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Doc#: 0600335333 Fee: \$52.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 01/03/2006 01:21 PM Pg: 1 of 15

Recording at the Request of and
when Recorded Mail Originator:

JPMorgan Chase Bank, N.A.
Commercial Real Estate Division
1 Bank One Plaza
Mail Code: IL1-0951
Chicago, IL 60670
Attention: Maria Di Giannantonio

MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING

THIS MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING (the "Mortgage") is made as of December 28, 2005, by LENNAR 139 POLK, LLC, an Illinois limited liability company, whose address is c/o Concord Homes, Inc., 2300 Barrington Road, Suite 700, Hoffman Estates, Illinois 60195, and SWC Clark Polk, LLC, an Illinois limited liability company, whose address is c/o First American Properties, LLC, 3436 Kennicott, Suite 100, Arlington Heights, Illinois 60004, as tenants-in-common and jointly and severally (each, a "Co-Tenant" and collectively referred to herein as "Mortgagor"), in favor of JPMORGAN CHASE BANK, N.A. ("Mortgagee"), whose address for purposes of this Mortgage is 1 Bank One Plaza, Mail Code IL1-0954, Chicago, Illinois 60670.

RECITALS

WHEREAS, Mortgagor and Mortgagee have entered into that certain Loan Agreement of even date herewith (the "Loan Agreement") pursuant to which Mortgagee has agreed to make disbursements in an amount not to exceed FOURTEEN MILLION NINE HUNDRED FIFTY SIX THOUSAND DOLLARS (\$14,956,000) (the "Loan"), for the purpose of financing the acquisition and development of certain property located at the southwest corner of Polk and Clark Streets in Chicago, Illinois (the "Property"). Capitalized terms used herein and not defined herein shall have the meanings ascribed to them in the Loan Agreement; and

This instrument prepared by:
Linda Schurman
GoodSmith Gregg & Unruh LLP
105 W. Adams, 26th Floor
Chicago, Illinois 60603

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Box 400-CTCC

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WHEREAS, Mortgagee requires as a condition precedent to its making the Loan that Mortgagor enter into this Mortgage and to grant to Mortgagee a security interest, mortgage, lien, encumbrance and charge upon the collateral more particularly hereinafter described.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and in order to secure the full and timely payment of the Indebtedness (as defined below), Mortgagor does hereby GRANT, BARGAIN, SELL, CONVEY, ASSIGN, TRANSFER, MORTGAGE, PLEDGE, GRANT A SECURITY INTEREST IN, and SET OVER unto Mortgagee the property described on Exhibit A hereto and all of Mortgagor's right, title and interest in and to any and all buildings and other improvements now or hereafter constructed thereon (collectively, the "Premises"), along with the other items listed below constituting Mortgaged Property, subject, however, to the Permitted Encumbrances.

The following, with the Premises, are herein collectively called the "Mortgaged Property":

- Premises;
- (a) All appurtenances and all estate, rights and privileges of Mortgagor in and to the Premises;
 - (b) Any and all water and water rights, ditch, and ditch rights, reservoir and reservoir rights, stock or interests in water, irrigation or ditch companies, royalties, minerals, oil and gas rights, lease or leasehold interests owned by Mortgagor, now or hereafter used or useful in connection with, appurtenant to or related to the Premises;
 - (c) All right, title and interest of Mortgagor in and to all streets, roads and public places, opened or proposed, and all easements and rights of way, public or private, now or hereafter used in connection with the Premises;
 - (d) Subject to the rights of Mortgagor under Paragraph A.4 hereof, all of Mortgagor's right, title and interest in and to the Leases and Rents (as defined in Paragraph A.4 hereof);
 - (e) All of Mortgagor's right, title and interest in all agreements for the sale of the Property or any portion thereof, whether now in existence or arising hereafter, and all amendments and supplements thereto (the "Sales Agreements"); and
 - (f) Subject to the rights of Mortgagor under Paragraphs D.7 and D.8 of the Loan Agreement, Mortgagor's right, title and interest in and to any and all awards, payments or other amounts including interest thereon, which may be made with respect to the Mortgaged Property as a result of injury to or decrease in the value of the Mortgaged Property or as a result of the exercise of the right of eminent domain.

TO HAVE AND TO HOLD the Mortgaged Property, together with all and singular of the rights, privileges, tenements, hereditaments and appurtenances thereto in any way incident or belonging unto Mortgagee and to its successors and assigns forever.

FOR THE PURPOSE OF SECURING, in such order of priority as Mortgagee may elect the following (the "Indebtedness"):

- (1) Payment to Mortgagee of an indebtedness in the maximum principal sum of FOURTEEN MILLION NINE HUNDRED FIFTY SIX THOUSAND DOLLARS (\$14,956,000) with interest thereon, according to the terms of the Loan Agreement, and any and all extensions, modifications, substitutions or renewals of such indebtedness;

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(2) Payment to Mortgagee of all other sums, with interest thereon, becoming due or payable under the provisions of the Loan Agreement, which Loan Agreement is incorporated herein by reference to the same extent and effect as if fully set forth herein and made a part of this Mortgage, and the provisions of any and all other instruments, agreements and documents executed by Mortgagor and delivered to or for the benefit of Mortgagee in connection with the Loan (such other instruments, agreements and documents, together with the Loan Agreement and this Mortgage are sometimes hereinafter collectively referred to as the "Loan Documents"); and

(3) Due, prompt and complete observance and performance of each and every obligation, covenant and agreement of Mortgagor contained herein or in any of the other Loan Documents.

It is expressly understood and agreed that the indebtedness secured hereby will in no event exceed THIRTY MILLION DOLLARS (\$30,000,000). The Note evidencing the Loan has a maturity date of December 28, 2007, subject to Mortgagor's right to extend the maturity date for an additional one year period in accordance with the terms of the Loan Agreement.

A. PROVISIONS RELATING TO THE MORTGAGED PROPERTY

A.1 Condition of Mortgaged Property.

(a) Mortgagor agrees not to leave the Mortgaged Property unsecured. Mortgagor agrees to comply with all laws, ordinances, regulations and governmental orders affecting the Mortgaged Property, the non-compliance with which would have a material adverse effect on the use or value of the Mortgaged Property; not to commit, suffer or permit any act with respect to the Mortgaged Property in violation of law, or of any covenants, conditions or restrictions affecting the Mortgaged Property, the non-compliance with which would have a material adverse effect on the use or value of the Mortgaged Property; to make or cause to be made from time to time all needful or proper replacements, repairs, and renewals; and to do any other act or acts, all in a timely and proper manner, which from the character or use of the Mortgaged Property may be reasonably necessary to protect and preserve the value of the Mortgaged Property.

(b) Mortgagor agrees to observe and comply with all conditions and requirements necessary to preserve and extend any and all rights, licenses, permits (including but not limited to zoning variances, special exceptions and non-conforming uses), privileges, franchises and concessions which are applicable to the Mortgaged Property or which have been granted to or contracted for by Mortgagor in connection with the contemplated use of the Mortgaged Property, the loss of which would have a material adverse effect on the use or value of the Mortgaged Property; and to not initiate, join in or consent to any change in any restrictive covenant, zoning ordinance or other private or public restriction affecting the Mortgaged Property or any part thereof which is not a Permitted Encumbrance, except with Mortgagee's prior written consent, not to be unreasonably withheld or delayed.

(c) Mortgagee may during normal business hours and with reasonable prior notice to Mortgagor, enter and inspect or protect the Mortgaged Property, in person or by agent, in such manner and to such extent as it may deem necessary, but only if such person or agent is accompanied by a representative of Mortgagor that Mortgagor shall make available if Mortgagee satisfies the requirements of this sentence as to time and notice of such inspection.

A.2 Alterations and Additions. Mortgagor shall not engage in any construction activity on the Property other than the Infrastructure Work, except as may be approved by Mortgagee, which approval shall not be unreasonably withheld, conditioned or delayed.

A.3 Status of Title. Mortgagor agrees to protect, preserve and defend its interest in the Mortgaged Property and title thereto; to appear and defend this Mortgage in any action or proceeding affecting or purporting to affect the Mortgaged Property, the lien or security interest of this Mortgage thereon, or any of the rights of Mortgagee hereunder, and to pay all costs and expenses incurred by Mortgagee in or in connection with any such action or proceeding, including reasonable attorneys' fees, whether any such action or proceeding progresses to

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judgment and whether brought by or against Mortgagee. Upon the occurrence and during the continuation of a Default or if Mortgagee reasonably determines that Mortgagor has failed to diligently prosecute or defend any such action, Mortgagee may, but shall not be under any obligation to, appear or intervene in such action or proceeding and retain counsel therein and defend the same or otherwise take such action therein as may be advised and may settle or compromise the same and, in that behalf and for any of such purposes, may expend and advance such sums of money as Mortgagee may deem necessary, and Mortgagee shall be reimbursed therefor in accordance with the provisions of the Loan Agreement.

A.4 Assignment of Rents and Performance of Leases.

(a) Mortgagor hereby absolutely assigns and transfers to Mortgagee all of Mortgagor's right, title and interest in and to the following:

(1) All leases, written or oral, now in existence or hereafter arising and all agreements for the use and occupancy of all or any portion of the Premises, together with all the right, power and authority of Mortgagor to alter, modify or change the terms of such leases and agreements or to surrender, cancel or terminate such leases and agreements and together with any and all extensions and renewals thereof (all of such leases, agreements and tenancies being hereinafter collectively called the "Leases");

(2) Any and all guaranties of the obligations of the lessees (the "Lessees") under any of such Leases;

(3) The immediate and continuing right to collect and receive all of the rents, income, receipts, revenues, issues and profits now due or which may become due or to which Mortgagor may now or shall hereafter (whether during any applicable period of redemption, or otherwise) become entitled or may demand or claim, arising or issuing from or out of the Leases, or from or out of the Premises or any part thereof, including but not limited to: minimum rents, additional rents, percentage rents, parking maintenance charges or fees, tax and insurance contributions, proceeds of sale of electricity, gas, chilled and heated water and other utilities and services, deficiency rents and liquidated damages following default or late payment of rent, premiums payable by any Lessee upon the exercise of a cancellation privilege provided for in any Lease, amounts payable by any Lessee pursuant to a negotiated lease termination, and all proceeds payable under any policy of insurance covering loss of rents resulting from untenability caused by destruction or damage to the Premises, together with any and all rights and claims of any kind that Mortgagor may have against any Lessee under any Lease or any subtenants or occupants of the Premises (all such money, rights and claims being hereinafter collectively called the "Rents"), LESS AND EXCEPTING THEREFROM, HOWEVER, any sums which by the express provisions of any Lease are payable directly to any governmental authority or to any other person, firm or corporation other than the lessor under such Lease or any person, firm or corporation which controls or is controlled by or is under common control with the lessor under such Lease.

(b) Provided that there exists no Default hereunder, Mortgagor shall have the right under a license granted hereby and Mortgagee hereby grants to Mortgagor a license (but limited by the remedial of Mortgagee set forth herein) to collect, but not more than one (1) month in advance, all of the Rents arising from or out of the Leases or any renewals or extensions thereof, or from or out of the Premises or any part thereof, and, subject to the restrictions set forth in the Loan Documents, to exercise the rights of the landlord under the Leases. So long as no Default exists hereunder, Mortgagor may use the Rents in any manner not inconsistent with the Loan Documents. The license granted hereby shall be revoked at Mortgagee's option upon written notice from Mortgagee to Mortgagor after the occurrence and during the continuance of a Default hereunder (such written notice to be given at any time after the occurrence of a Default and such revocation to be effective so long as a Default is continuing) and thereafter during the continuance of such Default all Rents collected shall be paid over to Mortgagee immediately upon receipt by Mortgagor.

(c) Subject to the license described and limited in subparagraph (b) above, Mortgagor hereby constitutes and appoints Mortgagee the true and lawful attorney-in-fact, coupled with an interest, of Mortgagor,

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empowered and authorized in the name, place and stead of Mortgagor to demand, sue for, attach, levy, recover and receive all Rents and any premium or penalty payable upon the exercise by any Lessee under any Lease of a privilege of cancellation originally provided in such Lease and to give proper receipts, releases and acquittances therefor and after deducting expenses of collection, to apply the net proceeds as a credit upon any portion of the indebtedness secured hereby selected by Mortgagee notwithstanding the fact that such portion of said indebtedness may not then be due and payable or that such portion of said indebtedness is otherwise adequately secured, and Mortgagor does hereby authorize and direct any such Lessee to deliver such payment to Mortgagee, in accordance with this Mortgage, and Mortgagor hereby ratifies and confirms all that its said attorney, Mortgagee, shall do or cause to be done by virtue of the powers granted hereby. The foregoing appointment is irrevocable and continuing and such rights, powers and privileges shall be exclusive in Mortgagee, its successors and assigns, so long as any part of the Indebtedness remains unpaid or undischarged. A Lessee need not inquire into the authority of Mortgagee to collect any Rents, and its obligations to Mortgagor shall be absolutely discharged to the extent of any payment to Mortgagee.

(d) At the option of Mortgagee, this Mortgage shall become subject and subordinate, in whole or in part (but not with respect to priority of entitlement to insurance proceeds or any condemnation or eminent domain award) to all or any portion of the Leases upon the execution by Mortgagee of unilateral declaration to that effect and recording thereof in the Cook County Recorder's Office.

(e) The acceptance by Mortgagee of the assignment provided in this Paragraph A.4, together with all of the rights, powers, privileges and authority created in this paragraph or elsewhere in this Mortgage, shall not, prior to foreclosure or entry upon and taking possession of the Premises by Mortgagee, be deemed or construed to constitute Mortgagee a "mortgagee in possession" nor thereafter or at any time or in any event obligate Mortgagee to appear in or defend any action or proceeding relating to the Leases, the Rents or the Premises or to take any action hereunder or to expend any money or incur any expenses or perform or discharge any obligation, duty or liability under any Lease or to assume any obligation or responsibility for any security deposits or other deposits delivered to Mortgagor by any Lessee and not assigned and delivered to Mortgagee, nor shall Mortgagee be liable in any way for any injury or damage to person or property sustained by any person or persons, firm or corporation in or about the Premises.

A.5 Security Agreement and Fixture Filing.

(a) Mortgagor hereby grants to Mortgagee a security interest in all of Mortgagor's right, title and interest in the following property, whether now owned or hereafter acquired: (i) all building materials, furniture, fixtures, equipment and other personal property to be incorporated into any improvements constructed on the Premises (whether such items are stored on the Premises or elsewhere); (ii) all other goods, materials, supplies, inventory, fixtures, equipment, machinery, furniture and furnishings and other personal property which are located on, or used in connection with, the Premises; (iii) all Leases and Rents; (iv) the Construction Contracts, the Plans and Specifications and all Sales Agreements; (v) all deposit accounts, including, without limitation, all deposits accounts in which Balancing Deposits may be held; (vi) to the extent assignable, all general intangibles, accounts, chattel paper, instruments, documents, investment property, notes, drafts, letters of credit, letter of credit rights, insurance and condemnation awards and proceeds, trade names, trademarks and service marks, and deposits arising from or related to the Premises and any business conducted on the Premises by Mortgagor; and (vii) all replacements and substitutions for, or additions to, all products and proceeds of, and all books, records and files relating to, any of the foregoing (the "Personal Property Collateral"). The security interest granted in this Paragraph A.5 shall secure the payment and performance of the Indebtedness. Terms used in Paragraph A.5 that are defined in the Illinois Uniform Commercial Code, as in effect from time to time (the "Illinois UCC"), and not otherwise defined in this Mortgage, shall have the meanings ascribed to them in the Illinois UCC.

(b) This Mortgage shall constitute a fixture filing within the meaning of the Illinois UCC with respect to the portion of the Personal Property Collateral that constitutes fixtures. The addresses of Mortgagor and Mortgagee are as set forth in the preamble hereto.

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(c) Mortgagor hereby authorizes Mortgagee to file, and if requested will execute and deliver to Mortgagee, all financing statements and other documents and take such other actions as may from time to time be requested by Mortgagee in order to maintain a first perfected security interest of Mortgagee in the Personal Property Collateral, and the priority thereof against any lien or encumbrance not expressly permitted under the Loan Agreement.

A.6 Subrogation. As further security for the payment and performance of the Indebtedness, Mortgagee shall be subrogated to the lien, although released of record, of any and all encumbrances paid from the proceeds of any advance or expenditure included in the Indebtedness to the extent permitted by law.

A.7 Indemnity. To the fullest extent permitted by law, Mortgagor shall indemnify, save and keep Mortgagee harmless from any damage, claims or causes of action brought by third parties arising out of or related to a known or alleged design or construction defect of the Infrastructure Work, or otherwise arising out of or related to Mortgagor's operations and management or other activities of or in connection with the Mortgaged Property. Mortgagor hereby acknowledges that Mortgagee shall not be deemed to have assumed any responsibility or liability in respect to the design of the Infrastructure Work, or the adequacy of the Plans and Specifications, on account of Mortgagee's receipt or review of the Plans and Specifications delivered pursuant to the Loan Agreement. Mortgagor shall indemnify, save and keep Mortgagee harmless from any liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind and nature whatsoever, specifically excepting, however, any such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements due to Mortgagee's gross negligence or willful misconduct, which may be imposed on, incurred by or asserted against Mortgagee in any way relating to or arising out of (i) the Loan Documents or any other document delivered in connection therewith or the transactions contemplated thereby, (ii) the protection of the collateral, (iii) the management, operation or sale of collateral after the acquisition of title thereto, or (iv) the enforcement of any of the terms of the Loan Documents or of any such other documents.

B. GENERAL PROVISIONS; COVENANTS

B.1 Amendment. No alteration or amendment of this Mortgage shall be effective unless in writing and signed by the parties sought to be charged or bound thereby.

B.2 Governing Law. This Mortgage shall be construed in accordance with the internal laws (including, without limitation, 735 ILCS Section 105/5-1 et seq., but otherwise without regard to the conflict of laws provisions) of the State of Illinois, but giving effect to federal laws applicable to national banks.

B.3 Extensions and Modifications. From time to time, without affecting the obligation of Mortgagor or Mortgagor's successors or assigns to pay the sums secured by this Mortgage and to observe the covenants of Mortgagor contained herein, and without affecting the lien or priority of the lien hereon on the Mortgaged Property, Mortgagee may, at Mortgagee's option, without giving notice to or obtaining the consent of Mortgagor, Mortgagor's successors or assigns or of any other lien holder, and without liability on Mortgagee's part, extend the time for payment of said indebtedness or any part thereof, reduce the payments thereon, release anyone liable on any of said indebtedness, accept a renewal note or notes therefor, modify in accordance with the Loan Documents or applicable law the terms and time of payment of said indebtedness, release from this Mortgage any part of the Mortgaged Property, take or release other or additional security, reconvey any part of the Mortgaged Property, consent to the granting of any easement or dedication, join in any extension or subordination agreement, and agree in writing with Mortgagor to modify the rate of interest or period of amortization of the Note or change the amount of the installments payable thereunder.

B.4 Waiver by Mortgagor. Mortgagor waives any requirements of presentment, demands for payment, notices of nonpayment or late payment, protest, notices of protest, notices of dishonor, and all other formalities or notices of any kind not otherwise required hereby or by the other Loan Documents. To the full extent permitted by law, Mortgagor agrees that it will not at any time or in any manner whatsoever take any advantage of any stay, exemption or extension law or any so-called "Moratorium Law" now or at any time hereafter in force, nor

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take any advantage of any law now or hereafter in force providing for the valuation or appraisal of the Mortgaged Property, or any part thereof, prior to any sale thereof to be made pursuant to any provisions herein contained, or to any decree, judgment or order of any court of competent jurisdiction; or after such sale, claim or exercise any rights under any statute now or hereafter in force to redeem the property so sold, or any part thereof, or relating to the marshaling thereof, upon foreclosure sale or other enforcement hereof. To the full extent permitted by law, Mortgagor hereby expressly waives any and all rights it may have to require that the Mortgaged Property be sold as separate tracts or units in the event of foreclosure. To the full extent permitted by law, Mortgagor hereby expressly waives any and all rights of redemption under IMFL (as defined in Paragraph C.6 hereof), on its own behalf, on behalf of all persons claiming or having an interest (direct or indirect) by, through or under Mortgagor and on behalf of each and every person acquiring any interest in or title to the Mortgaged Property subsequent to the date hereof, it being the intent hereof that any and all such rights of redemption of Mortgagor and such other persons, are and shall be deemed to be hereby waived to the full extent permitted by applicable law. Mortgagor acknowledges that the Mortgaged Property does not constitute agricultural real estate as defined in Section 15-1201 of IMFL or residential real estate as defined in Section 15-1219 of IMFL.

B.5 Corrections. Mortgagor will, upon the reasonable request of Mortgagee, promptly correct any defect, error or omission which may be discovered in the contents of this Mortgage or in the execution or acknowledgment hereof, and will execute, acknowledge and deliver such further instruments and do such further acts as may be necessary or as may be reasonably requested by Mortgagee for the purpose of curing any formal defect or omission or to subject to the lien and security interest hereby created any of Mortgagor's properties, rights or interest covered or intended to be covered hereby, and to perfect and maintain such lien and security interest.

B.6 No Third Parties Benefited. This Mortgage is made and entered into for the sole protection and benefit of Mortgagee, Mortgagor and their respective successors and permitted assigns, and no other person or persons shall have any right to action hereon or rights to Loan disbursements at any time.

B.7 Heirs, Successors and Assigns. This Mortgage shall be binding upon and inure to the benefit of the heirs, successors, permitted assigns and personal representatives of the parties hereto. This Mortgage shall run with the land and the term "Mortgagor" shall include any subsequent owner or owners of the Mortgaged Property.

B.8 Time. Time is of the essence of this Mortgage and each provision hereof of which time is an element.

B.9 Severability. If any provision of this Mortgage or the application hereof to any person or situation shall, to any extent, be held invalid or unenforceable, the remainder of this Mortgage, and the application of such provision to persons or situations other than those to which it shall have been held invalid or unenforceable, shall not be affected thereby, but shall continue to be valid and enforceable to the fullest extent permitted by law.

B.10 Paragraph Headings. Paragraph headings are provided herein for convenience only and shall not serve as a basis for interpretation or construction of this Mortgage, nor as evidence of the intention of the parties hereto.

B.11 No Merger. It being the desire and the intention of the parties hereto that this Mortgage and the lien hereof do not merge in fee simple title to the Mortgaged Property, it is hereby understood and agreed that should Mortgagee acquire any additional or other interests in or to said property or the ownership thereof, then, unless a contrary intent is manifested by Mortgagee as evidenced by an appropriate document duly recorded, this Mortgage and the lien hereof shall not merge in the fee simple title, toward the end that this Mortgage may be foreclosed as if owned by a stranger to the fee simple title.

B.12 Insurance Provisions. Wherever provision is made in the Loan Documents for insurance policies to bear mortgage clauses or other loss payable clauses or endorsements in favor of Mortgagee, or to confer authority upon Mortgagee to settle or participate in the settlement of losses under policies of insurance or to hold and

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disburse or otherwise control use of insurance proceeds, from and after the entry of judgment of foreclosure, all such rights and powers of Mortgagee shall continue in Mortgagee as judgment creditor or mortgagee until confirmation of sale. 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 such insurance policies.

B.13 Counterparts. This Mortgage may be executed in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

C. DEFAULTS AND REMEDIES

C.1 Defaults. A Default (as such term is defined in the Loan Agreement) shall constitute a "Default" hereunder.

C.2 Remedies Upon Default. At any time after the occurrence of a Default hereunder and during the continuance thereof, Mortgagee, at its option, and without further notice or demand, may declare all other amounts secured hereby immediately due and payable (provided, however, that such amounts shall become immediately due and payable automatically and without notice to Mortgagor upon the occurrence of a Default with respect to either Co-Tenant under Paragraphs G.2 or G.3 of the Loan Agreement), and irrespective of whether Mortgagee exercises such option, and regardless of (i) Mortgagee's delay in exercising such option, (ii) Mortgagee's failure to exercise such option on the occasion of any prior Default, or (iii) the adequacy of Mortgagee's security, it may, at its option and in its sole discretion, without any additional notice or demand to or upon Mortgagor, do one or more of the following to the fullest extent permitted by law:

(a) Mortgagee may in person or by agent enter upon, take possession of, complete construction of, manage and operate, continue the sales program for, and make repairs and alterations to, the Mortgaged Property or any part thereof, and do any other acts which Mortgagee deems proper to protect and maintain the security hereof; and either with or without taking possession, terminate the license granted to Mortgagor in Paragraph A.4 hereof to receive the Rents and sue for or otherwise collect and receive said Rents, including those past due and unpaid, and apply the same as provided in the Loan Agreement. Without limiting the generality of the foregoing, to the fullest extent permitted by law, Mortgagee may make, modify, enforce, cancel or accept surrender of any Sales Agreement or Lease, remove and evict any Lessee, increase or decrease Rents under any Lease, appear in and defend any action or proceeding purporting to affect the Mortgaged Property, and perform and discharge each and every obligation, covenant and agreement of Mortgagor contained in any Sales Agreement or Lease. Upon request of Mortgagee, Mortgagor shall assemble and make available to Mortgagee at the Premises any of the Mortgaged Property that is not located thereat or has been removed therefrom. The entering upon and taking possession of the Mortgaged Property, the collection of any Rents and the application thereof as aforesaid, or the other actions taken by Mortgagee pursuant to this subparagraph, shall not cure or waive any Default heretofore or thereafter occurring, or affect any notice of Default hereunder or invalidate any act done pursuant to any such notice. Mortgagee or Mortgagee's agent shall have access during Mortgagor's normal business hours to the books and records used in the operation and maintenance of the Mortgaged Property and shall be liable to account only for those Rents and sales proceeds actually received. Mortgagee shall not be liable to Mortgagor, anyone claiming under or through Mortgagor or anyone having an interest in the Mortgaged Property by reason of anything done or left undone by Mortgagee, other than an intentional tort or act of gross negligence by Mortgagee. Nothing contained in this Paragraph C.2 shall require Mortgagee to incur any expense or do any act. Notwithstanding Mortgagee's continuance in possession, undertaking of other actions pursuant to this subparagraph (a), or receipt and application of Rents or sales proceeds, Mortgagee shall be entitled to exercise every right provided for in this Mortgage or by law upon or after the occurrence and during the continuance of a Default. All Rents and sales proceeds collected by or on behalf of Mortgagee shall be applied in the manner set forth in the Loan Agreement.

(b) Mortgagee, without regard to the adequacy of any security for the indebtedness hereby secured and whether or not waste has occurred, and without notice to Mortgagor, shall be entitled to the appointment

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of a receiver by any court having jurisdiction to take possession of and protect the Mortgaged Property, operate the same, continue the sales program therefor, collect the Rents therefrom and perform any and all other acts which Paragraph C.2(a) hereof states that Mortgagee may perform.

(c) Mortgagee may bring an action in any court of competent jurisdiction to foreclose this Mortgage or to enforce any of the covenants hereof. In any suit to foreclose the lien hereof, there shall be allowed and included as additional Indebtedness in the decree for sale all costs and expenses which may be paid or incurred by or on behalf of Mortgagee for reasonable attorneys' fees, appraisers' fees, receiver's costs and expenses, insurance, taxes, outlays for documentary and expert evidence, costs for preservation of the Mortgaged Property, stenographer's charges, publication costs and costs of procuring all abstracts of title, title searches and examinations, 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 decree the true condition of the title to or value of the Mortgaged Property or for any other reasonable purpose. The amount of any such costs and expenses that may be paid or incurred after the decree for sale is entered may be estimated and the amount of such estimate may be allowed and included as additional Indebtedness secured hereby in the decree for sale. In the event of a foreclosure sale or other disposition of the Mortgaged Property or any portion thereof, the proceeds of said sale or other disposition shall be applied, first, to such costs and expenses, then to payment of the Indebtedness in accordance with the terms of the Loan Agreement, and finally the remainder, if any, shall be paid to Mortgagor. If the Mortgaged Property consists of several lots or parcels, Mortgagee may elect to sell the Property either as a whole or in separate lots or parcels. If Mortgagee elects to sell in separate lots or parcels, Mortgagee may designate the order in which such lots or parcels shall be offered for sale or sold. Any person, including Mortgagor or Mortgagee, may purchase at the sale.

(d) Mortgagee may dispose of any part of the Mortgaged Property constituting personal property in any manner now or hereafter permitted by Article 9 of the Illinois UCC or in accordance with any other remedy provided by law. Mortgagee shall be eligible to purchase any part or all of such property at any such disposition. Any such disposition may be either public or private as Mortgagee may so elect, subject to the provisions of the Illinois UCC. Mortgagee shall give Mortgagor at least ten (10) days' prior written notice of the time and place of any public sale or other disposition of such property or of the day on or after which any private sale or any other intended disposition is to be made, and if such notice is sent to Mortgagor as provided in Paragraph 1.3 of the Loan Agreement, it shall constitute reasonable notice to Mortgagor.

(e) Rights of Tenants. Mortgagee shall have the right and option to commence a civil action to foreclose this Mortgage and to obtain a decree of foreclosure and sale subject to the right of any tenant or tenants of the Premises having an interest in the Premises. The failure to join any such tenant or tenants of the Premises as party defendant or defendants in any such civil action or the failure of any decree of foreclosure and sale to foreclose their rights shall not be asserted by Mortgagor as a defense in any civil action instituted to collect the indebtedness secured hereby, or any part thereof or any deficiency remaining unpaid after foreclosure and sale of the Mortgaged Property, any statute or rule of law at any time existing to the contrary notwithstanding.

C.3 Foreclosure Procedure. To the fullest extent permitted by law, Mortgagor hereby expressly waives any right that it may have to direct the order in which any of the Mortgaged Property shall be sold in the event of any foreclosure of this Mortgage.

C.4 Foreclosure Purchase. Upon any sale of the Mortgaged Property pursuant to judicial proceedings, if Mortgagee or its nominee is a purchaser at such sale, it shall be entitled to use and apply all or any portion of the amounts then secured hereby for or in settlement or payment of all or any portion of the purchase price of the property purchased, and in such case, this Mortgage, the Note and documents evidencing expenditures secured hereby shall be presented to the person conducting the sale in order that the amount of said indebtedness so used or applied may be credited thereon as having been paid.

C.5 Cumulative Remedies. No remedy herein conferred upon or reserved to Mortgagee is intended to be exclusive of any other remedy herein or in any other Loan Document or by law provided, but each

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shall be cumulative and shall be in addition to every other remedy given hereunder or any other Loan Document or now or hereafter existing at law or in equity or by statute. Every power or remedy given by this instrument to Mortgagee, or to which Mortgagee may be otherwise entitled, may be exercised from time to time to the fullest extent permitted by law and as often as may be deemed expedient by Mortgagee, and Mortgagee may pursue inconsistent remedies. If there exists additional security for the performance of the obligations secured hereby, Mortgagee, at its sole option and without limiting or affecting any rights or remedies hereunder, may exercise any of the rights and remedies to which it may be entitled hereunder either concurrently with whatever other rights it may have in connection with such other security or in such order as it may determine.

C.6 Compliance with Illinois Mortgage Foreclosure Law. In the event that any provision in this Mortgage shall be inconsistent with any provision of the Illinois Mortgage Foreclosure Law, 735 ILCS 5/15 (“IMFL”), the provisions of IMFL 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 IMFL. If any provision of this Mortgage shall grant to Mortgagee any rights or remedies upon default by Mortgagor which are more limited than the rights that would otherwise be vested in Mortgagee under IMFL in the absence of said provision, Mortgagee shall be vested with the rights granted in IMFL to the full extent permitted by law. Without limiting the generality of the foregoing, all expenses incurred by Mortgagee to the extent reimbursable under Sections 15-1510 and 15-1512 of IMFL, whether incurred before or after any decree or judgment of foreclosure, and whether enumerated in this Mortgage, shall be added to the indebtedness secured by this Mortgage or by the judgment of foreclosure.

C.7 Mortgagor's Right to Contest Legal Requirements The provisions of Paragraph D.11 of the Loan Agreement are incorporated herein by reference as if fully set forth herein.

C.8 Limited Recourse Obligation. The provisions of Paragraph I.21 of the Loan Agreement are incorporated herein by reference as if fully set forth herein.

[SIGNATURE PAGE FOLLOWS]

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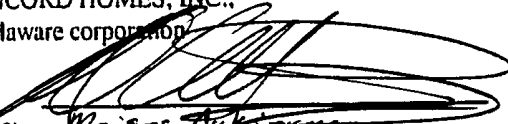
Mortgage

IN WITNESS WHEREOF, Mortgagor has duly executed and delivered this Mortgage as of the day and year first above written.

MORTGAGOR:

LENNAR 139 POLK LLC, an Illinois limited liability company

By: CONCORD HOMES, INC.,
a Delaware corporation

By: 
Name: Moises Cukferman
Title: Vice President

SWC CLARK POLK, LLC, an Illinois limited liability company

By: 200 WINDY POINT DRIVE L.L.C., an Illinois limited liability company, its sole member

By: _____
Name: _____
Title: _____

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Mortgage

IN WITNESS WHEREOF, Mortgagor has duly executed and delivered this Mortgage as of the day and year first above written.

MORTGAGOR:

LENNAR 139 POLK LLC, an Illinois limited liability company

By: **CONCORD HOMES, INC.,**
a Delaware corporation

By: _____
Name: _____
Title: _____

SWC CLARK POLK, LLC, an Illinois limited liability company

By: **200 WINDY POINT DRIVE L.L.C., an Illinois limited liability company, its sole member**

By: _____
Name: Wayne Moneyski
Title: Manager

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Mortgage

STATE OF ILLINOIS)
) SS:
COUNTY OF COOK)

On December 28, 2005, before me, the undersigned, a Notary Public in and for said State personally appeared Moises Cukierman, known to me to be the Vice President of CONCORD HOMES, INC., a Delaware corporation, the sole member of LENNAR 139 POLK LLC, an Illinois liability company, and acknowledged the foregoing to be the free act and deed of said corporation, as the sole member of said limited liability company.

WITNESS my hand and official seal.

Sherril Johnson

Notary Public in and for
said County and State

[SEAL]



STATE OF ILLINOIS)
) SS:
COUNTY OF COOK)

On _____, 2005, before me, the undersigned, a Notary Public in and for said State personally appeared _____, known to me to be the _____ of 200 WINDY POINT DRIVE L.L.C., an Illinois limited liability company, sole member of SWC CLARK POLK, L.L.C, an Illinois limited liability company, and acknowledged the foregoing to be the free act and deed of said limited liability company, as the sole member of said limited liability company.

WITNESS my hand and official seal.

Notary Public in and for
said County and State

[SEAL]

UNOFFICIAL COPY

Mortgage

STATE OF ILLINOIS)
) SS:
COUNTY OF COOK)

On _____, 2005, before me, the undersigned, a Notary Public in and for said State personally appeared _____, known to me to be the _____ of CONCORD HOMES, INC., a Delaware corporation, the sole member of LENNAR 139 POLK LLC, an Illinois liability company, and acknowledged the foregoing to be the free act and deed of said corporation, as the sole member of said limited liability company.

WITNESS my hand and official seal.

Notary Public in and for
said County and State

[SEAL]

STATE OF ILLINOIS)
) SS:
COUNTY OF COOK)

On 12-19, 2005, before me, the undersigned, a Notary Public in and for said State personally appeared Walter H. H. H., known to me to be the Manager of 200 WINDY POINT DRIVE L.L.C., an Illinois limited liability company, sole member of SWC CLARK POLK, LLC, an Illinois limited liability company, and acknowledged the foregoing to be the free act and deed of said limited liability company, as the sole member of said limited liability company.

WITNESS my hand and official seal.

Karen E. Schell

Notary Public in and for
said County and State



UNOFFICIAL COPY

Exhibit A

THE FOLLOWING DESCRIBED PARCEL OF LAND, TAKEN AS A TRACT:

THAT PART OF BLOCK 109 IN SCHOOL SECTION ADDITION TO CHICAGO AND LOTS AND PARTS OF LOTS 1, 2, 5, 6, 7, 8, 11, 12, 13, 14, 17, 18, 19, 20, 23, 24, 25, 26, 29 AND 30 AND PARTS OF LOTS 3, 4, 9, 10, 15, 16, 21, 22, 27 AND 28, IN BLOCK 110, TOGETHER WITH THE NORTH AND SOUTH 10 FOOT WIDE ALLEY HERETOFORE VACATED BY ORDINANCE PASSED JUNE 19, 2002 AND RECORDED DECEMBER 11, 2002 AS DOCUMENT 0021366616, AND ALSO THAT PART OF SOUTH LASALLE STREET HERETOFORE VACATED BY SAID DOCUMENT NO. 0021366616 IN ADAM'S AND PARKER'S SUBDIVISION OF BLOCKS 103 AND 110 IN SCHOOL SECTION ADDITION TO CHICAGO, AND TOGETHER WITH PARTS OF LOTS 1 TO 5, BOTH INCLUSIVE, IN SAID BLOCK 109, AND THAT PART OF SOUTH LASALLE STREET HERETOFORE VACATED BY SAID DOCUMENT NUMBER 0021366616 IN W.S. GURNEE'S SUBDIVISION OF BLOCK 104 AND THE WEST 1/2 OF BLOCK 109 IN SCHOOL SECTION ADDITION TO CHICAGO, ALL IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, ALL TAKEN AS A TRACT, AND BEING MORE PARTICULARLY BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT THE POINT OF INTERSECTION OF THE SOUTH LINE OF WEST POLK STREET WITH THE WEST LINE OF SOUTH CLARK STREET, AS WIDENED AND RUNNING; THENCE SOUTH 00 DEGREES, 00 MINUTES, 37 SECONDS WEST ALONG SAID WEST LINE OF SOUTH CLARK STREET, AS WIDENED, A DISTANCE OF 497.43 FEET TO A POINT OF INTERSECTION WITH A LINE 318.65 FEET NORTH FROM AND PARALLEL WITH THE SOUTH LINE OF THE NORTH 1/2 OF WEST TAYLOR STREET, SAID TAYLOR STREET HERETOFORE VACATED BY SAID DOCUMENT NO. 0021366616; THENCE NORTH 89 DEGREES 54 MINUTES, 22 SECONDS WEST ALONG SAID PARALLEL LINE A DISTANCE OF 332.64 FEET TO THE EAST LINE OF THE METRA RAILROAD RIGHT OF WAY EASEMENT; THENCE NORTH 00 DEGREES, 03 MINUTES 23 SECONDS WEST ALONG SAID EAST LINE OF THE METRA RAILROAD RIGHT OF WAY EASEMENT, A DISTANCE OF 305.12 FEET; THENCE NORTH 07 DEGREES, 54 MINUTES, 48 SECONDS EAST ALONG THE EASTERLY LINE OF SAID RAILROAD RIGHT OF WAY EASEMENT, A DISTANCE OF 194.27 FEET TO A POINT OF INTERSECTION WITH THE SOUTH LINE OF WEST POLK STREET AFORESAID; THENCE SOUTH 89 DEGREES 52 MINUTES 38 SECONDS EAST ALONG SAID SOUTH LINE OF WEST POLK STREET, A DISTANCE OF 306.29 FEET TO THE POINT OF BEGINNING IN COOK COUNTY, ILLINOIS.

17 16 412 002
 005
 007
 012
 010 + 003