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**SEVENTH AMENDMENT TO NOTE AND REAL ESTATE
MORTGAGE AND ASSIGNMENT OF RENTS AND LEASES**

Executed to be Effective
June 15, 1994

Chicago, Illinois

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THIS SEVENTH AMENDMENT TO NOTE AND REAL ESTATE MORTGAGE AND ASSIGNMENT OF RENTS AND LEASES, dated and executed November 30, 1994, (hereinafter referred to as "**Seventh Amendment**") is between DEARBORN PRAIRIE HOMES CORPORATION, an Illinois corporation, having its principal office at 1337 West Fullerton Avenue, Chicago, Illinois 60614 (hereinafter referred to as "**Borrower**"), DANIEL E. MCLEAN, also doing business at 1337 West Fullerton Avenue, Chicago, Illinois 60614 (hereinafter referred to as "**Guarantor**"), and NATIONAL CITY BANK, INDIANA, as successor to Merchants National Bank and Trust Company of Indianapolis, a national banking association, having its principal banking office at 101 West Washington Street, Indianapolis, Indiana 46255 (hereinafter referred to as "**Lender**").

Recitals

1.1 **Description of Loan Agreement.** Lender entered into a certain Construction Loan Agreement dated February 28, 1989 (hereinafter referred to as "**Loan Agreement**") with VMS/MCL Dearborn Park II Venture, an Illinois joint venture (hereinafter referred to as "**Venture**"). In the Loan Agreement, Lender, *inter alia*, established a revolving line of credit for the Venture in the principal amount of Fifteen Million and 00/100 Dollars (\$15,000,000.00) with a maturity of February 28, 1991 (hereinafter referred to as the "**Loan**"). The purpose of the Loan was to fund the cost of a certain residential development project known as The Prairie Homes of Dearborn Park II (referred to in the Loan Agreement and hereinafter also referred to as the "**Project**"). Borrower was a Venture partner at such time, and now is the surviving Venture partner having assumed all of Venture's liabilities, obligations, and responsibilities in connection with the Loan and the loan documents (as defined in Section 1.14 below) as more fully discussed in Section 1.7 below.

THIS INSTRUMENT PREPARED BY,
AND AFTER RECORDING, PLEASE RETURN TO:

Allan Goldberg
Arnstein & Lehr
120 South Riverside Plaza
Chicago, Illinois 60606

RECORDER'S BOX 378

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1.2 **Description of Note.** The Loan was evidenced by a certain Promissory Note dated February 28, 1989 executed by Venture to Lender in the original principal amount of \$15,000,000.00 (hereinafter referred to as the "Note"). In the Note, Venture promised to pay to the order of Lender the principal amount therein stated and interest thereon as therein provided.

1.3 **Description of Mortgage.** To secure the Note, Venture executed a certain Real Estate Mortgage and Assignment of Rents and Leases dated February 28, 1989, and recorded March 1, 1989 as Document No. 89090221 in the Office of the Recorder of Deeds of Cook County, Illinois relative to the real estate described in Exhibit "A" (hereinafter referred to as the "Mortgage").

1.4 **Description of Limited Continuing Guaranty.** To further secure the Note, Guarantor executed and delivered to Lender a certain Limited Continuing Guaranty dated February 28, 1989, unconditionally guaranteeing the payment and performance of the Venture's obligations to Lender under the Note and Loan Agreement upon the terms and conditions provided in such guaranty (the "Guaranty").

1.5 **First Amendment to Note and Real Estate Mortgage.** The Note and the Mortgage were each amended by a certain Amendment to Note and Real Estate Mortgage and Assignment of Rents and Leases dated and executed April 17, 1991, to be effective as of February 28, 1991, by and between Venture and Lender, and recorded April 18, 1991 as Document No. 91177794 in the Office of the Recorder of Deeds of Cook County, Illinois, (hereinafter referred to as the "First Amendment"). The First Amendment modified the Note, by amending *inter alia*, (i) the principal loan balance to \$11,000,000.00, and (ii) the interest rate on the principal Loan balance to a rate per annum 150 basis points above Lender's Base Rate.

1.6 **Second Amendment to Note and Real Estate Mortgage.** The Note, the Mortgage, and the First Amendment were each amended further by a certain Second Amendment to Note and Real Estate Mortgage and Assignment of Rents and Leases, Amendment to Loan Documents, and Acknowledgment and Confirmation, dated and executed April 29, 1991, to be effective as of April 19, 1991, by and among Venture, Borrower, Daniel E. McLean, VMS Financial Guarantee Limited Partnership and Lender, and recorded May 1, 1991 as Document No. 91201898 in the Office of the Recorder of Deeds of Cook County, Illinois (hereinafter referred to as the "Second Amendment"). The Second Amendment provided, *inter alia*, for the payment to Lender of Additional Interest (as therein defined) upon the terms and conditions fully set forth in Paragraph 4 of the Second Amendment.

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1.7 **Withdrawal of One of Venture Partners and Assumption of Obligations By Borrower As Survivor.** Also as a result of the Second Amendment, on April 29, 1991, VMS Dearborn Park II, Inc., an Illinois corporation, one of the two joint venture partners of, VMS/MCL Dearborn Park II Venture, an Illinois joint venture, withdrew from the Venture and, pursuant to a certain Agreement and Assignment and Assumption of Partnership Interest also dated April 29, 1991, the Venture transferred and assigned to the remaining joint venture partner, Dearborn Prairie Homes Corporation, an Illinois corporation, all of its right, title, and interest in and to the Venture property. Therefore, Dearborn Prairie Homes Corporation, Borrower herein, as the remaining surviving Venture partner, accepted and assumed all of the interests of VMS Dearborn Park II, Inc., and assumed all of the liabilities, obligations, and responsibilities of said corporation with respect to the Venture.

1.8 **Third Amendment to Note and Real Estate Mortgage.** The Note, the Mortgage, the First Amendment, and the Second Amendment were each amended further by a certain Third Amendment to Note and Real Estate Mortgage and Assignment of Rents and Leases, dated and executed June 11, 1991, to be effective as of April 30, 1991, by and among Borrower, Guarantor, and Lender, and recorded June 13, 1991 as Document No. 91286116 in the Office of the Recorder of Deeds of Cook County, Illinois (hereinafter referred to as the "Third Amendment"). The Third Amendment provided, *inter alia*, (i) an extension of the final date for payment of the entire unpaid principal balance and all accrued and unpaid interest to February 28, 1993, (ii) an amendment to the Additional Interest provisions, (iii) a provision for periodic financial reporting requirements, (iv) procedures for the advancement by Lender of a portion of the Loan and the Cash Collateral Account (as defined in the Loan Agreement) (v) the establishment of an Earnest Money Account as defined and more fully described in Paragraph 2.5 of the Third Amendment, and (vi) a modification to the pre-sale requirements and the creation of certain limitations upon the number of unsold residential units Borrower is allowed to have in any stage of construction completion from time to time, all as more fully set forth in Paragraph 2.6 of the Third Amendment.

1.9 **Fourth Amendment to Note and Real Estate Mortgage.** The Note, the Mortgage, the First Amendment, the Second Amendment, and the Third Amendment were each amended further by a certain Fourth Amendment to Note and Real Estate Mortgage and Assignment of Rents and Leases, dated and executed August 29, 1991, by and among Borrower, Guarantor, and Lender, and recorded September 3, 1991 as Document No. 91452931 in the Office of the Recorder of Deeds of Cook County, Illinois (hereinafter referred to as the "Fourth Amendment"). The Fourth Amendment provided, *inter alia*, for Borrower to give to Lender a second mortgage ("**Second Mortgage**") on certain real property owned by Guarantor, commonly known as W1773 Bloomfield Road, Lake Geneva, Walworth County, Wisconsin 53147, as security for certain earnest money and customer upgrade deposits previously pledged to Lender by Borrower pursuant to the Third Amendment.

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1.10 **Second Mortgage.** At the time of making and delivering the Fourth Amendment, the Borrower offered and Lender accepted, as additional consideration for, and an inducement to, the Lender's deferring the exercise of certain of Borrower's obligations under the Loan, the Second Mortgage as hereinabove described, which was recorded August 30, 1991 as Document No. 217533, Volume 533 of Records on Page 1 through 21, in the Office of Registrar of Deeds of Walworth County, Wisconsin. The Second Mortgage and the Fourth Amendment were made, executed, and delivered concurrently on August 29, 1991. The Second Mortgage was originally for Nine Hundred and Forty Six Thousand Thirty-Two and 00/100 Dollars (\$946,032.00) which balance has decreased from time to time as certain deposits and deferred proceeds were repaid pursuant to the terms of Section 2.2 of the Fourth Amendment. However, it was understood and agreed by the Borrower that at no time would the minimal amounts secured by the Second Mortgage be less than Five Hundred Thousand and 00/100 Dollars (\$500,000.00), as more fully provided in Section 2.3 of the Fourth Amendment.

1.11 **Fifth Amendment to Note and Real Estate Mortgage.** The Note, the Mortgage, the First Amendment, the Second Amendment, the Third Amendment and the Fourth Amendment were each amended further by a certain Fifth Amendment to Note and Real Estate Mortgage and Assignment of Rents and Leases, dated and executed March 29, 1993, by and among Borrower, Guarantor, and Lender, and consented to by MCL Realty, Inc., and recorded April 5, 1993 as Document No. 93247511 in the Office of the Recorder of Deeds of Cook County, Illinois (hereinafter referred to as the "Fifth Amendment"). The Fifth Amendment provided, *inter alia*, (i) a reduction in the maximum outstanding principal loan balance to \$8,500,000.00 (ii) an extension of the final date for payment of the entire unpaid principal balance and all accrued and unpaid interest to February 28, 1994, (iii) a deferment of a portion of the Loan repayment due from certain closings on residential sales in the Project, all as more fully set forth in Section 2.3 of the Fifth Amendment, (iv) an amendment of the Second Mortgage and the amounts secured thereby, (v) the grant of a security interest in favor of Lender in the Earnest Money Accounts, and (vi) provisions for delivery of certain budgets and appraisals.

1.12 **Amended Second Mortgage.** At the time of making and delivering the Fifth Amendment, Borrower offered and Lender accepted, an Amended and Restated Second Mortgage and Security Agreement which was recorded April 2, 1993 as Document No. Volume 254397 of Records on Page 290 in the Office of Registrar of Deeds of Walworth County, Wisconsin ("Amended Second Mortgage"). The Amended Second Mortgage provided, *inter alia*, that the amount secured by the Amended Second Mortgage would be no less than \$950,000.00. The Amended Second Mortgage was made, executed, and delivered as additional consideration for Lender's agreement to renew the Loan in accordance with the provisions set forth in Section 2.4 of the Fifth Amendment. The Amended Second Mortgage was given as additional collateral to secure the Fifth Amendment, and shall at all times be pledged to secure the Guaranty and the Loan.

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1.13 **Sixth Amendment to Note and Real Estate Mortgage.** The Note, the Mortgage, the First Amendment, the Second Amendment, the Third Amendment, the Fourth Amendment and the Fifth Amendment were each amended further by a certain Sixth Amendment to Note and Real Estate Mortgage and Assignment of Rents and Leases, dated and executed September 27, 1993, by and among Borrower, Guarantor and Lender, and consented to by MCL Realty, Inc., MCL/Central Station Limited Partnership and Melk Development/MCL Dearborn Park, L.P., and recorded September 30, 1993 as Document No. 93785119 in the Office of the Recorder of Deeds of Cook County, Illinois (hereinafter referred to as the "**Sixth Amendment**"). The Sixth Amendment provided, inter alia, (i) an extension of the final date for payment of the entire unpaid principal balance and all accrued and unpaid interest to July 1, 1995, (ii) the dismissal by Lender of the complaint filed in National City Bank, Indiana v. Banyon Strategic Land Trust, Case Number 91L03577, filed in the Circuit Court of Cook County, (iii) that Borrower make certain Minimum Additional Principal Reduction payments, in addition to Borrower's existing payment obligations, as more fully set forth in Section 2.2 of the Sixth Amendment, (iv) the grant by Guarantor of the Additional Collateral as evidenced by the execution and delivery of two Collateral Assignment and Security Agreements, which serve as security for Borrower's repayment of the Minimum Additional Principal Reduction payments (the "**Collateral Assignment and Security Agreements**"), as more fully set forth in Section 2.3 of the Sixth Amendment, (v) a provision for the delivery by Borrower of quarterly certified financial statements and cash flow projections, (vi) an amendment to the Additional Interest provisions, as more fully set forth in Section 2.5 of the Sixth Amendment, (vii) a deferment of a portion of the loan repayment due from certain closings on residential sales in the Project, which is defined as Deferred Proceeds, as more fully set forth in Section 2.6 of the Sixth Amendment, (viii) the reaffirmation of a grant of a security interest in favor of Lender in the Escrow Accounts, and (ix) provisions for delivery of certain budgets and appraisals.

1.14 **Description of Other Lien Agreements.** Venture also executed and delivered to Lender a certain Subordination Agreement (the "**Subordination Agreement**"), and a certain Security Agreement (the "**Security Agreement**"), each dated February 28, 1989 (the Loan Agreement, the Note, the Mortgage, the Guaranty, the Subordination Agreement, Security Agreement, the First Amendment, the Second Amendment, the Third Amendment, the Fourth Amendment, the Second Mortgage, the Fifth Amendment, the Amended Second Mortgage, the Sixth Amendment, and the Collateral Assignment and Security Agreements, together with any and all other documents evidencing or securing the obligations of Venture and Borrower, either individually, jointly, or severally, to Lender are hereinafter collectively referred to as the "**Loan Documents**"). This Seventh Amendment and the First Amendment to Continuing Guaranty referred to in Section 2.10 hereof shall hereafter be deemed to be included within the definition of the Loan Documents.

1.15 **Description of Other Parties.** Guarantor is the sole shareholder and director, and an officer of Borrower, and is also the sole shareholder and director, and an

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officer of MCL Development Corporation, an Illinois corporation (hereinafter "**MCL Development**"), MCL Construction Corporation, an Illinois corporation (hereinafter "**MCL Construction**"), and MCL Realty Inc., an Illinois corporation ("**MCL Realty**"). Guarantor has a direct financial interest in and relationship with the Project because (i) MCL Development is the general contractor of certain of the improvements which have been developed and constructed at the Project, (ii) MCL Construction is the current general contractor of the improvements which have been and will continue to be developed and constructed at the Project, and (iii) MCL Realty is the sales and marketing agent for the Project. Guarantor is also a class II limited partner of MCL/Central Station Limited Partnership, an Illinois limited partnership ("**MCL/Central**"). Guarantor is also a limited partner of Melk Development/MCL Dearborn Park L.P., an Illinois limited partnership ("**Melk Development/MCL**").

In the Fourth Amendment, at Borrower's request, Guarantor agreed to pledge certain net commissions (as defined in Section 2.2 therein) earned from the current and future sales of residential units to the extent necessary to retire the outstanding balance of certain Deposits. MCL Realty, therefore, joined in the execution of the Fourth Amendment, the Fifth Amendment, and the Sixth Amendment. MCL/Central and Melk Development/MCL joined in the execution of the Sixth Amendment, thereby ratifying their respective agreement with, and consent to, the provisions therein respecting net commissions earned from current and future sales of residential units in the Project and the provisions respecting the Additional Collateral therein described. Borrower has again requested that Guarantor pledge such net commissions (as defined in Section 2.6 of the Sixth Amendment) as additional consideration for this Seventh Amendment, and Guarantor has, accordingly, joined in the execution of this Seventh Amendment.

As additional consideration therefor, and at Borrower's request, Guarantor has agreed to reaffirm its pledge of certain "Additional Collateral" described in Section 2.3 hereof to the extent necessary to meet the Minimum Additional Principal Reduction payments (as defined in Section 2.2 hereof). MCL/Central and Melk Development/MCL, therefore, join in the execution of this Seventh Amendment, thereby ratifying their respective agreement with, and consent to, the provisions of Sections 2.2 and 2.3 hereof.

1.16 **Outstanding Default.** Borrower acknowledges that a default has occurred in the payment of amounts due to Lender under the Loan Documents, specifically, Borrower has failed to pay to Lender the scheduled installment of Minimum Additional Principal Reduction in the amount of Five Hundred Thousand Dollars (\$500,000.00), which was due and payable on or before June 15, 1994, and Borrower has requested that Lender defer the exercise of Lender's rights and remedies now available to Lender pursuant to the terms and conditions of the Loan Documents. Borrower acknowledges that it is now obligated to pay in full all of the indebtedness due and owing under the Loan Documents as of June 15, 1994 ("the **Indebtedness**"), and that it has no right of offset or counterclaim or defense with respect to the Indebtedness. Lender has agreed to comply with the request of Borrower with respect to the exercise of such rights and remedies, including,

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without limitation, Lender's right to attach, collect, assume or enforce the Additional Collateral pledged by Guarantor to Lender to secure the Loan and repayment of the Minimum Additional Principal Reduction payments, but only upon certain terms and conditions which are satisfactory to both Lender and Borrower, as set forth herein.

1.17 **Seventh Amendment.** Borrower has requested (i) a reduction in the maximum outstanding principal loan balance to Six Million Five Hundred Thousand and No/100 Dollars (\$6,500,000.00) and (ii) a change in the timing of the repayment of the remaining unpaid principal balance of the Minimum Additional Principal Reduction payments from the semi-annual schedule set forth in Section 2.2 of the Sixth Amendment to the periodic repayment to Lender from any contemporaneous distributions to Guarantor, Borrower, MCL Realty, or any of their respective affiliates or related entities, of any and all cash flow or other cash or non-cash proceeds or distributions from MCL/Central or Melk Development/MCL, which is defined in Section 2.2 of the Sixth Amendment, as modified in Section 2.2 of this Seventh Amendment, as a "Cash Distribution." In consideration of, and at Borrower's request, Lender has agreed to the foregoing changes and modifications upon certain terms and conditions set forth in this Seventh Amendment.

1.18 **Ratification of Loan Documents.** Borrower and Guarantor acknowledge and agree that each of the Loan Documents secures, extends to, includes, and is effective with respect to all past, present, and future indebtedness and obligations to Lender by either of them notwithstanding Borrower's assumption, as surviving partner, of all liabilities, obligations, and responsibilities with respect to the Venture, as aforesaid, including, but not limited to, the Loan, as amended by the First Amendment, the Second Amendment, the Third Amendment, the Fourth Amendment, the Fifth Amendment, the Sixth Amendment, and the Second Mortgage, the Amended Second Mortgage and the Collateral Assignment and Security Agreements, as well as by any future extensions, renewals, increases, amendments, or modifications thereof.

1.19 **Modification Agreement.** Borrower and Lender again desire to modify certain terms and provisions under the Note and the other Loan Documents.

II

Modification Covenants and Representations

To secure the payment and performance of all present and future indebtedness and obligations of Borrower to Lender, including, but not limited to (i) the indebtedness evidenced by the Note and all renewals, extensions, modifications, and replacements thereof, and (ii) the agreements of Borrower contained herein and in the other Loan Documents, Borrower and Lender, in consideration of the premises and of the mutual covenants, agreements, and conditions herein contained, and for other good and valuable

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consideration, the sufficiency of which is hereby mutually acknowledged, hereby agree as follows:

2.1 **Incorporation by Reference.** The recitals hereto set forth and exhibit attached hereto are incorporated herein and made a part hereof.

2.2 **The Note.** The Note, as heretofore amended from time to time, shall be and is hereby modified by (i) reducing the maximum outstanding principal balance at any time to Six Million Five Hundred Thousand and No/100 Dollars (\$6,500,000.00), and (ii) modifying the repayment process and the final date for repayment of the remaining unpaid principal balance of the Minimum Additional Principal Reduction payments, in the aggregate amount of One Million Five Hundred Thousand and No/100 Dollars (\$1,500,000.00), so that the last of such payments, if not sooner paid, shall be due and payable no later than the maturity date of July 1, 1995, provided, however, that in the event that, at any time after the date hereof and prior to July 1, 1995, any cash flow or other cash or non-cash proceeds or distributions, including, without limitation, profits, distributable funds, distributions with respect to taxes, proceeds generated by any sale, refinancing, lease or other disposition of any property owned by MCL/Central and/or Melk Development/MCL, or any other distributions of any nature whatsoever, or the proceeds thereof (collectively, the "Cash Distribution"), is distributed or distributable from MCL/Central and/or Melk Development/MCL to Guarantor, then Borrower and Guarantor shall pay to Lender one hundred percent (100%) of the Cash Distribution, which shall be applied by Lender to the unpaid balance of the Minimum Additional Principal Reduction payments. Borrower and Guarantor shall make such payments of Cash Distribution to Lender unless and until the entire Minimum Additional Principal Reduction amount has been fully repaid to Lender. Such payment requirements of Minimum Additional Principal Reduction shall be in addition to and not in lieu of Borrower's existing payment obligations under the Note, as modified and amended.

2.3 **Additional Collateral for Minimum Additional Principal Reduction.** As provided in the Sixth Amendment, Guarantor has pledged to Lender for the benefit of Borrower the following additional collateral owned by Guarantor to secure the Loan and repayment of the Minimum Additional Principal Reduction payments periodically made for Cash Distribution and occurring throughout the Loan term:

- (i) An assignment by Guarantor of his right to receive any Cash Distribution from MCL/Central, which is attributable to, allocated to, or result from Guarantor's existing limited partnership interest in, and any hereafter acquired partnership interest of Guarantor in, MCL/Central and/or the sale or other disposition of such partnership interest.

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- (ii) An assignment by Guarantor of his right to receive any Cash Distribution from Melk Development/MCL, which is attributable to, allocated to, or result from Guarantor's existing limited partnership interest in, and any hereafter acquired partnership interest of Guarantor in, Melk Development/MCL and/or the sale or other disposition of such partnership interest.

(Collectively, the "Additional Collateral").

The Additional Collateral shall secure the Minimum Additional Principal Reduction payments and Lender may, in addition to its rights to the Cash Distribution hereunder, attach, collect, assume, or enforce the Additional Collateral at any time that a default by Borrower or Guarantor occurs under the Loan Documents or there is a default in the repayment of Minimum Additional Principal Reduction. As provided in the Sixth Amendment, the Additional Collateral has been pledged to Lender pursuant to the Collateral Assignment and Security Agreements, which were executed and delivered by Guarantor to Lender contemporaneous with the execution of the Sixth Amendment. The term Additional Collateral means the security which has been pledged to secure the Loan and the Minimum Additional Principal Reduction separate and distinct from the term "additional collateral" as used elsewhere in the Loan Documents, including the Amended Second Mortgage, such "additional collateral" having been given to secure the Loan, as amended, and the Guaranty.

In no event shall the net amounts (net of amounts including collection and other costs, fees and expenses incurred by Lender) collected by Lender and applied to the Loan from the Additional Collateral exceed the total outstanding and unpaid Minimum Additional Principal Reduction amount.

2.4 Valuation of Additional Collateral; Determination of Cash Distribution. Borrower shall furnish or cause to be furnished to Lender the following:

- (a) As of the date hereof and monthly thereafter, certified financial statements and cash flow projections to evidence that the net present value of the undistributed cash flow for MCL/Central and Melk Development/MCL at all times prior to the maturity date of the Note equals or is greater than the then existing amounts due under Minimum Additional Principal Reduction. A discount rate of 10% shall be applied in the calculations.
- (b) As of the date hereof and monthly thereafter, statements of all Cash Distributions for MCL/Central and Melk Development/MCL for the previous month, which are certified by the respective general partner of each partnership.

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All of the foregoing financial statements and other information shall be submitted in reasonable detail, prepared for financial reporting purposes by the chief financial officer of Borrower, MCL/Central and Melk Development/MCL, as appropriate. In the event of a default by Borrower or Guarantor under the Loan Documents, then, at the option of Lender, all of the foregoing financial statements and other information shall be prepared in accordance with generally accepted accounting principles applied on a consistent basis throughout the periods involved.

2.5 Additional Interest. As provided in the Second Amendment, Borrower is obligated to pay to Lender the Additional Interest, as defined in Paragraph 4 of the Second Amendment. As provided in Section 2.5 of the Sixth Amendment, Lender agreed that, in the event (i) the Loan has been paid in full due in part to the application to the Loan of amounts loaned to Borrower from sources other than Lender including amounts paid to Lender pursuant to the pledge of the Additional Collateral and the Second Mortgage which shall be deemed to be loaned to Borrower as it is paid to Lender ("**Borrowed Source Repayment**"), and (ii) the Project generates Cash Flow (as defined in Paragraph 4 of the Second Amendment) which is deemed Additional Interest payable to Lender, then Borrower shall first meet any Borrowed Source Repayment obligations only as described above or as Lender has pre-approved, and may deduct such amount, only to the extent thereof, from the Additional Interest due and payable to Lender.

2.6 Repayment of Deposits and Deferred Proceeds. As provided in the Fourth Amendment, Lender agreed to Borrower's request to defer a portion of the Loan repayment due from certain closings on residential sales ("**Deferred Proceeds**") in the Project, provided, however, that any such Deferred Proceeds shall be limited only to those residential sales transactions identified on Exhibit "E" attached to the Fourth Amendment or on any substituted Exhibit "B" agreed to in writing by Lender and Borrower. As provided in Section 1.12 of the Fourth Amendment, Guarantor agreed to pledge, for the benefit of Borrower, certain additional collateral owned by Guarantor to secure the Loan and repayment of the Deposits and Deferred Proceeds periodically made and occurring throughout the Loan term. Repayment of the Deposits and Deferred Proceeds will continue to be made from the following sources as provided in the Fourth Amendment:

(i) The net commissions (as defined herein) which MCL Realty earns from the current and future sales of residential units to the extent necessary to retire the outstanding balance identified in Exhibit "B" attached to the Fourth Amendment or on any substituted Exhibit "B" agreed to in writing by Lender and Borrower. The net commissions are 6% of the gross sales price for each residential unit less, (a) 2% to be retained by MCL Realty, and (b) a commission of 3% paid to an unaffiliated real estate broker with respect to any such residential sale. In no event will the net commissions be less than 4% of the gross sales price for any particular residential sale not involving an unaffiliated third party broker, and

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(ii) Any other form of liquidity or acceptable collateral from a source, unaffiliated with the Project (as defined in the Loan Agreement) but available to Borrower (specifically excluding from this sub-section, the Additional Collateral), and

(iii) Liquidation of the collateral pledged by way of the Amended Second Mortgage, amended and restated of even date herewith.

Any outstanding balance due and owing shall be declared due in full upon maturity of the Loan.

2.7 Escrow Account for Deposits. As provided in the Fourth Amendment, Borrower shall continue to place or cause to be placed all Deposits (i.e., earnest money deposits and customer upgrade deposits) into an escrow account ("**Escrow Account**") specifically established and amended hereby to be controlled by the law firm of Sachnoff & Weaver, Ltd. which will act as custodian for Lender and escrow agent for the parties ("**Escrow Agent**") subject to the terms and conditions of an escrow letter agreement dated August 29, 1991, as amended. To the extent permitted by law, Borrower hereby grants to Lender a continuing security interest in the Escrow Account to be held, administered, and controlled by the Escrow Agent, and this Seventh Amendment shall constitute a Security Agreement upon the Escrow Account. Borrower agrees to execute and deliver to Lender from time to time such UCC Financing Statements as may be reasonably requested by Lender to perfect its security interest in the monies held in the Escrow Account.

2.8 Reporting Requirements. As also provided in the Fourth Amendment, Borrower shall continue to furnish or cause to be furnished to Lender monthly the following:

(i) **Escrow Account.** Borrower shall cause the Escrow Agent to furnish Lender with a detailed report identifying in ledger format each of the Deposits received, and advanced from the Escrow Account accompanied by the previous month's Escrow Account bank statement, on a monthly reporting form satisfactory to Lender's Commercial Auditing Department. The monthly report shall be furnished to Lender within five (5) business days of the Escrow Agent's receipt of its bank statement for such account.

(ii) **Customer Upgrades.** Each month Lender shall review Escrow Agent's monthly reports provided as aforesaid and shall compare the results to individual residential unit contract sale files held or maintained by Borrower or its sales representatives or agents. Escrow Agent shall deliver a check to Lender monthly for deposit to the Cash Collateral Account (as defined in the Loan Agreement) and as more fully provided in Section 2.4 of the Third Amendment, for customer upgrades deposited during the preceding month. Borrower shall continue to comply with the established Customer Upgrade Reporting Procedure in form and substance satisfactory to Lender's Commercial Auditing Department.

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2.9 **Approval for Single Family Homes Only.** As an inducement to Lender's consent to the terms and provisions of this Seventh Amendment, from and after the effective date hereof, Borrower shall build only single family detached homes in the Project The Prairie Homes of Dearborn Park, subject, however, to compliance by Borrower with existing conditions, as set forth in the Loan Documents, as modified including, but not limited to, a revised development budget, and the written approval by Lender, Dearborn Park Corporation, and the City of Chicago Planning Commission, and Borrower shall not commence or continue construction of any terrace homes and/or townhouses at the Project without the prior written approval of the Lender, Dearborn Park Corporation, and the City of Chicago Planning Commission.

2.10 **One Hundred Percent (100%) Guaranty by Guarantor.** Notwithstanding the terms and conditions of the Guaranty to the contrary, and in order to induce Lender to consent to the terms and provisions of this Seventh Amendment, the Guaranty is hereby amended and modified to provide that the total amount recoverable from Guarantor under the Guaranty shall be one hundred percent (100%) of the Indebtedness, plus interest after maturity as provided under the Loan Documents, plus all costs of collection and reasonable attorneys' fees, and the Guarantor shall execute and deliver to Lender, contemporaneous with its execution of this Seventh Amendment, an Amendment to Continuing Guaranty which evidences such modification.

2.11 **The Other Loan Documents.** Except as otherwise provided herein, the Mortgage and each of the other Loan Documents are hereby ratified and confirmed and remain in full force and effect.

2.12 **Representations and Warranties As To Loan Agreement.** Borrower and Guarantor each represent and warrant to Lender that all representations and warranties contained in Paragraph 8 of the Loan Agreement are true and correct as of date hereof, that there has been full compliance with the covenants contained in Paragraph 9 of the Loan Agreement and that as of the date hereof there exists no default or any condition that, with the giving of notice or lapse of time or both, would constitute a default under the Loan Agreement, except as previously disclosed to Lender, including the withdrawal of one of the Venture partners.

2.13 **Representations and Warranties As To Note and Other Loan Documents.** Borrower and Guarantor each represent and warrant to Lender that all representations and warranties contained in each of the Note and the Loan Documents are true and correct as of the date hereof, that there has been full compliance with the covenants contained in each of the Note and the Loan Documents and that as of the date hereof there exists no default or any condition that, with the giving of notice or lapse of time or both, would constitute a default under the Note and the Loan Documents, except as previously disclosed to Lender.

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2.14 **No Forbearance or Waiver of Remedies.** Except as specifically set forth herein, nothing contained herein shall be deemed to be an agreement by Lender to forbear in exercising any of its rights or remedies available under the Loan Documents, at law or in equity, and Lender expressly reserves any and all rights and remedies available to it under the Loan Documents, at law or in equity. No failure to exercise or delay by Lender in exercising any right, power, or privilege hereunder, under the Loan Documents, or at law or in equity, shall preclude any other or further exercise thereof, or the exercise of any other right, power, or privilege.

Lender, Borrower and Guarantor hereby knowingly, voluntarily and intentionally waive the right any may have to a trial by jury in respect of any litigation based hereon or arising out of, under or in connection with this Agreement or the Loan Documents or any agreement contemplated to be executed in conjunction therewith, or any course of conduct, course of dealings, statements (whether verbal or written) or actions of any party. This provision is a material inducement for Lender to enter into this Seventh Amendment.

Borrower and Guarantor acknowledge that they are not aware of and do not intend to assert any claims or causes of action against Lender of any kind or nature whatsoever. Borrower and Guarantor acknowledge and agree that Lender acted in good faith in consenting to and agreeing to the terms of this Seventh Amendment. All defenses or claims of any kind or nature, whether existing by virtue of state, federal bankruptcy or federal non-bankruptcy law, by agreement or otherwise, are hereby forever waived and released by Borrower and Guarantor against Lender, its successors and assigns, and its officers, agents, employees and attorneys, including, without limitation, any affirmative defenses, counterclaims, set-offs, deductions, or recoupments.

Borrower and Guarantor also hereby agree to indemnify Lender, its successors and assigns, and its officers, agents, employees and attorneys, and hold them harmless from, any and all liability, loss or damage which may or might be incurred under or by reason of this Seventh Amendment, the Loan Documents or otherwise, and also from any and all claims and demands whatsoever which may be asserted against Lender by reason of any undertakings on Lender's part to perform or discharge pursuant to this Agreement, the Loan Documents, or otherwise.

2.15 **Expenses, Attorneys' Fees.** Lender is hereby authorized to reimburse itself from the undisbursed portion of the Loan, and Borrower acknowledges that Lender has such right, all amounts incurred by or on behalf of Lender for attorneys' fees and all other expenses reasonably incurred by or on behalf of Lender by reason of the matters specified herein and for the preparation of this Seventh Amendment or any previous amendments to or modifications of the Loan Documents as well for all other documents necessary and required to effectuate the provisions of this Seventh Amendment. In the event any dispute shall arise concerning the subject matter of this Seventh Amendment, then Lender shall be entitled to recover its reasonable attorneys' fees and costs incurred in connection therewith, including without limitation, all costs of trial, appellate, and bankruptcy pro-

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ceedings. The rights and remedies of Lender contained in this Section 2.15 or elsewhere in this Seventh Amendment shall be in addition to, and not in lieu of, the rights and remedies contained in the Loan Documents and as otherwise provided by law or in equity.

2.16 **Consent to Agreement.** Borrower and Guarantor individually, jointly, and severally acknowledge that they are sophisticated parties and have thoroughly read and reviewed the terms and provisions of this Agreement and that each is familiar with the same, that the terms and provisions herein contained are clearly understood by each and have been fully and unconditionally consented to by Borrower and Guarantor, have each had the full benefit and advice of counsel of their own selection, or the opportunity to obtain the benefit and advice of counsel, in regard to understanding the terms, meaning, and effect of this Seventh Amendment, and that this Seventh Amendment has been entered into by Borrower and Guarantor freely, voluntarily, with full knowledge, and without duress, and that in executing this Seventh Amendment, Borrower and Guarantor are relying on no other representations either written or oral, express or implied, made by Lender, or by any other party and that the consideration received by Borrower and Guarantor hereunder has been actual and adequate.

2.17 **Title Company Approval.** This Seventh Amendment shall be of no force and effect unless and until this Seventh Amendment has been recorded in the Office of the Recorder of Deeds of Cook County, Illinois and Chicago Title Insurance Company has issued an endorsement to its previously issued Alta Loan Policy No. 71-98-536 under which it insures Lender that the Mortgage, as previously amended and as amended hereby, constitutes a valid lien on the Real Estate described in said Mortgage, subject only to the liens and encumbrances set forth on Exhibit "E" to the Mortgage and to current real estate taxes not yet due and payable.

2.18 **No Joint Venture.** It is hereby acknowledged by Borrower and Guarantor that the relationship between Lender and Borrower, or Lender and Guarantor, as the case may be, is that of creditor and debtor, or creditor and guarantor, and is not intended to be and shall not in any way be construed to be that of a partnership, a joint venture, or that of principal and agent; and it is hereby further acknowledged that any disbursement of the Loan to any one other than Borrower shall not be deemed to make Lender a partner, joint venturer, or principal or agent of Borrower, but rather shall be deemed to be solely for the purpose of protecting Lender's security for the Loan.

2.19 **Binding Effect.** This Seventh Amendment shall be binding upon and inure to the benefit of Borrower, Guarantor, and Lender, and their respective heirs, beneficiaries, successors, assigns, and personal and legal representatives.

2.20 **Governing Law.** This Seventh Amendment shall be governed by and construed in accordance with the laws of the State of Illinois.

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IN WITNESS WHEREOF, the undersigned have caused this Seventh Amendment to be executed and effective as of the day and year first above written.

BORROWER:

DEARBORN PRAIRIE HOMES CORPORATION,
an Illinois corporation

By: _____

Daniel E. McLean
Daniel E. McLean
President

GUARANTOR:

Daniel E. McLean, Individually
SSN: 343-38-9935

LENDER:

NATIONAL CITY BANK, INDIANA

By: _____

John J. Thullen
John J. Thullen,
Vice-President

Property of Cook County Clerk's Office

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STATE OF ILLINOIS)
) SS:
COUNTY OF COOK)

I, Eve Safarik, a Notary Public in and for the County and State aforesaid, do hereby certify that Daniel E. McLean, President of Dearborn Prairie Homes Corporation, an Illinois corporation, 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 the said instrument as his own free and voluntary act and as the free and voluntary act of said corporation, for the uses and purposes therein set forth; and did then and there affix the corporate seal of said corporation, to said instrument as his 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 30th day of November, 1994.

Eve Safarik
Notary Public

My Commission Expires:



Clerk's Office

04021203

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STATE OF ILLINOIS)
) SS:
COUNTY OF COOK)

I, Eve Safarik, a Notary Public in and for the County and State aforesaid, do hereby certify that Daniel E. McLean, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 30th day of November, 1994.

Eve Safarik
Notary Public

My Commission Expires:

8/30/98



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STATE OF INDIANA)
) SS:
COUNTY OF MARION)

I, Diana Priest, a Notary Public in and for the County and State aforesaid, do hereby certify that John J. Thullen, Vice-President of National City Bank, Indiana, a national banking association, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Vice-President, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said Bank, for the uses and purposes therein set forth; and did then and there affix the corporate seal of said Bank, to said instrument as his own free and voluntary act and as the free and voluntary act of said Bank, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 2nd day of ~~November~~^{December}, 1994.

Diana A. Priest

Notary Public

My Commission Expires:

Diana S. Priest
Notary Public
County of Residence: Hendricks
My Commission Expires
2/13/98

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CONSENT

MCL REALTY, INC., an Illinois corporation, hereby consents to the provisions of and agrees to comply with certain repayment requirements set forth in this Seventh Amendment.

MCL REALTY, INC.

By: 

Daniel E. McLean, President

CONSENT

MCL/CENTRAL STATION LIMITED PARTNERSHIP, an Illinois limited partnership, hereby consents to the provisions of and agrees to comply with certain requirements set forth in Sections 2.2 and 2.3 of this Seventh Amendment.

**MCL/CENTRAL STATION
LIMITED PARTNERSHIP**

By: MCL/Central Station, Inc.,
an Illinois corporation,
General Partner

By: 

Daniel E. McLean, President

CONSENT

MELK DEVELOPMENT/MCL DEARBORN PARK L.P., an Illinois limited partnership, hereby consents to the provisions of and agrees to comply with certain requirements set forth in Sections 2.2 and 2.3 of this Seventh Amendment.

**MELK DEVELOPMENT/
MCL DEARBORN PARK L.P.**

By: MCL/Dearborn Park, Inc.,
an Illinois corporation,
General Partner

By: 

Daniel E. McLean, President

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EXHIBIT "A"

Parcel "A":

Block 5 in Dearborn Park Unit No. 2, being a resubdivision of Sundry lots and vacated streets and alleys in part of the North East 1/4 of Section 21, Township 39 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

Parcel "B":

Block 7 together with the South 381.50 feet of Block 4 in Dearborn Park Unit No. 2, being a resubdivision of Sundry lots and vacated streets and alleys in part of the North East 1/4 of Section 21, Township 39 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

Property bounded by Roosevelt Road on the North and 15th Street on the South, State Street on the East.

Permanent Index No.: 17-21-210-012, 009, 013, 011, 013, 024 and 028.

17 21 210-008, 016, 017, 022, 010, 022, 026, 032 and 082.

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