

2004 012002

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JUNIOR MORTGAGE

THIS INSTRUMENT ("Mortgage") WITNESSES: That PEACHTREE PARTNERS, L.L.C., an Indiana limited liability company ("Mortgagor"), in consideration of One Dollar (\$1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, hereby MORTGAGES and WARRANTS to EDWARD ROSE PROPERTIES, INC., a Michigan corporation ("Mortgagee"), the real estate ("Real Estate") and property located in Lake County, State of Indiana, more particularly described as follows:

Lots 5 and 5C in Resubdivision of Watertower Park Lots 1, 2, & 5, as per plat thereof, recorded in Plat Book 93, Page 56, in the Office of the Recorder of Lake County, Indiana

together with all rights, title and interests of Mortgagor in and to: (i) All rights, privileges, interests, tenements, hereditaments, easements and appurtenances in any way now or hereafter pertaining to the Real Estate ("Easements"); (ii) All buildings and other improvements of every kind and description now or hereafter placed on the Real Estate, together with all fixtures, machinery and other articles of personal property now or hereafter attached to or regularly used in connection with the Real Estate, and all replacements thereof ("Improvements"); (iii) All extensions, improvements, betterments, substitutes, replacements, renewals, additions and appurtenances of or to the Easements or Improvements ("Additions"); (iv) All rents, issues, proceeds, income and profits of the Real Estate, Easements, Improvements and Additions, including all payments made in connection with leases, subleases and other agreements affecting the Real Estate, Easements, Improvements or Additions ("Rents"); and (v) All awards, payments or proceeds of conversion, whether voluntary or involuntary, of any of the foregoing, including, without limitation, all insurance, condemnation and tort claims ("Proceeds"). (Hereinafter, the Real Estate, Easements, Improvements, Additions, Rents, and Proceeds are referred to together as the "Mortgaged Property").

This Mortgage is given to secure performance by Mortgagor of the covenants and agreements contained in this Mortgage and to secure payment of (i) the principal of and interest on the indebtedness evidenced by a certain \$5,000 promissory note, dated January 8, 2004 ("Note"), executed and delivered by Mortgagor to Mortgagee, (ii) all sums advanced and costs and expenses incurred by Mortgagee which are made or incurred pursuant to, or allowed by, the terms of this Mortgage, ("Advancements"); (iii) all costs of repossession, collection, disposition and reasonable attorneys' fees incurred by Mortgagee ("Costs"); (iv) all other indebtedness, obligations and liabilities of Mortgagor (and each of them, if more than one) to Mortgagee, now existing or hereafter arising, whether fixed or contingent, direct or indirect, primary or secondary, joint or several, and regardless of how created or evidenced ("Additional Liabilities"); and (v) any and all extensions or renewals of any of the foregoing indebtedness ("Extensions"). (Hereinafter, the Note, Advancements, Costs, Additional Liabilities and Extensions are referred together as the "Indebtedness.")

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Mortgagor hereby further covenants with Mortgagee as follows:

1. **Payment of Sums Due.** Mortgagor covenants and agrees to promptly pay the principal of and interest on the Note and the other Indebtedness, as and when the payment (s) thereof become due, all without relief from valuation and appraisal laws and with attorneys' fees.

2. **Care and Condition of Mortgaged Property.** Mortgagor shall (a) promptly repair, restore or rebuild the Mortgaged Property, or any portion thereof, which is damaged or destroyed; (b) keep the Mortgaged Property in good condition and repair, without waste, and free from encroachments and from mechanic's or materialman's lien or claims for lien not expressly subordinated to this Mortgage; (c) pay when due any indebtedness which may be secured by a lien or charge on the Mortgaged Property, whether or not superior to the lien of this Mortgage; (d) comply with all requirements of law and covenants and restrictions of record applicable to the Mortgaged Property or its use; (e) permit no change in or alteration of the design, structural character or general nature of the Real Estate and the Improvements without Mortgagee's prior written consent (which consent shall not be withheld unreasonably); and (f) permit Mortgagee to enter upon and inspect the Mortgaged Property at all reasonable times.

3. **Warranties.** Mortgagor covenants and warrants that: (a) Mortgagor is lawfully seized of the Real Estate in fee simple, has valid and indefeasible title to the Mortgaged Property and has a good and legal right to convey and mortgage the Mortgaged Property; and (b) the Mortgaged Property is and will remain free from all liens and encumbrances except only mortgages and liens in favor of Mortgagee and any prior mortgage lien in favor of Sand Ridge Bank existing on the date hereof for an amount not exceeding the amount now due Sand Ridge Bank (a "Prior Mortgage Lien"), and Mortgagor will warrant and defend title to the Mortgaged Property against all claims made thereon.

4. **Insurance.** Mortgagor will keep in force comprehensive general liability and contractual liability insurance, and subject to the senior rights of Sand Ridge Bank, Mortgagee shall be listed as an additional insured thereon.

5. **Taxes.** Mortgagor will pay and discharge or cause to be paid and discharged when due, and before any penalty attaches, all taxes (including real and personal property taxes), general and special assessments, water and sewer rents or assessments, and all other governmental and municipal charges and impositions of any kind imposed upon or assessed against Mortgagor or the Mortgaged Property, or any part thereof, or arising in respect of the ownership, occupancy, use or possession thereof.

6. **Protection of Security by Mortgagee.** Mortgagee may, at Mortgagee's option, but without any duty or obligation of any sort to do so and without in any way waiving or relieving any default by Mortgagor, make any payment and perform any act required of Mortgagor by this Mortgage, including but not limited to, payment of insurance premiums, taxes, assessments, repair expenses and prior liens and encumbrances. All expenses so incurred, including reasonable attorneys' fees, and any other reasonable expenses incurred by Mortgagee to protect the Mortgaged Property shall constitute Advancements and shall be immediately due and payable by Mortgagor.

7. **Transfer of Mortgaged Property.** Except upon payment in full of the Note, Mortgagor shall not, without the prior written consent of Mortgagee (which consent may be withheld without reasonable cause), lease, transfer, sell, contract to sell or in any way further encumber all or any part of the Mortgaged Property.

8. **Condemnation.** If all or any part of the Mortgaged Property, is taken or damaged pursuant to an exercise, or threat of exercise, of the power of eminent domain, the entire proceeds of the award or compensation payable in respect of the part so taken or damaged shall be first paid to Sand Ridge Bank and any remaining proceeds are hereby assigned to and shall be paid directly to Mortgagee.

9. **Default and Acceleration.** Time is of the essence of this Mortgage. Upon the occurrence of any "Event of Default" (as hereinafter defined), and at any time thereafter, then, in any and every such case, the entire Indebtedness shall, at the option of Mortgagee, become immediately due and payable without any notice, presentment, demand, protest, notice of protest, or other notice of dishonor or demand of any kind, all of which are hereby expressly waived by Mortgagor, and Mortgagee shall have the right immediately to foreclose the mortgage lien created by this Mortgage against the Mortgaged Property, to enforce every other security interest created by this Mortgage and to institute any action, suit or other proceeding which Mortgagee may deem necessary or proper for the protection of its interests. The following shall each constitute an "Event of Default" for purposes of this Mortgage:

(a) Default (i) in the payment when due of any of the Indebtedness, or (ii) in the performance any covenant or term of this Mortgage, which is not cured within fifteen (15) days of notice from Mortgagee;

(b) If Mortgagor becomes the subject of an order for relief under the United States Bankruptcy Code, takes any action to obtain relief under the United States Bankruptcy Code, files an answer admitting bankruptcy or insolvency or in any manner is adjudged bankrupt or insolvent;

(c) Institution of proceedings to enforce or foreclose any Prior Mortgage Lien or any other mortgage or lien upon all or any part of the Mortgaged Property; or

(d) Default by Mortgagor under the Note or any Prior Mortgage Lien.

10. **Foreclosure and Application of Proceeds.** All expenses which may be paid or incurred by or on behalf of Mortgagee in connection with the foreclosure of this Mortgage for reasonable attorneys' fees, appraisers' fees, outlays for documentary and expert evidence, stenographers' charges, publication costs and cost of procuring all title searches, policies and examinations and similar data and assurances with respect to title as Mortgagee reasonably may deem necessary to prosecute such suit shall constitute Advancements, shall be immediately due and payable by Mortgagor, with interest thereon at the Default Rate (as defined in the Note), and shall be allowed and included as Indebtedness in the judgment for sale. The proceeds of any foreclosure sale of the Mortgaged Property shall be distributed and applied in the following order or priority: First, on account of all Advancements incident to the foreclosure proceedings and all Costs; second, all other items which under the terms of this Mortgage constitute Indebtedness additional to the Note; third, all principal, interest and other amounts remaining unpaid on the

Note; and fourth, any remainder to the person or persons entitled thereto as determined by the court in the foreclosure proceedings.

11. **Foreclosure Proceedings and Receiver.** Upon the commencement of any proceedings to foreclose this Mortgage, Mortgagee shall be entitled forthwith to the appointment of a receiver or receivers, as a matter of right, without the giving of notice to any other party, without regard to the adequacy or inadequacy of any security for the Indebtedness and without the requirement of any bond. Mortgagee shall be entitled to recover judgment either before or after or during the pendency of any proceedings for the enforcement of this Mortgage. The right of Mortgagee to recover such judgment shall not be affected by the exercise of any other right, power or remedy for the enforcement of this Mortgage, or the foreclosure of the lien of this Mortgage.

12. **No Exclusive Remedy.** Each and every right, power and remedy conferred upon or reserved to Mortgagee in this Mortgage is cumulative and shall be in addition to every other right, power and remedy given in this Mortgage or now or hereafter existing at law or in equity. No delay or omission of Mortgagee in the exercise of any right, power or remedy shall be construed to be a waiver of any Event of Default or any acquiescence therein.

13. **Provisions Severable.** In the event any one or more of the provisions of this Mortgage for any reason shall be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Mortgage, but this Mortgage shall be construed as if such invalid, illegal or unenforceable provisions had never been contained in this Mortgage.

14. **Notices.** All notices pursuant to this Mortgage shall be in writing and shall be deemed to have been sufficiently given or served for all purposes when presented personally or sent by registered or certified United States mail, addressed to Mortgagor c/o 1851 Govert Lane, Schererville, Indiana 46410 or at such other place as either party may, by notice in writing, designate as a place for service of notice.

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

16. **Environmental Condition.**

(a) Mortgagor represents and warrants that to its actual knowledge the Mortgaged Property (i) contains no facilities that are subject to reporting under Section 312 of the federal Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. § 11022); (ii) is not the site of any underground storage tanks; (iii) is not listed on the Comprehensive Environmental Response, Compensation and Liability Information System (CERCLIS) in accordance Section 116 of the Comprehensive Environmental Response, Compensation and

Liability Act (42 U.S.C. § 9616); and (iv) contains no environmental defects, as that term is defined in IND. CODE § 13-11-2-70.

(b) Mortgagor agrees to protect, defend, save, hold harmless and indemnify Mortgagee, and its affiliates, successors, assigns, employees, representatives, attorneys, and agents (collectively, the "Indemnified Parties"), from and against any and all liabilities, losses, damages, penalties, claims and costs (including reasonable attorneys' and other professional and consultant's fees and other costs and expenses associated with court and/or administrative proceedings) incurred by an Indemnified Party, arising from, or in connection with any of the following: (i) the presence, use, storage, disposal, processing, generation, transportation, treatment, discharge or release of any Hazardous Material in, on, under or emanating from the Mortgaged Property whether occurring prior to or after the date hereof, regardless of whether the same is caused or permitted by Mortgagor or any other person or entity; (ii) the violation or claimed violation of any Environmental Laws in regard to the Mortgaged Property by Mortgagor, or its successors, assigns, tenants, employees, representatives, and agents; (iii) the breach of any terms or provisions of this Mortgage or the Note; or (iv) the enforcement of this indemnity. As used in this Section 16 the term "Environmental Laws" means any and all local, state and federal laws, rules and regulations pertaining to human health and environment, as now or hereafter enacted or amended, including, without limitation, the Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980; the Federal Resource Conservation and Recovery Act; Title 13 of the Indiana Code; and any other laws, including case law, which might be deemed or referred to as environmental common law. As used in this Section 16 the term "Hazardous Material" means any substance regulated by the Environmental Laws.

17. **Miscellaneous.** The captions in this Mortgage are for convenience only and do not define or limit the provisions of this Mortgage. All changes to this Mortgage must be in writing signed by Mortgagee and, if this Mortgage is to be recorded, shall not be effective until recorded. Wherever used, the singular number shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders.

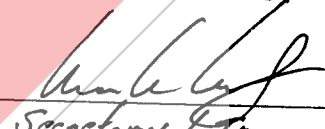
IN WITNESS WHEREOF, Mortgagor has executed this Mortgage this 9th day of January, 2004.

PEACHTREE PARTNERS, L.L.C.

By: Terra Development, Inc., Manager



By:
Its:


Secretary & Treasurer

STATE OF INDIANA)
) SS:
COUNTY OF LAKE)

Before me, a Notary Public in and for State of Indiana and a resident of Lake County, Indiana personally appeared

D. MARK KELLY
the Secretary/Treasurer of Terra Development, Inc., the Manager of Peachtree Partners, L.L.C., who acknowledged execution of the foregoing Mortgage as such for and on behalf of said Manager and company.

Witness my hand and Notarial Seal this 8 day of January, 2004.

Lisa M. Ansell

(Signature)

LISA M ANSERELLO
NOTARY PUBLIC STATE OF INDIANA, Notary Public
PORTER COUNTY (Printed)
MY COMMISSION EXP. NOV. 21, 2008

My commission expires:

This instrument prepared by Jeffrey P. Gray, Wildman, Harrold, Allen & Dixon LLP, 225 West Wacker Drive, Chicago, IL 60606-1229

Return to: Donald E. Williams, Barnes & Thornburg, 11 South Meridian Street, Indianapolis, IN 46204-3535

