



Doc#: 0527742140 Fee: \$40.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 10/04/2005 10:24 AM Pg: 1 of 9

***This Document Prepared By And
When Recorded Return To:***

Crowley Barrett & Karaba, Ltd.
20 South Clark Street
Suite 2310
Chicago, Illinois 60603-1806
(312) 726-2468 phone
(312) 726-2741 fax
Attn: Tonya M. Parravano

For Recorder's Use Only

CONSTRUCTION MORTGAGE

THIS INDENTURE, made as of August 31, 2005, between FAINA LOYFMAN, not personally, but as Trustee under the FINE HOMES LLC, an Illinois limited liability company (herein referred to as "**Mortgagor**"), and FIFTH THIRD BANK (CHICAGO), a Michigan banking corporation (herein referred to as "**Mortgagee**").

WITNESSETH:

THAT WHEREAS, Mortgagor has executed a Construction Loan Agreement of even date herewith (the "**Loan Agreement**"), the terms and provisions of which are incorporated herein by reference, providing for a loan from Mortgagee to Mortgagor in the aggregate amount of THREE MILLION EIGHT HUNDRED SIXTY THOUSAND AND NO/100 DOLLARS (\$3,860,000.00) (the "**Loan**") and is evidenced by a Construction Note in the amount of THREE MILLION EIGHT HUNDRED SIXTY THOUSAND AND NO/100 DOLLARS (\$3,860,000.00) (the "**Note**"). The Loan is payable with interest at the Interest Rate (as defined in the Loan Agreement). The entire remaining balance of principal and interest is due and payable on or before September 5, 2006 (the "**Maturity Date**"); provided, however, that the Maturity Date may be extended to March 5, 2007 in the event Mortgagor exercises its extension option pursuant to the terms and conditions of Section 3.7 of the Loan Agreement.

All such payments on account of the indebtedness evidenced by the Note shall be first applied to interest on the unpaid principal balance and the remainder to principal. Interest after default or maturity, whether by reason of acceleration or otherwise, shall accrue at rate equal to Five Percent (5%) plus the Interest Rate per annum (the "**Default Rate**"). Interest shall be computed on the basis of a 360-day year for the actual number of days elapsed. All of said principal and interest shall be payable at Rolling Meadows, Illinois, or at such other place as Mortgagee shall from time to time designate in writing.

This Mortgage is given to secure not only the indebtedness from Mortgagor to Mortgagee existing on the date hereof, but all future advances, whether such advances are obligatory or are to be made at the option of Mortgagee, or otherwise, as are made within twenty (20) years from the date of this Mortgage, to the same extent as if such future advances were made on the date of the execution of this Mortgage, although there may be no advance(s) made at the time of the execution of this Mortgage, and although there may be no indebtedness outstanding at the time the advance is made.

PHK and No Abs 1/23

ST 507 9810

CT

Box 334

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"Indebtedness" means all obligations of Mortgagor, or, if Mortgagor is a land trustee, any beneficiaries of the land trust of which Mortgagor is trustee, to Mortgagee for payment of any and all amounts due under the Note or this Mortgage, together with any and all other indebtedness now or at any time due and owing from Mortgagor to Mortgagee, howsoever and whensoever arising or created. **"Indebtedness"** also includes all amounts so described herein and all costs of collection, legal expenses and in-house or reasonable outside attorneys' fees incurred or paid by Mortgagee in attempting the collection or enforcement of the Note or this Mortgage, or any extension or modification of this Mortgage or the Note, and guaranty of the Note, or in any legal proceeding occurring by reason of Mortgagee's being the mortgagee under this Mortgage or any extension or modification thereof or the Payee under the Note or any extension or modification thereof, including but not limited to any declaratory judgment action, or in the repossession, custody, sale, lease, assembly or other disposition of any collateral for the Note. Notwithstanding anything contained herein to the contrary, in no event shall the lien of this Mortgage secure outstanding liabilities in excess of two hundred percent (200%) of the original stated principal amount of the Note.

NOW, THEREFORE, Mortgagor to secure the payment of the said principal sum of money and said interest in accordance with the terms, provisions and limitations of this Mortgage, and also in consideration of the sum of One Dollar (\$1.00) in hand paid, the receipt whereof is hereby acknowledged, does by these presents, grant, remise, release, hypothecate and convey unto Mortgagee, its successors and assigns, the following described real estate situate, lying and being in the County of Will and the State of Illinois, to wit:

LEGAL DESCRIPTION - SEE EXHIBIT A ATTACHED HERETO which, with the property hereinafter described, is referred to herein as the **"Premises."**

This Mortgage shall also secure any and all renewals or extensions of the whole or any part of the Indebtedness hereby secured however evidenced, with interest at such lawful rate as may be agreed upon, and any such renewals or extensions or any change in the terms of rate of interest shall not impair in any manner the validity or priority of this Mortgage, nor release Mortgagor from personal liability for the Indebtedness hereby secured.

TOGETHER with all improvements thereon situate and which may hereafter be erected or placed thereon, and all and singular tenements, hereditaments and appurtenances and easements thereunto belonging and the rents, issues and profits thereof, which are hereby expressly conveyed and assigned to Mortgagee as additional security and as an equal and primary fund with the property herein conveyed for the repayment of the monies secured by this Mortgage, and any and all appurtenances, fixtures and equipment in or that may at any time be placed in any building now or hereafter standing on said Premises.

It is mutually covenanted and agreed, by and between the parties hereto that, in addition to all other things which at law or by convention are regarded as fixtures, and specifically but not by way of limitation, all shades and awnings, screens and carpets, shrubbery, gas and electric fixtures, radiators, heaters, engines and machines, boilers, ranges, elevators and motors, bathtubs, sinks, water-closets, basins, pipes, faucets and other plumbing and heating fixtures, mirrors, mantels, refrigerating plants, iceboxes, electric refrigerators, air conditioning apparatus, cooking apparatus and appurtenances, and such other goods and chattels as may ever be furnished by a landlord in letting and operating an unfurnished building, similar to any building now or hereafter standing on said Premises, whether or not the same are or shall be attached to said building by nails, screws, bolts,

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pipe connections, masonry, or in any other manner whatsoever, which are now or hereafter to be used upon said described Premises shall be conclusively deemed to be the "fixtures" and an accession to the freehold and a part of the realty, whether affixed or annexed or not, and conveyed by this Mortgage; and all the estate, right, title or interest of the said Mortgagor in and to said Premises, property, improvements, furniture, apparatus, furnishings and fixtures are hereby expressly conveyed, assigned and pledged; and as to any of the property aforesaid, which does not so form a part and parcel of the real estate or does not constitute a "fixture" as such term is defined in the Uniform Commercial Code. This Mortgage is hereby deemed to be as well a Security Agreement under the Uniform Commercial Code for the purpose of creating hereby a security interest in such property, which Mortgagor hereby grants to Mortgagee as Secured Party (as such term is defined in the Uniform Commercial Code).

TO HAVE AND TO HOLD the above described Premises with the appurtenances and fixtures thereto appertaining or belonging unto Mortgagee, its successors and assigns, forever, for the purposes herein set forth and for the security of the Indebtedness evidenced by the Note hereinbefore described, and interest thereon and free from all rights and benefits under and by virtue of the Homestead Exemption Laws of the State of Illinois, which said rights and benefits the said Mortgagor does hereby expressly release and waive.

In addition, Mortgagor covenants with Mortgagee as follows:

1. **Care and Condition of Premises.** Mortgagor shall (1) promptly repair, restore or rebuild any buildings or improvements now or hereafter on the Premises which may become damaged or destroyed so long as insurance proceeds are sufficient therefor; (2) keep said Premises in good condition and repair, without waste, and free from mechanics' or other liens or claims for lien not expressly subordinated to the lien hereof; (3) pay when due any indebtedness which may be secured by a lien or charge on the Premises superior to the lien hereof, and upon request exhibit satisfactory evidence of the discharge of such prior lien to Mortgagee; (4) complete within a reasonable time any building or buildings now or at anytime in process of erection upon said Premises; (5) comply with all requirements of law or municipal ordinances with respect to the Premises and the use thereof; and (6) perform all obligations of Borrower under the terms of the Loan Agreement and not cause or permit a default to occur or exist under the terms of the Loan Agreement which shall not be cured as provided in the Loan Agreement.
2. **Payment of Indebtedness, Taxes and Other Charges.** Mortgagor shall pay the principal and interest on the Indebtedness secured hereby and shall pay before any penalty attaches all general taxes, and shall pay special taxes, special assessments, water charges, sewer service charges, and all other charges against the Premises when due, and shall, upon written request furnish to Mortgagee duplicate receipts therefor. To prevent default hereunder Mortgagor shall pay in full under protest, in the manner provided by statute, any tax or assessment which Mortgagor may desire to contest.
3. **Insurance.** Mortgagor shall obtain and maintain insurance as provided in Section 5.1(c) of the Loan Agreement.
4. **Protection of Security by Mortgagee.** In case of default therein, Mortgagee may, but need not, make any reasonable payment or perform any reasonable act hereinbefore required of Mortgagor in any form and manner deemed expedient, and may, but need not, make full or partial

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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 therefor, or redeem from any tax sale or forfeiture affecting said Premises or contest any tax or assessment. All monies paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including reasonable attorneys' fees, and any other monies by Mortgagee to protect the mortgaged Premises and the lien hereof, shall be so much additional Indebtedness secured hereby and shall become immediately due and payable without notice and with interest thereon at the default rate stated above. Inaction of Mortgagee shall never be considered as a waiver of any right accruing to Mortgagee on account of any default hereunder on the part of Mortgagor. Mortgagee making any payment hereby authorized relating to taxes or 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.

5. **Default and Acceleration.** Mortgagor shall pay each item of Indebtedness herein mentioned, both principal and interest, when due according to the terms of the Note, and shall perform each and every covenant and provision of this Mortgage. At the option of Mortgagee, upon such notice as required under the terms of the Loan Agreement, all unpaid Indebtedness secured by this Mortgage shall, notwithstanding anything in the Note or in this Mortgage to the contrary, become due and payable (a) immediately in the case of default under the terms of the Loan Agreement, the Note or this Mortgage; (b) immediately in the event Mortgagor shall, without the prior consent of Mortgagee, sell, transfer, convey, encumber, or assign the title to all or any portion of the Premises, or the rents, issues, or profits therefrom in violation of the provisions of the Loan Agreement, whether by operation of law, voluntarily or otherwise, or shall contract to do any of the foregoing unless the Note will be repaid as part of that transaction; or (c) immediately upon the occurrence of a default in the performance of any covenant or agreement of Mortgagor contained in this Mortgage or in the Note secured hereby, whereupon Mortgagee, at its option, shall then have the unqualified right to accelerate the maturity of the Note, causing the full principal balance, accrued interest, and other charges, if any, to be immediately due and payable without notice to Mortgagor.

6. **Foreclosure.** When the Indebtedness hereby secured shall become due whether by acceleration or otherwise, Mortgagee shall have the right to foreclose the lien hereof. In any suit to foreclose the lien hereof, there shall be allowed and included as additional Indebtedness in the judgment for sale all expenditures and expenses which may be reasonably paid or incurred by or on behalf of Mortgagee for attorneys' fees, special process server fees, Mortgagee's fees, appraiser's 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 judgment) of procuring all such abstracts of title, title searches and examination, guarantee policies and similar data and assurances with respect to title as Mortgagee may deem to be reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such judgment the true condition of the title to or the value of the Premises. Without limiting the generality of the foregoing, all expenses incurred by Mortgagee to the extent reimbursable under the Illinois Mortgage Foreclosure Law, as amended from time to time, whether or not enumerated herein, shall be added to the Indebtedness secured by this Mortgage, and included in such judgment of foreclosure. All expenditures and expenses in this paragraph mentioned shall become so much additional Indebtedness secured hereby and immediately due and payable, with interest thereon at the rate stated above, when paid or incurred by Mortgagee in connection with (a) any proceeding, including probate and bankruptcy proceedings, to which Mortgagor or Mortgagee shall be a party, either as plaintiff,

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claimant or defendant, by reason of this Mortgage or any Indebtedness hereby secured; (b) preparation for the commencement of any suit for the foreclosure hereof after accrual of such right to foreclose whether or not actually commenced; or (c) preparations for the defense of any threatened suit or proceeding which might affect the Premises or the security hereof, whether or not actually commenced. In addition to the foregoing, in any such foreclosure proceeding, Mortgagee shall be entitled to exercise any and all rights and remedies provided in the Illinois Mortgage Foreclosure Law, as amended from time to time, in such order as Mortgagee may lawfully elect.

7. **Application of Proceeds.** The proceeds of any foreclosure sale of the Premises shall be distributed and applied in the following order of priority: (1) first, on account of all costs and expenses incident to the foreclosure proceedings, including all such items as are mentioned in the preceding paragraph hereof; (2) second, on account of all other items which under the terms hereof, constitute secured Indebtedness additional to that evidenced by the Note, with interest thereon as herein provided; (3) third, on account of all principal and interest remaining unpaid on the Note; and (4) fourth, any overplus to Mortgagor, its successors or assigns, as their rights may appear.

8. **Mortgagee in Possession or Receiver.** Mortgagee shall have the right to be placed as mortgagee in possession or to have a receiver appointed without the requirement of the posting of any bond, to take possession of all or any part of the Premises, with the power to protect and preserve the Premises, to operate the Premises preceding foreclosure or sale, and to collect the rents from the Premises and apply the proceeds, over and above the cost of the receivership, against the Indebtedness. The mortgagee in possession or receiver may serve without bond if permitted by law. Mortgagee's right to the appointment of a receiver shall exist whether or not the apparent value of the Premises exceeds the Indebtedness by a substantial amount. Employment by Mortgagee shall not disqualify a person from serving as a receiver. Nothing contained in this Mortgage shall be construed as constituting Mortgagee a mortgagee in possession in the absence of taking of actual possession of the Premises by Mortgagee pursuant to this Mortgage.

9. **Waiver of Redemption.** In the event of a judicial proceeding to foreclose this Mortgage, Mortgagor does hereby expressly waive any and all rights of redemption from any judgment of foreclosure of this Mortgage on its own behalf, and on behalf of its successors and assigns and each and every person acquiring any interest in or title to the Premises subordinate or subsequent hereto, and on behalf of all other persons to the extent permitted by the applicable provisions of the statutes and laws of the State of Illinois.

10. **Inspection.** Mortgagee shall have the right to inspect the Premises at all reasonable times and access shall be permitted for that purpose.

11. **Examination of Title, Location, etc.** Mortgagee has no duty to examine the title, location, existence, or condition of the Premises, nor shall Mortgagee be obligated to record this Mortgage or to exercise any right herein given unless expressly obligated by the terms hereof, nor be liable for any acts or omissions hereunder, except in case of its own gross negligence or misconduct or that of the agents or employees of Mortgagee.

12. **Condemnation.** If all or any part of the Premises is taken or damaged pursuant to an exercise, or threat of exercise, of the power of eminent domain, the entire proceeds of the award of compensation payable in respect of the part so taken or damaged are hereby assigned to and shall be paid directly to Mortgagee. The proceeds of any award or compensation actually received by

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Mortgagee after deduction therefrom of all reasonable costs and expenses including reasonable attorney's fees incurred by Mortgagee in connection with the taking, at Mortgagee's option, shall be applied, without premium, in part or entirely to payment of the Indebtedness secured hereby or to restoration of the Premises, as provided in the Loan Agreement.

13. **Release.** Mortgagee shall release this Mortgage and the lien thereof by proper instrument in accordance with the terms of the Loan Agreement.

14. **No Exclusive Remedy.** Each and every right, power and remedy conferred upon or reserved to Mortgagee in this Mortgage is cumulative and shall be in addition to every other right, power and remedy given in this Mortgage or now or hereafter existing at law or in equity. No delay or omission of Mortgagee in the exercise of any right, power or remedy shall be construed to be a waiver of any event of Default or any acquiescence therein. If any provisions of this Mortgage shall grant to Mortgagee any rights or remedies upon default of Mortgagor which are more limited than the rights that would otherwise be vested in Mortgagee under the Illinois Mortgage Foreclosure Law, as amended, in the absence of said provision, Mortgagee shall be vested with the rights granted in the Illinois Mortgage Foreclosure Law, as amended, to the full extent permitted thereby.

15. **Provisions Severable.** In the event any one or more of the provisions of this Mortgage for any reason shall be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Mortgage, but this Mortgage shall be construed as if such invalid, illegal or unenforceable provisions had never been contained in this Mortgage. In the event that any provision in this Mortgage shall be inconsistent with any provision of the Illinois Mortgage Foreclosure Law, as amended, the provisions of the Illinois Mortgage Foreclosure Law, as amended, shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the Illinois Mortgage Foreclosure Law, as amended.

16. **Incorporation of Provisions of Loan Agreement.** This Mortgage is executed by Mortgagor pursuant to the terms and provisions of the Loan Agreement. The terms and provisions of the Loan Agreement, including the definitions contained therein, are hereby incorporated herein by reference.

17. **Notices.** All notices pursuant to this Mortgage shall be in writing and shall be deemed to be sufficiently given for all purposes when given in accordance with the terms of the Loan Agreement.

18. **Successors and Assigns.** This Mortgage shall (a) run with the land, (b) apply and extend to, be binding upon and inure to the benefit of Mortgagor, Mortgagor's subsidiaries, affiliates, successors and assigns and all persons claiming under or through Mortgagor, and the word "Mortgagor" shall include all such persons, and (c) shall apply and extend to, be binding upon and inure to the benefit of Mortgagee and Mortgagee's successors and assigns. The word "Mortgagee" shall include the successors and assigns of Mortgagee, and the holder or holders, from time to time, of the Note and any other Indebtedness instruments.

19. **Miscellaneous.** The captions in this Mortgage are for convenience only and do not define or limit the provisions of this Mortgage. All changes to this Mortgage must be in writing signed by Mortgagee and, if this Mortgage is recorded, shall not be effective until being recorded.

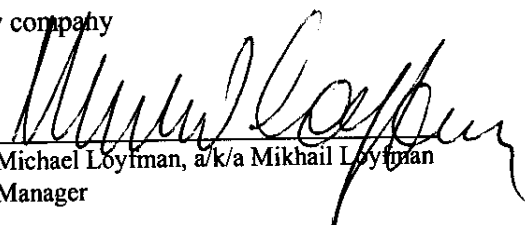
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Wherever used, the singular number shall include the plural, the plural, the singular, and use of any gender shall be applicable to all genders.

IN WITNESS WHEREOF, Mortgagor has caused this instrument to be executed as of the day and year first above written.

FINE HOMES LLC, an Illinois limited liability company

By: _____


Michael Loytman, a/k/a Mikhail Loytman
Manager

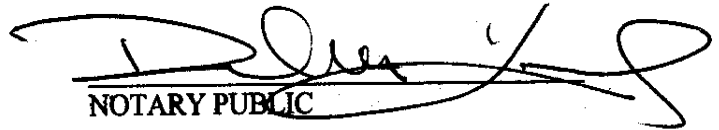
Property of Cook County Clerk's Office

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STATE OF ILLINOIS)
) SS
COUNTY OF Cook)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Michael Loyfman, a/k/a Mikhail Loyfman of FINE HOMES LLC, an Illinois limited liability company, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Manager, 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 LLC as aforesaid, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 31 day of August, 2005.


NOTARY PUBLIC



My Commission Expires:

01.03.07

UNOFFICIAL COPY**STREET ADDRESS:** 60 HARBOR LANE**CITY:** GLENCOE**COUNTY:** COOK**TAX NUMBER:** 05-08-314-029-0000

05-08-400-001-0000

LEGAL DESCRIPTION: 05-08-400-002-0000**PARCEL 1:**

THAT PART OF BLOCK 9 (EXCEPT THE SOUTHWESTERLY 50 FEET THEREOF) IN TAYLORSPOINT, A SUBDIVISION IN THE SOUTH WEST 1/4 OF SECTION 8 TOWNSHIP 42 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, DESCRIBED AS FOLLOWS: COMMENING AT THE NORTHWEST CORNER OF BLOCK 9, THENCE NORTH 89 DEGREES 59 MINUTES 08 SECONDS EAST ALONG THE NORTH LINE OF SAID BLOCK 9, A DISTANCE OF 75.00 FEET TO THE POINT OF BEGINNING, THENCE CONTINUING NORTH 89 DEGREES 59 MINUTES 08 SECONDS EAST ALONG THE NORTH LINE OF SAID BLOCK 9 A DISTANCE OF 167.40 FEET TO THE EAST LINE OF SAID BLOCK 9, THENCE SOUTH 01 DEGREES 06 MINUTES 31 SECONDS WEST ALONG THE EAST LINE OF SAID BLOCK 9 A DISTANCE OF 109.32 FEET, THENCE SOUTH 89 DEGREES 59 MINUTES 08 SECONDS WEST PARALLEL WITH THE NORTH LINE OF SAID BLOCK 9, A DISTANCE OF 165.42 FEET THENCE NORTH 00 DEGREES 04 MINUTES 27 SECONDS EAST, PARALLEL TO THE WEST LINE OF SAID BLOCK 9, A DISTANCE OF 109.30 FEET TO THE POINT OF BEGINNING.

PARCEL 2:

THAT PART OF THE SOUTHEAST FRACTIONAL 1/4 OF SECTION 8, TOWNSHIP 42 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN WHICH LIES WESTERLY OF LAKE MICHIGAN, EASTERLY OF THE EASTERLY LINE OF BLOCK 9 OF TAYLORSPOINT, BEING A SUBDIVISION OF THE SOUTHWEST FRACTIONAL 1/4 OF THE AFORESAID SECTION 8, LYING NORTHERLY OF A LINE 109.30 FEET SOUTHERLY OF AND PARALLEL WITH THE NORTHERLY LINE OF BLOCK 9 EXTENDED EASTERLY TO LAKE MICHIGAN AND LYING SOUTHERLY OF THE NORTHERLY LINE OF SAID BLOCK 9 EXTENDED EASTERLY TO LAKE MICHIGAN, IN COOK COUNTY, ILLINOIS TOGETHER WITH ALL RIPARIAN RIGHTS THEREUNTO APPERTAINING OR BELONGING.