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ILLINOIS

This Document Prepared By and Should be Returned To:

RBC Centura Bank  
11011 Richmond Avenue  
Suite 890  
Houston, Texas, 77042  
Attention: John T. DeSpain



Doc#: 0430046131  
Eugene "Gene" Moore Fee: \$56.00  
Cook County Recorder of Deeds  
Date: 10/26/2004 10:51 AM Pg: 1 of 17

*This space reserved for Recorder's use only.*

TICOR  
392555

Permanent Real Estate  
Tax Index Numbers:

Property Address: \_\_\_\_\_  
Loan Number: 2834-013113

**MASTER REAL ESTATE CONSTRUCTION MORTGAGE, SECURITY AGREEMENT,  
FIXTURE FINANCING STATEMENT WITH ASSIGNMENT OF LEASES AND RENTS**

Re: LOT 176 ON RAYMOND L LUTGERT'S SUBDIVISION

**THE MAXIMUM AMOUNT TO BE ADVANCED ON THE BASIS OF THE REAL PROPERTY DESCRIBED HEREIN IS THE SUM OF FIVE HUNDRED NINETY-TWO THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$592,500.00).**

THIS MASTER REAL ESTATE CONSTRUCTION MORTGAGE, SECURITY AGREEMENT AND FIXTURE FINANCING STATEMENT WITH ASSIGNMENT OF LEASES AND RENTS (as the same may from time to time be extended, renewed or modified, the "Mortgage") is made as of August 27, 2004 by THOMAS HOMES CONCEPTS, INC. an Illinois corporation ("Mortgagor"), having its principal place of business at 1835 Rohlwing Road, Suite A, Rolling Meadows, Illinois 60008, to RBC CENTURA BANK, a North Carolina banking corporation ("Mortgagee"), having its principal place of business at 11011 Richmond Avenue, Suite 850, Houston, Texas 77042, Attention: John T. DeSpain. Notwithstanding anything to the contrary in this Mortgage or the other Loan Documents (as defined in the Loan Agreement hereafter defined), this Mortgage operates as a Mortgage in accordance with the laws of the State of Illinois.

**RECITALS:**

A. Mortgagee has agreed to loan Mortgagor the principal amount not to exceed One Million Five Hundred Thousand and No/100 Dollars (\$1,500,000.00) (the "Loan"), pursuant to the Loan Agreement dated May 10, 2004 by and between Mortgagor and Mortgagee (the "Loan Agreement"). The Loan shall be evidenced by a certain Note dated May 10, 2004 (the "Note") made by Mortgagor payable to Mortgagee in the principal amount of One Million Five Hundred

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Thousand and No/100 Dollars (\$1,500,000.00) with a maturity date of May 10, 2006. The Note is a revolving line of credit Note under which advances may be made by Mortgagee to the Mortgagor and repaid by the Mortgagor who may thereafter reborrow the amounts repaid. The Loan Agreement specifies the maximum amount to be advanced upon specific collateral securing the payment of the Note, and the maximum amount to be advanced on the Note based on the collateral described herein is the sum of Five Hundred Ninety-two Thousand Five Hundred and No/100 Dollars (\$592,500.00).

B. A condition precedent to Mortgagee's extension of the Loan to Mortgagor is the execution and delivery by Mortgagor of this Mortgage.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Mortgagor agrees as follows:

Mortgagor hereby mortgages, grants, assigns, premises, releases, warrants and conveys to Mortgagee, its successors and assigns, the real estate legally described on Exhibit A attached hereto (the "Real Estate"), together with the other property described in the following paragraph (the Real Estate and property being hereinafter referred to as the "Premises") to secure: (i) the payment of the Loan and all interest, late charges and other indebtedness evidenced by or owing under the Note or any of the other Loan Documents (as defined in the Note) and by any extensions, modifications, renewals or refinancings thereof; (ii) the performance and observance of the covenants, conditions, agreements, representations, warranties and other liabilities and obligations of Mortgagor or any other obligor to or benefiting Mortgagee which are evidenced or secured by or otherwise provided in the Note, this Mortgage or any of the other Loan Documents; (iii) the reimbursement of Mortgagee for any and all sums expended or advanced by Mortgagee pursuant to any term or provision of or constituting additional indebtedness under or secured by this Mortgage or any of the other Loan Documents, with interest thereon as provided herein or therein; (iv) payment of all other indebtedness, of whatever kind or character, now owing or which may hereafter become owing by Mortgagor to Mortgagee, whether such indebtedness is evidenced by note, open account, overdraft, endorsement, surety agreement, guaranty, any trust agreement or set aside letter issued by Mortgagee in connection with the Premises, any document executed in connection with the issuance of a letter of credit, or otherwise (it being contemplated that Mortgagor may subsequently become indebted to Mortgagee).

In addition to the Real Estate, the Premises hereby mortgaged includes all buildings, structures and improvements owned by Mortgagor and now or hereafter constructed or erected upon or located on the Real Estate, all tenements, easements, rights-of-way and rights used as a means of access thereto, all fixtures and appurtenances thereto now or hereafter belonging or pertaining to the Real Estate, with all payments, earnings, income, and profits arising from sale of all or any portion of the Mortgaged Property or from the Contracts and all other sums due or to become due under and pursuant thereto and together with any and all earnest money, security deposits, letters of credit or other deposits under any of the Contracts and all rents, issues, royalties, income, revenue, proceeds, profits, and all accounts relating to the Premises, including all refunds, rebates or credits in connection with a reduction in real estate taxes and assessments charged against the Mortgaged Property as a result of tax certiorari or any application or proceedings for reduction, and together and all other benefits thereof, and any after-acquired title, franchise, or license and the reversions or remainders thereof, for so long and during all such times as Mortgagor may be entitled thereto (which are pledged primarily and on a parity with said Real Estate and not secondarily), and all machinery, apparatus, equipment, appliances, floor covering, furniture, furnishings, supplies, materials, fittings, fixtures and other personal property of every kind and nature whatsoever, and any and all contracts, subcontracts, and agreements, written or oral, between Mortgagor and any other party, and between parties other than Mortgagor, in any way relating to the construction of Improvements or the supplying of material (specially fabricated or otherwise), labor, supplies, or other services; all proceeds thereof, now or hereafter located thereon or therein and which is owned by Mortgagor. All of the land, estate and property hereinabove described, real, personal and mixed, whether or not affixed or annexed, and all rights hereby conveyed and mortgaged are intended so to be as a unit and are hereby understood, agreed and declared, to the maximum extent permitted by law, to form a part and parcel of the Real Estate and to be appropriated to the use of the Real Estate, and shall be for the purposes of this Mortgage deemed to be conveyed and mortgaged hereby; provided, however, as to any of the property aforesaid which does not so form a part and parcel of the Real Estate, this Mortgage is hereby deemed also to be a Security Agreement under the Uniform Commercial Code as enacted in the state in which the property is located (the "Code") for purposes of granting a security interest in such property, which Mortgagor hereby grants to Mortgagee, as secured party (as defined in the Code).

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TO HAVE AND TO HOLD the Premises unto Mortgagee, its successors and assigns, forever, for the purposes and uses herein set forth, together with all right to retain possession of the Premises after any Event of Default (as hereinafter defined).

Mortgagee, prior to release of this Mortgage, may make one or more future advances to Mortgagor not to exceed a total indebtedness of Three Million and No/Dollars (\$3,000,000.00), which future advances shall, in each instance, be secured by this Mortgage in accordance with applicable state law. Such future advances, with interest thereon, shall be secured by this Mortgage, whether made (i) under the Note, or (ii) under any substitution, renewal, replacement or modification of the Note, when evidenced by substitution, renewal, replacement or modification agreements or notes stating that such agreements or notes are secured by this Mortgage.

In addition to any other debt or obligation secured hereby, this Instrument shall secure unpaid balances of advances made for the payment of taxes, assessments, insurance premiums, and other costs incurred for the maintenance and protection of the Premises including, without limitation, any costs incurred in connection with any appropriate environmental tests, inspections and, if necessary, remediation.

## IT IS FURTHER UNDERSTOOD AND AGREED THAT:

1. **Title.** Mortgagor represents, warrants and covenants that (a) except those liens and encumbrances described on the loan policy of title insurance issued to Mortgagee insuring the lien of this Mortgage (the "Permitted Exceptions"); and (b) Mortgagor has legal power and authority to mortgage and convey the Premises.

2. **Maintenance, Repair and Restoration of Improvements, Payment of Prior Liens, etc.** Mortgagor shall: (a) promptly repair, restore or rebuild any buildings or improvements owned by Mortgagor and now or hereafter on the Premises which may become damaged or be destroyed; (b) keep the Premises in good condition and repair, without waste, and free from mechanics' liens or other liens or claims for lien, except that Mortgagor shall have the right to contest by appropriate proceedings the validity or amount of any such lien if and only if Mortgagor shall, within thirty (30) days after the filing thereof, (i) place a bond with Mortgagee in an amount, form, content and issued by a surety reasonably acceptable to Mortgagee for the payment of any such lien or (ii) cause the title company which has issued the loan policy of title insurance to Mortgagee insuring the lien of this Mortgage to issue an endorsement thereto insuring against loss or damage on account of any such lien; (c) immediately pay when due any indebtedness which may be secured by a lien or charge on the Premises superior or inferior to or at parity with the lien hereof (no such superior, inferior or parity lien to be permitted hereunder), and upon request exhibit satisfactory evidence of the discharge of any such lien to Mortgagee; (d) complete within a reasonable time any buildings or any other improvements owned by Mortgagor and now or at any time in process of construction upon the Premises; (e) comply with all requirements of law, municipal ordinances and restrictions of record with respect to the Premises and the use thereof, including without limitation, those relating to building, zoning, environmental protection, health, fire and safety; (f) make no material alterations to the Premises or any buildings or other improvements now or hereafter constructed thereon, without the prior written consent of Mortgagee; (g) not suffer or permit any change in the general nature of the occupancy of the Premises without the prior written consent of Mortgagee; (h) not initiate or acquiesce in any zoning reclassification without the prior written consent of Mortgagee; (i) pay or cause to be paid each item of indebtedness secured by this Mortgage when due according to the terms of the Note and the other Loan Documents; and (j) duly perform and observe or cause to be performed and observed all of the covenants, terms, provisions and agreements herein, in the Note and in the other Loan Documents on the part of Mortgagor to be performed and observed. As used in this Paragraph and elsewhere in this Mortgage, the term "indebtedness" shall mean and include the principal sum evidenced by the Note, together with all interest thereon and all other amounts payable to Mortgagee thereunder, and all other sums at any time secured by this Mortgage.

3. **Payment of Taxes and Assessments.** Mortgagor shall pay all general taxes, special taxes, special assessments, water charges, sewer service charges, and all other liens or charges levied or assessed against the Premises, or any interest therein, of any nature whatsoever when due and before any penalty or interest is assessed, and, at the request of Mortgagee, shall furnish to Mortgagee duplicate receipts of payment therefor. If any special assessment is permitted by applicable law to be paid in installments, Mortgagor shall have the right to pay such assessment in installments, so long as all such installments are paid prior to the due date thereof. Notwithstanding anything contained herein to the contrary, Mortgagor shall have the right to protest any taxes assessed against the Premises, so long as such protest is conducted in good faith by appropriate legal proceedings diligently prosecuted and Mortgagor shall furnish to the title insurer such security or indemnity as said insurer requires to induce it to issue an endorsement, in form and substance acceptable to Mortgagee, insuring over any exception created by such protest.

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4. **Tax Deposits.** At Mortgagee's option, Mortgagor may be required to deposit with Mortgagee on the first day of each month until the indebtedness secured by this Mortgage is fully paid, a sum equal to one-twelfth (1/12th) of 105% of the annual taxes and assessments (general and special) on the Premises, as reasonably determined by Mortgagee. Such deposits are to be held without any allowance of interest and are to be used for the payment of taxes and assessments on the Premises next due and payable when they become due. Mortgagee may, at its option, pay such taxes and assessments when the same become due and payable (upon submission of appropriate bills therefor from Mortgagor) or shall release sufficient funds to Mortgagor for the payment thereof. If the funds so deposited are insufficient to pay any such taxes or assessments for any year (or installments thereof, as applicable) when the same shall become due and payable, Mortgagor shall, within ten days after receipt of demand therefor, deposit additional funds as may be necessary to pay such taxes and assessments in full. If the funds so deposited exceed the amount required to pay such taxes and assessments for any year, the excess shall be applied toward subsequent deposits. Said deposits need not be kept separate and apart from any other funds of Mortgagee.

5. **Mortgagee's Interest In and Use of Deposits.** Upon the occurrence of an Event of Default, Mortgagee may, at its option, apply monies at the time on deposit pursuant to Paragraph 4 hereof, or any other deposits being held by Mortgagee, toward any of the indebtedness secured hereby in such order and manner as Mortgagee may elect. When such indebtedness has been fully paid, and Mortgagor has no further obligation under the Loan documents, any remaining deposits shall be returned to Mortgagor. Such deposits are hereby pledged as additional security for the indebtedness hereunder and shall not be subject to the direction or control of Mortgagor. Mortgagee shall not be liable for any failure to apply to the payment of taxes, assessments and insurance premiums any amount so deposited unless Mortgagor, prior to the occurrence of an Event of Default, shall have requested Mortgagee in writing to make application of such funds to the payment of such amounts, accompanied by the bills for such taxes, assessments and insurance premiums. Mortgagee shall not be liable for any act or omission taken in good faith.

## 6. Insurance.

A. Mortgagor shall at all times keep all buildings, improvements, fixtures and articles of personal property now or hereafter situated on the Premises insured against loss or damage by fire and such other hazards as may reasonably be required by Mortgagee, including without limitation: (i) all-risk fire and extended coverage insurance, with vandalism and malicious mischief endorsements, for the full replacement value of the Premises, with agreed upon amount and inflation protection endorsements; (ii) if the Premises are located in a flood hazard area, flood insurance in the maximum amount obtainable up to the amount of the indebtedness hereby secured; and (iii) such other insurance as Mortgagee may from time to time require. Mortgagor also shall at all times maintain comprehensive public liability, property damage and workmen's compensation insurance covering the Premises and any employees thereof, with such limits for personal injury, death and property damage as Mortgagee may require. Mortgagor shall be the named insured under such policies and Mortgagee shall be identified as an additional insured party. All policies of insurance to be furnished hereunder shall be in forms, with companies, in amounts and with deductibles reasonably satisfactory to Mortgagee, with mortgagee clauses attached to all policies in favor of and in form satisfactory to Mortgagee, including a provision requiring that the coverage evidenced thereby shall not be terminated or modified without thirty days prior written notice to Mortgagee and shall contain endorsements that no act or negligence of the insured or any occupant and no occupancy or use of the Premises for purposes more hazardous than permitted by the terms of the policies will affect the validity or enforceability of such policies as against Mortgagee. Mortgagor shall deliver all policies, including additional and renewal policies, to Mortgagee, and, in the case of insurance about to expire, shall deliver renewal policies not less than thirty days prior to their respective dates of expiration.

B. Mortgagor shall not take out separate insurance concurrent in form or contributing in the event of loss with that required to be maintained hereunder unless Mortgagee is included thereon as the loss payee or an additional insured as applicable, under a standard mortgage clause acceptable to Mortgagee and such separate insurance is otherwise acceptable to Mortgagee.

C. In the event of loss, Mortgagor shall give immediate notice thereof to Mortgagee, who shall have the sole and absolute right to make proof of loss, and each insurance company concerned is hereby authorized and directed to make payment for such loss directly to Mortgagee (rather than to Mortgagor and Mortgagee jointly). Mortgagee shall have the right, at its option and in its sole discretion, to apply any insurance proceeds so received after the payment of all of Mortgagee's expenses, either (i) on account of the unpaid principal balance of the Note, irrespective of whether such principal balance is then due and payable, whereupon Mortgagee may declare the whole of the balance of indebtedness hereby secured to be due and payable, or (ii) to the restoration or repair of the property damaged as provided in Paragraph 22 hereof. If insurance proceeds are delivered to Mortgagor by Mortgagee as herein provided, Mortgagor shall repair,

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restore or rebuild the damaged or destroyed portion of the Premises so that the condition and value of the Premises are substantially the same as the condition and value of the Premises prior to being damaged or destroyed. If Mortgagee permits the application of such insurance proceeds to the cost of restoration and repair of the Premises, any surplus which may remain out of said insurance proceeds after payment of such costs shall be applied on account of the unpaid principal balance of the Note, irrespective of whether such principal balance is then due and payable. In the event of foreclosure of this Mortgage, all right, title and interest of Mortgagor in and to any insurance policies then in force shall pass to the purchaser at the foreclosure sale. At the request of Mortgagee, from time to time, Mortgagor shall furnish Mortgagee, without cost to Mortgagee, evidence of the replacement value of the Premises.

**7. Condemnation.** If all or any part of the Premises are damaged, taken or acquired, either temporarily or permanently, in any condemnation proceeding, or by exercise of the right of eminent domain, the amount of any award or other payment for such taking or damages made in consideration thereof, to the extent of the full amount of the remaining unpaid indebtedness secured by this Mortgage, is hereby assigned to Mortgagee, who is empowered to collect and receive the same and to give proper receipts therefor in the name of Mortgagor and the same shall be paid forthwith to Mortgagee. Such award or monies shall be applied on account of the unpaid principal balance of the Note, irrespective of whether such principal balance is then due and payable.

**8. Stamp Tax.** If, by the laws of the United States of America, or of any state or political subdivision having jurisdiction over Mortgagor, any tax is due or becomes due in respect of the execution and delivery of this Mortgage, the Note or any of the other Loan Documents, Mortgagor covenants and agrees to pay such tax in the manner required by any such law. Mortgagor further covenants to reimburse Mortgagee for any sums which Mortgagee may expend by reason of the imposition of any such tax. Notwithstanding the foregoing, Mortgagor shall not be required to pay any income or franchise taxes of Mortgagee.

**9. Lease Assignment.** As part of the consideration for the indebtedness evidenced by the Note, Mortgagor hereby absolutely and unconditionally assigns and transfers to Mortgagee all of the occupancy agreements and leases now existing or hereafter entered into with respect to the Premises, and all modifications, renewals and extensions thereof, (collectively the "Leases") and all the rents, accounts and revenues, which shall include all deposits, of the Premises, including those now due, past due, or to become due by virtue of any of the Leases or any other agreement for the occupancy or use of all or any part of the Premises, regardless as to whom the rents, accounts and revenues of the Premises are payable; provided, however, that prior to an Event of Default under this Mortgage, Mortgagor shall exercise all of its rights under the Leases and shall collect and receive all of the rents, accounts and revenues of the Premises, and Mortgagor shall apply the rents, accounts and revenues so collected to current operating expenses of the Premises and current amounts due Mortgagee with the balance, so long as no such Event of Default has occurred, to the account of Mortgagor. Upon an Event of Default hereunder, and without the necessity of Mortgagee entering upon and taking and maintaining full control of the Premises in person, by agent or by a court-appointed receiver, Mortgagee shall immediately (i) be entitled to exercise all of the rights of Mortgagor under the Leases and (ii) be entitled to possession of all rents, accounts and revenues of the Premises as specified in this Paragraph 9 as the same become due and payable, including but not limited to rents, accounts and revenues then due and unpaid. At the time of any such Event of Default, any such rents, accounts and revenues then held by Mortgagor shall immediately be held by Mortgagor as trustee for the benefit of Mortgagee only. Mortgagor agrees that commencing upon an Event of Default, each occupant of the Premises shall make such rents, accounts and revenues payable to and pay such rents, accounts and revenues to Mortgagee or Mortgagee's agents on Mortgagee's written demand to each occupant personally, by mail or by delivering such demand to each rental unit, without any liability on the part of said occupant to inquire further as to the existence of a default by Mortgagor. Unless Mortgagee takes possession of the property or exercises control over it, Mortgagee shall not be liable for any loss sustained by the Mortgagor resulting from any failure by Mortgagee either to collect the rents, accounts and revenues of the Premises or in exercising or failing to exercise any of the rights of Mortgagor under the Leases. Mortgagee shall have no liability to any occupant under any of the Leases for the performance or observance of any of the terms, conditions or obligations contained therein unless Mortgagee takes possession of the Premises.

**10. Effect of Extensions of Time.** If the payment of the indebtedness secured hereby or any part thereof is extended or varied or if any part of any security for the payment of the indebtedness is released, all persons now or at any time hereafter liable therefor, or interested in the Premises or having an interest in Mortgagor, shall be held to assent to such extension, variation or release, and their liability and the lien and all of the provisions hereof shall continue in full force, any right of recourse against all such persons being expressly reserved by Mortgagee, notwithstanding such extension, variation or release.

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**11. Effect of Changes in Laws Regarding Taxation.** If any law is enacted after the date hereof requiring (i) the deduction of any lien on the Premises from the value thereof for the purpose of taxation or (ii) the imposition upon Mortgagee of the payment of the whole or any part of the taxes or assessments, charges or liens herein required to be paid by Mortgagor, or (iii) a change in the method of taxation of mortgages or debts secured by mortgages or Mortgagee's interest in the Premises, or the manner of collection of taxes, so as to affect this Mortgage or the indebtedness secured hereby or the holders thereof, then Mortgagor, upon demand by Mortgagee, shall pay such taxes or assessments, or reimburse Mortgagee therefor; provided, however, that Mortgagor shall not be deemed to be required to pay any income or franchise taxes of Mortgagee. Notwithstanding the foregoing, if in the opinion of counsel for Mortgagee it may be unlawful to require Mortgagor to make such payment or the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then Mortgagee may declare all of the indebtedness secured hereby to be immediately due and payable.

**12. Mortgagee's Performance of Defaulted Acts and Expenses Incurred by Mortgagee.** If an Event of Default has occurred, Mortgagee may, but need not, make any payment or perform any act herein required of Mortgagor in any form and manner deemed expedient by Mortgagee, and may, but need not, make full or partial payments of principal or interest on prior encumbrances, if any, and purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof, or redeem from any tax sale or forfeiture affecting the Premises or consent to any tax or assessment or cure any default of Mortgagor in any lease of the Premises. All monies paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including attorneys' fees, and any other monies advanced by Mortgagee in regard to any tax referred to in Paragraph 8 above or to protect the Premises or the lien hereof, shall be so much additional indebtedness secured hereby, and shall become immediately due and payable by Mortgagor to Mortgagee, upon demand, and with interest thereon at the Default Rate (as defined in the Note) then in effect. In addition to the foregoing, any costs, expenses and fees, including attorneys' fees, incurred by Mortgagee in connection with (a) sustaining the lien of this Mortgage or its priority, (b) protecting or enforcing any of Mortgagee's rights hereunder, (c) recovering any indebtedness secured hereby, (d) any litigation or proceedings affecting the Note, this Mortgage, any of the other Loan Documents or the Premises, including without limitation, bankruptcy and probate proceedings, or (e) preparing for the commencement, defense or participation in any threatened litigation or proceedings affecting the Note, this Mortgage, any of the other Loan Documents or the Premises, shall be so much additional indebtedness secured hereby, and shall become immediately due and payable by Mortgagor to Mortgagee, upon demand, and with interest thereon at the Default Rate. The interest accruing under this Paragraph 12 shall be immediately due and payable by Mortgagor to Mortgagee, and shall be additional indebtedness evidenced by the Note and secured by this Mortgage. Mortgagee's failure to act shall never be considered as a waiver of any right accruing to Mortgagee on account of any Event of Default. Should any amount paid out or advanced by Mortgagee hereunder, or pursuant to any agreement executed by Mortgagor in connection with the Loan, be used directly or indirectly to pay off, discharge or satisfy, in whole or in part, any lien or encumbrance upon the Premises or any part thereof, then Mortgagee shall be subrogated to any and all rights, equal or superior titles, liens and equities, owned or claimed by any owner or holder of said outstanding liens, charges and indebtedness, regardless of whether said liens, charges and indebtedness are acquired by assignment or have been released of record by the holder thereof upon payment.

**13. Mortgagee's Reliance on Tax Bills and Claims for Liens.** Mortgagee, in making any payment hereby authorized relating to taxes and assessments, may do so according to any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof.

**14. Event of Default; Acceleration.** Each of the following shall constitute an "Event of Default" for purposes of this Mortgage:

A. Mortgagor fails to pay within ten (10) days on the date when due (i) any installment of principal or interest payable pursuant to the Note, or (ii) any other amount payable pursuant to the Note, this Mortgage, the Loan Agreement or any of the other Loan Documents;

B. Mortgagor fails to keep in full force and effect the insurance required to be maintained in accordance with this Mortgage, or the Loan Agreement, or the Mortgagor fails to deliver such insurance to Mortgagee upon request;

C. Mortgagor fails to timely provide any financial or accounting report required under any of the Loan Documents;

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- D. The existence of any inaccuracy or untruth in any material respect in any representation or warranty contained in this Mortgage or any of the other Loan Documents or of any statement or certification as to facts delivered to Mortgagee, Mortgagor or any guarantor of the Note;
- E. Mortgagor or any guarantor of the Note shall make an assignment for the benefit of creditors or Mortgagor or any guarantor of the Note shall admit in writing its inability to pay, or the failure of Mortgagor or any guarantor of the Note to pay, debts generally as the debts become due;
- F. Mortgagor or any guarantor of the Note files a voluntary petition in bankruptcy or is adjudicated a bankrupt or insolvent or files any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future federal, state, or other statute or law, or seeks or consents to or acquiesces in the appointment of any trustee, receiver or similar officer of Mortgagor or of all or any substantial part of the property of Mortgagor or any guarantor of the Note or any of the Premises;
- G. The commencement of any involuntary petition in bankruptcy against Mortgagor or any guarantor of the Note or the institution against Mortgagor or any guarantor of the Note of any reorganization, arrangement, composition, readjustment, dissolution, liquidation or similar proceedings under any present or future federal, state or other statute or law, or the appointment of a receiver, trustee or similar officer for all or any substantial part of the property of Mortgagor or any guarantor of the Note which shall remain undismissed or undischarged for a period of sixty days;
- H. Any sale, transfer, lease, assignment, conveyance, financing, lien or encumbrance made in violation of Paragraph 27 of this Mortgage;
- I. Subject to Mortgagor's right to contest as provided herein, the Premises become subject to any mechanic's, materialman's, mortgage or other lien except a lien for local real estate taxes and assessments not then due and payable;
- J. Mortgagor fails to cure properly any violation of laws or ordinances affecting or which may be interpreted to affect the Premises;
- K. Except as permitted in this Mortgage or contemplated under the Loan Documents, the actual or threatened alteration, improvement, demolition or removal of any of the Improvements (as such term is defined in the Loan Agreement) without the prior consent of Mortgagee;
- L. Damage to the Premises in any manner which is not covered by insurance solely as a result of Mortgagor's failure to maintain insurance required in accordance with this Mortgage;
- M. All or a substantial part of Mortgagor's assets (other than the Premises) are attached, seized, subjected to a writ or distress warrant or are levied upon (unless such attachment, seizure, writ, distress warrant or levy is vacated within sixty [60] days following the date of the same);
- N. Entry of a judgment in excess of \$10,000.00 and the expiration of any appeal rights or the dismissal or final adjudication of appeals against Mortgagor (unless such judgment is vacated within sixty [60] days following the date of the same);
- O. This Mortgage shall cease to constitute a first-priority lien on the Premises (other than in accordance with its terms);
- P. Seizure or forfeiture of the Premises, or any portion thereof, or Mortgagor's interest therein, resulting from criminal wrongdoing or other unlawful action of Mortgagor, its affiliates or any tenant in the Premises under any federal, state or local law;
- Q. Mortgagor, or any guarantor of the Note, shall die, dissolve, terminate or liquidate, or merge with or be consolidated with any other entity, or become permanently disabled;
- R. Mortgagor discontinues its homebuilding business;
- S. Mortgagor takes any action to or otherwise begins the process of winding up its business or affairs, or dissolving, liquidating or terminating;
- T. A change in "control" of Mortgagor (as used in this subparagraph "control" shall mean the possession, directly or indirectly, of power to direct or cause the direction of management or policies of Mortgagor, whether through ownership of securities or other ownership interests, by contract or otherwise); and

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U. A default or event of default occurs under any term, covenant, or condition of this Mortgage or any of the other Loan Documents other than as specified in any of the above subparagraphs and such default or event of default is not cured with the applicable cure period provided in the applicable Loan Document or herein;

V. The holder of any lien or security interest on the Premises (without hereby implying Mortgagee's consent to the existence, placing, creating or permitting of any such lien or security interest) institutes foreclosure or other proceedings for the enforcement of its remedies thereunder;

W. Any Event of Default occurs and is continuing under any Loan Documents or other documents relating to or evidencing the Loan; or

X. Mortgagor, without the prior written consent of Mortgagee, creates, places or permits to be created or placed, or through any act or failure to act, acquiesces in the placing of, or allows to remain, any mortgage, pledge, lien (statutory, constitutional or contractual), security interest, encumbrance or charge on, or conditional sale or other title retention agreement, regardless of whether same is expressly subordinate to the liens of the Loan Documents, with respect to, the Premises, the Leases, the Plans and Specifications (as defined in the Loan Agreement) or the rents of the Premises, other than the Permitted Exceptions.

If an Event of Default occurs, Mortgagee may, at its option, declare the whole of the indebtedness hereby secured to be immediately due and payable without further notice to Mortgagor, with interest thereon from the date of such Event of Default at the Default Rate. Notwithstanding anything to the contrary contained in or inferable from any provision hereof, upon the occurrence of an Event of Default as defined in subparagraph V herein, the principal balance, the unpaid accrued interest under the Note and any other accrued but unpaid portion of the Indebtedness shall be automatically and immediately due and payable in full without the necessity of any action on the part of the Mortgagee.

#### 15. Foreclosure; Expense of Litigation.

A. When all or any part of the indebtedness hereby secured shall become due, whether by acceleration or otherwise, Mortgagee shall have the right to foreclose the lien hereof for such indebtedness or part thereof and/or exercise any right, power or remedy provided in this Mortgage or any of the other Loan Documents. It is further agreed that if default be made in the payment of any part of the secured indebtedness, as an alternative to the right of foreclosure for the full secured indebtedness after acceleration thereof, Mortgagee shall have the right to institute partial foreclosure proceedings with respect to the portion of said indebtedness so in default, as if under a full foreclosure, and without declaring the entire secured indebtedness due (such proceeding being hereinafter referred to as a "partial foreclosure"), and provided that if foreclosure sale is made because of default of a part of the secured indebtedness, such sale may be made subject to the continuing lien of this Mortgage for the unmatured part of the secured indebtedness. It is further agreed that such sale pursuant to a partial foreclosure shall not in any manner affect the unmatured part of the secured indebtedness, but as to such unmatured part, the lien hereof shall remain in full force and effect just as though no foreclosure sale had been made under the provisions of this Paragraph. Notwithstanding the filing of any partial foreclosure or entry of a decree of sale in connection therewith, Mortgagee may elect at any time prior to a foreclosure sale pursuant to such decree to discontinue such partial foreclosure and to accelerate the entire secured indebtedness by reason of any uncured Event of Default upon which such partial foreclosure was predicated or by reason of any other Event of Default and proceed with full foreclosure proceedings. It is further agreed that several foreclosure sales may be made pursuant to partial foreclosures without exhausting the right of full or partial foreclosure sale for any unmatured part of the secured indebtedness. In the event of a foreclosure sale, Mortgagee is hereby authorized, without the consent of Mortgagor, to assign any and all insurance policies to the purchaser at such sale or to take such other steps as Mortgagee may deem advisable to cause the interest of such purchaser to be protected by any of such insurance policies.

B. In any suit to foreclose or partially foreclose the lien hereof, there shall be allowed and included as additional indebtedness in the decree for sale all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for reasonable attorneys' fees, appraisers' fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to the title as Mortgagee may deem reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or the value of the Premises. All expenditures and expenses of the nature mentioned in this paragraph and such other expenses and fees as may be incurred in the enforcement of Mortgagor's obligations hereunder, the protection of said Premises and the maintenance of the lien of this Mortgage, including the reasonable fees of any attorney employed by Mortgagee in any litigation or proceeding affecting this Mortgage, the Note, or the Premises, including probate and bankruptcy proceedings,



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or in preparations for the commencement or defense of any proceeding or threatened suit or proceeding shall be immediately due and payable by Mortgagor, with interest thereon at the Default Rate and shall be secured by this Mortgage.

**16. Application of Proceeds of Foreclosure Sale.** The proceeds of any foreclosure (or partial foreclosure) sale of the Premises shall be distributed and applied in the following order of priority: first, to all costs and expenses incident to the foreclosure proceedings, including all such items as are mentioned in Paragraph 15 above; second, to all other items which may under the terms hereof constitute secured indebtedness additional to that evidenced by the Note, with interest thereon as provided herein or in the other Loan Documents; third, to all principal and interest remaining unpaid on the Note; and fourth, any surplus to Mortgagor, its successors or assigns, as their rights may appear or to any other party legally entitled thereto.

**17. Appointment of Receiver.** Upon or at any time after the filing of a complaint to foreclose (or partially foreclose) this Mortgage, the court in which such complaint is filed shall, upon petition by Mortgagee, appoint a receiver for the Premises. Such appointment may be made either before or after sale, without notice, without regard to the solvency or insolvency of Mortgagor at the time of application for such receiver and without regard to the value of the Premises or whether the same shall be then occupied as a homestead or not and Mortgagee hereunder or any other holder of the Note may be appointed as such receiver. Such receiver shall have power to collect the rents, issues and profits of the Premises (i) during the pendency of such foreclosure suit, (ii) in case of a sale and a deficiency, during the full statutory period of redemption, whether there be redemption or not, and (iii) during any further times when Mortgagor, but for the intervention of such receiver, would be entitled to collect such rents, issues and profits. Such receiver also shall have all other powers and rights that may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Premises during said period, including, to the extent permitted by law, the right to lease all or any portion of the Premises for a term that extends beyond the time of such receiver's possession without obtaining prior court approval of such lease. The court from time to time may authorize the application of the net income received by the receiver in payment of (a) the indebtedness secured hereby, or by any decree foreclosing this Mortgage, or any tax, special assessment or other lien which may be or become superior to the lien hereof or of such decree, provided such application is made prior to foreclosure sale, and (b) any deficiency upon a sale and deficiency.

**18. Mortgagee's Right of Possession in Case of Default.** At any time after an Event of Default has occurred, Mortgagor shall, upon demand of Mortgagee, surrender to Mortgagee possession of the Premises. Mortgagee, in its discretion, may, with or without process of law, enter upon and take and maintain possession of all or any part of the Premises, together with all documents, books, records, papers and accounts relating thereto, and may exclude Mortgagor and its employees, agents or servants therefrom, and Mortgagee may then hold, operate, manage and control the Premises, either personally or by its agents. Mortgagee shall have full power to use such measures, legal or equitable, as in its discretion may be deemed proper or necessary to enforce the payment or security of the avails, rents, issues, and profits of the Premises, including actions for the recovery of rent, actions in forcible detainer and actions in distress for rent. Without limiting the generality of the foregoing, Mortgagee shall have full power to:

- A. sell any of the lots under any purchase agreement with builders or buyers for amounts which Mortgagee deems appropriate;
- B. make any repairs, renewals, replacements, alterations, additions, betterments and improvements to the Premises as Mortgagee deems are necessary;
- C. insure and reinsure the Premises and all risks incidental to Mortgagee's possession, operation and management thereof; and
- D. receive all of such avails, rents, issues and profits.

**19. Application of Income Received by Mortgagee.** Mortgagee, in the exercise of the rights and powers hereinabove conferred upon it, shall have full power to use and apply the avails, rents, issues and profits of the Premises to the payment of or on account of the following, in such order as Mortgagee may determine:

- A. to complete work on the Premises, to the payment of the operating expenses of the Premises, including cost of management and leasing thereof (which shall include compensation to Mortgagee and its agent or agents, if management be delegated to an agent or agents, and shall also include lease commissions and other compensation and expenses of seeking and procuring tenants and entering into leases), established claims for damages, if any, and premiums on insurance hereinabove authorized;

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B. to the payment of taxes and special assessments now due or which may hereafter become due on the Premises; and

C. to the payment of any indebtedness secured hereby, including any deficiency which may result from any foreclosure sale.

**20. Rights Cumulative.** Each right, power and remedy herein conferred upon Mortgagee is cumulative and in addition to every other right, power or remedy, express or implied, given now or hereafter existing under any of the Loan Documents or at law or in equity, and each and every right, power and remedy herein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient by Mortgagee, and the exercise or the beginning of the exercise of one right, power or remedy shall not be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy, and no delay or omission of Mortgagee in the exercise of any right, power or remedy accruing hereunder or arising otherwise shall impair any such right, power or remedy, or be construed to be a waiver of any Event of Default or acquiescence therein.

**21. Mortgagee's Right of Inspection.** Mortgagee and its representatives shall have the right to inspect the Premises and the books and records with respect thereto at all reasonable times, and access thereto shall be permitted for that purpose.

**22. Disbursement of Insurance or Eminent Domain Proceeds.**

A. Before commencing to repair, restore or rebuild following damage to, or destruction of, all or a portion of the Premises, whether by fire or other casualty, Mortgagor shall obtain from Mortgagee its approval of all site and building plans and specifications pertaining to such repair, restoration or rebuilding.

B. Prior to each payment or application of any insurance proceeds to the repair or restoration of the improvements upon the Premises to the extent permitted in Paragraph 6 above (which payment or application may be made, at Mortgagee's option, through an escrow, the terms and conditions of which are satisfactory to Mortgagee and the cost of which is to be borne by Mortgagor), Mortgagee shall be entitled to be satisfied as to the following:

(i) An Event of Default has not occurred;

(ii) Either (a) such improvements have been fully restored, or (b) the expenditure of money as may be received from such insurance proceeds or condemnation award will be sufficient to repair, restore or rebuild the Premises, free and clear of all liens, claims and encumbrances, except the lien of this Mortgage and the Permitted Exceptions, or, if such insurance proceeds or condemnation award shall be insufficient to repair, restore and rebuild the Premises, Mortgagor has deposited with Mortgagee such amount of money which, together with the insurance proceeds or condemnation award, shall be sufficient to restore, repair and rebuild the Premises; and

(iii) Prior to each disbursement of any such proceeds held by Mortgagee in accordance with the terms of this Paragraph 22 for the cost of any repair, restoration or rebuilding, Mortgagee shall be furnished with a statement of Mortgagee's architect (the cost of which shall be borne by Mortgagor), certifying the extent of the repair and restoration completed to the date thereof, and that such repairs, restoration, and rebuilding have been performed to date in conformity with the plans and specifications approved by Mortgagee and with all statutes, regulations or ordinances (including building and zoning ordinances) affecting the Premises; and Mortgagee shall be furnished with appropriate evidence of payment for labor or materials furnished to the Premises, and total or partial lien waivers substantiating such payments.

C. Prior to the payment or application of insurance proceeds to the repair, restoration or rebuilding of the improvements upon the Premises to the extent permitted in Paragraph 6 above, there shall have been delivered to Mortgagee the following:

(i) A waiver of subrogation from any insurer with respect to Mortgagor or the then owner or other insured under the policy of insurance in question;

(ii) Such plans and specifications, such payment and performance bonds and such insurance, in such amounts, issued by such company or companies and in such forms and substance, as are required by Mortgagee.

D. If Mortgagor shall fail to restore, repair or rebuild the improvements upon the Premises within a time deemed reasonably satisfactory by Mortgagee, then Mortgagee, at its option, may commence and perform all necessary acts to restore, repair or rebuild the said improvements for or on behalf of Mortgagor. If insurance proceeds shall exceed the amount necessary to complete the repair, restoration or rebuilding of the improvements upon the Premises, such

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excess shall be applied on account of the unpaid principal balance of the Loan irrespective of whether such balance is then due and payable.

E. If Mortgagor commences the repair or rebuilding of the improvements located on the Premises, but fails to comply with the conditions precedent to the payment or application of insurance proceeds set forth in this Paragraph 22, or Mortgagor shall fail to restore, repair or rebuild the improvements upon the Premises within a time deemed reasonably satisfactory by Mortgagee, and if Mortgagee does not restore, repair or rebuild the said improvements as provided in subparagraph (d) above, then such failure shall constitute an Event of Default.

**23. Release Upon Payment and Discharge of Mortgagor's Obligations.** Mortgagee shall release this Mortgage and the lien hereof by proper instrument upon payment and discharge of all indebtedness secured hereby, including payment of all reasonable expenses incurred by Mortgagee in connection with the execution of such release.

**24. Notice.** Any notices, communications and waivers under this Mortgage shall be in writing and shall be (i) delivered in person, (ii) mailed, postage prepaid, either by registered or certified mail, return receipt requested, or (iii) by overnight express carrier, addressed in each case to the party at the address set forth in the first paragraph of this Mortgage, or to any other address as to any of the parties hereto, as such party shall designate in a written notice to the other party hereto. All notices sent pursuant to the terms of this Paragraph shall be deemed received (i) if personally delivered, then on the date of delivery, (ii) if sent by overnight, express carrier, then on the next federal banking day immediately following the day sent, or (iii) if sent by registered or certified mail, then on the earlier of the third federal banking day following the day sent or when actually received.

**25. Waiver of Defenses.** No action for the enforcement of the lien or of any provision hereof shall be subject to any defense which would not be good and available to the party interposing the same in an action at law upon the Note.

**26. Waiver of Rights.** Mortgagor hereby covenants and agrees that Mortgagor shall not apply for or avail itself of any appraisal, valuation, stay, extension or exemption laws, or any so-called "Moratorium Laws," now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, but hereby waives the benefit of such laws. To the fullest extent permitted by law, Mortgagor, for itself and all who may claim through or under it, waives any and all rights to have the property and estates comprising the Premises marshaled upon any foreclosure of the lien hereof and further agrees that any court having jurisdiction to foreclose such lien may order the Premises sold as an entirety.

**27. Transfer of Premises; Further Encumbrance.**

A. Neither all nor any portion of (i) the Premises [except for Lot (as defined in the Loan Agreement) sales in the ordinary course of business] or (ii) any interest in Mortgagor or (iii) any interest of Mortgagor in the Premises shall be sold, conveyed, assigned, encumbered or otherwise transferred (nor shall any agreement be entered into to sell, convey, assign, encumber or otherwise transfer same) without, in each instance, the prior written consent of Mortgagee, which consent may be given or withheld in Mortgagee's sole and absolute discretion, and may be conditioned in any manner that Mortgagee desires, including, without limitation, increases in the rate of interest charged on the Loan and payment of assumption fees. Any violation or attempted violation of the provisions of this Paragraph 27 shall be an Event of Default for purposes of all of the Loan Documents.

B. Any consent by Mortgagee, or any waiver by Mortgagee of an Event of Default under this Paragraph 27 shall not constitute a consent to or waiver of any right, remedy or power of Mortgagee upon a continuing or subsequent Event of Default under this Paragraph 27. Mortgagor acknowledges that any agreements, liens, charges or encumbrances created in violation of the provisions of this Paragraph 27 shall be void and of no force or effect. Mortgagor agrees that if any provision of this Paragraph 27 is deemed a restraint on alienation, that such restraint is a reasonable one.

**28. Expenses Relating to Note and Mortgage.**

A. Mortgagor will pay all expenses, charges, costs and fees relating to the Loan or necessitated by the terms of the Note, this Mortgage or any of the other Loan Documents, including without limitation, Mortgagee's reasonable attorneys' fees in connection with the negotiation, documentation, administration, servicing and enforcement of the Note, this Mortgage and the other Loan Documents, all filing, registration and recording fees, all other expenses incident to the execution and acknowledgment of this Mortgage and all federal, state, county and municipal taxes, and other taxes (provided Mortgagor shall not be required to pay any income or franchise taxes of Mortgagee), duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of the Note and this Mortgage. Mortgagor recognizes that, during the term of this Mortgage, Mortgagee:

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(i) May be involved in court or administrative proceedings, including, without restricting the foregoing, foreclosure, probate, bankruptcy, creditors' arrangements, insolvency, housing authority and pollution control proceedings of any kind, to which Mortgagee shall be a party by reason of the Loan Documents or in which the Loan Documents or the Premises are involved directly or indirectly;

(ii) May make preparations following the occurrence of an Event of Default hereunder for the commencement of any suit for the foreclosure hereof, which may or may not be actually commenced;

(iii) May make preparations following the occurrence of an Event of Default hereunder for, and do work in connection with, Mortgagee's taking possession of and managing the Premises, which event may or may not actually occur;

(iv) May make preparations for and commence other private or public actions to remedy an Event of Default hereunder, which other actions may or may not be actually commenced;

(v) May enter into negotiations with Mortgagor or any of its agents, employees or attorneys in connection with the existence or curing of any Event of Default hereunder, the sale of the Premises, the assumption of liability for any of the indebtedness represented by the Note or the transfer of the Premises in lieu of foreclosure; or

(vi) May enter into negotiations with Mortgagor or any of its agents, employees or attorneys pertaining to Mortgagee's approval of actions taken or proposed to be taken by Mortgagor which approval is required by the terms of this Mortgage.

B. All expenses, charges, costs and fees described in this Paragraph 28 shall be so much additional indebtedness secured hereby, shall bear interest thirty (30) days after the date so incurred until paid at the Default Rate and shall be paid, together with said interest, by Mortgagor forthwith upon demand.

**29. Financial Statements.** Mortgagor hereby represents and warrants that the financial statements for Mortgagor and the Premises previously submitted to Mortgagee are true, complete and correct in all material respects, disclose all actual and contingent liabilities of Mortgagor or relating to the Premises and do not contain any untrue statement of a material fact or omit to state a fact material to such financial statements. No material adverse change has occurred in the financial condition of Mortgagor or the Premises from the dates of said financial statements until the date hereof.

**30. Statement of Indebtedness.** Mortgagor, within seven (7) days after being so requested by Mortgagee, shall furnish a duly acknowledged written statement setting forth the amount of the debt secured by this Mortgage, the date to which interest has been paid and stating either that no offsets or defenses exist against such debt or, if such offsets or defenses are alleged to exist, the nature thereof.

**31. Further Instruments.** Upon request of Mortgagee, Mortgagor shall execute, acknowledge and deliver all such additional instruments and further assurances of title and shall do or cause to be done all such further acts and things as may reasonably be necessary fully to effectuate the intent of this Mortgage and of the other Loan Documents.

**32. Additional Indebtedness Secured.** All persons and entities with any interest in the Premises or about to acquire any such interest should be aware that this Mortgage secures more than the stated principal amount of the Note and interest thereon; this Mortgage secures any and all other amounts which may become due under the Note or any other document or instrument evidencing, securing or otherwise affecting the indebtedness secured hereby including, without limitation, any and all amounts expended by Mortgagee to operate, manage or maintain the Premises or to otherwise protect the Premises or the lien of this Mortgage.

**33. Indemnity.** Mortgagor hereby covenants and agrees that no liability shall be asserted or enforced against Mortgagee in the exercise of the rights and powers granted to Mortgagee in this Mortgage, and Mortgagor hereby expressly waives and releases any such liability. Mortgagor shall indemnify and save Mortgagee harmless from and against any and all liabilities, obligations, losses, damages, claims, costs and expenses (including attorneys' fees and court costs) (collectively, the "Claims") of whatever kind or nature which may be imposed on, incurred by or asserted against Mortgagee at any time by any third party which relate to or arise from: (a) any suit or proceeding (including probate and bankruptcy proceedings), or the threat thereof, in or to which Mortgagee may or does become a party, either as plaintiff or as a defendant, by reason of this Mortgage or for the purpose of protecting the lien of this Mortgage; (b) the offer for sale or sale of all or any portion of the Premises; and (c) the ownership, leasing, use, operation or maintenance of the Premises, if such Claims relate to or arise from actions taken prior to the surrender of possession of the Premises to Mortgagee in accordance with the terms of this Mortgage; provided, however, that Mortgagor shall not be obligated to indemnify or hold Mortgagee harmless from and against any Claims directly arising from the gross negligence or willful

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misconduct of Mortgagee. All costs provided for herein and paid for by Mortgagee shall be so much additional indebtedness secured hereby and shall become immediately due and payable without notice and with interest at the Default Rate.

**34. Waiver of Rights of Redemption and Reinstatement.** Mortgagor hereby releases and waives, to the fullest extent permitted by law, any and all rights of reinstatement and redemption provided in the Illinois Mortgage Foreclosure Act.

**35. Fixture Filing.** Mortgagor and Mortgagee agree that this Mortgage shall constitute a financing statement and fixture filing under the Code with respect to all "fixtures" (as defined in the Code) attached to or otherwise forming a part of the Premises and that a security interest in and to such fixtures is hereby granted to Mortgagee. For purposes of the foregoing, Mortgagee is the secured party and Mortgagor is the debtor and the collateral covered by this financing statement shall be all items of property contained within the definition of the "Premises" which is or becomes a fixture on the Real Estate or any other real estate contained within the definition of the Premises.

**36. Compliance with Environmental Laws.** In addition to all other provisions of this Mortgage, Mortgagor, at its cost and expense, shall comply with all laws, and all rules and regulations of any governmental authority ("Agency") having jurisdiction, concerning environmental matters, including, but not limited to, any discharge (whether before or after the date of this Mortgage) into the air, waterways, sewers, soil or ground water or any substance or "pollutant". Mortgagee and its agents and representatives shall have access to the Premises and to the books and records of Mortgagor and any occupant of the Premises claiming by, through or under Mortgagor for the purpose of ascertaining the nature of the activities being conducted thereon and to determine the type, kind and quantity of all products, materials and substances brought onto the Premises or made or produced thereon. Mortgagor and all occupants of the Premises claiming under Mortgagor shall provide to Mortgagee copies of all manifests, schedules, correspondence and other documents of all types and kinds when filed or provided to any Agency or as such are received from any Agency. Mortgagee and its agents and representatives shall have the right to take samples in quantity sufficient for scientific analysis of all products, materials and substances present on the Premises, including, but not limited to, samples of products, materials or substances brought onto or made or produced on the Premises by Mortgagor or an occupant claiming by, through or under Mortgagor or otherwise present on the Premises.

**37. Uniform Commercial Code Security Agreement.** In addition to being a mortgage, this Mortgage is intended to be a security agreement pursuant to the Uniform Commercial Code as enacted in the state wherein the Premises is located, for any of the items specified above as part of the Premises which, under applicable law, may be subject to a security interest pursuant to the Uniform Commercial Code, and Mortgagor hereby grants to Mortgagee a security interest in said items. Mortgagor agrees that Mortgagee may file this Mortgage, or a reproduction thereof, in the real estate records or other appropriate index, as a financing statement filed as a fixture filing with respect to all items constituting a part of the collateral which are or are to become fixtures related to the Premises, in accordance with the Code. The information required under the Code is set forth in other provisions of this Mortgage. Mortgagor is the record owner of the Premises. Any reproduction of this Mortgage or of any other security agreement or financing statement shall be sufficient as a financing statement. In addition, Mortgagor agrees to execute and deliver to Mortgagee, upon Mortgagee's request, any financing statements, as well as extensions, renewals and amendments thereof, and reproductions of this Mortgage in such form as Mortgagee may require to perfect a security interest with respect to said items. Mortgagor shall pay all costs of filing such financial statements and any extensions, renewals, amendments and releases thereof, and shall pay all reasonable costs and expenses of any record searches for financing statements which Mortgagee may require. Without the prior written consent of Mortgagee, Mortgagor shall not create or suffer to be created pursuant to the Uniform Commercial Code any other security interest in said items, including replacements and additions thereto. Upon an Event of Default, Mortgagee shall have the remedies of a secured party under the Uniform Commercial Code and, at Mortgagee's option, may also invoke the remedies provided in this Mortgage as to such items. In exercising any of said remedies, Mortgagee may proceed against the items of real property and any items of personal property specified above as part of the Premises, separately or together and in any order whatsoever, without in any way affecting the availability of Mortgagee's remedies under the Uniform Commercial Code or of the remedies provided in this Mortgage.

### 38. Miscellaneous.

A. **Successors and Assigns.** This Mortgage and all provisions hereof shall be binding upon and enforceable against Mortgagor and its assigns and other successors. This Mortgage and all provisions hereof shall inure to the benefit of Mortgagee, its successors and assigns and any holder or holders, from time to time, of the Note.

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B. Invalidity of Provisions: Governing Law. If any provision of this Mortgage is deemed to be invalid by reason of the operation of law, or by reason of the interpretation placed thereon by any administrative agency or any court, Mortgagor and Mortgagee shall negotiate an equitable adjustment in the provisions of the same in order to effect, to the maximum extent permitted by law, the purpose of this Mortgage and the validity and enforceability of the remaining provisions, or portions or applications thereof, shall not be affected thereby and shall remain in full force and effect. This Mortgage is to be construed in accordance with and governed by the laws of the state in which the mortgaged property is located.

C. Municipal and Zoning Requirements. Mortgagor shall not by act or omission permit any building or other improvement on premises not subject to the lien of this Mortgage to rely on the Premises or any part thereof or any interest therein to fulfill any municipal or governmental requirement, and Mortgagor hereby assigns to Mortgagee any and all rights to give consent for all or any portion of the Premises or any interest therein to be so used. Similarly, no building or other improvement on the Premises shall rely on any premises not subject to the lien of this Mortgage or any interest therein to fulfill any governmental or municipal requirement. Mortgagor shall not by act or omission alter (or permit the alteration of) the zoning classification of the Premises in effect as of the date hereof, nor shall Mortgagor impair the integrity of the Premises as a single zoning lot separate and apart from all other premises. Any act or omission by Mortgagor which would result in a violation of any of the provisions of this subparagraph shall be void.

D. Mortgagee in Possession. Nothing herein contained shall be construed as constituting Mortgagee a mortgagee in possession in the absence of the actual taking of possession of the Premises by Mortgagee pursuant to this Mortgage.

E. Relationship of Mortgagee and Mortgagor. Mortgagee shall in no event be construed for any purpose to be a partner, joint venturer, agent or associate of Mortgagor or of any lessee, operator, concessionaire or licensee of Mortgagor in the conduct of their respective businesses and, without limiting the foregoing, Mortgagee shall not be deemed to be such partner, joint venturer, agent or associate on account of Mortgagee becoming a mortgagee in possession or exercising any rights pursuant to this Mortgage, any of the other Loan Documents, or otherwise.

F. Time of the Essence. Time is of the essence of the payment by Mortgagor of all amounts due and owing to Mortgagee under the Note and the other Loan Documents and the performance and observance by Mortgagor of all terms, conditions, obligations and agreements contained in this Mortgage and the other Loan Documents.

G. No Merger. It being the desire and intention of the parties hereto that the Mortgage and the lien hereof do not merge in fee simple title to the Premises, it is hereby understood and agreed that should Mortgagee acquire any additional or other interest in or to the Premises or the ownership thereof, then, unless a contrary intent is manifested by Mortgagee as evidenced by an express statement to that effect in an appropriate document duly recorded, this Mortgage and the lien hereof shall not merge in the fee simple title and this Mortgage may be foreclosed as if owned by a stranger to the fee simple title.

H. Waiver of Statute of Limitations. Mortgagor hereby waives the right to assert any statute of limitation as a bar to the enforcement of the lien of this Mortgage or to any action brought to enforce the Note or any other obligation secured by this Mortgage. Notwithstanding the foregoing, nothing in this paragraph is intended to constitute a waiver of the rights of Mortgagor and Mortgagee under the Code, it being agreed that the parties may mutually consent to such waiver in a separate subsequent writing.

I. Waiver of Marshaling. Notwithstanding the existence of any other security interests in the Premises held by Mortgagee or by any other party, Mortgagee shall have the right to determine the order in which any or all of the Premises shall be subjected to the remedies provided herein. Mortgagee shall have the right to determine the order in which any or all portions of the indebtedness secured hereby are satisfied from the proceeds realized upon the exercise of the remedies provided herein. Mortgagor, any party who consents to this Mortgage and any party who now or hereafter acquires a security interest in the Premises and who has actual or constructive notice hereof, hereby waives any and all right to require the marshaling of assets in connection with the exercise of any of the remedies permitted by applicable law or provided herein.

J. Jurisdiction and Venue. **THIS MORTGAGE AND THE OTHER LOAN DOCUMENTS SHALL BE GOVERNED, CONSTRUED, APPLIED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE IN WHICH THE MORTGAGED PROPERTY IS LOCATED (WITHOUT REGARD TO ANY CONFLICT OF LAWS PRINCIPLES) AND THE APPLICABLE LAWS OF THE UNITED STATES OF AMERICA. MORTGAGOR HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY COURT**

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**OF COMPETENT JURISDICTION CHOSEN BY MORTGAGEE LOCATED IN THE STATE IN WHICH THE MORTGAGED PROPERTY IS LOCATED IN CONNECTION WITH ANY PROCEEDING OUT OF OR RELATING TO THIS MORTGAGE.**

**K. Waiver of Right to Jury Trial. MORTGAGEE AND MORTGAGOR ACKNOWLEDGE AND AGREE THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THE LOAN DOCUMENTS OR WITH RESPECT TO THE TRANSACTIONS CONTEMPLATED HEREIN AND THEREIN WOULD BE BASED UPON DIFFICULT AND COMPLEX ISSUES AND THEREFORE, THE PARTIES AGREE THAT ANY COURT PROCEEDING ARISING OUT OF ANY SUCH CONTROVERSY WILL BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY.**

**L. Construction Loan. The Note which is secured by this Mortgage evidences a debt created by one or more disbursements made by Mortgagee to Mortgagor to finance the cost of the construction of certain improvements upon Real Estate owned by Mortgagor in accordance with the provisions of the Loan Agreement, and this Mortgage is a construction mortgage as such term is defined in the Uniform Commercial Code as adopted in the state in which the property is located. The terms and conditions recited and set forth in the Loan Agreement are fully incorporated in this Mortgage and made a part hereof, and an Event of Default under any of the conditions or provisions of the Loan Agreement shall constitute a default hereunder. Upon the occurrence of any such Event of Default, the holder of the Note may at its option declare the indebtedness secured thereby immediately due and payable, or complete the construction of said improvements and enter into the necessary contracts therefor, in which case all money expended shall be so much additional indebtedness secured hereby and any money expended in excess of the amount of the original principal shall be immediately due and payable with interest at the Default Rate. Upon completion of the improvements described in the Loan Agreement free and clear of mechanic's lien claims, and upon compliance with all of the terms, conditions and covenants of the Loan Agreement, the terms of this paragraph shall become null and void and of no further force and effect. In the event of a conflict between the terms of the Loan Agreement and this Mortgage, the provisions of the Loan Agreement shall apply and take precedence over this Mortgage.**

IN WITNESS WHEREOF, Mortgagor has executed this instrument the day and year first above written.

**MORTGAGOR:**

**THOMAS HOMES CONCEPTS, INC.,** an Illinois corporation

By: James J. Thomas  
 Name: James J. Thomas  
 Title: President

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STATE OF Illinois )  
 ) SS:  
COUNTY OF Cook )

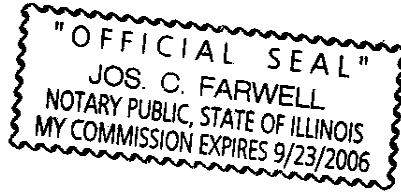
Before me, a Notary Public in and for said County and State, personally appeared James J Thomas, the President of THOMAS HOMES CONCEPTS, INC., an Illinois corporation ("Company"), who, after having been duly sworn, acknowledged the execution of the foregoing Master Real Estate Construction Mortgage, Security Agreement, Fixture Filing with Assignment of Leases and Rents for and on behalf of such CORP.

Witness my hand and Notarial Seal this 27 day of August, 2004.

Jos. C. Farwell  
Notary Public

My Commission Expires: 9/23/06

My County of Residence: Cook





# UNOFFICIAL COPY

**EXHIBIT "A"  
LEGAL DESCRIPTION  
(THE REAL ESTATE)**

**LOT 176 ON RAYMOND L LUTGERT'S SUBDIVISION OF THE WEST 78 ACRES OF THE SOUTH WEST QUARTER OF SECTION 19, TOWNSHIP 42 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, (EXCEPT THE SOUTH 25 FEET THEREOF) IN COOK COUNTY, ILLINOIS.**

Property of Cook County Clerk's Office