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

Bank of America, N.A.
12250 Weber Hill Rd.
Suite 140
St. Louis, MO 63127
Attention: Diann Blaha



Doc#: 0328014214
Eugene "Gene" Moore Fee: \$48.00
Cook County Recorder of Deeds
Date: 10/07/2003 02:49 PM Pg: 1 of 13

MORTGAGE AND SECURITY AGREEMENT

This Mortgage, made this 28th day of AUGUST, 2003, between NEWPORT HOMES, INC., an Illinois corporation ("Mortgagor"), whose address is 885 W. DUNDEE RD., PALATINE, IL 60074 and Bank of America, N.A. ("Mortgagee"), whose address 2625 Butlerfield Rd., Suite 209W, Oak Brook, Illinois 60523.

WITNESSETH:

WHEREAS, Mortgagor and Mortgagee have entered into that certain master loan agreement dated AUGUST 28, 2003 ("Loan Agreement"), of even date, which by reference is made a part hereof to the same extent as though set out in full herein; and

WHEREAS, Mortgagor is indebted to Mortgagee in the principal sum of **FOUR HUNDRED SEVENTY ONE THOUSAND AND 00/100 Dollars (\$471,000.00)** together with interest thereon, as evidenced by that certain promissory note of even date executed by Mortgagor and delivered to Mortgagee, together with all modifications, renewals, extensions, replacements or alterations thereof (the "Note"), which by reference is made a part hereof to the same extent as though set out in full herein;

NOW, THEREFORE, to secure the performance by Mortgagor of all covenants and conditions of the Note, this Mortgage, and all other instruments securing the Note, and all existing or future notes, loans, guaranties, or other indebtedness owed by Mortgagor, or either or any of them, to Mortgagee, including all future advances, obligatory or otherwise, notwithstanding that such indebtedness is secured by other mortgages, any interest rate protection agreement entered into in connection with the any such indebtedness, all sums advanced by Mortgagee for the benefit of Mortgagor under any other instrument or otherwise, including without limitation, any amounts paid by Mortgagee under any letters of credit issued by Mortgagee for the benefit of Mortgagor, and including all expenses or obligations incurred by Mortgagee pursuant to any existing or future mortgage, loan or security agreement (the "Obligations"), and in order to charge the properties, interests and rights hereinafter described with such payment and performance up to a maximum principal amount of \$471,000.00 and for and in consideration of the sum of Ten and no/100 Dollars (\$10.00), Mortgagor does hereby grant, bargain, sell, assign, transfer, convey, mortgage and warrant to Mortgagee and, where applicable, grant a security interest in:

(A) That certain land in the County of COOK, State of Illinois, more particularly described upon the attached Exhibit A (the "Land"), to have and to hold the same, together with each and every tenement, hereditament, easement, right, power, privilege, immunity and appurtenance thereunto belonging or in anywise appertaining and the reversion and reversions, remainder and remainders, and also the estate, right, title, interest, homestead, right of dower, separate estate, property, possession and claim whatsoever in law as well as in equity of Mortgagor of, in and to the same in every part and parcel thereof unto Mortgagee in fee simple.

(B) (i) All goods which are now or hereinafter affixed and goods which are to become affixed to the Land, in which Mortgagor now or hereafter has any rights; (ii) all inventory and all materials now or hereafter delivered to the Land for use in any way thereon, in which Mortgagor now or hereafter has any rights; (iii) all accounts receivable,

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general intangibles, actions and rights in action, in which Mortgagor now or hereafter has any rights including all rights of Mortgagor under all sales contracts or contracts with any architect, engineer, surveyor, subcontractor and materials supplied in connection with the Land, all of which contracts are hereby assigned to the Mortgagee, together with all plans, specifications, drawings, schedules and copyrights included therein, all rights to insurance policies and proceeds, all licenses, building and business permits, and all utility reservations and rights to receive utility services and all rights to and under fees or charges paid by Mortgagor or on its behalf in connection with the Land; (iv) all equipment, including parts, accessories, attachments, special tools, additions and accessions thereto, in which Mortgagor now has or hereafter acquires any rights, used or useful in connection with the Land; (v) all security deposits, escrow payments and earnest money deposits; (vi) all surveys, soil reports and samples obtained or prepared in connection with the Land and (vii) all proceeds, products, replacements, additions, substitutions, renewals and accessions of any of the foregoing items.

(C) All buildings, structures, and improvements, rents, issues, profits, revenue, income, proceeds, and other benefits flowing or derived from the land or property described in paragraphs (A) and (B) hereof, together with all leases thereof now made or hereafter entered into, whether written or verbal, provided however, that permission is hereby given to Mortgagor so long as no default has occurred hereunder, to collect, receive, and use such benefits from the land or property as they become due and payable but not in advance thereof.

(D) All contract rights, commissions, money, deposits, certificates of deposit, letters of credit, documents, instruments, chattel paper, accounts, and general intangibles (as such terms are from time to time defined in the Uniform Commercial Code as adopted by the State of Illinois) in any manner related to the construction, use, operation, sale, conversion, or other disposition (voluntary or involuntary) of the Mortgaged Property, appurtenances thereto, improvements, tangible property, or rents, including all construction plans and specifications, permits, governmental or quasi-governmental approvals, licenses, developers rights, vested rights under any Planned Unit Developments or Development of Regional Impact or other project, zoning, or land use approval, insurance policies, rights of action and other choses in action.

(E) All proceeds of the conversion, voluntary or involuntary, of any of the land or property encumbered by this mortgage into cash or other liquidated claims, including all judgments, settlements, and insurance and condemnation proceeds.

Everything referred to in paragraphs (A), (B), (C), (D), and (E) hereof and any additional property hereafter acquired by Mortgagor and subject to the lien of this Mortgage or any part of these properties is herein referred to as the "Mortgaged Property."

PROVIDED ALWAYS, that if Mortgagor shall pay to Mortgagee the sums due under the Obligations including, without limitation, the Note at the times and in the manner stipulated therein, and faithfully perform all of the covenants and agreements in any loan document evidencing the Obligations to be kept, performed or observed by Mortgagor, and all periods of time for recovery of payments or proceeds of property securing the Obligations under any bankruptcy or insolvency law affecting Mortgagor or Mortgagee in connection with the Obligations secured hereby have elapsed then this Mortgage shall cease and be void, but shall otherwise remain in full force and effect.

To the extent any of the Mortgaged Property encumbered by this Mortgage constitutes personal property subject to the provisions of the Uniform Commercial Code, as adopted by the State of Illinois, this Mortgage constitutes a "Security Agreement" for all purposes under the Uniform Commercial Code and Mortgagor hereby confirms its grant of a security interest in such personal property. This Mortgage shall also be considered a "construction mortgage" as that term is defined in Section 9-313 of the Uniform Commercial Code as adopted by the State of Illinois. Without limitation, Mortgagee, at its election, upon the occurrence of a default under this Mortgage, will have all rights, powers, privileges and remedies from time to time available to a secured party under the provisions of the Uniform Commercial Code with respect to the Mortgaged Property. The names and address of debtor and secured party are as shown for the Mortgagor and Mortgagee, respectively, on the first page of this Mortgage. The remedies for any violation of the covenants, terms, and conditions of the security agreement herein contained shall be (i) as prescribed herein; (ii) as prescribed by general law; or (iii) as prescribed by the specific statutory provisions now or hereafter enacted and specified in the Uniform Commercial Code, all at Mortgagee's election. If requested by Mortgagee, Mortgagor shall execute and deliver such other Security Agreements, Financing Statements and other instruments Mortgagee may request in order to perfect its security interest upon the Mortgaged Property.

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I. REPRESENTATIONS AND WARRANTIES

1.1. **Organization, Power.** Mortgagor is duly organized and has all requisite power and authority to execute and deliver this Mortgage and the other Loan Documents and to enter into the transactions contemplated hereby.

1.2. **Validity of this Mortgage.** This Mortgage is within the legal powers of the Mortgagor, has been properly authorized by all requisite corporate or partnership action if the Mortgagor is a corporation or partnership, does not violate any law or any other agreement to which the Mortgagor is a party or to which the Mortgaged Property is subject, and constitutes the legal, valid and binding obligation of the Mortgagor enforceable according to its terms.

1.3. **Title to the Property.** The Mortgagor warrants that it owns the Mortgaged Property in fee simple and has good and marketable title to the Mortgaged Property free and clear of any liens, charges and encumbrances. The Mortgagor will preserve such title, and will forever warrant and defend the same to the Mortgagee and will forever warrant and defend the validity and priority of lien hereof against the claims of all persons and parties whomsoever.

1.4. **Taxes.** The Mortgagor has filed all federal, state, county and municipal income and other tax returns required to have been filed by it and has paid all taxes which have become due pursuant to such returns or pursuant to any assessments received by it, and Mortgagor does not know of any basis for any additional assessment with respect to such taxes.

1.5. **Litigation.** There is not now pending against or affecting the Mortgagor or the Property, nor, to the knowledge of the Mortgagor, is there threatened, any action, investigation, suit or proceeding by or before any administrative agency or other tribunal which if adversely determined would materially impair or affect the Mortgagor's financial condition or the operation of the Mortgaged Property.

1.6. **Zoning.** The current and proposed use of the Mortgaged Property complies with all applicable zoning statutes, laws and ordinances, all land use regulations and all restrictive covenants relating to the Mortgaged Property.

II. COVENANTS OF MORTGAGOR

2.1. **Compliance with Note and Mortgage.** Mortgagee shall comply with all provisions hereof, of the Note, the Loan Agreement and of every other instrument evidencing or securing the Obligations, and will promptly pay to Mortgagee the principal with interest thereon and all other sums required to be paid by Mortgagor under the Obligations evidenced by the Loan Documents.

2.2. **Maintain Existence.** Mortgagor will maintain in good standing its corporate (if Mortgagor is a corporation) or partnership (if Mortgagor is a partnership) or limited liability company (if Mortgagor is a limited liability company) existence and its authority to transact business in all jurisdictions where the nature of its business or properties requires it to be so authorized.

2.3. **Defense of Title.** Mortgagor shall execute and deliver to Mortgagee, at Mortgagor's sole expense, such further assurances of title to the Mortgaged Property that are necessary to evidence, preserve or protect the lien and security interest created by this instrument. Mortgagor shall, at its sole expense, warrant and defend title to the Mortgaged Property and the priority of the lien and security interest created by this instrument against all claims and demands whatsoever.

2.4. **Compliance with Laws.** Mortgagor shall comply with all laws, rules, regulations and codes, including but not limited to fire and building codes, of federal, state and local authorities applicable to the Mortgaged Property or the use of the Mortgaged Property, and with the requirements of every board of fire underwriters or similar body whose requirements apply to similar property in the area where the Mortgaged Property is located.

2.5. **Inspection by Mortgagee.** Mortgagee may at any reasonable time, inspect the Mortgaged Property and all books and records of Mortgagor pertaining to the Mortgaged Property. Mortgagor shall give Mortgagee access to the Mortgaged Property to exercise any of the Mortgagee's rights and remedies under this instrument.

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2.6. **Payment of Taxes and Liens.** Mortgagor shall pay all taxes, assessments, liens, levies, liabilities, obligations and encumbrances of every nature and kind whether now or hereafter imposed, levied or assessed on the Mortgaged Property, this Mortgage or the indebtedness secured hereby or which may become a lien thereon. All such payments shall be made when due and payable before they become delinquent and before any interest accrues or any penalty is incurred. Insofar as any such lien or encumbrances are of record, the same shall be promptly satisfied or released and evidence of such satisfaction or release shall be given to Mortgagee. Mortgagee may at its option at any time, require Mortgagor to deposit with Mortgagee on the first day of each month, in addition to making payments of principal and interest, until the Obligations are fully paid, an amount equal to one-twelfth (1/12) of the annual taxes and assessments payable with respect to the Mortgaged Property. Such deposits shall not be, nor be deemed to be, trust funds, but may be commingled with the general funds of Mortgagee, and no interest shall be payable in respect thereof. Upon demand by Mortgagee, Mortgagor shall deliver to Mortgagee such additional monies as are necessary to enable Mortgagee to pay such taxes and assessments when due. In the event of default under any of the terms, covenants and conditions of the Loan Documents to be performed or observed by Mortgagor, Mortgagee may apply to the reduction of the sums secured hereby, in such manner as Mortgagee shall determine, any amount under this paragraph remaining to Mortgagor's credit. Mortgagee shall have no obligation to pay taxes and assessments except to the extent of such deposits.

2.7. **Insurance.** Mortgagor shall keep the improvements now existing or hereafter erected on the Mortgaged Property and all parts of the Mortgaged Property insured as may be required from time to time by Mortgagee against loss by fire, flood and hazards included within the term "extended coverage," and such other hazards as Mortgagee may require, in such amounts and for such periods as may be required by Mortgagee, and to pay promptly, when due, all premiums for such insurance. During the period of any construction upon the Mortgaged Property, the Mortgagor shall maintain Builder's Risk coverage in such amounts as may be required by Mortgagee. Without limitation, such insurance shall also include insurance against liability on account of damage to person or property, insurance required under all applicable workers' compensation laws and if required by the Flood Disaster Protection Act of 1973, as amended, a National Flood Insurance Policy or equivalent covering the Mortgaged Property. All such insurance shall be carried with companies approved by Mortgagee, and the policy and renewals thereof, or certificates evidencing the existence of such insurance, at Mortgagee's election, shall be held by Mortgagee and have attached thereto or identified thereon Lender's loss payable clauses in favor of and in form acceptable to Mortgagee. All policies of insurance shall contain a clause providing that such policies may not be canceled without thirty (30) days prior written notice to Mortgagee. In event of loss, Mortgagor shall give immediate notice by mail to Mortgagee and Mortgagee may make proof of loss if not made promptly by Mortgagor, and each insurance company concerned is hereby authorized and directed to make payments for such loss directly to Mortgagee, instead of to Mortgagor or to Mortgagor and Mortgagee jointly. The insurance proceeds or any part thereof may be applied by Mortgagee at its option, after deducting therefrom all its expenses, either to reduction of the indebtedness hereby secured or to the restoration or repair of the property damaged. Mortgagee is hereby authorized, at its option, to settle and compromise any claims, awards, damages, rights of action and proceeds, and any other payment or relief under any insurance policy. In the event of foreclosure of this Mortgage or other transfer of title to the Mortgaged Property in extinguishment of the indebtedness secured hereby, all right, title, and interest of Mortgagor in and to any insurance policies then in force shall pass to the purchaser or grantee. Mortgagee may at its option require Mortgagor to deposit with Mortgagee on the first day of each month, in addition to making payments of principal and interest, until the Note is fully paid, an amount equal to one-twelfth (1/12) of the annual premiums for all insurance. Such deposits shall not be, nor be deemed to be, trust funds, but may be commingled with the general funds of Mortgagee, and no interest shall be payable in respect thereof. Upon demand by Mortgagee, Mortgagor shall deliver to Mortgagee such additional monies as are necessary to make up any deficiencies in the amounts necessary to enable Mortgagee to pay such premiums when due. In the event of default under any of the terms, covenants and conditions of the Loan Documents to be kept, performed or observed by Mortgagor, Mortgagee may apply to the reduction of the sums secured hereby, in such manner as Mortgagee shall determine, any amount under this paragraph remaining to Mortgagor's credit and any return premium received from cancellation of any insurance policy by Mortgagee upon foreclosure of this Mortgage.

2.8. **Condemnation.** If all or any part of the Mortgaged Property or any interest therein shall be damaged or taken through condemnation by any governmental authority or any other authority authorized by the laws of the State of Illinois or the United States of America or there is a transfer by private sale in lieu thereof, either temporarily or permanently, then the entire indebtedness and other sums secured hereby shall, at the option of Mortgagee, become immediately due and payable. Mortgagee shall be entitled to all compensation awards, damages claims, rights of action and proceeds of, or on account of any such damage or taking through condemnation and is hereby authorized, at its option, to commence, appear in and prosecute, in its own or Mortgagor's name, any action or proceeding relating to any condemnation, and to settle or compromise any claim in connection therewith. All such compensation awards, damages, claims, rights of action and

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proceeds, and any other payments or relief, and the right thereto, are hereby assigned by Mortgagor to Mortgagee, who, after deducting therefrom all its expenses including attorneys' fees, may release any monies so received by it without affecting the lien on this Mortgage or may apply the same, in such manner as Mortgagee shall determine, to the reduction of the sums secured hereby. Any balance of such monies then remaining shall be paid to Mortgagor. Mortgagor agrees to execute such further assignments of any compensation, awards, damages, claims, rights of action and proceeds, and any other payments or relief, and the right thereto, are hereby assigned by Mortgagor to Mortgagee, who, after deducting therefrom all its expenses including attorneys' fees, may release any monies so received by it without affecting the lien on this Mortgage or may apply the same, in such manner as Mortgagee shall determine to the reduction of the sums secured hereby.

2.9. Care of Mortgaged Property. Mortgagor shall not remove or demolish any building or other property forming a part of the Mortgaged Property without the written consent of Mortgagee, or permit, commit, or suffer any waste, impairment or deterioration of the Mortgaged Property or any part thereof, and shall keep the same and the improvements thereon in good condition and repair. Mortgagor shall notify Mortgagee in writing within five (5) days of any injury, damage, or impairment of or occurring on the Mortgaged Property including, but not limited to, serious injury or loss by death or otherwise occurring on the Mortgaged Property. Mortgagee may, at Mortgagee's discretion, have the Mortgaged Property inspected at the time and Mortgagor shall pay all costs incurred by Mortgagee in executing such inspection.

2.10. Mortgagee's Right to Make Certain Payments. In the event Mortgagor fails to pay and/or discharge the taxes, assessments, liens, levies, liabilities, obligations and encumbrances, or fails to keep the Mortgaged Property insured or to deliver the policies with premiums paid, or fails to repair the Mortgaged Property as herein agreed, Mortgagee is hereby authorized at its election to pay and/or discharge the taxes, assessments, liens, levies, liabilities, obligations and encumbrances or any part thereof, to procure and pay for such insurance or to make and pay for such repairs, without any obligation on its part to determine the validity and/or necessity thereof, and without Mortgagee waiving or affecting any option, lien, equity or right under or by virtue of this Mortgage. The full amount of each and every such payment made by Mortgagee will be added to the principal amount due under the Note, and shall be immediately due and payable by Mortgagor and shall bear interest from the date each such payment is made by Mortgagee until paid at the Default Rate, as hereinafter defined, and together with such interest, shall be secured by the lien of this Mortgage. Nothing herein contained shall be construed as requiring Mortgagee to advance or expend monies for any of the purposes mentioned in this paragraph.

2.11. Payment of Expenses. Mortgagor shall pay all reasonable costs of collection including attorneys' fees, paralegals' fees, and service tax thereon, whether incurred at the trial or appellate level or in arbitration, disbursements and costs of abstracts of title or other title evidence, appraisals, reappraisals, or environmental assessments incurred or paid at any time by Mortgagee, in the event of the failure on the part of Mortgagor promptly and fully to perform, comply with and abide by any stipulation, agreement, condition or covenant of the Loan Documents. Such costs of collection shall be immediately due and payable without notice or demand. If such costs and fees are not timely paid by Mortgagor, Mortgagee, without waiving or impairing any other of its rights or remedies, and without demand on Mortgagor, may make such payment on Mortgagor's behalf. The full amount of each and every such payment shall be immediately due and payable and shall bear interest from the date Mortgagee makes such payment until paid at the rate as set forth in the Note applicable to periods when default exists thereunder ("Default Rate"). All such costs, charges and expenses so incurred or paid, together with such interest, shall be secured by the lien of this Mortgage.

2.12. Construction Loan. The Mortgagor will cause the improvements specified in the Loan Agreement to be constructed in accordance with all of the terms, provisions and conditions specified therein, will pursue such construction with due diligence and complete same on or before the date of completion specified in the Loan Agreement, will comply with all the covenants made by it in the Loan Agreement and will permit no default to occur thereunder. Reference is made herein to the Loan Agreement for all purposes to the same extent and effect as if the Loan Agreement was fully set forth herein and made a part of this Mortgage.

In the event of the Mortgagor's failure to carry on or complete construction of the Improvements (as defined in the Loan Agreement) or other default of the Mortgagor under the Loan Agreement and whether or not the Mortgagee shall cause the indebtedness secured hereby to become immediately due and payable, the Mortgagee is hereby vested with full and complete authority to enter upon the Mortgaged Property to employ watchmen to protect the Mortgaged Property from injury and to preserve and protect the personal property therein, to continue any and all outstanding contracts for erection and completion of the improvements on the Mortgaged Property, to make and enter into any contracts and obligations wherever

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necessary, either in its own name as Mortgagee hereunder or in the name of the Mortgagor, and pay and discharge all debts, obligations and liabilities incurred thereby. All sums so advanced by the Mortgagee (exclusive of advances of the principal of the indebtedness) shall be an advancement governed by Paragraph 2.11 hereof.

2.13. **No Transfer.** Mortgagor may not sell, convey, assign, transfer or otherwise dispose of any interest in all or a portion of the Mortgaged Property, or any ownership interest in Mortgagor or any guarantor, without Mortgagee's prior written consent, which consent may be withheld in Mortgagee's sole discretion. Whether such transfer is voluntary or involuntary, or by operation of law (other than in connection with the death or incompetency of any individual Mortgagor), any such transfer shall be void as to Mortgagee, and constitute an immediate default under this Mortgage, without notice, in the sole discretion of Mortgagee. Mortgagee's consent to any transfer, sale, or conveyance hereunder shall not be deemed a consent to any subsequent transfer, sale, or conveyance for which Mortgagee's prior written approval has not been obtained.

If Mortgagor is an entity, a sale, assignment, pledge, transfer, hypothecation, encumbrance or lien on any legal or beneficial interest in Mortgagor or of any ability to exert control of Mortgagor, shall be deemed to be a transfer of the Mortgaged Property and a default hereunder.

2.14. **After-Acquired Property.** The lien of this Mortgage will automatically attach, without further act, to all after-acquired property located in, on, or attached to, or used or intended to be used in connection with or with the operation of the Mortgaged Property.

2.15. **Indemnity.** Mortgagor shall (to the extent permitted by law) protect, defend, and indemnify Mortgagee, and hold Mortgagee harmless from and against, any claims, actions or proceedings against Mortgagee and any loss, cost, damage or expense, including but not limited to reasonable attorney's fees and disbursements, incurred by Mortgagee, arising out of or in any way related to a breach of the representations, warranties, covenants or agreements of Mortgagor herein. Mortgagee shall have the right, jointly with Mortgagor, to negotiate and settle any such claims, actions or proceedings.

2.16. **Additional Documents.** At any time, upon Mortgagee's request, Mortgagor shall make, execute and deliver or cause to be made, executed and delivered to Mortgagee and, where appropriate, shall cause to be recorded or filed in such offices and places as shall be deemed desirable by Mortgagee any and all further mortgages, instruments or further assurance, certificates, financing statements and other documents as Mortgagee may consider necessary or desirable in order to effectuate, complete, enlarge or perfect, or to continue and preserve the obligations of Mortgagor under the Note and this Mortgage, and the lien of this Mortgage as a first prior lien upon all of the Mortgaged Property, whether now owned or hereafter acquired by Mortgagor. Upon any failure by Mortgagor to do so, Mortgagee may make, execute, record, file, re-record or refile any and all such mortgages, instruments, certificates, financing statements, and documents for and in the name of Mortgagor, and Mortgagor hereby irrevocably appoints Mortgagee agent and attorney-in-fact of Mortgagor to do so.

III. EVENTS OF DEFAULT

3.1. **Any one of the following shall constitute an "Event of Default":**

(a) Failure by Mortgagor to pay on the due date any installment of principal or interest required under the Obligations, or any deposits for taxes or assessments or insurance premiums due hereunder, or any other sums to be paid by Mortgagor hereunder, or under the Loan Agreement or any other instrument securing the Obligations.

(b) Failure by Mortgagor to duly keep, perform and observe any other covenant, condition or agreement in the Loan Documents.

(c) If either Mortgagor or any guarantor or endorser of the Obligations: (i) files a voluntary petition in bankruptcy, or (ii) is adjudicated as bankrupt or insolvent, or (iii) files any petition or answer seeking or acquiescing in any reorganization, management, composition, readjustment, liquidation, dissolution or similar relief for itself under any law relating to bankruptcy, insolvency or other relief for debtors, or (iv) seeks, consents to or acquiesces in the appointment of any trustee, receiver, master or liquidator of itself or of all or any part of the Mortgaged Property, or (v) makes any general

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assignment for the benefit of creditors, or (vi) makes any admission in writing of its inability to pay its debts generally as they become due; or (vii) a court of competent jurisdiction enters an order, judgment or decree approving a petition filed against it seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future federal, state, or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors, which order, judgment or decree remains unvacated and unstayed for an aggregate of sixty (60) days whether or not consecutive from the date of entry thereof; or (viii) any trustee, receiver or liquidator of it or any part of the Mortgaged Property is appointed without the prior written consent of Mortgagee, which appointment shall remain unvacated and unstayed for an aggregate of sixty (60) days whether or not consecutive.

(d) Any breach of any warranty or material untruth of any representation of Mortgagor contained in any Loan Document.

(e) An event of default under any existing or future notes, loans, advances, guaranties, or other indebtedness owned to the Mortgagee by the Mortgagor, or by any guarantor or endorser of the Note, or under any instrument securing such indebtedness.

(f) If Mortgagor defaults in any payment or the performance of any agreement in any mortgage on the Mortgaged Property, or in the event of any default in any such mortgage so as to cause such mortgage to be accelerated and become due and payable during the continuance of this Mortgage.

(g) Any federal, state or local tax due or any claim of lien for labor or materials or any other lien or encumbrance of any nature whatsoever is recorded against Mortgagor or the Mortgaged Property and is not remedied by payment or transferred to substitute security in the manner provided by law, within ten (10) days after it is recorded in accordance with applicable law.

(h) The receipt by Mortgagee of any notice from Mortgagor or a guarantor of the Obligations of the termination of any future advance provision of this Mortgage or the termination of the coverage of any guaranty with respect to future advance.

IV. REMEDIES OF MORTGAGEE

4.1. **Acceleration.** If an Event of Default shall have occurred, Mortgagee may declare the outstanding principal amount of the Note and the interest accrued thereon, and all other sums secured hereby, to be due and payable immediately, and upon such declaration such principal and interest and other sums shall immediately become due and payable without demand, notice or presentment for payment.

4.2. **Other Remedies.** If an Event of Default shall have occurred, Mortgagee may proceed by suit or suits at law or in equity or by any other appropriate proceeding or remedy; (a) to enforce payment of the Obligations, including, without limitation, the Note or the performance of any term hereof or any other right provided by the Loan Documents; (b) to foreclose this Mortgage and to sell, as an entirety or in separate lots or parcels, the Mortgaged Property under the judgment or decree of a court of competent jurisdiction; (c) to collect all rents, issues, profits, revenues, income, proceeds or other benefits from the Mortgaged Property; (d) to seek appointment of a receiver to enter upon and take possession of the Mortgaged Property and to collect all rents, issues, profits, revenues, income or other benefits thereof and apply the same as the Court may direct and such receiver shall have all rights and powers permitted under law; (e) to exercise any right or remedy available to Mortgagee as a secured party under the Uniform Commercial Code as adopted by the State of Illinois; and (f) to pursue any other remedy available to it. Any judgment against the Mortgagor shall bear interest at the Maximum Rate (as defined in the Note).

4.3. **No Waiver.** No delay or omission of Mortgagee to insist, at any time, upon strict performance of any covenant, provision or condition of this Mortgage or to exercise any right, power or remedy accruing upon any Event of Default shall be construed as a waiver or relinquishment of such covenant, provision, condition, right, power or remedy. Receipt by Mortgagee of any monthly installment of principal and/or interest due under the Note with knowledge, whether actual or constructive, of the breach of any covenant provision or condition of this Mortgage shall not be deemed a waiver of such breach. In no event shall Mortgagee be deemed to have made a waiver hereunder unless the waiver is expressed in a

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document signed by the Mortgagee and stating with specificity the covenant, provision, condition, right, power, or remedy being waived.

4.4. **Waiver of Homestead and Other Rights.** Except to the extent contrary to applicable law, Mortgagor hereby releases and waives the benefit of (i) all laws now existing or hereafter enacted that provide for appraisal before sale of the items of the Mortgaged Property being sold, or that provide for the extension of the time for the enforcement of the collection of the Obligations or that create or extend the period for redemption of any of the Mortgaged Property from any sale thereof to collect the Obligations, and (ii) the homestead exemption laws of the state where the Mortgaged Property is located. Without limiting the generality of the foregoing, Mortgagor wholly waives all rights of redemption including without limitation the period of redemption provided, if any, under Illinois law and further agrees that if and when a sale is had under a decree of foreclosure against Mortgagor, the sheriff or other officer making such sale, or such person's successor in office, is authorized to immediately execute a deed to the purchaser.

4.5. **Matters Relating to Enforcement of Remedies.** Except to the extent a different procedure is required by applicable law;

(a) Upon any sale of any item of the Mortgaged Property made pursuant to judicial proceedings for foreclosure ("Judicial Sale"), it shall not be necessary for any public officer acting under execution or order of the court to have present or constructively in his possession any of the Mortgaged Property.

(b) Upon the completion of every Judicial Sale, the court officer conducting the sale shall execute and deliver to each purchaser a bill of sale or deed of conveyance, as appropriate, for the items of the Mortgaged Property that are sold. Mortgagor hereby grants such court officer the power as the attorney-in-fact of Mortgagor to execute and deliver in Mortgagor's name all deeds, bills of sale and conveyances necessary to convey and transfer to the purchaser all of Mortgagor's rights, title and interest in the items of the Mortgaged Property that are sold. Mortgagor hereby ratifies and confirms all that its said attorney-in-fact lawfully does pursuant to such power. Nevertheless, Mortgagor, if so requested by such court officer or by any purchaser, shall ratify any such sale by executing and delivering to such court officer or to such purchaser, as applicable, such deeds, bills of sale or other instruments of conveyance and transfer as may be specified in any such request.

(c) The recitals contained in any instrument of conveyance or transfer made by such court officer to any purchaser at any Judicial Sale shall, to the extent permitted by law, conclusively establish the truth and accuracy of the matters stated therein, including but not limited to the amount of the Obligations, the occurrence of the Default, and the advertisement and conduct of such sale in the manner provided herein or under applicable law. All prerequisites to such sale shall be presumed from such recitals to have been satisfied and performed.

(d) To the extent permitted by applicable law, every Judicial Sale, or sale made as contemplated by Section 4.2(e), shall operate to divest all rights, title, and interest of Mortgagor in and to the items of the Mortgaged Property that are sold, and shall be a perpetual bar, both at law and in equity, against Mortgagor and Mortgagor's heirs, executors, administrators, personal representatives, successors and assigns, and against everyone else, claiming the items sold either from, through or under Mortgagor or Mortgagor's heirs, executors, administrators, personal representatives, successors or assigns.

(e) A receipt from any person authorized to receive the purchase money paid at any Judicial Sale, or sale made as contemplated by Section 4.2(e), shall be sufficient discharge therefor to the purchaser. After paying such purchase money and receiving such receipt, neither such purchaser nor such purchaser's heirs, executors, administrators, personal representatives, successors or assigns shall have any responsibility or liability respecting the application of such purchase money or any loss, misapplication or non-application of any of such purchase money, or to inquire as to the authorization, necessity, expediency or regularity of any such sale.

(f) In any Judicial Sale, or sale made as contemplated by Section 4.2(e), the Mortgagee may bid for and purchase any of the Mortgaged Property being sold, and shall be entitled, upon presentment of the relevant documents evidencing the same, to apply the amount of the Obligations held by it against the purchase price for the items of the Mortgaged Property so purchased. The amount so applied shall be credited against the Obligations in the order as provided below.

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4.6. **Application of Sale Proceeds.** The proceeds of any Judicial Sale or other sale or realization from the Mortgaged Property pursuant to this instrument, and all other monies received by Mortgagee in any proceedings for the enforcement hereof, shall be paid and applied as follows:

First, (to the extent permitted by law) to the payment of the costs and expenses of so realizing on the Mortgaged Property, including but not limited to all costs and expenses incurred by Mortgagee in connection therewith, including but not limited to reasonable attorneys' fees and disbursements, together with interest thereon at the Default Rate from the date incurred;

Second, to the portion of the Obligations that constitute interest accrued but unpaid;

Third, to the remainder of the Obligations;

Fourth, to the holders of any liens or security interests on the Mortgaged Property that are junior to the lien and security interest under this instrument; and

Fifth, the balance, if any, to Mortgagor, or its heirs, executors, administrators, personal representatives, successors or assigns, or to whosoever else may be lawfully entitled to receive the same, or as a court of competent jurisdiction may direct.

V. MISCELLANEOUS

5.1. **Successors and Assigns Bound.** Whenever one of the parties hereto is named or referred to herein, the heirs, personal representatives, successors and assigns of such party shall be included and all covenants and agreements contained in this Mortgage, by or on behalf of Mortgagor or Mortgagee, shall bind and inure to the benefit of their respective heirs, personal representatives, successors and assigns.

5.2. **Invalid or Unenforceable.** In the event that any of the covenants, agreements, terms or provisions contained herein or in any Loan Document shall be invalid, illegal or unenforceable in any respect, the validity of the remaining covenants, agreement, terms or provisions contained herein and in the Loan Documents shall be in no way affected, prejudiced or disturbed thereby.

5.3. **Future Advances.** This Mortgage shall secure not only existing indebtedness, but also such future advances made to Mortgagor, or its successors in title to the Mortgaged Property, whether such advances are obligatory or are to be made at the option of Mortgagee, or otherwise, to the same extent as if such future advances were made on the date of the execution of this Mortgage, although there may be no advance made at the time of the execution of this Mortgage and although there may be no indebtedness outstanding at the time any advance is made. The amount of indebtedness that may be so secured may decrease or increase from time to time, but the total unpaid balance so secured at one time shall not exceed the amount stated on the front of this Mortgage, plus interest thereon and any disbursements made for the payment of taxes, levies or insurance on the Mortgaged Property. **NOTWITHSTANDING ANY OTHER TERM OF THIS MORTGAGE, THE MAXIMUM PRINCIPAL AMOUNT SECURED HEREBY SHALL NOT EXCEED \$750,000.00.**

5.4. **Obligations of Mortgagor.** Each party executing this Mortgage shall be jointly and severally liable hereunder.

5.5. **Hazardous Waste.** Without limiting any rights of Mortgagee under the Loan Documents or applicable laws, (a) the Mortgagor represents and warrants to Mortgagee that to the best of Mortgagor's knowledge and except as used in the ordinary course of business, (i) the Mortgaged Property is free of any substance which could pose a hazard to the environment or the health or safety of persons on or about the Mortgaged Property or which is classified as hazardous or toxic in or pursuant to any law or restriction relating to health or the environment ("Hazardous Material"); and (ii) there is no claim or inquiry threatened, instituted or completed concerning the presence or discharge of any Hazardous Material on, in, under or about the Mortgaged Property (and Mortgagor will promptly advise Mortgagee in writing as soon as Mortgagor first obtains knowledge of any such claim or inquiry heretofore or hereafter occurring); (b) Mortgagor will not place or allow to remain

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any Hazardous Material, on, in, under or about the Mortgage Property; and (c) Mortgagor agrees to indemnify and hold harmless Mortgagee, its successors and assigns, and their respective directors, officers, employees, agents, and affiliates, from and against any and all claims, damages, losses, costs, fines, penalties, liabilities and expenses (including, but not limited to, attorneys' fees and costs) arising in whole or in part from the presence of any Hazardous Material, on, in, under, or about the Mortgaged Property at any time prior to full and final release or foreclosure (or transfer in lieu of foreclosure) of this Mortgage, regardless of the cause and regardless of when asserted, imposed, or incurred. The foregoing provisions regarding environmental matters shall be cumulative of all other obligations of Mortgagor and all other rights and remedies of Mortgagee, and the foregoing indemnities shall survive any modification of the Note, payment of the debt evidenced by the Note, and foreclosure (or transfer in lieu thereof), any debtor relief proceeding and the release or other termination of this Mortgage. Mortgagor agrees, upon reasonable request of Mortgagee, to provide Mortgagee from time to time (and at Mortgagor's expense) with a current environmental assessment of the Mortgaged Property within a reasonable time after such request. Such assessment shall be in a form satisfactory to Mortgagee and from an environmental consultant satisfactory to Mortgagee.

5.6. **Partial Releases.** Any part of the Mortgaged Property may be released by Mortgagee from the lien and security interest created by this instrument. Any such partial release shall be at the sole option of Mortgagee; Mortgagee shall not be obligated to grant partial releases. Any such partial release shall not affect the lien and security interest created by this instrument as to the remainder of the Mortgaged Property.

5.7. **Satisfaction.** The lien and security interest provided by this Mortgage will continue unimpaired and in full force and effect unless and until the Obligations are paid in full and all of Mortgagor's covenants and Agreements are fully performed, whereupon such lien and security interest will be without further force and effect and this Mortgage shall be released of record at the cost of Mortgagor.

5.8. **Time of the Essence.** Time is of the essence with respect to each and every covenant, agreement, and obligation of Mortgagor under this Mortgage and the other Loan Documents, and any and all other instruments nor or hereafter evidencing, securing or otherwise relating to the Loan.

5.9. **Oral Modification Ineffective.** No term of this Mortgage or any other of the Loan Documents may be waived, changed, modified, discharged, or terminated except by an instrument in writing signed by the party against which enforcement of the waiver, change, modification, discharge or termination is sought.

5.10. WAIVER OF JURY TRIAL. THE MORTGAGOR HEREBY WAIVES TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO WHICH THE MORTGAGOR AND THE LENDER MAY BE PARTIES ARISING OUT OF, IN CONNECTION WITH, OR IN ANY WAY PERTAINING TO, THIS MORTGAGE AND/OR ANY OTHER LOAN DOCUMENTS. IT IS AGREED AND UNDERSTOOD THAT THIS WAIVER CONSTITUTES A WAIVER OF TRIAL BY JURY OF ALL CLAIMS AGAINST ALL PARTIES TO SUCH ACTIONS OR PROCEEDINGS, INCLUDING CLAIMS AGAINST PARTIES WHO ARE NOT PARTIES TO THIS MORTGAGE. THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE BY MORTGAGOR, AND THE MORTGAGOR HEREBY REPRESENTS THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY ANY INDIVIDUAL TO INDUCE THIS WAIVER OF TRIAL BY JURY OR TO IN ANY WAY MODIFY OR NULLIFY ITS EFFECT. THE MORTGAGOR FURTHER REPRESENTS AND WARRANTS THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS MORTGAGE AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, OR HAS HAD THE OPPORTUNITY TO BE REPRESENTED BY INDEPENDENT LEGAL COUNSEL SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL.

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

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

(b) **Reservation of Rights.** Nothing in this Mortgage shall be deemed to (i) limit the applicability of any otherwise applicable statutes of limitation or repose and any waivers contained in this Mortgage; of (ii) be a waiver by Lender of the protection afforded to it by U.S.C. Sec. 91 or any substantially equivalent state law; or (iii) limit the right of Lender (A) to exercise self help remedies such as (but not limited to) setoff, or (B) to foreclose against any real or personal property collateral, or (C) to obtain from a court provisional or ancillary remedies such as (but not limited to) injunctive relief or the appointment of a receiver. The Bank may exercise such self help rights, foreclose upon such property, or obtain such provisional or ancillary remedies before, during or after the pendency of any arbitration proceeding brought pursuant to this Mortgage. Neither this exercise of self help remedies nor the institution nor maintenance of an action for foreclosure or provisional or ancillary remedies shall constitute a waiver of the right of any party, including the claimant in any such action, to arbitrate the merits of the controversy or claim occasioning resort to such remedies. No provision in the Loan Documents regarding waiver of Jury Trial, submission to jurisdiction and/or venue in any court is intended or shall be construed to be in derogation of the provisions in any Loan Document for arbitration of any controversy or claim.

5.12. **Notices.** Any communication between the parties to this Mortgage shall be deemed given if in writing and when (i) personally delivered, or (ii) sent by certified or registered mail, courier or telegram. Whenever applicable provisions of the Uniform Commercial Code or other applicable law require that notice be reasonable, ten (10) days' notice shall be deemed reasonable.

5.13. **Captions.** Section captions in this instrument are for convenience only and shall not affect the interpretation or construction of this instrument.

5.14. **Governing Law.** This Mortgage and the rights and obligations of the parties hereunder shall be governed by and construed and interpreted in accordance with the laws of the State of Illinois, without regard to choice or conflict of laws rules.

IN WITNESS WHEREOF, this instrument has been executed the date and year first above written.

NEWPORT HOMES, INC., an Illinois corporation

By:


MICHAEL SCHALL, President

By:


VINCENT DeLIGIO, Vice President

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EXHIBIT A
Legal Description

LOT 1 of Newport Subdivision being a resubdivision of Lot 80 and the West 200 feet of the East 633 feet of the North 220 feet (except the South 45 feet thereof and except that part taken for Hintz Road) of the Northwest quarter of the Northeast quarter of Section 17, Township 42 North, Range 11, East of the Third Principal Meridian pursuant to Final Plat of Resubdivision recorded August 20, 2003 as Document No. 0323238089.

PIN# 03-17-217-003
03-17-217-004

Property of Cook County Clerk's Office

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STATE OF ILLINOIS)
)
COUNTY OF Cook) SS.

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that **Michael Schall** the **PRESIDENT** and **Vincent DeLigio** the **VICE PRESIDENT**, respectively of **NEWPORT HOMES, INC.**, an Illinois corporation, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such President and Vice President, respectively, appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 28th day of AUGUST, 2003.



Cathleen F. Deligio
NOTARY PUBLIC