

WHEREAS, the Loans are further secured by (1) a Construction Mortgage, Assignment of Rents and Security Agreement dated October 20, 1988 from Old Borrower to Lender and recorded in the Recorder's Office of Cook County, Illinois as Document No. 88489200, as amended by the First Amendment (said Mortgage, as so

WHEREAS, the obligations under the Notes and otherwise relating to the Loans were guaranteed by that certain Guaranty of Payment and Completion dated October 20, 1988, from Lexington Development Corporation, a Delaware corporation ("Guarantor"), to Lender (the "Guaranty"); and

WHEREAS, the Loans are evidenced by (i) a Note Secured by Mortgage dated October 20, 1988 in the principal amount of \$18,147,840 made by Old Borrower payable to the order of Lender (said Note, as same may be amended from time to time is herein called "Note 1"), (ii) a Revolving Note Secured by Mortgage dated October 20, 1988 in the principal amount of \$2,500,000 made by Old Borrower payable to the order of Lender (said Note, as same may be amended from time to time is herein called "Note 2"), and (iii) a Note Secured by Mortgage dated February 28, 1989 in the principal amount of \$3,386,818 made by Old Borrower payable to the order of Lender (said Note, as same may be amended from time to time is herein called "Note 3") (Note 1, Note 2 and Note 3 being herein collectively referred to as the "Notes"); and

WHEREAS, pursuant to the terms of a Construction Loan Agreement dated October 20, 1988, as amended by a First Amendment and Modification to Construction Loan Agreement and dated February 28, 1989 and recorded in the Cook County Recorder's Office as Document No. 89089329 (the "First Amendment") (said Construction Loan Agreement, as so amended, and as same may be amended from time to time is herein called the "Loan Agreement") by and between Old Orchard Country Club Village Limited Partnership, an Illinois limited partnership ("Beneficiary") (Trustee and Beneficiary being herein together referred to as "Old Borrower"), Lender has made several loans to Beneficiary and Trustee in the aggregate amount of \$24,034,658 (the "Loans") relating to the real property legally described on Exhibit A attached hereto and hereby made a part hereof (the "Mortgaged Property"); and

W I T N E S S E T H

This Assumption Agreement (this "Agreement") is made as of this 1st day of August, 1989 by and between CONTINENTAL BANK N.A. (formerly known as Continental Illinois National Bank and Trust Company of Chicago), a national banking association ("Lender"), LEXINGTON HOMES INC., (formerly known as Folx, Inc.) an Illinois corporation (as successor in interest to Old Orchard Country Club Village Limited Partnership) ("New Borrower"), and AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, not personally but as Trustee (the "Trustee") under Trust Agreement dated February 29, 1988 and known as Trust No. 104695-00 (the "Trust").

ASSUMPTION AGREEMENT AND SECOND AMENDMENT TO CONSTRUCTION LOAN AGREEMENT AND CONSTRUCTION MORTGAGE, ASSIGNMENT OF RENTS AND SECURITY AGREEMENT

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the Loan Documents. Agreement shall have the respective meanings ascribed to them in this

2. Unless defined herein, all defined terms in this Agreement shall have the respective meanings ascribed to them in this Agreement and made a part hereof with the same force and effect as though restated herein.

1. The foregoing recitals are accurate and are incorporated herein and made a part hereof with the same force and effect as though restated herein.

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Borrower is a corporation duly formed, validly existing and in good standing under the laws of the State of Illinois. The sole shareholder of Borrower is Focus Financial Group,

(a) Section 1.B. is hereby deleted and the following language is hereby substituted therefor:

7. The Loan Agreement is hereby amended as follows:

All notices to Lender under the Loan Documents shall be sent to the attention of Mr. John Hertz.

Lexington Homes, Inc.  
1156 W. Shure Drive  
Arlington Heights, Illinois 60004  
Attention: President

6. As of the date hereof, all references to the Beneficiary under the Loan Documents shall be deemed to be to New Borrower, and all references therein to the address of New Borrower in said Loan Documents shall be deemed to be at:

5. Lender does hereby consent to the dissolution of Beneficiary and to New Borrower's succession to ownership of the beneficial interest in the Trust, subject to the liens and security interests granted to the Lender under the Loan Documents. Lender's consent to said succession shall not be deemed to be a consent to any future succession to or transfer of the beneficial interest in the Trust, or the Mortgaged Property or of the ownership of New Borrower.

4. New Borrower does hereby confirm its assumption of all of the obligations, covenants, representations, warranties, agreements and restrictions of Beneficiary under the Loan Documents and agrees to be bound by the provisions of such documents as if New Borrower had originally executed them.

3. In order to induce Lender to enter into this Amendment, New Borrower hereby represents and warrants (a) that all of the Loan Documents, as same are amended hereby, are true and complete in all material respects on the date hereof with the same force and effect as if made on such date except as set forth below, (b) that the Loan Documents are in full force and effect in accordance with their respective terms, (c) that New Borrower has no defenses, claims, causes of action, counterclaims or offsets against Lender, its officers, employees, agents, directors or attorneys, of any kind or nature whatsoever, as of the date hereof there are no real estate taxes or assessments due and owing on the Mortgaged Property, (e) as of July 26, 1989, the principal amount outstanding under Note 1 is \$6,553,880.98 and the principal amount outstanding under Note 2 is \$3,386,818, (f) New Borrower is the sole owner of the entire beneficial interest in the Trust and has the power and authority to execute this Agreement without the joinder of any person or entity, and (g) the beneficial interest in the Trust and the Mortgaged Property remain subject to the liens and security interests granted to Lender under the Loan Documents, which liens and security interests are hereby acknowledged and confirmed as of the date hereof. With respect to the representation in Section 1.H. of the Loan Agreement, Lender acknowledges that "permitted exceptions" shall include exceptions shown on date-stamp endorsements previously furnished to Lender from time to time. With respect to Section 1.I. of the Loan Agreement, Exhibit D is supplemented by the matters set forth on "Exhibit D-Supplemental" attached hereto.

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For the purposes of this paragraph the amount of any Restricted Payment declared, paid or distributed in property of Borrower shall be deemed to be the greater of the book value or fair market value (as determined in good faith by the Board of Directors of Borrower) of such property at the time of the making of the Restricted Payment in question.

(such declarations or payments of dividends, and all such other distributions being herein collectively called "Restricted Payments"), if after giving effect thereto, the aggregate amount of Restricted Payments made during the period from and after March 31, 1989 to and including the date of the making of the Restricted Payment in question would exceed 75% of Consolidated Net Income for such period, computed on a cumulative basis for said entire period.

(b) make any other payment or distribution, either directly or indirectly or through any subsidiary, in respect of its capital stock;

(a) declare or pay any dividends, either in cash or property, on any shares of its capital stock of any class (except dividends or other distributions payable solely in shares of capital stock of Borrower), or

Except as hereinafter provided, Borrower will not:

(3) Dividends, Stock Purchases and Issuances.

(2) Consolidated Net Worth. Borrower will at all times keep and maintain Consolidated Net Worth at an amount not less than \$50,000,000.

(1) Interest Charges. Borrower shall keep and maintain the ratio of Net Income Available for Interest Charges for the preceding 12 month period to Interest Charges for the preceding 12 month period at not less than 1.25 to 1.

v. Borrower agrees to comply with all of the covenants and agreements set forth below:

(d) Section 3.1V. is hereby deleted and the following language is hereby substituted therefor:

(c) Sections 1.1G., 3.1F. and 3.1K. are hereby deleted in their entirety.

(b) Section 1.1D. is hereby deleted in its entirety.

Inc., a Delaware corporation ("Focus"). Except for a pledge by Focus to Westinghouse of 100% of the capital stock of Borrower, Focus' interest in Borrower is and will remain free and clear of all liens, claims, encumbrances and rights of others. Until the Loans are paid in full, Focus, Westinghouse, a wholly owned subsidiary of Focus or Westinghouse, Jerrold Mexler, Edward Ross, or a corporation of which not less than 51% of the voting stock is owned beneficially and of record by Jerrold Mexler or Edward Ross or trustees on their behalf or on behalf of their descendants (all of the foregoing being collectively known as "Permitted Transferees") will own, beneficially and of record, not less than 51% of the voting stock of Borrower.

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(8) Reports and Rights of Inspection. Borrower will keep, and will cause each subsidiary to keep, proper books or record and account in which full and correct entries will be made of all dealings or transactions of or in relation to the business and affairs of Borrower or such subsidiary, in accordance with generally accepted principles of accounting consistently applied (except for changes disclosed in the financial statements furnished to Lender pursuant to this

(7) Land Ratio. Borrower will not permit the ratio of "Land Inventory" (hereinafter defined), to (b) Borrower's consolidated Net Worth, to exceed 1.75 to 1. For purposes hereof, the term "Land Inventory" shall mean vacant land, unimproved land and improved land which is not scheduled for the construction of homes within the following 18 month period (in each case valued at the greater of cost or market) owned by Borrower and any Restricted Subsidiary, and the term "Land" shall include land which Borrower or a subsidiary is contractually obligated to purchase, whether or not title has been passed to Borrower or a subsidiary, if the purchase contract does not contain a liquidated damages provision as the seller's sole and exclusive remedy in the event of Borrower's default.

(6) Minimum Liquidity. Borrower will not permit Borrower's Net Liquidity to be less than \$7,500,000. As used herein, "Net Liquidity" shall mean the sum of (i) unrestricted cash in banks (which shall not include, for this purpose, customer deposits), (ii) unrestricted money market funds, (iii) unrestricted negotiable certificates of deposit, (iv) unrestricted U.S. Treasury securities, (v) unrestricted marketable securities traded on an active secondary market, and (vi) funds currently available for disbursement (and not restricted in any way) under existing working capital lines of credit, provided no event of default or unmatured default exists thereunder.

(5) Maximum Leverage. Borrower will not permit the ratio of (a) Borrower's indebtedness minus the subordinated debt, to (b) Borrower's consolidated Net Worth, to exceed 4.0 to 1. Borrower will not permit the net ratio of (a) Borrower's indebtedness plus all contingent liabilities minus subordinated debt, to (b) Borrower's consolidated Net Worth, to exceed 5.5 to 1.

(b) any Restricted Subsidiary may sell, lease or otherwise dispose of all or substantially all of its assets to Borrower or any wholly-owned Restricted Subsidiary.

(a) any Restricted Subsidiary may merge or consolidate with or into Borrower or any wholly-owned Restricted Subsidiary so long as in any merger or consolidation involving Borrower, Borrower shall be the surviving or continuing corporation; and

Borrower will not, and will not permit any Restricted Subsidiary to, (i) consolidate with or be a party to a merger with any other corporation or (ii) sell, lease or otherwise dispose of all or substantially all of the assets of Borrower and its Restricted Subsidiaries, provided, however, that:

(4) Mergers, Consolidations and Sale of Assets.

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section and concurred in by the independent public accountants referred to in subparagraph (c) below, and will furnish to lender:

(a) Quarterly Statements. As soon as available and in any event within 45 days after the end of each quarterly fiscal period (except the last) of each fiscal year, duplicate copies of:

(i) consolidated and consolidating balance sheets of Borrower and its Restricted Subsidiaries as of the close of such quarter setting forth in comparative form the amount for the end of the preceding fiscal period and the amount for the close of the corresponding quarter of the preceding fiscal year, and which shall show the information listed in Exhibit B hereto:

(ii) consolidated and consolidating statements of income and retained earnings of Borrower and its Restricted Subsidiaries for such quarter setting forth in comparative form the amount for the preceding period of the preceding fiscal year; and

(iii) consolidated and consolidating statements of changes in financial position of Borrower and its Restricted Subsidiaries for the portion of the fiscal year ending with such quarter setting forth in comparative form the amount for the corresponding period of the preceding fiscal year,

all in reasonable detail and certified to lender as complete and correct in all material respects by the chief financial officer of Borrower.

Notwithstanding the foregoing, Borrower shall have no obligation to supply quarterly balance sheets prior to the fiscal quarter ended September 30, 1990.

(b) Semiannual Statement. By December 1, 1989, for the semiannual period ending September 30, 1989, duplicate copies of:

(i) consolidated and consolidating balance sheets of Borrower and its Restricted Subsidiaries as of the close of such period setting forth in comparative form the amount for the end of the preceding fiscal period and the amount for the close of the corresponding period of the preceding fiscal year, and which shall show the information listed in Exhibit B hereto:

(ii) consolidated and consolidating statements of income and retained earnings of Borrower and its Restricted Subsidiaries for such period setting forth in comparative form the amount for the corresponding period of the preceding fiscal year; and

(iii) consolidated and consolidating statements of changes in financial position of Borrower and its Restricted Subsidiaries for the portion of the fiscal year ending with such period setting forth in comparative form the amount for the corresponding period of the preceding fiscal year,

all in reasonable detail and certified to lender as complete and correct in all material respects by the chief financial officer of Borrower.

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(c) Annual Statements. As soon as available and in any event within 120 days after the close of each fiscal year of Borrower duplicate copies of:

(1) consolidated and consolidating balance sheets of Borrower and its Restricted Subsidiaries as of the close of such fiscal year, and

(ii) consolidated and consolidating statements of income and retained earnings and changes in financial position of Borrower and its Restricted Subsidiaries for such fiscal year,

(iii) consolidated and consolidating statements of changes in financial position of Borrower and its Restricted Subsidiaries for the portion of the fiscal year ending with such quarter,

in each case setting forth in comparative form the consolidated figures for the preceding fiscal year, all in reasonable detail and accompanied by an unqualified opinion of a firm of independent public accountants or the recognized national standing selected by Borrower to the effect that the consolidated financial statements have been prepared in accordance with generally accepted accounting principles consistently applied (except for changes in application in which such accountants concur) and present fairly the financial condition of Borrower and its Restricted Subsidiaries and that the examination of such accountants in connection with such financial statements has been made in accordance with generally accepted auditing standards and, accordingly, includes such tests of the accounting records and such other auditing procedures as were considered necessary in the circumstances.

(d) Audit Reports. Promptly upon receipt thereof, one copy of each interim or special audit made by independent accountants of the books of Borrower or any Restricted Subsidiary;

(e) SEC and other Reports. Promptly upon their becoming available, one copy of each financial statement, report, notice or proxy statement sent by Borrower to stockholders generally and of each regular or periodic report, and any registration statement or prospectus filed by Borrower or any Subsidiary with any securities exchange or the Securities and Exchange Commission or any successor agency, and copies of any orders in any proceedings to which Borrower or any of its Subsidiaries;

(f) Requested Information. With reasonable promptness, such other data and information as Lender may reasonably request;

(g) Officers' Certificates. Within the periods provided in subparagraphs (a), (b) and (c) above, a certificate of the chief financial officer of Borrower stating that he has reviewed the provisions of this Agreement and setting forth: (i) the information and computations (in sufficient detail) required in order to establish whether Borrower was in compliance with the requirements of Section 3.1 through (7), inclusive, at the end of the period covered by the financial statements then being furnished, (ii) such financial statements were prepared in accordance with generally accepted accounting principles, and (iii) whether there existed as of the date of such financial

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"Adjustable Rate Junior Subordinated Notes" shall mean the \$26,000,000 Adjustable Rate Junior Subordinated Notes of Borrower due May 1, 1994, issued pursuant to the Junior Subordinated Note Agreement between Borrower and Focus dated as of April 28, 1989.

(10) Definitions. The capitalized terms used in the foregoing definitions shall have the meanings set forth below:

(9) Inspections. Without limiting the foregoing or of any other provision hereof, Borrower will permit Lender to visit and inspect, under Borrower's guidance, any of the properties of Borrower or any Subsidiary, to examine all their books of account, records, reports and other papers, to make copies and extracts therefrom, and to discuss their respective affairs, finances and accounts with their respective officers, employees, and independent public accountants (and by this provision Borrower authorizes said accountants to discuss with Lender the finances and affairs of Borrower and its Subsidiaries) all at such reasonable times and as often as may be reasonably requested. Borrower shall not be required to pay or reimburse Lender for expenses which Lender may incur in connection with any such visitation or inspection.

(k) Annual Cash Flow Projection. The annual statements required above shall then be accompanied by annual cash flow projections for the then current fiscal year showing Borrower's projections of cash flow for such period.

(j) Weekly Sales Reports. Within 10 days after the close of each week, Borrower will furnish to Lender sales reports for the preceding week prepared in a form showing all information supplied to Lender in Borrower's current form of sales report. Such sales reports shall show such information for each phase of the project.

(i) Unrestricted Subsidiaries. Within the period provided in subparagraph (c) above, financial statements of the (character and for the dates and periods as in said subparagraph (c) provided covering each Unrestricted Subsidiary (or groups of Unrestricted Subsidiaries on a consolidated basis).

(h) Accountant's Certificates. Within the period provided in paragraph (c) above, a certificate of the accountants who render an opinion with respect to such financial statements stating that they have reviewed this agreement and stating further, whether in making their audit, such accountants have become aware of any Event of Default or Unmatured Default under any of the terms or provisions of this Agreement insofar as any such condition or event then exists, specifying the nature and period of existence thereof; and

statements any Event of Default or any condition or event, both, could give rise to an Event of Default (an "Unmatured Default") and, if any such condition or event exists on the date of the certificate, specifying the nature and period of existence thereof and the action Borrower is taking and proposes to take with respect thereto;

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(f) net earnings of any business entity (other than a Restricted Subsidiary) in which Borrower or any Restricted Subsidiary has an ownership interest such net earnings shall have actually been received by Borrower or such Subsidiary in the form of cash distributions;

(e) net earnings and losses of any corporation (other than a Restricted Subsidiary) with which Borrower or a Restricted Subsidiary shall have consolidated or which shall have merged into or with Borrower or a Restricted Subsidiary prior to the date of such consolidation or merger;

(d) net earnings and losses of any corporation (other than a Restricted Subsidiary), substantially all the assets of which have been acquired in any manner, realized by such other corporation prior to the date of such acquisition;

(c) net earnings and losses of any Restricted Subsidiary accrued prior to the date it became a Restricted Subsidiary;

(b) the proceeds of any life insurance policy;  
(a) any gains or losses on the sale or other disposition of investments or fixed or capital assets, and any taxes on such excluded gains and any tax deductions or credits on account of any such excluded losses;

"Consolidated Net Income" for any period shall mean the gross revenues of Borrower and its Restricted Subsidiaries for such period less all expenses and other proper charges (including taxes on income), determined on a consolidated basis in accordance with generally accepted accounting principles consistently applied and after eliminating earnings or losses attributable to outstanding minority interests, but excluding in any event:

items in accordance with generally acceptable accounting principles. mean the aggregate of Borrower and its Restricted Subsidiaries on a consolidated basis eliminating intercompany items in accordance with generally acceptable accounting principles.

"Capitalized Lease" shall mean any lease the obligation for Rentals with respect to which is required to be capitalized on a balance sheet of the lessee in accordance with generally accepted accounting principles.

"Assets" shall mean as of the date of any determination thereof, the total amount of all assets of Borrower and its Restricted Subsidiaries, less depreciation, depletion and other properly deductible valuation reserves.

"Adjustable Rate Subordinated Notes" shall mean the \$25,000,000 Adjustable Rate Subordinated Notes of Borrower due May 1, 1994 issued pursuant to the Subordinated Note Agreement between Borrower and Westinghouse dated as of April 28, 1989.

"Adjustable Rate Notes" shall mean the \$25,000,000 Adjustable Rate Notes of Borrower due May 1, 1994, issued pursuant to the Note Agreement between Borrower and Westinghouse dated as of April 28, 1989 (the "Adjustable Rate Notes").



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(g) any portion of the net earnings of any Restricted Subsidiary which for any reason is unavailable for payment or dividends to Borrower or any other Restricted Subsidiary;

(h) earnings resulting from any reappraisal, reevaluation or write-up of assets;

(i) any deferred or other credit representing any excess of the equity in any Subsidiary at the date of acquisition thereof over the amount invested in such Subsidiary;

(j) any gain arising from the acquisition of any Securities of Borrower or any Restricted Subsidiary; and

(k) any reversal of any contingency reserve, except to the extent that provision of such contingency reserve shall have been made from income arising during such period.

"Consolidated Net Assets" shall mean as of the date of any determination thereof the total amount of all Assets of Borrower and its Restricted Subsidiaries after deducting all investments in the loans, advances and extensions of credit to unrestricted Subsidiaries, all determined in accordance with generally accepted accounting principles.

"Consolidated Net Worth" shall mean, as of the date of any determination thereof, Subordinated Debt, plus capital stock of any class plus surplus.

"Contingent Liabilities" shall mean as of the date of any determination thereof, all Guaranties, the undrawn amount of all letters of credit issued for the account of Borrower or a Subsidiary, all obligations of Borrower and all Subsidiaries under land purchase contracts for which all contingencies periods have expired, all obligations of Borrower or any Subsidiary under options to purchase land which have been exercised, and all obligations of Borrower and any Subsidiary under interest rate risk management agreements.

"Guaranties" by any person or entity shall mean all obligations (other than endorsements in the ordinary course of business or negotiable instruments for deposit or collection) of such person or entity guaranteeing or in effect guaranteeing any indebtedness, dividend or other obligation, of any other person or entity in any manner, whether directly or indirectly, including, without limitation, all obligations incurred through an agreement, contingent or otherwise, by such person or entity: (i) to purchase such indebtedness or obligation or any property or assets constituting security therefor, (ii) to advance or supply funds (x) for the purchase or payment of such indebtedness or obligation, (y) to maintain working capital or other balance sheet condition or otherwise to advance or make available funds for the purchase or payment of such indebtedness or obligation, or (iii) to lease property or to purchase Securities or other property or services primarily for the purpose of assuring the owner of such indebtedness or obligation of the ability of the primary owner of the indebtedness or obligation of the primary obligor against loss in respect thereof. For the purposes of all computations made under this agreement, a Guaranty in respect of any indebtedness for borrowed money shall be deemed to be equal to the principal amount of such indebtedness for borrowed money which have been guaranteed, plus accrued interest, and a Guaranty in respect of any other

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obligation or liability or any dividend shall be deemed to be indebtedness equal to the maximum aggregate amount of such obligation, liability or dividend.

"Indebtedness" of any person or entity shall mean and include all obligations of such person or entity which in accordance with generally accepted accounting principles shall be classified upon a balance sheet of such person or entity as liabilities of such person or entity, and in any event shall include all (i) obligations of such person or entity for borrowed money or which have been incurred in connection with the acquisition of property or assets, (ii) obligations secured by any lien or other charge upon property or assets owned by such person or entity, even though such person or entity has not assumed or become liable for the payment of such obligations, (iii) obligations created or arising under any conditional sale or other title retention agreement with respect to property acquired by such person or entity, notwithstanding the fact that the rights and remedies of the seller, lender or lessor under such agreement in the event of default are limited to repossession or sale of the property, (iv) Capitalized Rentals under any Capitalized Lease, (v) deferred income taxes, (vi) deferred investment tax credits, and (vii) Minority Interests, each of (v) through (vii), determined in accordance with generally accepted accounting principles consolidating Borrower and its Restricted Subsidiaries. For the purpose of computing the "Indebtedness" of any person or entity, there shall be excluded any particular indebtedness to the extent that, upon or prior to the maturity thereof, there shall have been deposited with the proper depository in trust the necessary funds (or evidence of such indebtedness, if permitted by the instrument creating the indebtedness) for the payment, redemption or satisfaction of such indebtedness; and thereafter such funds and evidence of indebtedness so deposited shall not be included in any computation of the assets of such person or entity.

"Interest Charges" for any period shall mean (i) all interest and (ii) all amortization of debt discount and expense, on all indebtedness for which such calculations are being made, whether expensed or capitalized (unless such capitalized interest is covered under interest reserves for project loans). Computations of Interest Charges on a pro forma basis for indebtedness having a variable interest rate shall be calculated at the rate in effect on the date of any determination.

"Minority Interests" shall mean any shares of stock of any class of a Restricted Subsidiary (other than directors' qualifying shares as required by law) that are not owned by Borrower and/or one or more of its Restricted Subsidiaries. Minority Interests shall be valued by valuing Minority Interests consisting of preferred stock at the voluntary or involuntary value of such preferred stock, whichever is greater, and by valuing Minority Interests consisting of common stock at the book value of capital and surplus applicable thereto adjusted, if necessary, to reflect any changes from the book value of such common stock required by the foregoing method of valuing Minority Interests in preferred stock.

"Net Income Available for Interest Charges" for any period shall mean the sum of (i) Consolidated Net Income during such period plus (to the extent deducted in determining Consolidated Net Income), (ii) all provisions for

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(11) General. Where the character or amount of any asset or liability or item of income or expense is required to be determined or any consolidation or other accounting computation is required to be made for the purpose of this agreement, the same shall be done in accordance with

"Wholly-owned" when used in connection with any subsidiary shall mean a subsidiary of which all of the issued and outstanding shares of stock (except shares required as directors' qualifying shares) shall be owned by Borrower and/or one or more of its wholly-owned subsidiaries.

"Unrestricted Subsidiary" shall mean any subsidiary which is not a Restricted Subsidiary.

"Subsidiary" shall mean, as to any particular parent corporation, any corporation of which more than 50% (by number of votes) of the voting stock shall be owned by such parent corporation. The term "Subsidiary" shall mean a subsidiary of Borrower.

"Subordinated Debt" shall mean the aggregate amount of the unpaid principal balance of the Adjustable Rate Junior Subordinated Notes and the Adjustable Rate Subordinated Notes outstanding as of the date of any determination thereof to the extent such Notes are subordinated to all indebtedness of Borrower to Lender.

"Securities" shall have the same meaning as in Section 2(1) of the Securities Act of 1933, as amended.

"Restricted Subsidiary" shall mean any Subsidiary (i) which is organized under the laws of the United States or America or any State thereof; (ii) which conducts substantially all of its business and substantially all of its assets within the United States; and (iii) of which more than 50% (by number of votes) of its voting stock is owned by Borrower and/or one or more Restricted Subsidiaries.

"Rentals" shall mean and include all fixed rents (including as such all payments which the lessee is obligated to make to the lessor on termination of the lease or surrender of the property) payable by Borrower or a Restricted Subsidiary, as lessee or sublessee under a lease of real or personal property, but shall be exclusive of any amounts required to be paid by Borrower or a Restricted Subsidiary (whether or not designated as rents or additional rents) on account of maintenance, repairs, insurance, taxes and similar charges. Fixed rents under any so-called "percentage leases" shall be computed solely on the basis of the minimum rents, if any, required to be paid by the lessee regardless of sales volume or gross revenues.

any Federal, state or other income taxes made by Borrower and its Restricted Subsidiaries during such period, (iii) interest charges during such period, and (iv) the amount of any depreciation, amortization and other non-cash charges including, without limitation, charges incurred as amortization of the purchase price of the assets of Lexington Development Corporation, an Illinois corporation ("Lexington") and BBN Contractors, Inc., an Illinois corporation, purchased by the Borrower pursuant to the Asset Purchase Agreement dated March 31, 1989 (the "Purchase Contract") by and among Lexington, Ronald Benach, William Haybrook, Peter Bianchini, Wayne Moretti and Borrower.

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(iii) Final judgment or judgments for the payment of money aggregating in excess of \$250,000 is or are outstanding against Borrower, any Restricted Subsidiary

(ii) Focus or Permitted Transferee shall no longer hold, beneficially and of record, 5% of the voting stock of Borrower; or

(i) If any representation or warranty made by Borrower in any agreement, statement or certificate furnished by Borrower or Focus pursuant hereto is untrue in any material respect as of the date of the issuance or making thereof; or

(h) The following Events of Default are hereby added to Section 6.1 at the end thereof, as follows:

(g) All references in Section 6.10. to "Guarantor" shall be to "Focus".  
(f) Section 6.11. is hereby deleted in its entirety.

Borrower will not modify or amend any of the terms or provisions of any of the Adjustable Rate Loan Documents, the Subordinated Loan Documents, the Revolving Loan Documents, the Adjustable Rate Junior Subordinated Loan Documents or the Employment Agreements in any material respect without Lender's prior written consent. Borrower will promptly send Lender true and complete copies of all modifications or amendments to any of said documents, whether or not Lender's consent to such approval is required. Borrower will not terminate or reduce the amount of any loan facility provided for under the Revolving Loan Documents without the prior written consent of Lender. Borrower will promptly notify Lender of the termination of any of the Employment Agreements or of any default asserted thereunder.

X. Borrower has heretofore furnished Lender with true and complete copies of (1) the Purchase and Sale Agreement, (2) the Adjustable Rate Note Agreement dated April 28, 1989 between Borrower and Westinghouse and all of the Adjustable Rate Notes issued thereunder (collectively, the "Adjustable Rate Loan Documents"), (3) the Subordinated Note Agreement dated April 28, 1989 between Borrower and Westinghouse and all of the Adjustable Rate Subordinated Notes issued thereunder (collectively, the "Adjustable Rate Subordinated Loan Documents"), (4) the Revolving Credit Agreement dated April 28, 1989 between Borrower and Westinghouse and the \$10,000,000 Revolving Note and the \$15,000,000 Revolving Note issued thereunder (collectively, the "Revolving Loan Documents"), (5) the Junior Subordinated Note Agreement dated April 28, 1989 between Borrower and Focus and all of the Adjustable Rate Junior Subordinated Notes issued thereunder (collectively, the "Adjustable Rate Loan Documents"), and (6) the Employment Agreements dated May 15, 1989 between Ronald J. Benach and Borrower, Wayne Horvitz and Borrower, Peter Bianchini and Borrower and William Haybrook and Borrower (collectively, the "Employment Agreements").

(e) The following Section 3.14. is hereby added to the Loan Agreement:

generally accepted accounting principles, to the extent applicable, except where such principles are inconsistent with the requirements of this Agreement.

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10. All references in any of the Loan Documents to any other Loan Document or Loan Documents shall be deemed to be to such documents as respectively modified hereby.

9. Except as set forth herein, the Loan Documents shall remain unmodified and in full force and effect and are hereby ratified and confirmed. Except as expressly stated herein, this Agreement shall not in any manner whatsoever waive any right or remedy afforded Lender under the Loan Documents.

8. The presence of a security interest in certain inventory and other personal property of New Borrower in favor of Westinghouse created by that certain Security Agreement dated April 28, 1989 from New Borrower to Westinghouse shall not result in an Event of Default under the Loan Documents.

(i) Lender acknowledges that there no longer is a guarantor of the Loans and agrees that except as provided in clause (g) above, all references to the "guarantor" under the Loan Agreement are hereby deleted.

(viii) Borrower shall fail to comply with any of its covenants set forth in Section 3.1V.(5) through (7) and, if such failure is indicated by the semiannual financial statements for the period ending September 30, 1989, such failure continues for sixty (60) days after notice thereof to Borrower, or if such failure is indicated by any other financial statement such failure continues for a period of thirty (30) days after notice thereof to Borrower.

(vii) Borrower shall fail to furnish to Lender audited financial statements of New Borrower as of May 15, 1989 on or before August 15, 1989; or

(vi) Borrower fails to perform any of its covenants or agreements under an Acceptance of Subordination Agreement by Borrower relating to either the Subordination Agreement entered into between Lender and Westinghouse or the Subordination Agreement between Lender and Focus, and such failure continues for a period of five (5) days after notice thereof to Borrower; or

(v) Any Event of Default shall occur under (1) any Subordinated Loan Documents, (3) any of the Revolving Loan Documents, or (4) any of the Focus Loan Documents; or

(iv) An Event of Default shall occur under any Construction Loan Agreement, Loan Agreement, Certificate and Agreement, Credit Agreement, mortgage, note, letter of credit application, interest rate risk management agreement or other agreement between Borrower (or a land trustee of which Borrower is beneficiary) and Lender, whether any such agreement or instrument is now or hereafter existing, including without limitation, any such agreement assumed by Borrower; or

or Focus or against any of their respective property or assets and any one of such judgments has remained unpaid, unvacated, unbonded or unstayed by appeal or otherwise for a period of 30 days from the date of its entry; or

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11. New Borrower hereby agrees to pay to Lender all fees and expenses incurred by Lender in connection with this agreement, the forbearance agreement and the Westinghouse Guaranty, including, without limitation, fees and expenses of Lender's counsel in connection therewith, recording charges, escrow charges, title charges and related expenses.
12. This Agreement shall be governed and construed under the laws of the State of Illinois.
13. This Agreement is executed by American National Bank and Trust Company of Chicago, not personally but as Trustee, as aforesaid in the exercise of the power and authority conferred and vested in it as such Trustee. No personal liability shall be asserted or enforceable against the Trustee because or in respect of this Amendment or the making thereof, all such liability, if any, being expressly waived by the Lender, its successors and assigns, but nothing herein contained shall modify or discharge the personal liability of New Borrower.

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IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby, have executed this Agreement as of the day and the year first above written.

NEW BORROWER

LEXINGTON HOMES, INC.,  
an Illinois corporation

By [Signature] its President

LENDER

CONTINENTAL BANK N.A., a  
national banking association

By [Signature] its  
TRUSTEE

AMERICAN NATIONAL BANK AND  
TRUST COMPANY OF CHICAGO, not  
personally, but as trustee as  
aforesaid

By [Signature] its  
VICE PRESIDENT

ATTEST:

[Signature]  
Its Vice President

ATTEST:

[Signature]  
Its ASSISTANT SECRETARY

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STATE OF Illinois )  
COUNTY OF Cook ) SS

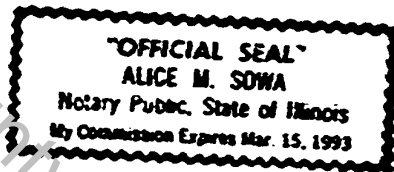
I, Alice M. Sowa, a Notary Public in and for said County, in the State aforesaid, do hereby certify that IRON COLLARD, personally known to me to be the VICE PRESIDENT of CONTINENTAL BANK N.A., a national banking association, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that she, as VICE PRESIDENT, signed and delivered the said instrument as her free and voluntary act and as the free and voluntary act of said association, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 18<sup>th</sup> day of August, 1989.

Alice M. Sowa  
Notary Public

My Commission Expires:

3/15/93



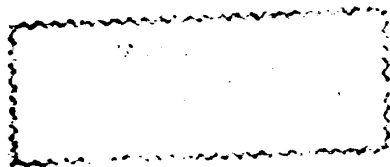
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11/11/11

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STATE OF Cook )  
COUNTY OF Willard ) SS

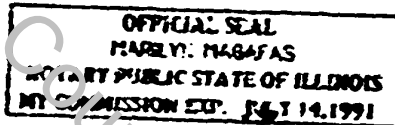
I, William Magafas, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Robert M. Borch and Lita J. Borch, personally known to me to be the Pres. and VP of LEXINGTON HOMES, INC., an Illinois corporation, and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they, as President and VP, signed and delivered the said instrument as their free and voluntary act and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 21 day of August, 1989.

William Magafas  
Notary Public

My Commission Expires:

7-14-91



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STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

M. SOVIENSKI

I, M. SOVIENSKI, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY THAT R. MICHAEL WHELAN, President of AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, and ASSISTANT Secretary, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such President and Claire Rosati Foley Secretary, respectively, appeared before me this day in person and acknowledged that they signed and delivered said instrument as their own free and voluntary act and as the free and voluntary act of said bank, as trustee as aforesaid, for the uses and purposes therein set forth; and said ASSISTANT in them, and there acknowledged that he, did affix the seal of said bank to said instrument as he own free and voluntary act and as the free and voluntary act of said bank, as trustee as aforesaid, for the uses and purposes therein set forth.

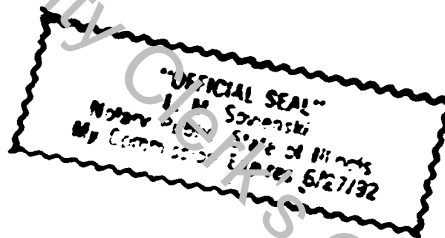
GIVEN under my hand and Notarial Seal this \_\_\_ day of \_\_\_\_\_, 1989.

M. Sovienksi AUG - 4 1989  
Notary Public

My Commission Expires: \_\_\_\_\_

THIS INSTRUMENT WAS PREPARED BY AND SHOULD BE RETURNED TO:

Susan L. Coldenberg, Esq.  
Katten Muchin & Zavis  
525 West Monroe  
Suite 1600  
Chicago, Illinois 60606



Office

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## EXHIBIT A - First Amended

### Parcel 1

That part of Lot 1 in Old Orchard Country Club Subdivision, being a Subdivision of part of the North West 1/4 of Section 27 and part of the East 1/2 of the North East 1/4 of Section 28, both in Township 42 North, Range 11 East of the Third Principal Meridian, according to the Plat thereof recorded as Document 21,895,678, lying North West of the following described line:

Beginning at a point on the Southwesterly line of said Lot 1, said point being 391.338 feet North West of the South East corner of said Lot; thence North 47 Degrees 58 Minutes 52 Seconds East, along a line perpendicular to said Southwesterly line, a distance of 198.57 feet to a point of curvature; thence Northerly 295.667 feet along the arc of a circle of 264.00 feet radius and central angle of 46 Degrees 32 Minutes 23 Seconds convex to the South East to a point of tangency on the East line of said Lot 1, all in Cook County, Illinois.

Permanent Tax Number: 03-28-202-006

### Parcel 2

The North 300 feet of the West 160 feet of the East 910 feet of the East half of the Northeast Quarter of Section 28, Township 42 North, Range 11, East of the Third Principal Meridian, lying North of the Center Line of Rand Road, in Cook County, Illinois.

Permanent Tax Number: 03-28-202-004

#### Street Address:

Intersection of Schoenbeck Road  
and Camp McDonald Road  
Mount Prospect, Illinois

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## EXHIBIT B

### ASSETS

Cash

Receivables

Properties Held for Sale

Land Held for Development

Land Under Development

Construction in Process

Land Deposits

Sales Contracts and Options

Total

Net Property and Equipment

Other Assets

Total Assets

### LIABILITIES

Loans

All Non-Acquisition Loans for

Land, Land Development and

Construction Land Contracts

Total Non-Acquisition Loans

Acquisition Loans

Non-Subordinated Portion

Subordinated Portion

Total Acquisition Loans

Accounts Payable

Construction

Other

Accrued Expenses

Minority Interest

Customer's Deposits

Dividends Payable

Total Liabilities

### EQUITY

TOTAL LIABILITIES AND

NET WORTH

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EXHIBIT D-  
SUPPLEMENTAL

OLD ORCHARD COUNTRY CLUB

1. Ordinance No. 3989 passed and approved on October 4, 1988 by the President and Board of Trustees of the Village of Mount Prospect of Illinois.
2. Ordinance No. 3910 passed and approved on March 15, 1988 by the President and the Board of Trustees of the Village of Mount Prospect.
3. Ordinance No. 3911 passed and approved on March 15, 1988 by the President and the Board of Trustees of the Village of Mount Prospect.
4. Ordinance No. 992 of the Village of Mount Prospect.
5. Ordinance No. 1006 of the Village of Mount Prospect approved December 8, 1964.
6. Ordinance dated January 24, 1973 and recorded as Document No. 22197242.
7. Annexation Agreement dated December 8, 1964 between the Village of Mount Prospect and Chicago Title & Trust Company, as trustee for Trust No. 37533.
8. Consent Decree Amendment entered April 6, 1988 in case No. 65CH5300.
9. Consent Decree Amendment executed by parties on December 14, 1988.
10. Consent Decree entered May 11, 1971 in case No. 65CH5300.
11. Consent Decree Amendment entered April 28, 1972 in case No. 65CH5300.
12. Consent Decree Amendment entered February 19, 1987 in case No. 65CH5300.
13. Letter dated March 7, 1989 to the Mount Prospect Fire Department from Lexington Homes (will not materially adversely affect the Mortgaged Property).

*Development of the*

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14. Recapture Agreement dated July 24, 1985 between Chicago Title and Trust Company pursuant to the terms of a Trust Agreement dated May 4, 1955 known as trust No. 37533 and its sole beneficiary, Albert H. Newman and Old Orchard Development Limited.
15. Amendment to Recapture Agreement by Chicago Title and Trust, as trustee for Trust No. 37533, and its beneficiary, Albert H. Newman, and American National Bank and Trust Company, as trustee for Trust No. 104695-00, and its beneficiary, Lexington Development Corporation.
16. Articles of Agreement for Deed dated December 30, 1986 between Chicago Title & Trust Company, as Trustee for Trust No. 37533, and its sole beneficiary, Albert H. Newman, and Chicago Title and Trust Company, as Trustee for Trust No. 1067116, and its sole beneficiary, Newman Acres, and Old Orchard Development, Ltd.
17. First Amendment to Articles of Agreement for Deed dated November 30, 1987 between Chicago Title and Trust Company, as trustee for Trusts Nos. 37533 and 1067116, whose sole beneficiaries are Albert H. Newman and Newman Acres, respectively and Old Orchard Development, Ltd.
18. Assignment of Rights under Articles of Deed and Recapture Agreement dated March 30, 1988 by Old Orchard Development, Ltd. to Lexington Development Corporation.
19. Seller's Consent dated March 30, 1988, to Assignment of Rights under Articles of Deed and Recapture Agreement.
20. Declaration of Condominium Ownership and of Easements, Restrictions, Covenants and Bylaws for Old Orchard Country Club Village.
21. Crossroads Group memorandum of agreement dated June 23, 1988 to Glen Steinberg et al. from Roy Gottlieb.
- \*22. Authorization for Engineering Services dated February 17, 1988 between Lexington Development and York & Associates.
23. Protective Covenants for Old Orchard Properties dated October 26, 1964 and entered by Chicago Title and Trust, as trustee for Trust No. 37433.

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- \*24. Architect Agreement dated November 20, 1987 between Matthias Jans & Associates, Ltd., and Lexington Homes.
- \*25. Letter agreement, dated November 11, 1987 between Lexington Homes and the Balsamo/Olson Group, Inc.
26. Subcontract Agreement dated October 6, 1988 between Old Orchard Country Club Village Limited Partnership and Arrowroad Construction Company, Inc.
27. Subcontract Agreement dated August 8, 1988 between Old Orchard Country Club Village Limited Partnership and C. A. Sementa Contractors, Inc.
28. Subcontract Agreement dated June 15, 1988 between Old Orchard Country Club Village Limited Partnership and Plaza Excavating Contractors.
29. Omnibus Assignment of all Contracts and Agreements dated October 20, 1988 and executed by Lexington Homes to Old Orchard Country Club Village Limited Partnership.
30. Agreement between John G. Bloodgood Architects, P.C. and Lexington Development Corporation, dated April 7, 1987 and revised May 15, 1987.
31. Agreement between Zimmer-Howell Engineering, Ltd., and Lexington Development Corporation, dated May 5, 1987.
32. Agreement between Cowhey Gudmundson Leder, Ltd. and Lexington Development Corporation, dated April 21, 1987.
33. Agreement between Chagensee Surveying Group, Ltd., and Lexington Development Corporation, dated August 29, 1987.
34. Subcontractors agreements between Lexington Development Corporation and the following subcontractors:

Read Excavating  
Wilkin Insulation  
Douglas and McCole  
BBM Contractors  
Diminon Enterprises  
Gibson Electric  
Rescom HVAC  
Keystone Plumbing

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1 2 3 4 5 6 7 8 9

Romano's Tile  
S.M.S. Masonry  
Prate Roofing  
Temko Installations  
Dual Duty  
Dual Duty  
Sager Weather Stripping  
Door Systems  
Alcoa  
Reserve Steel  
Magic Chef  
Hines  
Alcom  
C.A. Sementa  
A. Caputo  
Arrow Road  
Bell Land  
Vic Tanno Construction  
C.D. Chidestar  
Testing Service Corporation

35. Assignment dated April 8, 1988 between American National Bank and Trust Company of Chicago, as trustee for trust No. 104695-00 to the Village of Mount Prospect of all of the assignor's right, title and interest in and to the Easement Agreement made March 30, 1988 between Chicago Title and Trust Company as Trustee for Trust No. 37533 and American National Bank and Trust Company of Chicago, as trustee for Trust No. 104695-00.
36. Easement Agreement dated March 30, 1988 between Chicago Title and Trust Company, as Trustee for trust No. 37533 and American National Bank and Trust Company of Chicago, as Trustee for Trust No. 104695-00.
37. Sewer permit dated June 30, 1988 to Lexington Development Corporation as copermitee.
38. Letter dated July 27, 1988 to Lexington Homes from Cook County Department of Highways.
- \*39. Permit 87-3-329 from Cook County Department of Highways.
40. Highway permit No. 88-0729 MS 011 to Lexington Development from the Illinois Department of Transportation.

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41. Illinois Environmental Protection Agency permit No. 1988-IA1398 issued September 13, 1988 to Lexington Development Corporation.
42. Illinois Environmental Protection Agency permit No. 0079-FY1989 issued July 18, 1988 to Mount Prospect Village President and Board.
- \*43. Metropolitan Sanitary District of Chicago permit No. 88-322 issued July 12, 1988.
44. Cook County Department of Highways letter dated June 23, 1988 to Lexington Development.
45. Letter, dated October 28, 1988 from the Village of Mt. Prospect to Rudnick & Wolfe.
46. Right reserved by Rolling Green Country Club to drain or impound all surface waters on the property as contained in instrument recorded January 11, 1938 as Doc. No. 12,105,231.
47. Letter dated January 24, 1989 from Lexington Homes to Ernest Bloomquist, Esq.
48. Protective Covenants dated in February of 1968 by Frank M. Aldridge and Valerye J. Aldridge, as declarants.
49. Letter dated March 10, 1988 to Ron Benach of Lexington Homes from Roy Gottlieb of Crossroads Group.
50. Letter to the Village of Mount Prospect from Prospect Heights School District No. 23 dated January 4, 1988.
51. Letter to the Village of Mount Prospect from Prospect Heights Park District dated January 7, 1988.
52. Letter of Credit No. 6583922 issued by Continental Illinois National Bank and Trust Company of Chicago with expiration date of July 19, 1989 for \$1,167,332.
53. Letter of Credit No. 6585634 issued by Continental Illinois National Bank and Trust Company of Chicago with expiration date of August 3, 1989 for \$98,960.
54. Letter of Credit No. 6627709 issued by Continental Illinois National Bank and Trust Company of Chicago with expiration date of March 26, 1990 for \$546,425.

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- 55. Letter dated April 12, 1988 to Army Corps of Engineers from York and Associates, with joint application attached.
- 56. Letter dated March 9, 1988 to Lexington Homes from G. Michael Bender, associate engineer of Illinois State Water Survey, Surface Water Section.
- 57. Letter dated April 10, 1989 to Lexington Homes from Ticor Title Insurance.

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DEPT-01 RECORDING  
740000 TRAM 3109 08/21/89 14:58:00 \$27.00  
6793 & C #-89-388783  
COOK COUNTY RECORDER

2700

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