

This Instrument prepared by and  
after recording mail to:  
Francis L. Keldermans  
McBride Baker & Coles  
500 W. Madison Suite 4000  
Chicago, Illinois 60661

7620008 (2008)

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

This Second Amendment to Mortgage and Assignment of Leases and Rents and Security Agreement and Second Amendment to Construction Loan Agreement ("Second Amendment") is made as of the 24th day of May 1998, by and among Marquette National Bank, not individually, but as Trustee under Trust Agreement dated July 19, 1996 and known as Trust No. 13809 (referred to hereinafter as "Trustee" or "Mortgagor"), ERA-Valdivia Contractors, Inc., an Illinois corporation ("ERA"), Clear Ridge Development, Inc., an Illinois corporation ("Clear Ridge") and Marquette National Bank, a national banking association organized under the laws of the United States of America, whose address is 6316 S. Western Avenue, Chicago, Illinois 60635 ("Mortgagee" or "Lender").

Article I

DEFINITIONS

1.1 Definitions

As used herein, the following terms shall have the following meanings:

(a) Assignment: The assignment, contained in Article 3 of the Mortgage, from Mortgagor to Mortgagee, of all of Mortgagor's right, title and interest in and to the Leases and the Rents.

(b) Awards: All awards and payments made or hereafter to be made by any municipal, township, county, state, Federal or other governmental agencies, authorities or boards or any other entity having the power of eminent domain to Mortgagor, including, but not limited to, any awards and payments for any taking of all or a portion of the Mortgaged Property, as a result of, or by agreement in anticipation of, the exercise of the right of condemnation or eminent domain, or for any change or changes of grade of streets affecting the Mortgaged Property.

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(c) **Beneficiary:** Owner and holder of the Beneficial interest under the Trust ("beneficial interest").

(d) **Buildings:** All buildings, improvements, alterations or appurtenances now, or at any time hereafter, constructed or located upon the Land or any part thereof.

(e) **Defaulted Interest Rate:** The lesser of (i) the interest rate of the Applicable Interest Rate, as defined in the Loan Agreement and the Notes secured by the Mortgage, plus four (4.0%) per annum, or (ii) the highest contract rate allowed by law.

(f) **Event(s) of Default:** The happenings and occurrences described in Article 5 of the Mortgage.

(g) **Fixtures:** All fixtures located upon or within the Land or Buildings or now or hereafter attached to, or installed in, or used in connection with, any of the Land or Buildings whether or not permanently affixed to the Mortgaged Property.

(h) **Guarantor or Guarantors:** Jose G. Valdivia and ERA.

(i) **Guaranty.** The Reaffirmation of Guaranty of even date herewith executed by Jose J. Valdivia and the Guaranty of even date herewith executed by ERA.

(j) **Hazardous Materials.** Any flammable explosives, radioactive materials, oil or petroleum or chemical liquids or solids, liquid or gaseous products or hazardous wastes, toxic substances and similar substances and materials, including all substances and materials defined as hazardous or toxic wastes, substances or materials under any applicable rule, regulation, ordinance or law.

(k) **Impositions:** All (i) real estate and personal property taxes and other taxes and assessments, water and sewer rates and charges, and all other governmental charges and any interest or costs or penalties with respect thereto, and charges for any easement or agreement maintained for the benefit of the Mortgaged Property which at any time prior to or after the execution of the other Loan Documents may be assessed, levied, or imposed upon the Mortgaged Property or the rent or income received therefrom or any use or occupancy thereof, and (ii) other taxes, assessments, fees and governmental charges levied, imposed or assessed upon or against Mortgagor or any of its properties.

(l) **Indebtedness:** The principal of and interest on and all other amounts, payments and premiums due under the Notes, as hereinafter defined, and all other indebtedness of Mortgagor, Clear Ridge, or ERA to Mortgagee under and/or secured by the Mortgage and by any of the other Loan Documents, or any amendments, modifications, renewals and extensions of any of the foregoing.

(m) **Land:** The real estate described in Exhibit A attached hereto and commonly known as Tyler, Langdon, MacKinzie and Savannah's Subdivision and located at 5950 South between Austin and Nashville Avenues, Chicago, Illinois.

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(n) Leases: Any and all leases, subleases, licenses, concessions or grants of other possessory interests now or hereafter in force, oral or written, covering or affecting the Mortgaged Property, or any part thereof, together with all rights, powers, privileges, options and other benefits of Mortgagor thereunder.

(o) Loan Agreement: The Construction Loan Agreement by and between Mortgagor, ERA and Mortgagee dated August 21, 1996 as amended by the First Amendment to Mortgage and Assignment of Leases and Rents and Security Agreement and First Amendment to Construction Loan Agreement dated May 12th, 1997 ("First Amendment") and as further amended by this Second Amendment.

(p) Loan Documents: The Mortgage, this Second Amendment, the First Amendment, the Loan Agreement, the Notes, the Guaranty, the Security Agreement, the Collateral Assignment, the Environmental Indemnity Agreement, the Assignment of Rights, the Architect's Certificates, the Architect's Consent, and the General Contractor's Consent and any and all other documents executed by the Mortgagor or ERA, Clear Ridge, or others, including, but not limited to any guarantors, (other than the Mortgage and the First Amendment) now or hereafter securing the payment of the Indebtedness or the Letter of Credit Note or the observance or performance of the Obligations.

(q) Mortgage: The Mortgage and Assignment of Leases and Rents and Security Agreement made by the Trustee in favor of the Lender and dated August 21, 1996.

(r) Mortgaged Property: The Land, the Buildings, the Fixtures, the Leases and the Rents together with:

(i) all rights, privileges, permits, licenses, tenements, hereditaments, rights-of-way, easements, appurtenances and appurtenances of the Buildings belonging or in any way appertaining thereto and all right, title and interest of Mortgagor in and to any streets, ways, alleys, strips or gores of land adjoining the Land or any part thereof;

(ii) all the estate, right, title, interest, claim or demand whatsoever of Mortgagor, either at law or in equity, in and to the Land, the Buildings, the Fixtures, the Leases and the Rents; and

(iii) all the estate, right, title, interest, claim or demand whatsoever of Mortgagor, either at law or in equity, in and to the Awards, or payments with respect to casualties.

(s) Mortgagee: Marquette National Bank, and its successors and assigns and the holders, from time to time, of all or any of the Notes.

(t) Mortgagee's Address: 6316 South Western Avenue, Chicago, Illinois, 60636.

(u) Mortgagor: The person named as such in the preamble of this Mortgage, and his or its respective heirs, administrators, executors, successors and assigns and their successors in interest in and to the Mortgaged Property.

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(v) Mortgagor's Address: 6155 South Pulaski, Chicago, Illinois 60629.

(w) Note or Notes: (i) The Land Acquisition Note dated of even date herewith this Second Amendment made by Mortgagor and Clear Ridge to the order of Mortgagee, in the principal amount of One Million Fifty-Nine Thousand Five Hundred and No/100 Dollars (\$1,059,500.00), (ii) the Land Improvement Note dated of even date with this Second Amendment made by Mortgagor and Clear Ridge in the principal amount of Six Hundred and Twenty-Five Thousand and No/100 Dollars, (\$625,000.00) (iii) the Model Homes Note dated of even date with this Second Amendment made by Mortgagor and Clear Ridge to the order of Mortgagee in the principal amount of Three Hundred Thousand and No/100 Dollars (\$300,000.00) and (iv) the Non-Revolving Line of Credit Note dated of even date with this Second Amendment made by Mortgagor and Clear Ridge to the order of Mortgagee in the principal amount of Eight Hundred and Eighty Thousand and No/100 Dollars (\$880,000.00) (collectively the Land Acquisition Note, the Land Improvement Note, the Model Homes Note and the Amended and Restated Non-Revolving Line of Credit Note are collectively referred to hereinafter as the "Notes") which Notes are secured in part, by the Mortgage, together with any and all extensions, renewals, modification, and amendments thereof.

(x) Obligations: Any and all of the covenants, promises and other obligations (other than the Indebtedness) made or owing by Mortgagor, ERA, or Clear Ridge to or due to Mortgagee under and/or as set forth in the Note, the Mortgage, the First Amendment, this Second Amendment, the Loan Agreement or any of the other Loan Documents and any and all extensions, renewals, modifications and amendments of any of the foregoing.

(y) Original Notes. (i) The Amended and Restated Land Acquisition Note dated May 12, 1997 made by Mortgagor and Clear Ridge to the order of Mortgagee, in the principal amount of One Million One Hundred Thousand and No/100 Dollars (\$1,100,000.00), and (ii) the Amended and Restated Land Improvement Note dated May 12, 1997 made by Mortgagor and Clear Ridge to the order of Mortgagee in the principal amount of Five Hundred and Twenty-Five Thousand Dollars, (\$525,000.00) (iii) the Amended and Restated Model Homes Note dated May 12, 1997 made by Mortgagor and Clear Ridge to the order of Mortgagee in the principal amount of Two Hundred and Ninety-Five Thousand and No/100 Dollars (\$295,000.00), and (iv) the Amended and Restated Non-Revolving Line of Credit Note dated May 12, 1997 by Mortgagor and Clear Ridge to the order of Mortgagee in the principal amount of Eight Hundred and Eighty Thousand and No/100 Dollars (\$880,000.00) (collectively the Amended and Restated Land Acquisition Note, the Amended and Restated Land Improvement Note, the Amended and Restated Model Homes Note and the Amended and Restated Non-Revolving Line of Credit Note are collectively referred to hereinafter as the "Original Notes").

All capitalized terms used in this Second Amendment which are not specifically defined in this Second Amendment shall have the meaning or meanings specified in the Construction Loan Agreement as amended by the First Amendment.

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## Article 2

### RECITALS

2.1 The Original Notes are secured, inter alia, by a Construction Mortgage and Assignment of Leases and Rents and Security Agreement, dated August 21, 1996 (the "Mortgage") from the Trustee as Mortgagee and recorded August 28, 1996, as document number 96657728 in the Recorder's Office of Cook County, Illinois encumbering certain real property (the "Property") described in Schedule A attached thereto, situated in the County of Cook, Illinois; and

2.2 The Indebtedness and Obligations of Clear Ridge and the Trustee under the Notes, the Mortgage, the Loan Agreement, the First Amendment, this Second Amendment and the other Loan Documents are unconditionally guaranteed by the Guarantors;

2.3 The Borrower has requested that the Lender extend the Maturity Date of the Notes from May 24, 1998 to September 5, 1999.

2.4 Lender agrees to extend the Maturity Date to September 5, 1999 on the following conditions: (i) Clear Ridge and Trustee execute the Notes; (ii) Jose G. Valdivia reaffirms his obligations to Mortgagee under the Original Guaranty; and fully and unconditionally guarantees the Indebtedness and the Obligations of the Borrower; (iii) ERA fully and unconditionally guarantees the Indebtedness and the Obligations of the Borrower under the Notes, the Mortgage, the Loan Agreement, the First Amendment, this Second Amendment and all of the other Loan Documents (iv) the title insurance policy insuring the first lien granted Mortgagee under the Mortgage is endorsed to show no new or additional liens or encumbrances on the Mortgaged Property other than shown on such policy on the date of issuance; (v) Midwest Bank and Trust Company executes the Second Amended and Restated Limited Subordination Agreement dated of even date herewith between Lender and Midwest Bank and Trust Company (collectively the "Amendment Documents"); and (vi) Borrower pays Mortgagee's out-of-pocket closing costs in connection with this transaction, including without limitation, title insurance premiums and fees, escrow fees, recording fees, stamp and documentary taxes, and reasonable attorney's fees and expenses.

## Article 3

### AMENDMENT

3.1 The foregoing Definitions and Recitals are incorporated in this Article 3 as if set out in full in this Article. All references in the Mortgage and any of the other Loan Documents to any other Loan Document or Loan Documents shall be deemed to be to such documents as modified by the First Amendment, this Second Amendment and the Amendment Documents. Except as modified by the First Amendment, this Second Amendment and the Amendment Documents the Mortgage and the other Loan Documents remain unmodified, and, as modified hereby, are hereby affirmed and ratified by the parties hereto.

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3.2 The Mortgage and the Loan Agreement as amended by the First Amendment are hereby amended to incorporate the provisions of this Second Amendment as set forth herein.

3.3 The Maturity Date of the Notes is September 5, 1999, unless such date is accelerated by the Lender upon the occurrence of an Event of Default.

3.4 The execution and delivery of this Second Amendment and the Amendment Documents in no way modifies, limits, impairs or releases Guarantors from any of the Guarantors' obligations or liabilities under their respective Guaranty or Reaffirmation of Guaranty. Guarantors ratify and confirm each and every obligation of Guarantors under their respective Guarantees or Reaffirmations of Guarantees and hereby acknowledge that their obligations under their respective Guarantees or Reaffirmation of Guarantees continue in full force and effect and extend to all indebtedness and Obligations of Borrower arising pursuant to the Note, the Mortgage, the Loan Agreement and the other Loan Documents as amended by the First Amendment, this Second Amendment and the Amendment Documents.

3.5 The execution, delivery and performance of this Second Amendment and the Amendment Documents has been duly authorized by the parties hereto by all requisite action, if any (including approvals of all shareholders, partners, members or beneficiaries).

3.6 ERA and Clear Ridge hereby covenant, represent and warrant to Mortgagee that:

(a) No Event of Default now exists under the Mortgage or any of the other Loan Documents and no event has occurred that would constitute an Event of Default with the mere passage of time of the giving of notice, or both,

(b) The Mortgage, the Loan Agreement and all of the other Loan Documents, as amended by the First Amendment, this Second Amendment and the Amendment Documents, are not subject to any right of rescission, set-off, counterclaim or defense, either at law or in equity, nor will the operation of any of the terms of the Mortgage, the Loan Agreement or the other Loan Documents, as amended by the First Amendment, this Second Amendment and the Amendment Documents, render the Mortgage, the Loan Agreement or any of the other Loan Documents unenforceable, in whole or in part,

(c) Mortgagee, by previously entering into the First Amendment and currently entering into this Second Amendment and the Amendment Documents, does not waive any existing default or Event of Default under the Mortgage or any of the other Loan Documents, or any rights or remedies under the Mortgage or any of the other Loan Documents, except as expressly provided in the First Amendment, this Second Amendment or the Amendment Documents; and

(d) Mortgagee has not heretofore waived any default or Event of Default under the Mortgage, the Loan Agreement or any of the other Loan Documents.

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3.7 On the date hereof, ERA and Clear Ridge have complied with all of the covenants set forth in the Mortgage and the other Loan Documents. As of the date hereof, all of the representations and warranties set forth in the Mortgage and the other Loan Documents, are true and correct with the same effect as if such representations and warranties had been made on the date hereof, except to the extent such representations and warranties expressly relate to an earlier date.

3.8 ERA and Clear Ridge acknowledge and agree that every right, power and remedy of the Mortgagee under the Mortgage, the Loan Agreement and the other Loan Documents, including the First Amendment, this Second Amendment and the Amendment Documents, is in full force and effect, including, without limitation, such rights, powers and remedies relating to the Mortgage and all of the other Loan Documents as hereby amended, and the payment of the Indebtedness and the performance of the Obligations thereunder. Without limiting the foregoing, ERA and Clear Ridge intend, by execution and delivery of this Second Amendment and the Amendment Documents to absolutely, irrevocably and unconditionally covenant and warrant to Mortgagee:

(a) the due and punctual payment of the Indebtedness due and payable under the Notes, the Mortgage, the Loan Agreement and the other Loan Documents, as amended by the First Amendment, this Second Amendment and the Amendment Documents; and

(b) the performance by ERA, Clear Ridge and the Guarantors of all of their respective Obligations under the Mortgage and the other Loan Documents. ERA, Clear Ridge and the Guarantors acknowledge and declare that they have no defenses, claims, charges, pleas or setoffs whatsoever in law or in equity against the Mortgagee, the Mortgage, the Loan Agreement and the other Loan Documents as amended by the First Amendment, this Second Amendment and the Amendment Documents. ERA and Clear Ridge hereby waive and release any and all defenses which might accrue to them by the execution of this Second Amendment and the Amendment Documents.

3.9 This Second Amendment shall inure to the benefit of and shall be binding upon the parties and the respective successors, assigns, legal representatives, heirs, beneficiaries, executors, members and administrators.

3.10 Submission of this Second Amendment for examination shall not bind Mortgagee in any manner, and no obligation of Mortgagee shall arise hereunder until this Second Amendment and all of the Amendment Documents have been executed by ERA, Clear Ridge and Mortgagee.

3.11 ERA and Clear Ridge hereby acknowledge and agree that the modifications contained in this Second Amendment and the Amendment Documents shall in no manner affect or impair the liens and security interests of the Mortgagee, which liens and security interests are hereby acknowledged by ERA and Clear Ridge to be valid and subsisting first and prior mortgage or security liens, and all of the terms and provisions of the Mortgage and all of the other Loan

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Documents, shall be and remain in full force and effect as therein, except as modified by the First Amendment, this Second Amendment and the Amendment Documents.

3.12 This Second Amendment and the Amendment Documents shall be governed by and construed according to the laws of the State of Illinois.

3.13 ~~Trustee Exculpation~~. This Second Amendment is executed by the Trustee, not personally but solely as Trustee as aforesaid, in the exercise of the power and authority conferred upon and vested in it as such Trustee, and it is expressly understood and agreed that nothing in this Second Amendment shall be construed as creating any liability on such Trustee personally to perform any express or implied covenant, condition or obligation under this Second Amendment, all such liability, if any, being expressly waived by every person or entity now or hereafter claiming any right, title or interest under this Second Amendment.

IN WITNESS WHEREOF, intending to be legally bound hereby, Lender, Trustee, ERA and Clear Ridge have duly executed this Second Amendment, the day and year first above written.

TRUSTEE:

Marquette National Bank,  
not individually, but as Trustee under  
Trust Agreement dated July 19, 1996,  
and known as Trust Number 13809

By: Joyce A. Madsen  
JOYCE A. MADSEN, Trust Officer

LENDER:

Marquette National Bank

By: John Foote  
John Foote  
Vice President

ERA:

ERA-Valdivia Contractors, Inc.

By: Jose G. Valdivia  
Jose G. Valdivia, President

CLEAR RIDGE:

Clear Ridge Development, Inc., an  
Illinois corporation

By: Jose G. Valdivia  
Jose G. Valdivia, President

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## ACKNOWLEDGMENT

STATE OF ILLINOIS     )  
                                  ) SS.  
COUNTY OF COOK     )

On 9/14, 1998 before me, the undersigned, a Notary Public in and for the county and state aforesaid, personally appeared and personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed the within instrument as the Trust Officer on behalf of the Trustee and acknowledged to me that the execution thereof was the free and voluntary act and deed of said Trustee for the uses and purposes therein mentioned, and acknowledged to me that such Trust Officer executed the within instrument pursuant to the Trustee's corporate by-laws or a resolution of its Board of Directors.

WITNESS my hand and official seal.

(SEAL)



*Nancy R. Liker*  
Notary Public in and for the State of Illinois

My commission expires: 10-06-00

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## EXHIBIT A

### Legal Description

LOTS 1 THROUGH 48 INCLUSIVE OF THE TYLER, LANGDON, MACKINZIE AND SAVANNAH'S SUBDIVISION AS RECORDED MAY 29, 1996 AS DOCUMENT NUMBER 96402837

PERMANENT INDEX NOS. 19-17-500-001-0000  
19-18-500-002-0000  
19-18-500-003-0000

Commonly known as Tyler, Langdon, MacKinzie and Savannah's Subdivision, 5950 South between Austin and Nashville Avenue, Chicago, IL

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