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Doc#: 0331834128
Eugene "Gene" Moore Fee: \$98.00
Cook County Recorder of Deeds
Date: 11/14/2003 12:57 PM Pg: 1 of 15

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Prepared by, and after recording return to:

Mary Jo George, Esq.
Ballard Spahr Andrews & Ingersoll, LLP
601 13th Street, N.W., Suite 1000 South
Washington, D. C. 20005

FIRST AMENDMENT TO SUBORDINATION AND INTERCREDITOR AGREEMENT

THIS FIRST AMENDMENT TO SUBORDINATION AND INTERCREDITOR AGREEMENT (this "Amendment") is entered into as of the 25th day of September, 2003 by and among (i) **FANNIE MAE**, a federally-chartered and stockholder-owned corporation organized and existing under the Federal National Mortgage Association Charter Act, 12 U.S.C. § 1716, et seq. (the "**Senior Lender**"), (ii) **BANK OF AMERICA, N.A.**, a national banking association ("**Second Lender**"), (iii) **CHICAGO HOUSING AUTHORITY**, a municipal corporation, body corporate and politic created, organized and existing under the laws of the State of Illinois ("**CHA**") (the "**Third Lender**"), (iv) **DANIEL E. LEVIN** and **THE HABITAT COMPANY LLC**, an Illinois limited liability company, in their capacity as court-appointed receiver for the development of new, non-elderly public housing by the Chicago Housing Authority ("**Receiver**"), (v) the **CITY OF CHICAGO, ILLINOIS**, an Illinois municipal corporation, acting by and through its Department of Housing ("**City**") (the "**Fourth Lender**"), (vi) **ILLINOIS HOUSING DEVELOPMENT AUTHORITY**, a body politic and corporate of the State of Illinois ("**IHDA**") (the "**Fifth Lender**"), (vii) **BANK ONE, N.A.**, a national banking association (the "**Sixth Lender**") and (viii) **WEST MAYPOLE, L.P.**, an Illinois limited partnership ("**Borrower**"). Capitalized terms not otherwise defined herein shall have the meaning given in Section 1.

RECITALS

A. The CHA in its capacity as issuer of the Multifamily Housing Revenue Bonds, Series 2002B (Westhaven Park Apartments) (the "Series 2002B Bonds") has made a loan (the "**First Mortgage Loan**") to the Borrower in the original principal amount of \$3,560,000. The First Mortgage Loan is secured by a first priority leasehold mortgage lien (the "**First Mortgage**") on a multifamily housing project to be constructed in the City of Chicago, Cook County, Illinois known generally as Westhaven Park Apartments – Phase I (the "**Property**"). The Property is more fully described in Exhibit A attached hereto. The Borrower's obligation to repay the First Mortgage Loan is evidenced by a Multifamily Note dated as of December 1, 2002 (together with all addenda thereto, the "**First Mortgage Note**"), and is due in full on the date that is the 30th anniversary of the "**Conversion Date**" (as such term is defined in the First Mortgage Note). CHA has assigned its rights under the First Mortgage to Senior Lender and LaSalle Bank National Association, as Trustee ("**Bond Trustee**") as their interests may appear, and Senior Lender has the right to exercise all of the "mortgage rights" of the mortgagee under

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the First Mortgage pursuant to the terms of an Assignment of Mortgage Loan (the “**Assignment**”).

B. The Borrower requested (1) the Second Lender to purchase from the CHA its \$13,450,644 Chicago Housing Authority Multi-Family Housing Revenue Bonds, Series 2002A1 (Westhaven Park Apartments-Phase I) (the “**Series 2002A1 Bonds**”) and its \$2,942,322 Chicago Housing Authority Multi-Family Housing Revenue Bonds, Series 2002A2 (Westhaven Park Apartments-Phase I) (the “**Series 2002A2 Bonds**”, and together with the Series 2002A1 Bonds, the “**Series 2002A Bonds**”), the net sale proceeds of which were loaned by the CHA to the Borrower; (2) make a subordinate bridge loan to the Borrower in the amount of \$1,861,685 (the “**Bridge Loan**”), and to issue its letter of credit in the face amount of \$3,560,000 [plus 45 days interest] to the benefit of Fannie Mae (the “**Letter of Credit**”) to secure the repayment of the Series 2002A Bonds (the indebtedness evidenced by the Series 2002A Bonds, the Bridge Loan and Borrower’s reimbursement obligations in connection with the issuance of the Letter of Credit, together with interest to accrue thereon, and any other Payment Obligations related thereto, as hereinafter defined are collectively referred to herein as the “**Second Loan**”) and to secure the Second Loan by placing a second priority leasehold mortgage lien against the Property, (ii) the Third Lender to make a subordinate loan to Borrower in the amount of \$13,450,644 (this principal sum of \$13,450,644, together with interest to accrue thereon, and any and all Payment Obligations (as hereinafter defined is referred to herein as the “**HOPE VI Third Loan**”) and to secure the HOPE VI Third Loan by placing a third priority leasehold mortgage lien against the Property; (iii) the Fourth Lender to make a subordinate loan to Borrower of certain HOME Program funds in the amount of not more than \$8,500,000 (this principal sum of \$8,500,000, together with interest to accrue thereon, and any and all Payment Obligations is referred to herein as the “**Fourth Loan**”) and to secure the Fourth Loan by placing a fourth priority leasehold mortgage lien against the Property; and (iv) the Fifth Lender to make a subordinate loan under the Illinois Affordable Housing Program to Borrower in the amount of \$750,000 (this principal sum of \$750,000, together with interest to accrue thereon, and any and all Payment Obligations is referred to herein as the “**Fifth Loan**”) and to secure the Fifth Loan by placing a fifth priority leasehold mortgage lien against the Property.

C. The Senior Lender agreed to permit the Subordinate Lenders to make their respective Subordinate Loans and to place subordinate leasehold mortgage liens against the Property subject to all of the conditions contained in a Subordination and Intercreditor Agreement dated as of December 1, 2002 (the “**Subordination Agreement**”).

D. Borrower requested that Sixth Lender be permitted to make a Subordinate Loan in the amount of \$500,000 (this principal sum of \$500,000, together with interest to accrue thereon, and any other Payment Obligations is referred to as the “**Sixth Loan**”) and to secure the Sixth Loan by placing a sixth priority leasehold mortgage lien on the Property.

NOW, THEREFORE, in order to induce the Senior Lender and the other Subordinate Lenders to permit the Sixth Lender to make the Sixth Loan to the Borrower and to place a subordinate leasehold mortgage lien against the Property and in consideration thereof, the Senior Lender, the Subordinate Lenders and the Borrower agree as follows:

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1. The Subordination Agreement is hereby amended to add the Sixth Lender as a party thereto, and Sixth Lender hereby agrees to comply with all of the provisions applicable to it as a "Subordinate Lender."

2. Section 1 of the definitions of the Subordination Agreement is amended to add the following new definitions:

"Sixth Lender" means Bank One, N.A. When any other Person becomes the legal holder of the Sixth Note, such other Person shall automatically become the Sixth Lender.

"Sixth Loan Default" means a default by the Borrower in performing or observing any of the terms, covenants or conditions in the Sixth Loan Documents to be performed or observe by it, which continues beyond any applicable period provided in the Sixth Loan Documents for curing the default.

"Sixth Loan Documents" means the Sixth Note, the Sixth Mortgage, the Sixth Repayment Agreement and all other documents evidencing and securing the Sixth Loan.

"Sixth Mortgage" means the Junior Leasehold Mortgage, Assignment of Rents and Security Agreement dated as of September 30, 2003 encumbering the Property as security for the Sixth Loan, which is being recorded in the applicable land records immediately before this Amendment.

"Sixth Note" means the Promissory Note dated as of September 30, 2003, issued by the Borrower to the Sixth Lender, or order, to evidence the Sixth Loan.

"Sixth Repayment Agreement" means the Affordable Housing Program Repayment Agreement dated as of September 30, 2003, entered into among Borrower, West Maypole Partners, LLC and Sixth Lender.

3. Section 1 of the definitions of the Subordination Agreement is amended to delete the following definitions and restate them as provided below:

"Subordinate Lenders" means, collectively, the Second Lender, the Third Lender, the Fourth Lender, the Fifth Lender and the Sixth Lender.

"Subordinate Loan Default" means a Second Loan Default, a Third Loan Default, a Fourth Loan Default, a Fifth Loan Default and/or a Sixth Loan Default, as applicable.

"Subordinate Loan Documents" means the Second Loan Documents, the Third Loan Documents, the Fourth Loan Documents, the Fifth Loan Documents and/or the Sixth Loan Documents, as applicable.

"Subordinate Loans" means any two or more of the Second Loan, the Third Loan, the Fourth Loan, the Fifth Loan and the Sixth Loan.

"Subordinate Mortgage" means any one of the Second Mortgage, Third Mortgage, the Fourth Mortgage, the Fifth Mortgage or the Sixth Mortgage.

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“Subordinate Note” means any one of the Second Note, the Third Note, the Fourth Note, the Fifth Note or the Sixth Note.

4. **Permission to Place Subordinate Mortgage Liens Against Property.**

The Senior Lender and other Subordinate Lenders agree, notwithstanding any prohibition against inferior liens on the Property contained in the First Mortgage Loan Documents and the Subordinate Loan Documents and subject to the provisions of the Subordination Agreement, as amended hereby, to permit the Sixth Lender to record the applicable Sixth Mortgage and other recordable Sixth Loan Documents against the Property (which are subordinate in all respects to the lien of the First Mortgage and which shall have the priority indicated by its defined term) to secure the Borrower's obligations to repay the Sixth Note and all other obligations, indebtedness and liabilities of the Borrower and CHA, under and in connection with the Sixth Loan. Such permission is subject to the condition that each of the representations and warranties made by the Borrower and each of the acknowledgements and agreements given by the Sixth Lender in Section 3 of the Subordination Agreement is true and correct in all material respects on the date of this Amendment and on the date on which the proceeds of the Sixth Loan is disbursed to the Borrower and, if each is not true and correct in all material respects on both of those dates, the default provisions of the First Mortgage Loan Documents applicable to unpermitted liens on the Property shall apply.

5. The Borrower and Sixth Lender each confirm the representations and warranties of Section 4 of the Subordination Agreement are applicable to the Sixth Loan and the Sixth Loan Documents.

6. Section 3(c) of the Subordination Agreement is amended and restated to read:

“(c) **Term.** The term of each of the Third Note, the Fourth Note, the Fifth Note and the Sixth Note does not end before the term of the First Mortgage Note.”

7. In connection with the execution of this Amendment, Borrower shall deliver to Senior Lender and the other Subordinate Lenders a copy of each of the executed Sixth Loan Documents, certified to be true, correct and complete.

8. In connection with the execution of this Amendment, Borrower shall deliver to Sixth Lender a copy of each of the executed First Mortgage Loan Documents, certified to be true, correct and complete.

9. Section 11 of the Subordination Agreement is amended to add the notice address for the Sixth Lender:

“SIXTH LENDER:

BANK ONE, N.A.
1 Bank One Plaza
Chicago, Illinois 60670”

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10. Sections 12(a) and (h) of the Subordination Agreement is amended to delete the existing provisions and to restate them to include the Sixth Lender:

“(a) Assignment/Successors. This Agreement shall be binding upon the Borrower, the Senior Lender and the Subordinate Lenders and shall inure to the benefit of the respective legal successors and assigns of the Senior Lender, the Second Lender, the Third Lender, the Fourth Lender, the Fifth Lender and the Sixth Lender.”

“(h) Term. The term of this Agreement shall commence on the date hereof and shall continue until the earliest to occur of the following events: (i) as to each and all of the Subordinate Lenders, upon the payment of all of the principal of, interest on and other amounts payable under the First Mortgage Loan Documents; (ii) only as to the Second Lender, the Third Lender, the Fourth Lender, the Fifth Lender or the Sixth Lender as applicable, upon the payment of all of the principal of, interest on and other amounts payable under the Second Loan Documents, the Third Loan Documents, the Fourth Loan Documents, the Fifth Loan Documents or the Sixth Loan Documents, other than by reason of payments which the Second Lender, the Third Lender, the Fourth Lender, the Fifth Lender or the Sixth Lender, as applicable, is obligated to remit to the Senior Lender pursuant to Section 4 hereof; or (iii) as to each and all of the Subordinate Lenders, upon the acquisition by the Senior Lender of title to the Property pursuant to a foreclosure, or a deed in lieu of foreclosure, of the First Mortgage; or (iv) only as to the Second Lender, the Third Lender, the Fourth Lender, the Fifth Lender or the Sixth Lender, as applicable, the acquisition by the Second Lender, Third Lender, Fourth Lender, the Fifth Lender or the Sixth Lender of title to the Property pursuant to a foreclosure, or a deed in lieu of foreclosure, of its Mortgage, but only if such acquisition of title does not violate any of the terms of this Agreement.”

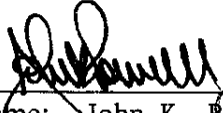
11. This Amendment may be executed in any number of counterparts, each of which shall be considered an original for all purposes; provided, however, that all such counterparts shall together constitute one and the same instrument.

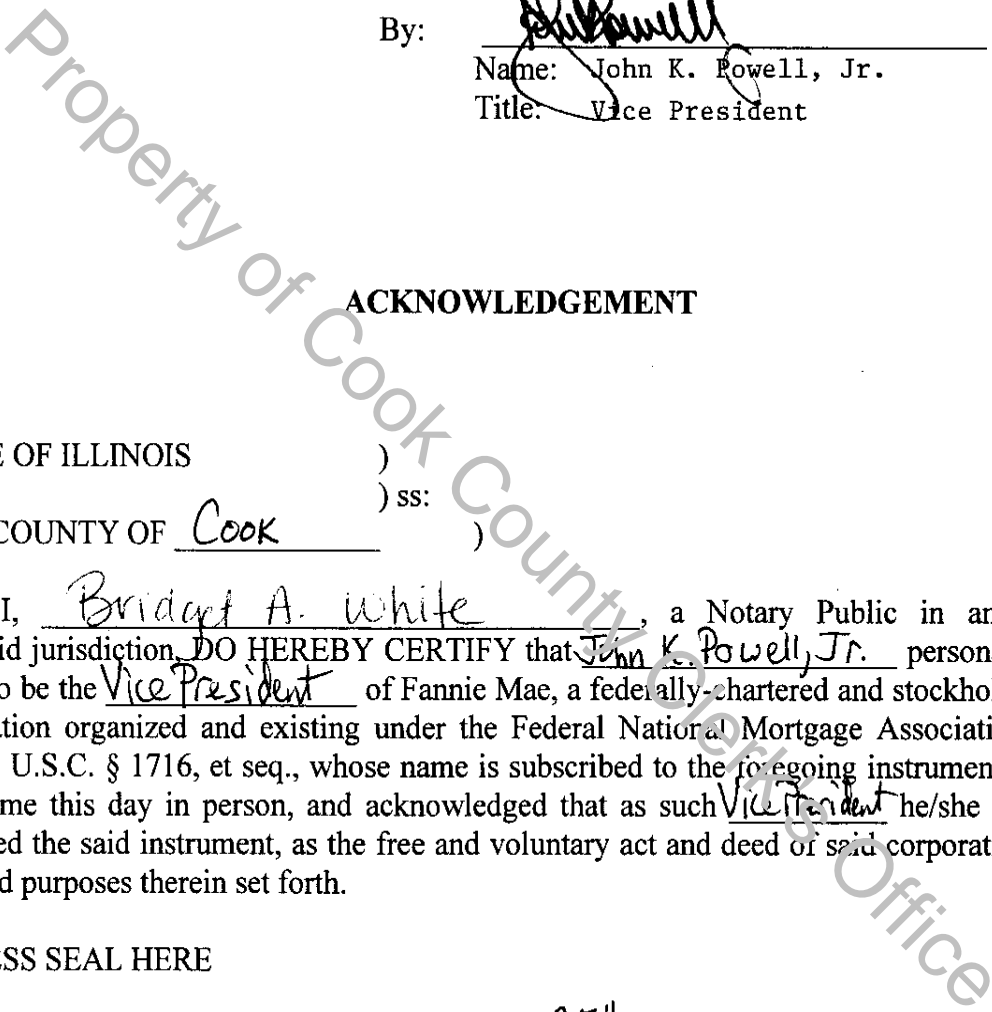
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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above.

SENIOR LENDER:

FANNIE MAE, a federally-chartered and stockholder-owned corporation organized and existing under the Federal National Mortgage Association Charter Act, 12 U.S.C. § 1716, et seq.

By: 
 Name: John K. Powell, Jr.
 Title: Vice President



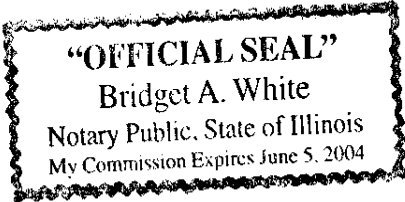
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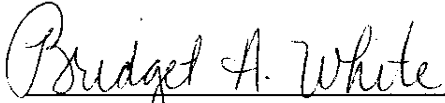
STATE OF ILLINOIS)
) ss:
 CITY/COUNTY OF Cook)

I, Bridget A. White, a Notary Public in and for the aforesaid jurisdiction, DO HEREBY CERTIFY that John K. Powell, Jr. personally known to me to be the Vice President of Fannie Mae, a federally-chartered and stockholder-owned corporation organized and existing under the Federal National Mortgage Association Charter Act, 12 U.S.C. § 1716, et seq., whose name is subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that as such Vice President he/she signed and delivered the said instrument, as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

IMPRESS SEAL HERE

Given under my hand and official seal, this 25th day of September, 2003.




 Notary Public

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SECOND LENDER:

BANK OF AMERICA, N.A., a national banking association

By: *Kristine J. Truitt*
Name: *Kristine J. Truitt*
Title: *Senior Vice President*

ACKNOWLEDGEMENT

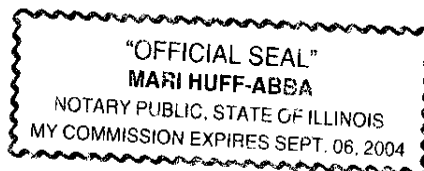
STATE OF *ILLINOIS*)
) ss:
CITY/COUNTY of *COOK*)

I, *Mari Huff-Abba*, a Notary Public in and for the aforesaid jurisdiction, DO HEREBY CERTIFY that *Kristine Truitt* personally known to me to be the *SR. VICE PRESIDENT* of Bank of America, N.A., a national banking association, whose name is subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that as such _____ he/she signed and delivered the said instrument, as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

IMPRESS SEAL HERE

Given under my hand and official seal, this *18th* day of September, 2003.

Mari Huff-Abba
Notary Public



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THIRD LENDER:

CHICAGO HOUSING AUTHORITY a municipal corporation, body corporate and politic created, organized and existing under the laws of the State of Illinois

By: [Signature]
Name:
Title:

ACKNOWLEDGEMENT

STATE OF Illinois)
CITY/COUNTY of Cook) ss:

I, Montel M. Gayles, a Notary Public in and for the aforesaid jurisdiction, DO HEREBY CERTIFY that Terry Peterson personally known to me to be the Chief Executive Officer of Chicago Housing Authority, a municipal corporation, body corporate and politic created, organized and existing under the laws of the State of Illinois, whose name is subscribed to the foregoing instrument appeared before me this day in person, and acknowledged that as such he he/she signed and delivered the said instrument, as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

IMPRESS SEAL HERE

Given under my hand and official seal, this 9th day of September, 2003.

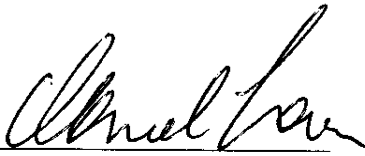


[Signature]
Notary Public

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RECEIVER:

DANIEL E. LEVIN and **THE HABITAT COMPANY LLC**, not personally, but in their official capacity as Receiver

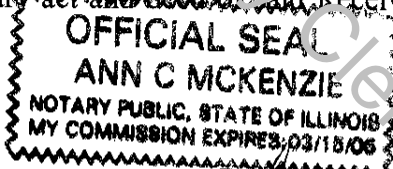
By: 
Daniel E. Levin, Chairman

ACKNOWLEDGEMENT

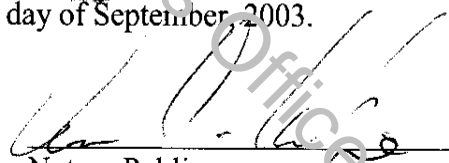
STATE OF ILLINOIS)
) ss:
CITY/COUNTY OF Cook)

I, Ann C. McKenzie, a Notary Public in and for the aforesaid jurisdiction, DO HEREBY CERTIFY that Daniel E. Levin and Daniel E. Levin, as Chairman of The Habitat Company LLC, not personally but in their official capacity, as Receiver for the development of new, non-elderly public housing by the Chicago Housing Authority, personally now to me, whose name is subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that as such Receiver he signed and delivered the said instrument, as the free and voluntary act and deed of said Receiver, for the uses and purposes therein set forth.

IMPRESS SEAL HERE



Given under my hand and official seal, this 3rd day of September, 2003.


Notary Public

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FOURTH LENDER:

CITY OF CHICAGO, an Illinois municipal corporation,
acting through its Department of Housing

By: _____

Name: John G. Markowski
Title: Commissioner

ACKNOWLEDGEMENT

STATE OF ILLINOIS)
) ss:

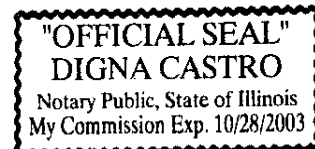
CITY/COUNTY of Cook)

I, Digna Castro, a Notary Public in and for the
aforesaid jurisdiction, DO HEREBY CERTIFY that John G. Markowski, personally known
to me to be the Commissioner of City of Chicago, an Illinois municipal corporation,
acting through its Department of Housing, whose name is subscribed to the foregoing
instrument, appeared before me this day in person, and acknowledged that as such
Commissioner he/she signed and delivered the said instrument, as the free and voluntary act
and deed of said corporation, for the uses and purposes therein set forth.

IMPRESS SEAL HERE

Given under my hand and official seal, this 14th day of September, 2003.

Digna Castro
Notary Public




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FIFTH LENDER:

JK

**ILLINOIS HOUSING DEVELOPMENT
AUTHORITY**, a public body corporate and politic
of the State of Illinois

By: 

Name: Peter K. Lennon
Title: Assistant Executive Director

Property of COOK COUNTY Clerk's Office

ACKNOWLEDGEMENT


STATE OF ILLINOIS

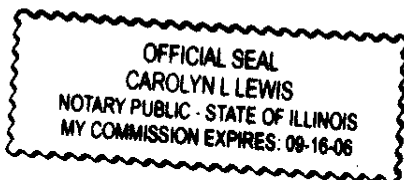
CITY/COUNTY OF COOK) ss:)

I, Carolyn L. Lewis, a Notary Public in and for the aforesaid jurisdiction, DO HEREBY CERTIFY that Peter K. Lennon personally known to me to be the Assistant Executive Director of the Illinois Housing Development Authority, a public body corporate and politic of the State of Illinois, whose name is subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that as such Assistant Executive Director he/she signed and delivered the said instrument, as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

IMPRESS SEAL HERE

Given under my hand and official seal, this 11th day of September, 2003


Notary Public



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SIXTH LENDER:

BANK ONE, N.A.,
a national banking association

By: Caroline Goldstein
Name: Caroline Goldstein
Title: VICE President

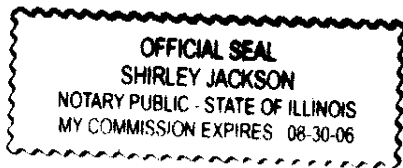
ACKNOWLEDGEMENT

STATE OF ILLINOIS)
CITY/COUNTY OF Cook) ss:

I, Shirley Jackson, a Notary Public in and for the aforesaid jurisdiction, DO HEREBY CERTIFY that Caroline Goldstein personally known to me to be the Vice President of the Bank One, N.A., a national banking association, whose name is subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that as such Vice Pres. he/she signed and delivered the said instrument, as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

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Given under my hand and official seal, this 29th day of September, 2003.



Shirley Jackson
Notary Public

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BORROWER:

WEST MAYPOLE, L.P., an Illinois limited partnership

By: **WEST MAYPOLE PARTNERS, LLC,**
an Illinois limited liability company, its General
Partner

By: **THE MICHAELS DEVELOPMENT
COMPANY, INC.,** a New Jersey
corporation, its Member

By: **ROBERT J. GREEN**
~~John J. Donnell~~ Robert J. Green
Vice President

And By: **BRINSHORE INC.,** an Illinois corporation,
its Member

By: **DAVID B. BART**
Name: **DAVID B BART**
Title: **CFO**

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STATE OF ~~ILLINOIS~~ New Jersey)
CITY/COUNTY OF Burlington) SS:

Robert J. Greer

I, Patricia A. Sergeant, a Notary Public in and for the aforesaid jurisdiction, DO HEREBY CERTIFY that ~~John O'Donnell~~, personally known to me to be the ~~Vice~~ President of The Michaels Development Company, Inc., a New Jersey corporation, a Member of West Maypole Partners, LLC, an Illinois limited liability company, the General Partner of West Maypole, L.P., an Illinois limited partnership, whose name is subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that as such ~~Vice~~ President he signed and delivered the said instrument, as the free and voluntary act and deed of said limited partnership, for the uses and purposes therein set forth.

IMPRESS SEAL HERE

Given under my hand and official seal, this 11 day of September, 2003.

Patricia A. Sergeant
Notary Public

PATRICIA A. SERGEANT
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires May 22, 2008

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ACKNOWLEDGEMENT

STATE OF ILLINOIS)
) ss:
CITY/COUNTY OF Cook)

I, Paul W. Shadle, a Notary Public in and for the aforesaid jurisdiction, DO HEREBY CERTIFY that David B. Brint personally known to me to be the CEO of Brinshore Inc., an Illinois corporation, a Member of West Maypole Partners, LLC, an Illinois limited liability company, the General Partner of West Maypole, L.P. an Illinois limited partnership, whose name is subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that as such CEO he/she signed and delivered the said instrument, as the free and voluntary act and deed of said limited partnership, for the uses and purposes therein set forth.

IMPRESS SEAL HERE

Given under my hand and official seal, this 9th day of September, 2003.

Paul W. Shadle

Notary Public

