

UNOFFICIAL COPY

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Cook County Recorder

91.50

FHLMC LOAN NUMBER 002743825

Arbor Lakes Apartments

CROSS-COLLATERALIZATION AGREEMENT

THIS CROSS-COLLATERALIZATION AGREEMENT (this "Agreement") is made as of the 12 day of July, 2002 between REILLY MORTGAGE GROUP, INC., a District of Columbia corporation, ("Lender") and GREAT LAKES PROPERTY GROUP TRUST, A TRUST FORMED PURSUANT TO THE LAWS OF THE STATE OF ILLINOIS ("Borrower").

14

RECITALS



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- A. Lender has made a loan to Borrower in the original principal amount of \$14,650,000.00 (the "Loan"). The Loan is secured by a Multifamily Mortgage, Assignment of Rents and Security Agreement recorded among the Land Records of Cook County, Illinois immediately prior to the recording of this Agreement (the "Mortgage") upon real property identified in Exhibit A hereto and other property included within the definition of "Mortgaged Property" in the Mortgage and constituting or related to a residential multifamily apartment project known as Arbor Lakes Apartments.
- B. Contemporaneously with the making of the Loan, Lender is making other mortgage loans (collectively, the "Related Loans") to Borrower or affiliates of Borrower, secured by Multifamily Mortgages or Deeds of Trust (collectively, the "Related Mortgages") upon other residential multifamily apartment projects (collectively, the "Related Properties"), all as more fully set forth in the following table:

Related Loan Amount	Related Borrower	Related Property Name	Related Property Location
\$18,650,000.00	James S. Smith, not personally, but solely as Trustee under Great Lakes Property Group Trust, an Illinois Trust	Green Trails Apartments	2800 Windsor Drive Lisle, IL 60532
\$15,350,000.00	James S. Smith, not individually but solely as Trustee under the provisions of that certain Great Lakes Property Group Trust Agreement dated June 27, 1994, a Trust formed pursuant to the laws of Illinois	Oxford Hill Apartments	10304 Oxford Hill Drive St. Louis, MO 63146
\$16,300,000.00	Great Lakes Property Group Trust, a Trust formed pursuant to the laws of Illinois	Aspen Place Apartments	826 Terrace Lake Drive Aurora, IL 60504

REILLY MORTGAGE GROUP

Property of Cook County Clerks Office

\$8,050,000.00

Skyridge Partners II,
LLC

Skyridge Club-Phase II

1395 Skyridge Drive
Crystal Lakes, IL 60014

C. Borrower acknowledges that a condition of Lender making the Loan and the Related Loans is that the Mortgaged Property serve as collateral for each of the Related Loans and that each of the Related Properties serve as collateral for the Loan. Borrower is executing this Agreement to satisfy such condition. Borrower further acknowledges that the benefits derived by Borrower from this Agreement and from those certain Cross-Collateralization Agreements entered into or to be entered into in connection with the Related Loans are equivalent to the burdens imposed upon Borrower and the Mortgaged Property by this Agreement, notwithstanding that the Loan and the Related Loans may be of differing amounts.

1. **Definitions.** For purposes of this Agreement, the following terms shall have the meanings indicated:

"Event of Default" shall have the meaning set forth in Section 4.

"Foreclosure" means a judicial or non-judicial foreclosure of or trustee's sale under the Mortgage or a Related Mortgage, a deed in lieu of such foreclosure or sale, a sale of any of the Total Property pursuant to lawful order of a court of competent jurisdiction in a bankruptcy case filed under Title 11 of the United States Code, or any other similar disposition of any of the Total Property.

"Fraudulent Transfer Laws" means Section 548 of Title 11 of the United States Code or any applicable provisions of comparable state law, including any provisions of the Uniform Fraudulent Conveyance Act or Uniform Fraudulent Transfer Act, as adopted under state law.

"Indebtedness" means the "Indebtedness" as defined in the Mortgage, exclusive of any sums payable by Borrower solely by reason of this Agreement.

"Loans" means the Loan and the Related Loans.

"Related Borrowers" means the original borrower under each of the Related Loans (which original borrower may be the Borrower named in this Agreement), and any successor to the interest of each such borrower in any of the Related Properties who acquires such Related Property subject to, or who assumes, a Related Mortgage.

"Related Indebtedness" means the aggregate of the "Indebtedness" as defined in each of the Related Mortgages.

"Related Loan Documents" means the "Loan Documents" as defined in each of the Related Mortgages.

"**Total Indebtedness**" means the aggregate of the Indebtedness plus the Related Indebtedness.

"**Total Loan Documents**" means the "Loan Documents" as defined in the Mortgage and the Related Loan Documents. This Agreement is among the Loan Documents as defined in the Mortgage, and the Cross-Collateralization Agreements entered into in connection with the Related Loans are among the Related Loan Documents.

"**Total Property**" means the aggregate of the Mortgaged Property and the "Mortgaged Property" described in each of the Related Mortgages.

Capitalized terms not otherwise defined in this Agreement shall have the meanings set forth in the Mortgage.

2. **Assumption and Integration of Related Indebtedness; Obligations**

Absolute. Borrower hereby acknowledges that:

(a) Borrower shall pay not only the Indebtedness, but all of the Related Indebtedness in accordance with the Related Loan Documents. Borrower and the Related Borrowers are jointly and severally liable for the payment of the Total Indebtedness. Lender at its option may treat the Loan and each of the Related Loans as separate and independent obligations of Borrower, or may treat some or all of the Loans, and all or any part of the Total Indebtedness, as a single, integrated indebtedness of Borrower.

(b) No invalidity, irregularity or unenforceability of all or any part of the Related Indebtedness shall affect, impair or be a defense to the recovery by Lender of the Indebtedness.

(c) It is the intention of Lender and Borrower that Borrower's obligations to pay the Related Indebtedness shall be independent, primary, and absolute, and shall be performed without demand by Lender and shall be unconditional irrespective of the genuineness, validity, regularity or enforceability of any of the Related Loan Documents, and without regard to any circumstance, other than payment in full of the Related Indebtedness, which might otherwise constitute a legal or equitable discharge of a borrower, a mortgagor, a surety, or a guarantor. Borrower waives, to the fullest extent permitted by law, all rights to require Lender to proceed against any Related Borrower or against any guarantor of any of the Total Indebtedness or to pursue any other right or remedy Lender may now or hereafter have against any Related Borrower or any collateral for any of the Total Indebtedness.

3. **Amendment of Mortgage to Grant Additional Security.** The Mortgage is hereby amended to provide that the Mortgage secures the obligation of Borrower to pay the Related Indebtedness as well as the obligation of Borrower to pay the Indebtedness.

4. Events of Default. Each of the following events shall constitute an "Event of Default" under this Agreement:

- (a) a default or breach by Borrower of any provision of this Agreement; and
- (b) any event or condition constituting an "Event of Default" under any of the Total Loan Documents.

5. Amendment of Mortgage to Provide for Cross-Default. The Mortgage is hereby amended to provide that any Event of Default under this Agreement shall constitute an Event of Default under the Mortgage.

6. Remedies.

(a) Upon the occurrence of an Event of Default, Lender, in its sole and absolute discretion, may exercise any or some or all of the following remedies, in such order and at such time or times as Lender shall elect:

(i) declare immediately due and payable the entire Total Indebtedness or any portion thereof; and

(ii) exercise any or some or all of Lender's rights and remedies under this Agreement, any of the Total Loan Documents, or applicable law.

(b) Lender may exercise such remedies in one or more proceedings, whether contemporaneous or consecutive or a combination of both, to be determined by Lender in its sole discretion. Lender may enforce its rights against the Mortgaged Property or the Total Property, or any portions of the Mortgaged Property or the Total Property, in such order and manner as Lender may elect in Lender's sole discretion. The enforcement of the Mortgage or any Related Mortgage or any other of the Total Loan Documents shall not constitute an election of remedies, and shall not limit or preclude the enforcement of the Mortgage or any other Related Mortgage or any other of the Total Loan Documents, through one or more additional proceedings. Lender may bring any action or proceeding, including but not limited to foreclosure proceedings, without regard to the fact that one or more other proceedings may have been commenced elsewhere with respect to other of the Total Property or any portion thereof. Borrower, for itself and for any and all persons or entities now or in the future holding or claiming any lien on, security interest in, or other interest or right of any nature in or to any of the Mortgaged Property, hereby unconditionally and irrevocably waives any rights Borrower may have, now or in the future, whether at law or in equity, to require Lender to enforce or exercise any of Lender's rights or remedies under this Agreement, under the Mortgage, or under any other of the Total Loan Document in any particular manner or order or in any particular state or county, or to apply the proceeds of any foreclosure in any particular manner or order.

(c) No judgment obtained by Lender in any proceeding enforcing any of the Total Loan Documents shall merge any of the Total Indebtedness into that judgment, and all Total Indebtedness which remains unpaid shall remain a continuing obligation of Borrower. Notwithstanding any foreclosure of the Mortgage or any of the Related Mortgages, Borrower shall remain bound under this Agreement.

7. Application of Proceeds. Proceeds of the enforcement or foreclosure of the Mortgage or any Related Mortgage shall be applied to the payment of the Total Indebtedness (including prepayment premiums) in such order as Lender may determine in Lender's sole discretion.

8. Adjustment of Obligations. If Borrower's incurring of the obligation to pay the Related Indebtedness provided for in Section 2 above, or the amendment of the Mortgage provided for in Section 3 above, becomes subject to avoidance under any Fraudulent Transfer Law, then automatically, the Related Indebtedness for which Borrower will be liable and the amount of the Related Indebtedness for which the Mortgaged Property shall constitute security, shall be limited to the largest amount that would not be subject to avoidance under such Fraudulent Transfer Law.

9. Borrower's Rights of Subrogation, Etc. Until the Total Indebtedness has been paid in full and there has expired the maximum possible period thereafter during which any payment to Lender with respect to the Total Indebtedness could be deemed a preference under the United States Bankruptcy Code, Borrower shall have no right of, and hereby waives any claim for, subrogation, contribution, reimbursement or indemnity (whether contractual, statutory, equitable, under common law or otherwise) which Borrower has now or may have in the future against any of the Related Borrowers or any of the Related Properties or against any guarantor or security for any of the Total Indebtedness. Borrower understands that the exercise by Lender of certain rights and remedies contained in the Mortgage or any one or more of the Related Mortgages may affect or eliminate Borrower's right of subrogation against a Related Borrower and that Borrower may therefore incur a partially or totally nonreimbursable liability under this Agreement. Nevertheless, Borrower hereby authorizes and empowers Lender, in Lender's sole and absolute discretion, to exercise any right or remedy, or any combination thereof, which may then be available.

10. Subordination of Obligations to Borrower. Any indebtedness or other obligation of a Related Borrower held by Borrower shall be subordinate to the rights of Lender against that Related Borrower. If Lender so requests at a time when an Event of Default has occurred, Borrower shall enforce and collect any such indebtedness or other obligation as trustee for Lender and shall pay over to Lender any amount collected, on account of the Total Indebtedness.

11. Lender's Rights. At any time and from time to time and without the consent of, or notice to, Borrower, without incurring liability to Borrower, and without impairing or releasing Borrower's liability for the Related Indebtedness, Lender may:

(a) change the manner, place or terms of payment, or change or extend the time of payment of, or renew, increase, accelerate or alter, any of the Related Indebtedness, any security for the Related Indebtedness, or any liability incurred directly or indirectly with respect to the Related Indebtedness;

(b) take and hold security for the payment of any of the Related Indebtedness, and sell, exchange, release, surrender, realize upon or otherwise deal with in any manner and in any order any property pledged or mortgaged to secure any of the Related Indebtedness;

(c) exercise or refrain from exercising any rights against Borrower, any Related Borrower, the Mortgaged Property, or any Related Properties;

(d) release or substitute any one or more endorsers, guarantors, or other obligors with respect to any of the Related Indebtedness;

(e) settle or compromise any of the Related Indebtedness, or subordinate the payment of all or any part of the Related Indebtedness to the payment of any liability (whether due or not) of any Related Borrower to its creditors other than Lender; and

(f) consent to or waive any breach by Borrower or any Related Borrower of, or any act, omission or default by Borrower or any Related Borrower under, this Agreement or any of the Total Loan Documents.

12. Waivers of Presentment, Marshalling, Certain Suretyship Defenses, etc.

(a) With respect to its obligations under this Agreement and the Total Loan Documents, Borrower waives presentment, demand, notice of dishonor, protest, notice of acceleration, notice of intent to demand or accelerate payment or maturity, presentment for payment, notice of nonpayment, grace, and diligence in collecting such obligations.

(b) Lender shall have the right to determine in its discretion whether and the order in which any or all of the Total Property or portions thereof shall be subjected to the remedies provided in the Total Loan Documents or applicable law. Lender shall have the right to determine in its discretion the order in which any or all portions of the Total Indebtedness are satisfied from the proceeds realized upon the exercise of such remedies. Borrower and any party who now or in the future acquires a lien on or security interest or other interest in any of the Mortgaged Property hereby unconditionally and irrevocably waives any and all right to require the marshalling of assets or to require that any of the Total Property or portions thereof be sold in the inverse order of alienation or in parcels or as an entirety in connection with the exercise of any such remedies.

13. Limited-Recourse Liability. Borrower's personal liability (liability beyond Borrower's interest in the Mortgaged Property) for the Related Indebtedness shall be

limited to the same extent as the personal liability of the Related Borrowers is limited in the Related Loan Documents.

14. Release Provisions. Anything in the Mortgage to the contrary notwithstanding, Lender will release the Mortgaged Property from this Agreement and the lien created hereby only upon payment in full of all of the Total Indebtedness.

15. Notices. All notices to Borrower under this Agreement shall be in writing and shall be given in the manner provided in the Mortgage for notices to Borrower. All notices to Lender by Borrower under this Agreement shall be in writing and shall be given in the manner in the Mortgage for notices to Lender.

16. Governing Law; Jurisdiction and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State in which the Mortgaged Property is located. Borrower irrevocably submits to the jurisdiction of any federal or state court sitting in (i) any state or jurisdiction in which the Mortgage Property or any of the Related Properties is located, and (ii) the Commonwealth of Virginia, over any suit, action or proceeding arising out of or relating to this Agreement. Borrower hereby submits to the *in personam* jurisdiction of each such court in any matter involving this Agreement. Borrower irrevocably waives, to the fullest extent permitted under applicable law, any objections it may now or hereafter have to the venue of any suit, action or proceeding brought in any such court and any claim that the same has been brought in an inconvenient forum. Borrower acknowledges that it has received material and substantial consideration for the cross-collateralization of the Mortgaged Property and the Related Properties and that the foregoing venue provision is integral to the Lender's realization of its rights hereunder. Borrower further acknowledges that it is not in disparate bargaining position, that it is a commercial enterprise, with sophisticated financial, legal and economic experience, that the venue selections contained herein are not unreasonable, unjust, inconvenient or overreaching.

17. Captions, Cross References and Exhibits. The captions assigned to provisions of this Agreement are for convenience only and shall be disregarded in construing this Agreement. Any reference in this Agreement to a "Section", a "Subsection" or an "Exhibit" shall, unless otherwise explicitly provided, be construed as referring to a section of this Agreement, to a subsection of the section of this Agreement in which the reference appears or to an Exhibit attached to this Agreement. All Exhibits referred to in this Agreement are hereby incorporated by reference.

18. Number and Gender. Use of the singular in this Agreement includes the plural, use of the plural includes the singular, and use of one gender includes all other genders, as the context may require.

19. Statutes and Regulations. Any reference in this Agreement to a statute or regulation shall include all amendments to and successors to such statute or regulation, whether adopted before or after the date of this Agreement.

- 20. No Partnership.** This Agreement is not intended to, and shall not, create a partnership or joint venture among the parties, and no party to this Agreement shall have the power or authority to bind any other party except as explicitly provided in this Agreement.
- 21. Successors and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective heirs, successors, and assigns.
- 22. Severability.** The invalidity or unenforceability of any provision of this Agreement shall not affect the validity of any other provision, and all other provisions shall remain in full force and effect.
- 23. Waiver; No Remedy Exclusive.** Any forbearance by a party to this Agreement in exercising any right or remedy given under this Agreement or existing at law or in equity shall not constitute a waiver of or preclude the exercise of that or any other right or remedy. Unless otherwise explicitly provided, no remedy under this Agreement is intended to be exclusive of any other available remedy, but each remedy shall be cumulative and shall be in addition to other remedies given under this Agreement or existing at law or in equity.
- 24. Third Party Beneficiaries.** Neither any creditor of any party to this Agreement, nor any other person, is intended to be a third party beneficiary of this Agreement.
- 25. Course of Dealing.** No course of dealing among the parties to this Agreement shall operate as a waiver of any rights of any party under this Agreement.
- 26. Further Assurances and Corrective Instruments.** To the extent permitted by law, the parties shall, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements to this Agreement and such further instruments as may reasonably be required for carrying out the intention of or facilitating the performance of this Agreement.
- 27. No Party Deemed Drafter.** No party shall be deemed the drafter of this Agreement, and this Agreement shall not be construed against either party as the drafter of the Agreement.

28. WAIVER OF TRIAL BY JURY. BORROWER AND LENDER EACH (A) COVENANTS AND AGREES NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS AGREEMENT THAT IS TRIABLE OF RIGHT BY A JURY AND (B) WAIVES ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO SUCH ISSUE TO THE EXTENT THAT ANY SUCH RIGHT EXISTS NOW OR IN THE FUTURE. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN BY EACH PARTY, KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL.

ATTACHED EXHIBITS: The following Exhibits are attached to this Agreement:

Exhibit A Description of the Land

Exhibit B Modifications to Agreement

Property of Cook County Clerk's Office

GREAT LAKES PROPERTY GROUP TRUST,
A TRUST FORMED PURSUANT TO THE
LAWS OF THE STATE OF ILLINOIS

ATTEST/WITNESS:

[Handwritten signature]

By: *James S. Smith* [SEAL]
Name: James S. Smith, not personally but
solely as Trustee under the provisions of that
certain Great Lakes Property Group Trust
Agreement dated June 27, 1994

Exculpation: The foregoing instrument was executed by
James S. Smith, not personally but solely in his capacity as
Trustee under the Trust established pursuant to the Trust
Agreement above identified (herein "Great Lakes Property
Group Trust").

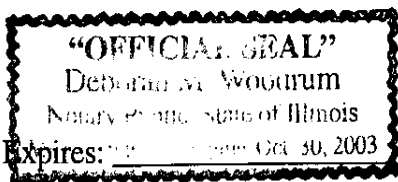
Neither James S. Smith nor any successor trustee nor any
beneficiary of the Great Lakes Property Group Trust shall
have any personal liability under the Loan Documents (as
defined in the Mortgage).

Furthermore, for such time period as the Mortgaged Property
(as defined in the Mortgage) is held by Great Lakes Property
Group Trust as Borrower, Lender's recourse against Borrower
for the Indebtedness (as defined in the Mortgage) shall be
limited solely to the Mortgaged Property and to the Related
Properties (as defined in the Cross-Collateralization
Agreement executed contemporaneously herewith in
connection with the Loan) and to Borrower's interest therein.

STATE OF ILLINOIS, Cook County ss:

I, the undersigned, a Notary Public, in and for the County and State aforesaid, do
hereby certify that James S. Smith, not personally but solely as Trustee of Great Lakes
Property Group Trust, a Trust formed pursuant to the laws of the State of Illinois, personally
known to me to be the same person whose name is subscribed to the foregoing instrument as
such Trustee, appeared before me this day, in person, and acknowledged that he signed and
delivered said instrument as his own free and voluntary act, and as the free and voluntary act
of said Trust, as Trustee, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 12 day of July, 2002.



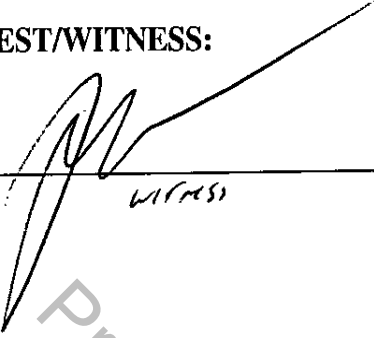
[Handwritten signature]
Notary Public

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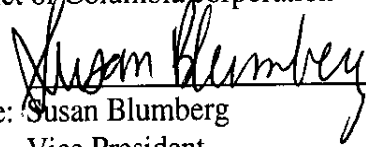
LENDER:

ATTEST/WITNESS:



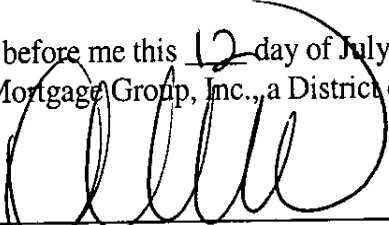
WITNESS

REILLY MORTGAGE GROUP, INC., a
District of Columbia corporation

By:  [SEAL]
Name: Susan Blumberg
Title: Vice President

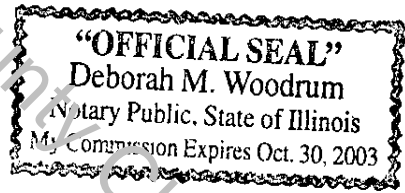
STATE OF ILLINOIS, Cook County ss:

The foregoing instrument was acknowledged before me this 12 day of July, 2002, by Susan Blumberg, Vice President of Reilly Mortgage Group, Inc., a District of Columbia corporation, on behalf of the corporation.



Notary Public

My Commission Expires: _____



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EXHIBIT A

0020770692

LEGAL DESCRIPTION

OF

ARBOR LAKES APARTMENTS

LOT 218 FORMERLY KNOWN AS COMMERCIAL TRACT, IN TIBURON PLANNED UNIT DEVELOPMENT PLAT IN PART OF THE EAST 1/2 OF THE NORTHEAST 1/4 OF SECTION 1, TOWNSHIP 42 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN AND PART IN THE WEST 1/2 OF THE NORTHWEST 1/4 OF SECTION 6, TOWNSHIP 42 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, RECORDED JULY 8, 1977 AS DOCUMENT 24004946 (CORRECTED BY CERTIFICATE OF CORRECTION RECORDED SEPTEMBER 26, 1977 AS DOCUMENT 24121632 AND OCTOBER 21, 1977 AS DOCUMENT 24159150), EXCEPTING THEREFROM THAT PART DEDICATED FOR PUBLIC ROADWAYS BY PLAT OF DEDICATION RECORDED JULY 11, 1985 AS DOCUMENT 85098153 AND EXCEPTING THEREFROM THAT PART DEDICATED FOR PUBLIC ROADWAY BY PLAT OF DEDICATION RECORDED JULY 11, 1985 AS DOCUMENT 85098154, IN COOK COUNTY, ILLINOIS.

Parcel Tax Identification No. 02-01-202-002

Property Address: 4248 Bloomington Avenue
Arlington Heights, IL 60004

EXHIBIT B

MODIFICATIONS TO AGREEMENT

Section 14 of the Agreement is modified to add the following language:

“Provided, however, if there occurs a Substitution of Collateral pursuant to a Substitution of a Substituted Property for the Original Property, as such terms are defined in the Mortgage, then the Indebtedness defined in this Agreement as one element of the definition of Total Indebtedness shall mean the indebtedness secured by the mortgage on the Substituted Property and a new or modified Cross-Collateralization Agreement will be entered into with respect to the mortgage on the Substituted Property and new or modified Cross-Collateralization Agreements will be entered into with respect to the Related Loans to recognize the Substitution aforesaid. In such event, the security described in the Mortgage shall be released from the purview of this Agreement and from all new or modified Cross-Collateralization Agreements aforesaid.”

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AFTER RECORDING, RETURN TO:

ROBERT B. JOSELOW, ESQ.
PEPPER HAMILTON LLP
600 FOURTEENTH STREET, NW
WASHINGTON, DC 20005-2004



Property of Cook County Clerk's Office