or other part of the Mortgaged Property shall be removed, added to, demolished or altered structurally to any extent or altered non-structurally in any material respect without the prior written consent of Lender. Borrower shall promptly comply, and cause the Mortgaged Property and the occupants or users thereof to comply, with all present and future laws, ordinances, orders, rules and regulations and other requirements of any governmental authority affecting the Mortgaged Property or any part thereof or the use or occupancy thereof, subject to Borrower's right to contest said laws, ordinances, orders, rules and regulations in accordance with applicable law, and any applicable terms and conditions of any of the Loan Documents. Lender and its representatives are hereby authorized to enter upon and inspect the Mortgaged Property at any time during normal business hours during the term of this Mortgage.

1.16 Leases and Other Agreements Affecting the Mortgaged Property. Borrower shall duly and punctually perform all terms, covenants, conditions and agreements binding upon Borrower or the Mortgaged Property under any lease or any other agreement or instrument of any nature whatsoever which involves or affects the Mortgaged Property or any part thereof and which is binding on Borrower. Borrower represents and warrants that Borrower or the Title Company has heretofore furnished Lender with true and complete copies of all such leases, agreements and instruments existing on the date of this Mortgage. Borrower agrees to furnish Lender with executed copies of all leases hereafter entered into with respect to all or any part of the Mortgaged Property. Borrower shall not, without the express written consent of Lender, enter into any new lease or modify, surrender, terminate, extend or renew, either orally or in writing, any lease now existing or hereafter created upon the Mortgaged Property or any part thereof, nor shall Borrower permit an assignment or sublease without the express written consent of Lender. If Lender so requests, Borrower shall cause the tenant under each or any of such leases to enter into subordination and attornment agreements with Lender which are satisfactory to Lender. Borrower shall not accept payment of advance rents or security deposits equal, in the aggregate, to more than one month's rent without the express written consent of Lender. In order to further secure payment of the Note and the observance, performance and discharge of Borrower's obligations hereunder, Borrower hereby assigns, transfers and sets over to Lender all of Borrower's right, title and interest in, to and under all of the leases now or hereafter affecting the Mortgaged Property or any part thereof and in and to all of the rents, issues, profits, revenues, awards and other benefits now or hereafter arising from the Mortgaged Property or any part thereof. Unless and until an Event of Default occurs, Borrower shall be entitled to collect the rents, issues, profits, revenues, awards and other benefits of the Mortgaged Property (except as otherwise provided in this Mortgage) as and when they become due and payable. Lender shall be liable to account only for rents, issues, profits, revenues, awards and other benefits of the Mortgaged Property actually received by Lender pursuant to any provision of this Mortgage.

1.17 Impairment of Security. Without limitation of any other provision hereof, Borrower shall not assign, in whole or in part, the rents, issues, profits, revenues, awards and other benefits from the Mortgaged Property without the prior written consent of Lender; any such assignment made without Lender's prior written consent shall be null and void and of no force and effect and the making thereof shall constitute an Event of Default under this Mortgage. Without limitation of the foregoing, Borrower shall not in any other manner impair the security of this Mortgage for the payment of the indebtedness secured hereby.

1.18 Prohibition of Further Encumbrance. Borrower shall not, without the prior written consent of Lender, further mortgage, hypothecate, pledge or otherwise encumber, whether by operation of law or otherwise, any interest in the Mortgaged Property. Any such encumbrance made without Lender's prior written consent shall be null and void and of no force or effect, and any mere attempt to create or cause an encumbrance in default of the terms hereof shall constitute an Event of Default under this Mortgage.

1.19 Prohibition of Transfer. Borrower shall not, without the prior written consent of Lender, sell, assign or otherwise transfer, whether directly or indirectly, by operation of law or otherwise, all or any portion of any interest in the Mortgaged Property other than to purchasers of individual Homes in the ordinary course of business and except as otherwise expressly described in the Loan Agreement. Any such transfer made without Lender's prior written consent shall be null and void and of no force and effect, and any mere attempt to create or cause a transfer in default of the terms hereof shall constitute an Event of Default under this Mortgage.

1.20 Further Assurances; After Acquired Property. At any time and from time to time, upon request from Lender, Borrower shall make, execute and deliver, or cause to be made, executed and delivered, to Lender and, where appropriate, to cause to be recorded or filed, or both, and from time to time thereafter to be re-recorded or refiled, or both, at such time and in such offices and places as shall be deemed desirable by Lender, any and all such other and further mortgages, security agreements, financing statements, continuation statements, instruments of further assurances, certificates and other documents as may, in the opinion of Lender, be necessary or desirable in order to effectuate, complete or perfect, or to continue and preserve (i) the obligations of Borrower under this Mortgage, the Note and the other Loan Documents, and (ii) the lien and security interest of this Mortgage as a first and prior lien and security interest upon all of the Mortgaged Property, whether now or hereafter acquired by Borrower. Upon any failure by Borrower to so make, execute and deliver each of such documents after written demand, Lender may make, execute, record, file, re-record and refile, as appropriate, any and all such mortgages, security agreements, financing statements, continuation statements, instruments, certificates and documents for and in the name of Borrower. The lien and security interest hereof will automatically attach, without further act, to all after-acquired property owned by Borrower attached to or used in connection with the operation of the Mortgaged Property or any part thereof.

ARTICLE 2

BORROWER'S DEFAULT

2.1 Borrower's Defaults and Lender's Remedies.

(a) Events of Default. Each of the following shall constitute an "Event of Default" under this Mortgage:

- (i) Borrower fails to pay, within ten (10) days after the date due (which in the case of any payment made on account of a Letter of Credit, as defined in the Loan Agreement, shall be the date Lender demands repayment thereof), any principal of or installment of interest on the

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Note, or fails to contribute or deposit any Borrower's Funds, as defined in the Loan Agreement, as and when required under the Loan Agreement; or

- (ii) Borrower fails to pay, when due, any amount payable under this Mortgage other than principal or interest, and such failure continues for a period of five (5) days after notice thereof from Lender to Borrower; or
- (iii) Borrower fails to keep or perform any of the agreements, undertakings, obligations, covenants or conditions under this Mortgage not expressly referred to in another clause of this Section and (A) such failure continues for a period of thirty (30) days after notice thereof from Lender to Borrower, or (B) if such failure cannot, because of its nature, be cured within said thirty (30) day period, then, if Borrower commences curing such failure within said thirty (30) day period and diligently continues such cure, such failure continues for an additional sixty (60) day period after an additional notice; or
- (iv) any "Event of Default" occurs, as defined under any of the Loan Documents, including, without limitation, the Loan Agreement; or
- (v) any representation, warranty or certification made in this Mortgage by Borrower or otherwise made in writing in connection with or as contemplated by this Mortgage or any of the other Loan Documents by Borrower shall be or become materially incorrect or false, or any material representation to Lender by Borrower as to the financial condition or credit standing of Borrower is or proves to be false or misleading; however, if any of the foregoing occurs through no fault of Borrower, then such failure must continue for a period of 30 days after the occurrence thereof, or if such failure cannot, because of its nature, be cured within said 30 day period, then, if Borrower commences curing such failure within said 30-day period and diligently continues such cure, such failure must continue for an additional 60-day period after the occurrence thereof in order to be considered an Event of Default hereunder; or
- (vi) the recording of any claim of lien against any portion of the Mortgaged Property and the continuance of such claim of lien for thirty (30) days without discharge, satisfaction or provision for payment being made by Borrower in a manner reasonably satisfactory to Lender; or the condemnation, seizure or appropriation of, or occurrence of an uninsured casualty with respect to any material portion of the Mortgaged Property; or the sequestration or attachment of, or any levy or execution upon any portion of the Mortgaged Property, any other collateral provided by Borrower under any of the Loan Documents, or any substantial portion of the other assets of Borrower, which sequestration, attachment, levy or execution is not released, expunged or dismissed prior to the earlier of thirty (30) days or the sale of the assets affected thereby; or
- (vii) the filing of a petition by Borrower for relief under the Bankruptcy Code (as defined in the Loan Agreement), or under any other present

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or future state or federal law regarding bankruptcy, reorganization or other debtor relief law; the filing of any pleading or an answer by Borrower in any involuntary proceeding under the Bankruptcy Code or other debtor relief law which admits the jurisdiction of the court or the petition's material allegations regarding Borrower's insolvency; a general assignment by Borrower for the benefit of creditors; or Borrower applying for, or the appointment of, a receiver, trustee, custodian or liquidator of Borrower or any property of Borrower; or

- (viii) the failure of Borrower to effect a full dismissal of any involuntary petition under the Bankruptcy Code or any other debtor relief law that is filed against Borrower or in any way restrains or limits Borrower or Lender regarding the Loan (as defined in the Loan Agreement), or all or any portion of the Mortgaged Property, prior to the earlier of the entry of any court order granting relief sought in such involuntary petition, or sixty (60) days after the date of filing of such involuntary petition; or
- (ix) the failure at any time of the Mortgage to be a valid first lien upon the Mortgaged Property or any portion thereof, other than as a result of any release or reconveyance of the Mortgage with respect to all or any portion of the Mortgaged Property pursuant to the terms and conditions of the Loan Agreement; or
- (x) the Mortgaged Property or any part thereof or any interest therein is sold, conveyed, transferred, assigned, disposed of, or is further encumbered, or an agreement for any of the foregoing is entered into, without the prior written consent of Lender, except for Purchase Contracts (as defined in the Loan Agreement) entered into in accordance with the express provisions of the Loan Agreement; or
- (xi) Borrower enters into any secondary or additional financing agreements or arrangements of any kind whatsoever secured, in whole or in part, by all or any part of or interest in the Mortgaged Property; or
- (xii) any order or decree is entered by any court of competent jurisdiction directly or indirectly enjoining or prohibiting Lender or Borrower from performing any of their obligations under this Mortgage or any of the Loan Documents, and such order or decree is not vacated, and the proceedings out of which such order or decree arose are not dismissed, within sixty (60) days after the granting of such decree or order.

(b) Lender's Remedies. Upon the happening of any Event of Default, Lender shall have the right, if such Event of Default shall then be continuing, in addition to all the remedies conferred upon Lender by law or equity or the terms of any Loan Document, to do any or all of the following, concurrently or successively, without notice to Borrower:

- (i) declare the Note to be, and it shall thereupon become, immediately due and payable without presentment, demand, protest or notice of any kind, all of which are hereby expressly waived, anything contained herein or in the Note to the contrary notwithstanding; or

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- (ii) terminate Lender's obligations under the Loan Documents to extend credit of any kind or to make any disbursement, whereupon the commitment and obligation of Lender to extend credit or to make disbursements shall terminate; or

- (iii) enter upon and take possession of the Mortgaged Property and do anything necessary or desirable to complete construction of any improvements contemplated by the Loan Documents, to fulfill the obligations of Borrower under the Loan Documents and to sell, manage, maintain, repair and protect the Mortgaged Property, and, without restricting the generality of the foregoing and for the purposes aforesaid, Borrower hereby authorizes Lender (A) to pay, settle or compromise all existing bills and claims which may be liens or security interests, or to avoid such bills and claims becoming liens or security interests against the Mortgaged Property or as may be necessary or desirable for the clearance of title or otherwise, (B) to use any funds of Borrower, including, without limitation, any loan balance which might not have been disbursed and customer deposits, to the extent permitted by law, for the purpose of completing said improvements, (C) to make such changes to the plans and specifications for said improvements as Lender may deem desirable to complete same which are not inconsistent with sound marketing practices, the Declaration (as defined in the Loan Agreement) or any Purchase Contracts (as defined in the Loan Agreement) which are then in full force and effect, (D) to execute all applications and certificates which may be required to carry out the intent and purposes hereof, (E) to employ such contractors, subcontractors, architects and others as Lender may deem appropriate for the purpose of completing said improvements, (F) to make all necessary and proper maintenance, repairs, renewals, replacements, additions, betterments and improvements thereto and thereon and purchase or otherwise acquire additional fixtures, personalty or other property for the purpose of completing said improvements, (G) to insure or keep said improvements insured, (H) to manage and operate the Mortgaged Property and exercise all the rights and powers of Borrower to the same extent as Borrower could in its own name or otherwise with respect to the same, (I) to do any and every act which Borrower might do, including, without limitation, to enter into leases of any portion of the Mortgaged Property and to enter into contracts for the sale of, and to sell and convey title to, the Mortgaged Property or any portion thereof, and Borrower agrees to execute and deliver such contracts, deeds, leases and other instrument as may be required by Lender or Lender's title company to carry out the intent of this Section, (J) to prosecute or defend any and all actions or proceedings involving the Mortgaged Property or any fixtures, equipment or other installations thereon, and (K) to exclude Borrower and the representatives of Borrower from the Mortgaged Property or any portion thereof, and Lender shall have joint access with Borrower to the books and accounts of Borrower; furthermore, in connection with an exercise by Lender of the foregoing remedy:
 - (1) Lender and its representatives shall be entitled to the entry, possession and use contemplated herein upon demand and

without the consent of any party and without any legal process or other condition precedent whatsoever; however, if Borrower shall for any reason fail to surrender or deliver the Mortgaged Property or any part thereof after such demand by Lender, Lender may obtain a judgment or decree conferring on Lender the right to immediate possession or requiring the delivery of immediate possession of all or part of the Mortgaged Property to Lender, and Borrower hereby specifically consent to the entry of such judgment or decree;

- (2) Borrower acknowledges that any denial of such entry, possession and use by Lender will cause injury and damage to Lender and agrees that Lender may forthwith sue for any remedy to enforce the immediate enjoyment of such right, and Borrower hereby waives the posting of any bond as a condition for granting such remedy; and
- (3) Borrower shall pay to Lender, upon demand, all expenses (including, without limitation, reasonable attorneys' fees and expenses) of obtaining such judgment or decree or of otherwise seeking to enforce its rights under this Mortgage or any of the other Loan Documents; and all such expenses shall, until paid, be secured by the Loan Documents and shall bear interest at the Default Rate described in the Loan Agreement (the "Default Rate"); or
- (iv) offset and apply any indebtedness now or hereafter owing from Lender to Borrower (including, without limitation, any amounts on deposit in any demand time, savings, passbook, certificate of deposit or like account maintained by Borrower with Lender or any Affiliate of Lender) against any and all amounts due from Borrower to Lender hereunder or under the other Loan Documents; or
- (v) collect and receive all the rents, issues, profits and revenues of the Mortgaged Property, including those past due as well as those accruing thereafter, and after deducting (A) all expenses of taking, holding, managing and operating the Mortgaged Property (including, without limitation, compensation for the services of all persons employed for such purposes), (B) the cost of all such maintenance, repairs, renewals, replacements, additions, betterments, improvements, purchases and acquisitions, (C) the cost of such insurance, (D) such taxes, assessments and other similar charges as Lender may determine to pay, (E) other proper charges upon the Mortgaged Property or any part thereof, and (F) Lender's attorneys' fee and expenses.

2.2 Protective Advances. If an Event of Default occurs, Lender may (but shall in no event be required to) cure any such Event of Default and any amounts expended by Lender in so doing, including, without limitation, all funds furnished by Lender pursuant to Section 2.1(b)(iii) above, shall (i) be deemed advanced by Lender under an obligation to do so regardless of the identity of the person or persons to whom such funds are furnished, (ii) constitute additional advances hereunder, the payment of which is additional indebtedness evidenced by the Note, and (iii) become due and owing, at Lender's demand, with interest accruing from the date of disbursement thereof until fully paid at the Default Rate.

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2.3 Other Remedies. If any Event of Default shall occur and be continuing, Lender may, in addition to any other rights and remedies hereunder, exercise any and all remedies provided in any of the other Loan Documents.

2.4 No Lender Liability. To the extent permitted by law, Lender shall have no liability for any loss, damage, injury, cost or expense resulting from any action or omission by it, or any of its representatives, which was taken, omitted or made in good faith.

2.5 Lender's Attorneys' Fees. In case of any Event of Default hereunder, Borrower shall pay Lender's reasonable attorneys' fees and expenses in connection with the enforcement of this Mortgage or any of the other Loan Documents.

2.6 Receiver. If an Event of Default shall have occurred and be continuing, Lender, upon application to a court of competent jurisdiction, shall be entitled as a matter of strict right without notice and without regard to the occupancy or value of any security for the indebtedness or the insolvency of any party bound for its payment to the appointment of a receiver to take possession of and to operate the Mortgaged Property and to collect and apply the rents, issues, profits, revenues, awards and other benefits thereof. The receiver shall have all of the rights and powers to the fullest extent permitted by law. Borrower shall pay to Lender upon demand all of Lender's costs and expenses, including, without limitation, receiver's fees and expenses and attorneys' fees and expenses, incurred pursuant to this Section plus interest thereon accruing at the Default Rate, and all such amounts shall be additional indebtedness secured hereby.

2.7 Lender's Power of Enforcement. If an Event of Default shall have occurred and be continuing, Lender may, either with or without entry or taking possession as herein provided or otherwise, proceed by suit or suits at law or in equity or by any other appropriate proceeding or remedy (i) to enforce payment of the Note or the performance of any term, covenant, condition or agreement of this Mortgage or any other right, (ii) to foreclose this Mortgage and to sell the Mortgaged Property as an entirety or otherwise, as Lender may determine, and (iii) to pursue any other remedy available to it, including, without limitation, any remedy available to it under any of the Loan Documents, all as Lender shall deem most effectual for such purposes. Lender may take action either by such proceedings or by the exercise of its powers with respect to entry or taking possession, as Lender may determine. Lender may elect to pursue any one or more or all of the foregoing.

2.8 Purchase by Lender. Upon any foreclosure sale, Lender may bid for and purchase the Mortgaged Property and shall be entitled to apply all or any part of the indebtedness secured hereby as a credit to the purchase price.

2.9 Fees and Expenses; Application of Proceeds of Sale. In any suit to foreclose the lien hereof, there shall be allowed and included as additional indebtedness secured hereby in the decree for sale all costs and expenses which may be paid or incurred by or on behalf of Lender or holder of the Note for reasonable attorneys' fees and expenses, appraiser's fees and expenses, receiver's fees and expenses, insurance, taxes, outlays for documentary and expert evidence, costs for preservation of the Mortgaged Property, stenographer's charges, publication cost and costs of procuring all abstracts of title, title searches and examinations, Certificates of Title issued by the Registrar of Titles (Torrens certificates), and similar data and assurances with respect to title as Lender or holder of the Note may deem to be 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 Mortgaged Property, or for any other reasonable purpose. The amount of any such costs and expenses which may be paid or incurred after the decree for sale is entered may be estimated and the amount of such estimate may be allowed and included as additional indebtedness secured hereby in the decree for sale. In the event of a foreclosure sale of the Mortgaged Property, the proceeds of said sale shall be applied first to the expenses of such sale

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and of all proceedings in connection therewith, including, without limitation, reasonable attorneys' fees and expenses, then to insurance premiums, liens, assessments, taxes and charges, including, without limitation, utility charges, then to payment of the outstanding principal balance of the indebtedness secured hereby, then to the accrued interest on all of the foregoing, and, finally, the remainder, if any, shall be paid to Borrower.

2.10 Waiver of Appraisal, Valuation, Stay, Extension and Redemption Laws. Borrower agrees, to the fullest extent permitted by law, that if an Event of Default occurs hereunder, neither Borrower nor anyone claiming through or under them shall or will set up, claim or seek to take advantage of any appraisal, valuation, stay, extension, homestead or redemption laws now or hereafter in force, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, or the absolute sale of the Property hereby conveyed, or the final and absolute putting into possession thereof, immediately after such sale, of the purchasers thereat, and Borrower, for itself and all who may at any time claim by, through or under them, hereby waives and releases, to the fullest extent permitted by law, the benefit of all such laws (including, without limitation, all rights under and by virtue of the homestead exemption laws and redemption laws of the State of Illinois) and any and all rights to have the assets comprised in the security intended to be created hereby marshalled upon any foreclosure of the lien hereof.

2.11 Leases. Lender, at its option, is authorized to foreclose this Mortgage subject to the rights of any tenants of the Mortgaged Property, and the failure to make such tenants parties to any such foreclosure proceedings and to foreclose their rights will not be, nor be asserted to be by Borrower, a defense to any proceedings instituted by Lender to collect the sums secured hereby, or any deficiency remaining unpaid after the foreclosure sale of the Mortgaged Property.

2.12 Discontinuance of Proceedings and Restoration of the Parties. In case Lender shall have proceeded to enforce any right, power or remedy under this Mortgage by foreclosure, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to Lender, then and in every such case, Borrower and Lender shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of Lender shall continue as if no such proceeding had been taken.

2.13 Remedies Cumulative. No right, power or remedy conferred upon or reserved to Lender by this Mortgage is intended to be exclusive of any other right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder or now or hereafter existing at law or in equity or by statute.

2.14 Suits to Protect the Mortgaged Property. Upon the occurrence of an Event of Default hereunder, Lender shall have the power (i) to institute and maintain such suits and proceedings as it may deem expedient to prevent any impairment of the Mortgaged Property by any acts which may be unlawful or in violation of this Mortgage; (ii) to preserve or protect its interest in the Mortgage Property and in the rents, issues, profits, revenues, awards and other benefits arising therefrom; and (iii) to restrain the enforcement of or compliance with any legislation or other governmental enactment, regulation, rule, order or other requirement that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with such enactment, regulation, rule, order or other requirement would impair the security hereunder or be prejudicial to the interest of Lender, and all costs and expenses incurred by Lender in connection therewith (including, without limitation, attorneys' fees and expenses) shall be paid by Borrower to Lender on demand with interest at the Default Rate, and all such amounts shall be additional indebtedness secured hereby.

2.15 Lender May File Proofs of Claim. In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other proceedings affecting Borrower, its creditors or their property, Lender, to the extent permitted by law, shall be entitled to

file such proofs of claim and other documents as may be necessary or advisable in order to have the claims of Lender allowed in such proceedings for the entire amount due and payable by Borrower under this Mortgage at the date of the institution of such proceedings and for any additional amount which may become due and payable by Borrower hereunder after such date.

ARTICLE 3

ASSIGNMENT OF LEASES AND RENTS

3.1 Assignment. For ten dollars (\$10.00) and other good and valuable consideration, including the indebtedness evidenced by the Note, the receipt and sufficiency of which are hereby acknowledged, Borrower has granted, bargained, sold and conveyed, and by these presents does grant, bargain, sell and convey absolutely unto Lender the Leases and the Rents, subject only to the hereinafter referenced License, to have and to hold the Leases and the Rents unto Lender, forever, and Borrower does hereby bind itself, its successors and assigns to warrant and forever defend the title to the Leases and the Rents unto Lender against every person whomsoever lawfully claiming or to claim the same or any part thereof by or through Borrower; provided, however, if Borrower shall pay or cause to be paid and shall perform and discharge or cause to be performed and discharged, the indebtedness hereby secured on or before the date same is to be paid, performed and discharged, then this assignment shall terminate and be of no further force and effect, and all rights, titles and interests conveyed pursuant to this assignment shall become revested in Borrower without the necessity of any further act or requirement by Borrower or Lender.

3.2 Limited License. Lender hereby grants to Borrower a limited license (the "License"), nonexclusive with the rights of Lender reserved in this Mortgage, to exercise and enjoy all incidences of ownership of the Leases and the Rents, including specifically but without limitation the right to collect, demand, sue for, attach, levy, recover and receive the Rents, and to give proper receipts, releases and acquittances therefor. Borrower hereby agrees to receive all Rents and hold the same as a trust fund to be applied, and to apply the Rent so collected, to the payment, satisfaction and discharge of the indebtedness described in the Note as and when the same shall become due and payable. Thereafter, Borrower may use the balance of the Rent collected in any manner not inconsistent with the Loan Documents.

3.3 Enforcement of Leases. Subject to and in accordance with the terms and conditions of Section 1.16 of this Mortgage, Borrower shall (a) duly and punctually perform and comply with any and all representations, warranties, covenants and agreements expressed as binding upon the landlord under any Lease, (b) maintain each of the Leases in full force and effect during the term thereof, (c) to the extent commercially reasonable, appear in and defend any action or proceeding in any manner connected with any of the Leases, (d) deliver to Lender copies of executed counterparts of all Leases and (e) deliver to Lender such further information, and execute and deliver to Lender such further assurances and assignments, with respect to the Leases as Lender may from time to time reasonably request. Without Lender's prior written consent, Borrower shall not materially discount any future accruing Rent, or assign or grant a security interest in or to the License or any of the Leases.

3.4 Suits; Attornment. Subject to the License and the provisions of Section 2.1(b) of this Mortgage, Lender hereby reserves and may exercise the right and Borrower hereby acknowledges that Lender has the right (but not the obligation), upon the occurrence and during the continuance of an Event of Default, to collect, demand, sue for, attach, levy, recover and receive any Rent, to give proper receipts, releases and acquittances therefor and, after deducting the expenses of collection, to apply the net proceeds thereof as a credit upon any portion of the indebtedness secured hereby selected by Lender, notwithstanding that such portion selected may not then be due and payable or that such portion is otherwise adequately secured. Borrower

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hereby authorizes and directs any lessee of the Mortgaged Property to deliver any such payment to, and otherwise to atorn all other obligations under the Leases direct to, Lender. Borrower hereby ratifies and confirms all that Lender shall do or cause to be done by virtue and in compliance with the terms of this assignment. No lessee shall be required to inquire into the authority of Lender to collect any Rent, and any lessee's obligation to Borrower shall be absolutely discharged to the extent of its payment to Lender.

3.5 Remedies. Upon or at any time after the occurrence of any Event of Default, Lender, at its option and in addition to the remedies provided in this Mortgage, shall have the complete, continuing and absolute right, power and authority to terminate the License solely by the giving of written notice of termination to Borrower. Upon Lender's giving of such notice, the License shall immediately terminate without any further action being required of Lender. Thereafter, as long as any Event of Default shall exist, Lender shall have the exclusive right, power and authority to take any and all action as described above, regardless of whether a foreclosure sale of the remainder of the Mortgaged Property has occurred under this Mortgage, or whether Lender has taken possession of the remainder of the Mortgaged Property or attempted to do any of the same. No action referred to above or in this section taken by Lender shall constitute an election of remedy. Notwithstanding any term to the contrary herein, in the event of such a termination of Borrower's License, such License shall be reinstated when and if the applicable Event of Default shall have been cured or waived.

3.6 No Obligation of Lender. Neither the acceptance by Lender of the assignment granted in this Mortgage, nor the granting of any other right, power, privilege or authority in this Mortgage, nor the exercise of any of the aforesaid, shall (a) prior to the actual taking of physical possession and operational control of the Mortgaged Property by Lender, be deemed to constitute Lender as a "mortgagee in possession" or (b) at any time thereafter, obligate Lender (i) to appear in or defend any action or proceeding relating to the Leases, the Rents or the remainder of the Mortgaged Property, (ii) to take any action hereunder, (iii) to expend any money or incur any expenses or perform or discharge any obligation, duty or liability with respect to any Lease, (iv) to assume any obligation or responsibility for any deposits which are not physically delivered to Lender or (v) for any injury or damage to person or property sustained in or about the Mortgaged Property, provided that nothing herein shall relieve Lender of liability for the willful misconduct or gross negligence or omissions of Lender.

3.7 Borrower's Indemnities. So long as the License is in effect, Borrower shall indemnify and hold Lender harmless from and against any and all liability, loss, cost, damage or expense which Lender incurs under or by reason of this assignment, or for any action taken by Lender hereunder in accordance with the terms hereof, or by reason of or in defense of any and all claims and demands whatsoever which are asserted against Lender arising out of the Leases. In the event Lender incurs any such liability, loss, cost, damage or expense, the amount thereof together with all reasonable attorneys' fees and interest thereon at the Default Rate specified in the Note shall be payable by Borrower to Lender, within ten (10) days after demand by Lender, and shall be secured by this Mortgage, provided that Borrower shall have no duty or liability hereunder to indemnify and hold Lender harmless from matters resulting from the willful misconduct or gross negligence of Lender.

3.8 Limitation. Notwithstanding anything to the contrary contained herein or in the other Loan Documents, the provisions of this Article 3 shall not apply to that part of the Mortgaged Property known as the Retail Portion (as defined in the Loan Agreement) from and after the date that said Retail Portion is conveyed by Borrower.

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ARTICLE 4

MISCELLANEOUS

4.1 Time of the Essence. Time is of the essence of this Mortgage.

4.2 Severability. Any provision of this Mortgage which is unenforceable or invalid or contrary to law, or the inclusion of which would adversely affect the validity, legality or enforcement of this Mortgage, shall be of no effect and, in such case, all the remaining terms and provisions of this Mortgage shall subsist and be fully effective according to the tenor of this Mortgage the same as though any such invalid portion had never been included herein. Notwithstanding any of the foregoing to the contrary, if any provisions of this Mortgage or the application thereof are held invalid or unenforceable only as to particular persons or situations, the remainder of this Mortgage, and the application of such provision to persons or situations other than those to which it shall have been held invalid or unenforceable, shall not be affected thereby, but shall continue valid and enforceable to the fullest extent permitted by law.

4.3 Notices. Any notice which either party hereto may be required or may desire to give hereunder shall be deemed to have been given if in writing and if delivered personally, or if mailed, postage prepaid, by United States registered or certified mail, return receipt requested, or if delivered by a responsible overnight courier, addressed:

if to Borrower: c/o Concord Development Corporation of Illinois
1540 East Dundee Road, Suite 350
Palatine, Illinois 60067
Attn: Mr. Wayne M. Moretti

with a copy to: c/o Concord Development Corporation of Illinois
1540 East Dundee Road, Suite 350
Palatine, Illinois 60067
Attn: Deborah Tyler Haddad, Esq.

and a copy to: Piper Marbury Rudnick & Wolfe
203 N. LaSalle St., Suite 1300
Chicago, Illinois 60601
Attn: Bruce D. Loring, Esq.

in the case of Lender to: Wells Fargo Bank, National Association
225 West Wacker Drive, Suite 2550
Chicago, Illinois 60606
Attn: Mr. Myles Milek

with a copy to: Wells Fargo Bank, National Association
Real Estate Group
420 Montgomery Street, Mac 0101-068
San Francisco, California 94163
Attn: Chief Credit Officer

and a copy to: Barack Ferrazzano Kirschbaum Perlman & Nagelberg
333 W. Wacker Drive, Suite 2700
Chicago, Illinois 60606
Attn: Marc M. Jacobs, Esq.

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or to such other address or addresses as the party to be given notice may have furnished in writing to the party seeking or desiring to give notice, as a place for the giving of notice, provided that no change in address shall be effective until seven (7) days after being given to the other party in the manner provided for above. Any notice given in accordance with the foregoing shall be deemed given when delivered personally or, if mailed, three (3) business days after it shall have been deposited in the United States mails as aforesaid or, if sent by overnight courier, the business day following the date of delivery to such courier.

4.4 Documentation. All documents and other matters required by any of the provisions of this Mortgage to be submitted or furnished to Lender shall be in form and substance satisfactory to Lender.

4.5 Additional Assurances. Borrower agrees that, at any time or from time to time, upon the written request of Lender, Borrower will execute all such further documents and do all such other acts and things as Lender may request to effectuate the transaction herein contemplated.

4.6 Choice of Law. This Mortgage shall be governed by and construed in accordance with the internal laws of the State of Illinois, except that, with respect to any portion of the Mortgaged Property located outside of Illinois, the laws of the state in which such portion of the Mortgaged Property is located shall be applicable thereto but only to the extent required for Lender to exercise its rights and remedies in order to realize upon its interest in the Mortgaged Property. Nothing herein shall be deemed to limit any rights, powers or privileges which Lender may have pursuant to any law of the United States of America or any rule, regulation or order of any department or agency thereof and nothing herein shall be deemed to make unlawful any transaction or conduct by Lender which is lawful pursuant to, or which is permitted by, any of the foregoing.

4.7 No Third Party Beneficiary. This Mortgage is made for the sole benefit of Borrower and Lender, and no other person shall be deemed to have any privity of contract hereunder nor any right to rely hereon to any extent or for any purpose whatsoever, nor shall any other person have any right of action of any kind hereon or be deemed to be a third party beneficiary hereunder.

4.8 Interpretation. All references herein to a party's best knowledge shall be deemed to mean the best knowledge of such party based on all appropriate and thorough inquiry. Unless specified to the contrary herein, all references herein to an exercise of discretion or judgment by Lender, to the making of a determination or designation by Lender, to the application of Lender's discretion or opinion, to the granting or withholding of Lender's consent or approval, to the consideration of whether a matter or thing is satisfactory or acceptable to Lender, or otherwise involving the decision making of Lender, shall be deemed to mean that Lender shall decide unilaterally using its sole and absolute discretion or judgment. The terms "herein," "hereof," "hereunder" and any other similar terms used herein shall be deemed to refer to this Agreement in its entirety. Any reference contained herein to attorneys' or other fees and expenses shall be deemed to be to reasonable fees and expenses and to include all reasonable fees and expenses of any other experts or consultants (other than in-house and staff attorneys).

4.9 No Waiver.

(a) General Waiver Provisions. No waiver of any term, provision, condition, covenant or agreement herein contained shall be effective unless set forth in a writing signed by Lender, and any such waiver shall be effective only to the extent set forth in such writing. No failure by Lender to exercise or delay by Lender in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof, or the exercise of any other right or remedy provided by law. The rights and remedies provided in this Agreement are cumulative and not

exclusive of any right or remedy provided by law or equity. No notice or demand on Borrower in any case shall, in itself, entitle Borrower to any other or further notice or demand in similar or other circumstances or constitute a waiver of the rights of Lender to any other or further action in any circumstances without notice or demand.

(b) Specific Waiver Provisions. If Lender (i) grants forbearance or an extension of time for the payment of any sums secured hereby; (ii) takes other or additional security for the payment of any sums secured hereby; (iii) waives or does not exercise any right granted herein or in the Note or in any other document or instrument securing the Note; (iv) releases with or without consideration any of the Mortgaged Property from the lien of this Mortgage or any other security for the payment of the indebtedness secured hereby; (v) changes any of the terms, covenants, conditions or agreements of the Note or this Mortgage or in any other document or instrument securing the Note; (vi) consents to the filing of any map, plat or replat or condominium declaration affecting the Mortgaged Property; (vii) consents to the granting of any easement or other right affecting the Mortgaged Property; or (viii) makes or consents to any agreement subordinating the lien hereof; any such act or omission shall not release, discharge, modify, change or affect [except to the extent of the changes referred to in clause (v) above] the original liability under the Note, this Mortgage or any other obligation of Borrower or any subsequent purchaser of the Mortgaged Property or any part thereof, or any maker, co-signer, endorser, surety or guarantor; nor shall any such act or omission preclude Lender from exercising any right, power or privilege herein granted or intended to be granted in the event of any default then made or of any subsequent default, except to the extent expressly agreed to in writing by Lender, nor, except as otherwise expressly provided in an instrument or instruments executed by Lender, shall the lien of this Mortgage or the priority thereof be altered thereby, whether or not there are junior lienors and whether or not they consent to any of the foregoing.

(c) Sale or Transfer. In the event of the sale, assignment or other transfer, by operation of law or otherwise, of all or any part of the Mortgaged Property, Lender, without notice, is hereby authorized and empowered to deal with any such vendee or transferee with reference to the Mortgaged Property or indebtedness secured hereby, or with reference to any of the terms, covenants, conditions or agreements hereof, as fully and to the same extent as it might deal with the original parties hereto and without in any way releasing or discharging any liabilities, obligations or undertakings. The foregoing shall not limit the prohibition against transfer set forth in Section 1.18 hereof.

(d) Partial Releases. Without limitation of the foregoing, Lender hereby reserves the right to make partial release or releases of the Mortgaged Property, or of any other security held by Lender with respect to all or any part of the indebtedness secured hereby, without notice to, or the consent, approval or agreements of, other parties in interest, including junior lienors, which partial release or releases shall not impair in any manner the validity or priority of this Mortgage on the portion of said property not so released. Lender hereby agrees to make partial releases from the lien of this Mortgage from time to time upon the terms and conditions set forth in the Loan Agreement.

4.10 Security Agreement. This Mortgage shall be construed as a "Security Agreement" within the meaning of and shall create a security interest under the Uniform Commercial Code as adopted in Illinois, with respect to any part of the Mortgaged Property which constitutes fixtures or personal property. Lender shall have the rights with respect to such fixtures and personal property afforded to it by said Uniform Commercial Code in addition to, but not in limitation of, the other rights afforded Lender by this Mortgage or any of the other Loan Documents. This Mortgage shall also be effective from the date of its recording as a financing statement filed as a fixture filing with respect to all goods constituting part of the Mortgaged Property which are or are to become fixtures.

4.11 No Merger. It being the desire and the intention of the parties hereto that this Mortgage and the lien hereof do not merge in fee simple title to the Mortgaged Property, it is hereunder understood and agreed that, should Lender acquire any additional or other interests in or to said property or the ownership thereof, then, unless a contrary interest is manifested by Lender as evidenced by an appropriate document duly recorded, this Mortgage and the lien hereof shall not merge in the fee simple title, such that this Mortgage may be foreclosed as if owned by a stranger to the fee simple title.

4.12 Delivery of Summons, Etc. If any action or proceeding shall be instituted which (i) is intended to evict Borrower or recover possession of the Mortgaged Property or any part thereof, or (ii) could result in a money judgment for failure to pay any obligation relating to the Mortgaged Property or this Mortgage (which judgment would not be covered and fully paid by applicable insurance), Borrower, to the extent required under the Loan Agreement, shall immediately, upon service thereof on or by Borrower deliver, to Lender a true copy of each petition, summons, complaint, notice of motion, order to show cause and all other process, pleadings and papers, however designated, served in any such action or proceeding.

4.13 Successors and Assigns. This Mortgage shall be binding upon Borrower and its legal representatives, successors and assigns.

4.14 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 Lender any rights or remedies upon default of Borrower which are more limited than the rights that would otherwise be vested in Lender under the Act in the absence of said provision, Lender 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 Lender 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 indebtedness secured by this Mortgage or by the judgment of foreclosure.

4.15 Waiver of Statutory Rights. Borrower acknowledges that the transaction of which this Mortgage is a part is a transaction which does not include either agricultural real estate (as defined in Section 15-1201 of the Act) or residential real estate (as defined in Section 15-1219 of the Act) and, to the fullest extent permitted by law, hereby voluntarily and knowingly waives its rights to reinstatement and redemption as allowed under Section 15-1601(b) of the Act, and to the fullest extent permitted by law, the benefits of all present and future valuation, appraisement, homestead, exemption, stay, redemption and moratorium laws under any state or federal law.

4.16 Legal Tender of United States. All payments hereunder shall be made in coin or currency which at the time of payment is legal tender in the United States of America for public and private debts.

4.17 Definitions; Captions. With respect to any reference in this Mortgage to any defined term, (i) if such defined term refers to a person, or a trust, corporation, partnership or other entity, then it shall also mean all heirs, personal representatives, successors and assigns of such person or entity, and (ii) if such defined term refers to a document, instrument or agreement, then it shall also include any replacement, extension or other modification thereof. Captions contained in this Mortgage in no way define, limit or extend the scope or intent of their respective provisions.

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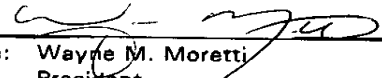
Loan No. 4407

4.18 WAIVER OF RIGHT TO JURY TRIAL. BORROWER HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT THAT BORROWER MAY HAVE TO A TRIAL BY JURY IN ANY LITIGATION ARISING IN ANY WAY IN CONNECTION WITH THIS MORTGAGE, ANY OF THE OTHER LOAN DOCUMENTS OR ANY OTHER STATEMENTS OR ACTIONS OF LENDER. BORROWER ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT FOR LENDER TO ENTER INTO THE LOAN AGREEMENT AND EACH OF THE OTHER LOAN DOCUMENTS IT EXECUTES, AND THAT THIS WAIVER SHALL BE EFFECTIVE AS TO EACH OF THE OTHER LOAN DOCUMENTS AS IF FULLY INCORPORATED THEREIN.

IN WITNESS WHEREOF, the undersigned has caused these presents to be signed by its duly authorized representative as of the date first above written.

CONCORD CITY CENTRE L.L.C., an Illinois limited liability company

By: A.C. Homes Corporation VII, an Illinois corporation, its Managing Member

By: 
Name: Wayne M. Moretti
Its: President

00286091

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STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

i. Diane R. Chartrand, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Wayne M. Moretti, President of A.C. Homes Corporation VII, an Illinois corporation, as a managing member of Concord City Centre L.L.C., an Illinois limited liability company, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such President appeared before me this day in person and acknowledged that he signed and delivered said instrument as his own free and voluntary act and as the free and voluntary act of said Wayne M. Moretti, as President of said corporation, as a managing member of said limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 13 day of April, 2000.

Diane R. Chartrand

Notary Public

My Commission Expires: _____



Cook County Clerk's Office

00286091

Loan No. 4407

EXHIBIT A

Legal Description

SUB LOT 4 IN CANAL TRUSTEES SUBDIVISION OF LOT 7 IN BLOCK 41 IN THE ORIGINAL TOWN OF CHICAGO IN SECTION 9, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

ALSO:

THE SOUTH 40 FEET OF LOT 8 IN BLOCK 41 IN THE ORIGINAL TOWN OF CHICAGO OF SECTION 9, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

ALSO LOTS 1, 2, 3, 4, 5, 6 AND 7 AND THE VACATED ALLEY IN THE SUBDIVISION OF THAT PART OF LOT 8 IN BLOCK 41 AFORESAID LYING NORTH OF THE SOUTH 40 FEET THEREOF IN COOK COUNTY, ILLINOIS.

17-09-444-003

17-09-444-010

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