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After Recording Return

To: Karen D. Bielarz, Sr. Staff Counsel  
Office of the General Counsel  
Chicago Housing Authority  
200 W. Adams Street, Suite 2100  
Chicago, Illinois 60606

Doc#: 0335614193  
Eugene "Gene" Moore Fee: \$104.00  
Cook County Recorder of Deeds  
Date: 12/22/2003 02:20 PM Pg: 1 of 41

## THIRD MORTGAGE, SECURITY AGREEMENT AND FINANCING STATEMENT

THIS THIRD MORTGAGE, SECURITY AGREEMENT AND FINANCING STATEMENT ("Mortgage") is made as of this 1st day of December, 2003, by PERSHING & STATE L.P., an Illinois limited partnership (the "Mortgagor"), with an address of c/o The Davis Group, 54 West Hubbard St., Suite 205, Chicago, Illinois 60610 to CHICAGO HOUSING AUTHORITY, an Illinois Municipal Corporation ("Mortgagee"), having its principal office at 626 West Jackson Boulevard, Chicago, Illinois 60661.

Certain capitalized terms used herein are defined in Exhibit C annexed hereto. All capitalized terms, unless defined herein, shall have the same meanings as are set forth in that certain Loan Agreement dated of even date herewith between Mortgagor and Mortgagee (herein as the same may be amended, supplemented or restated from time to time called the "Loan Agreement").

### WITNESSETH:

WHEREAS, Mortgagor has concurrently herewith executed and delivered a promissory note bearing even date herewith, in the principal sum as described on Exhibit B attached hereto and hereby made a part hereof, and made payable to Mortgagee (herein such note together with all amendments or supplements thereto, extensions thereof and notes which may be taken in whole or partial renewal, substitution or extension thereof shall be called the "Note") in which Mortgagor promise to pay said principal sum, plus interest, if any, thereon at the rate specified on Exhibit B hereto, and the maturity of which Note is described on Exhibit B hereto; and

WHEREAS, Mortgagee desires to secure repayment of the indebtedness evidenced by the Note, together with interest, if any, and any additional indebtedness or obligations incurred by Mortgagor on account of any future payments, advances or expenditures made by Mortgagee pursuant to all agreements, instruments and documents executed and delivered to Mortgagee previously, now or hereafter by, on behalf of or for the benefit of the Mortgagor in connection with the Premises (as hereinafter defined), including but not limited to this Mortgage, the Note, Loan Agreement, Assignment of Rents and Leases, Declaration of Restrictive Covenants, UCC Financing Statements, Escrow Agreement, Environmental Indemnity Agreement, and the Regulatory and Operating Agreement, as defined below, all as from time to time amended, supplemented or restated (the "Loan Documents"), between the Mortgagor and Mortgagee; and

Near North National Title Corp  
222 North LaSalle Street  
Chicago, Illinois 60601

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NOW, THEREFORE, in order to secure payment of principal, interest and other amounts due under the Note and of all other payments due to Mortgagee by Mortgagor under any of the Loan Documents and performance of the covenants and agreements contained in this Mortgage, including any substitutions, extensions or modifications hereto, Mortgagor does grant, assign, warrant, convey and mortgage to Mortgagee, its successors and assigns, and grants to Mortgagee, its successors and assigns forever a continuing security interest in and to, all of the following rights, interests, claims and property:

(A) all of the interests of Mortgagor in that certain real property described on Exhibit A attached hereto and hereby made a part hereof, and all easements, water rights, hereditaments, mineral rights and other rights and interests appurtenant thereto, and stipulated herein (the "Real Property"),

(B) all buildings, structures and other improvements of every kind and description now or hereafter erected, situated or placed upon the Real Property, together with any fixtures or attachments now or hereafter owned by Mortgagor and located in or on, forming part of, attached to, used or intended to be used in connection with or incorporated in the Real Property, including all extensions, additions, betterments, renewals, substitutions and replacements of any of the foregoing (the "Improvements"),

(C) any interests, estates or other claims of every name, kind or nature, both at law and in equity, which Mortgagor now has or may acquire in the Real Property, the Improvements, the Equipment (as hereinafter defined) or any of the property described in clauses (D), (E), (F), (G), (H) or (I) hereof;

(D) all of Mortgagor's interest and rights in and to the Regulatory Agreement of even date herewith, and all other leases, subleases and agreements, written or oral, now or hereafter entered into, affecting the Real Property, the Improvements, the Equipment or any part thereof, and all income, rents, issues, proceeds and profits accruing therefrom (provided that the assignment hereby made shall not diminish or impair the obligations of Mortgagor under the provisions of such leases, subleases or agreements, nor shall such obligations be imposed on Mortgagee);

(E) all right, title and interest of Mortgagor in and to all fixtures, tangible personal property of any kind or character now or hereafter attached to, contained in and used or useful in connection with the Real Property or the Improvements, together with all furniture, furnishings, apparatus, goods, systems, fixtures and other items of personal property of every kind and nature, now or hereafter located in, upon or affixed to the Real Property or the Improvements, or used or useful in connection with any present or future operation of the Real Property or the Improvements, including, but not limited to, all apparatus and equipment used to supply heat, gas, air conditioning, water, light, power, refrigeration, electricity, plumbing and ventilation, including all renewals, additions and accessories to and replacements of and substitutions for each and all of the foregoing, and all proceeds therefrom (the "Equipment");

(F) all of the estate, interest, right, title or other claim or demand which Mortgagor now has or may acquire with respect to (i) proceeds of insurance in effect with respect to the Real Property, the Improvements or the Equipment, and (ii) any and all awards, claims for

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damages, judgments, settlements and other compensation made for or consequent upon the taking by condemnation, eminent domain or any like proceeding of all or any portion of the Real Property, the Improvements or the Equipment;

(G) all intangible personal property, accounts, licenses, permits, instruments, contract rights, and chattel paper of Mortgagor, including, but not limited to cash, accounts receivable, bank accounts, certificates of deposit, rights (if any) to amounts held in escrow, deposits, judgments, liens and causes of action, warranties and guarantees, relating to the Real Property, the Equipment or the Improvements or as otherwise required under the Loan Documents;

(H) all other property rights of Mortgagor of any kind or character related to all or any portion of the Real Property, the Improvements or the Equipment; and

(I) the proceeds from the sale, transfer, pledge or other disposition of any or all of the property described in the preceding clauses.

All of the property referred to in the preceding clauses (A) through (I) shall be called, collectively, the "Premises". For purposes of this Mortgage, the "Act" shall mean the Illinois Mortgage Foreclosure Law, 735 ILCS 5/15-1101 et seq., as amended, supplemented and restated from time to time (the "Act").

**IT IS FURTHER** agreed, intended and declared that all the aforesaid property rights and interests shall, so far as permitted by law, be deemed to form a part and parcel of the Premises and be covered by this Mortgage, subject to the Prior Encumbrances, as such term is defined in Exhibit C annexed hereto.

**TO HAVE AND TO HOLD** the Premises unto Mortgagee and its successors and assigns, forever, for the purposes and uses herein set forth.

To protect the security of this Mortgage, Mortgagor further covenants and agrees as follows:

1. **Principal and Interest.** Mortgagor shall pay promptly when due the principal of and interest, if any, on the Note and any other sums required to be paid on the Note or under the other Loan Documents at the times and in the manner provided therein and shall pay any other indebtedness secured hereby as the same becomes due and shall perform and observe all of the covenants, agreements and provisions contained herein and in the other Loan Documents.

2. **Representation, Warranties and Covenants of Mortgagor.**

(a) Mortgagor represents and warrants to Mortgagee as follows:

(i) all representations and warranties of Mortgagor contained in this Mortgage and the other Loan Documents are true, accurate and complete at the time of Mortgagor's execution hereof and thereof and shall survive in all material respects the execution, delivery and acceptance hereof by the parties hereto for as long as any amounts payable under Section 1 hereof are outstanding;

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(ii) Mortgagor is a limited partnership duly organized and validly existing under the laws of the State of Illinois;

(iii) Mortgagor has the right, power and authority to enter into, execute and deliver and perform the terms and conditions of this Mortgage and the other Loan Documents;

(iv) the execution, delivery and performance by Mortgagor of this Mortgage and the other Loan Documents have been duly authorized by all necessary action of Mortgagor and will not violate any provision of law (including any order, writ, injunction or decree binding upon Mortgagor or the Premises) or the partnership agreement of Mortgagor, or result in the breach of or constitute a default under or require any consent under or result in the creation of any lien, charge or encumbrance upon the Premises or any other property or assets of Mortgagor under any agreement, instrument, restriction or document to which Mortgagor is now or hereafter a party or by which Mortgagor or the Premises are or may become bound or affected;

(v) Mortgagor has good, indefeasible and merchantable title to the Premises free and clear of all liens, charges and encumbrances except for those matters identified or referenced in Exhibit D hereto ("Permitted Encumbrances");

(vi) Mortgagor is now solvent and able to pay its debts as they mature;

(vii) there are no actions or proceedings by or before any court or governmental commission, board, bureau or other administrative agency pending or to the Mortgagor's best knowledge, threatened, against or affecting Mortgagor which if adversely determined could materially and adversely affect Mortgagor's ability to perform its obligations under the Note, this Mortgage or the Loan Documents, or which might result in any material adverse change to Mortgagor's financial condition or may materially affect the Premises or Mortgagor's other property or assets; and

(viii) Mortgagor is not obligated under any written contract, lease or agreement with respect to the ownership, use, operation or maintenance of the Premises, except for the obligations of Mortgagor under the Regulatory Agreement, the Redevelopment Agreement and the Permitted Encumbrances.

(b) Mortgagor shall:

(i) promptly repair, restore, replace or rebuild any portion of the Premises which may become damaged, destroyed, altered, removed, severed or demolished, whether or not insurance proceeds are available or sufficient for the purpose, with replacements at least equal in quality and condition as existed prior thereto, free from any security interest in, encumbrances on or reservation of title thereto except Permitted Encumbrances;

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(ii) keep and maintain the Premises in good condition and repair, without waste, and free from mechanics' liens, materialmen's liens or other liens and claims except Permitted Encumbrances;

(iii) complete, within a reasonable time, any construction of improvements now or hereafter constructed upon the Premises;

(iv) comply in all material respects with all statutes, rules, regulations, orders, decrees and other requirements of any federal, state or local governments having jurisdiction over the Premises and the use thereof and observe and comply with any conditions and requirements necessary to preserve and extend any and all rights, licenses, permits (including without limitation zoning variances, special exceptions and non-conforming uses), privileges, franchises and concessions that are applicable to the ownership, renovation, use and occupancy of the Premises;

(v) after completion of construction make no material alterations in the Premises (except those required by law and in the ordinary course of business) without Mortgagee's prior written consent, which consent will not be unreasonably withheld or delayed;

(vi) suffer or permit no change in the general nature of the occupancy or use of the Premises for residential purposes without Mortgagee's prior written consent;

(vii) for so long as there is no default under the Regulatory and Operating Agreement by Mortgagee, pay all operating costs of the Premises when due, including all utility charges and all other assessments or charges of a similar nature;

(viii) not initiate or acquiesce in any zoning reclassification with respect to the Premises, without Mortgagee's prior written consent;

(ix) not abandon the Premises, nor do anything whatsoever to depreciate or impair the value of the Premises or the security of this Mortgage;

(x) refrain from any action and correct any condition which would increase the risk of fire or other hazard to all or any portion of the Premises;

(xi) not permit any unlawful use or nuisance to exist upon the Premises, and

(xii) comply in all material respects with all instruments and documents of record or otherwise affecting the use or occupancy of all or any portion of the Premises.

3. **Taxes and Charges.** Mortgagor agrees to pay or cause to be paid, prior to delinquency, all Charges (as hereinafter defined) which are assessed or imposed upon the Premises or upon any of the Loan Documents, or become due and payable, and which create,

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may create or appear to create a lien upon the Premises or any part thereof or upon any of the Loan Documents; provided, however, that if by law any such Charge is payable or, at the option of Mortgagor, may be paid in installments, Mortgagor may pay the same together with any accrued interest on the unpaid balance of such Charge in installments as the same become due and before any fine, penalty, interest or cost may be added thereto for the nonpayment of any such installment and interest. ("Charge" shall mean and include all federal, state, county, city, municipal or other governmental (or any instrumentality, division, agency, body or department thereof) taxes, levies, assessments, charges, liens, claims or encumbrances related to the Premises, Mortgagor, or any of the Loan Documents.)

Mortgagor shall furnish Mortgagee within thirty (30) days after the date upon which any Charge is due and payable by Mortgagor, official receipts of the appropriate authority or other proof satisfactory to Mortgagee, evidencing the payment thereof. Mortgagor shall have the right before any delinquency occurs to contest or object to the amount or validity of any Charge by appropriate legal proceedings properly instituted and prosecuted in such manner as shall stay collection of the contested Charge and prevent the imposition of a lien or the sale or forfeiture of the Premises to collect the same; provided that no such contest or objection shall be deemed or construed in any way as relieving, modifying or extending Mortgagor's covenant to pay any such Charge at the time and in the manner provided in this Mortgage unless Mortgagor has given prior written notice to Mortgagee of Mortgagor's intent to contest or object to a Charge and, unless (i) Mortgagor shall demonstrate to Mortgagee's reasonable satisfaction that legal proceedings instituted by Mortgagor contesting or objecting to such Charge shall conclusively operate to prevent a lien against or the sale or forfeiture of the Premises or any part thereof as satisfaction of such Charge prior to final determination of such proceedings, and (ii) Mortgagor shall furnish to Mortgagee a good and sufficient bond or surety, or a good and sufficient undertaking as may be required or permitted by law, to accomplish a stay of any such sale or forfeiture of the Premises during the pendency of such contest, in an amount adequate fully to pay all such contested Charges and all interest and penalties upon the adverse determination of such contest.

**Insurance.** Mortgagor shall procure and maintain, or cause to be maintained, at all times, at Mortgagor's own expense, until final repayment of the indebtedness secured hereby, the types of insurance specified in Exhibit C annexed hereto.

All insurance policies shall provide that Mortgagee shall be given thirty (30) days' prior written notice of any modification, nonrenewal or cancellation. Coverage required hereunder may be put in place through blanket policies of insurance provided coverage amounts are in effect on a "per location" basis.

If Mortgagor fails to obtain or maintain any of the insurance policies required under this Mortgage or to pay any premium in whole or in part when due, Mortgagee may (without waiving or releasing any obligation or Event of Default by Mortgagor hereunder), after giving Mortgagor prompt notice of such action, obtain and maintain such insurance policies and take any other action which Mortgagee deems advisable to protect its interest in the Premises. All sums so disbursed by Mortgagee, including reasonable attorneys' fees, court costs and expenses, shall be reimbursed by Mortgagor upon demand by Mortgagee.

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Any and all deductibles or self-insured retention on the insurance coverages required herein shall be borne by Mortgagor, a general contractor or the appropriate subcontractor, as applicable.

Mortgagor expressly understands and agrees that any insurance coverages and limits furnished by Mortgagor shall in no way limit Mortgagor's liabilities and responsibilities specified under any of the Loan Documents or by law.

Mortgagor agrees and shall cause a general contractor to agree that all insurers shall waive their rights of subrogation against Mortgagee, its employees, elected officials, agents or representatives. Mortgagor hereby agrees to assume any liabilities of Mortgagee related to subrogation rights of subcontractors' insurers.

Mortgagor expressly understands and agrees that any insurance or self-insurance programs maintained with respect to the Premises by Mortgagee shall apply in excess of and not contribute to insurance provided by Mortgagor, a general contractor or any subcontractor under this Section.

The insurance required hereunder to be carried shall not be limited by any limitations expressed in the indemnification language herein or any limitation placed on the indemnity therein given as a matter of law.

If Mortgagor, general contractor or any subcontractor desires additional coverage, higher limits of liability, or other modifications for its own protection, Mortgagor, a general contractor or such subcontractor, as appropriate, shall be responsible for the acquisition and cost of such additional protection.

Mortgagee maintains the right to modify these requirements to the extent that such modification is consistent with insurance practices for residential housing projects in the Metropolitan Chicago area, which modifications shall go into effect not sooner than 30 days following notice thereof to Mortgagor.

It is hereby agreed that to the extent that Exhibit M to the Redevelopment Agreement contains additional requirements relating to the maintenance of insurance, the provisions of such Exhibit M to the Redevelopment Agreement shall be deemed to be incorporated herein.

4. **Inspection of Premises and of Books and Records.** Mortgagor shall permit Mortgagee, HUD and/or their respective agents to inspect, subject to the rights of tenants under leases of apartments in the Premises, the Premises at all reasonable times during business hours and upon reasonable notice, and access thereto shall be permitted for that purpose. Mortgagor shall keep and maintain full and correct records at Mortgagor's office showing in detail the income and expenses of the Premises and shall make such books, records and all supporting vouchers, data and other documents available for inspection, copying (including excerpts and transcriptions), audit and examination upon request by Mortgagee, HUD and their respective agents, successors and assigns until the fifth anniversary of the date of repayment of the Loan in full.

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5. **Insurance Proceeds.** In the event of any damage to, or destruction of the Premises, Mortgagor will give written notice to Mortgagee of such damage or destruction within five (5) Business days thereafter and authorize Mortgagee to proceed as follows:

(a) In the event of any loss greater than \$100,000 dollars covered by insurance policies, Mortgagee is hereby authorized at its option to (i) settle and adjust any claim under such policies without the consent of Mortgagor, or (ii) allow Mortgagor to agree with the insurance company or companies on the amount to be paid upon the loss. Mortgagor shall have the sole right to settle losses under \$100,000 dollars. Mortgagee shall, and is hereby authorized to, collect any such insurance proceeds, and the reasonable expenses incurred by Mortgagee in the adjustment and collection of insurance proceeds shall be deemed additional indebtedness secured by this Mortgage and shall be reimbursed to Mortgagee by Mortgagor upon demand.

(b) In the event of any insured damage to, or destruction of, the Premises or any part thereof, Mortgagee shall apply the proceeds of insurance to reimburse or, at the option of Mortgagee, pay directly Mortgagor for the cost of restoring, repairing, replacing or rebuilding the Premises if (i) an Event of Default hereunder or an event of default under any of the other Loan Documents shall not have occurred and be continuing; (ii) such insurance proceeds shall be in an amount sufficient to restore the Premises to at least the same value and substantially the same character as the Premises had immediately prior to such damage or destruction (and subject to no liens or encumbrances other than Permitted Encumbrances), or if such proceeds are not so sufficient, Mortgagor shall promptly deposit with Mortgagee funds equal to the amount of such deficiency; (iii) Mortgagor shall obtain all required governmental approvals with respect to such restoration, repair, replacement or rebuilding; (iv) prior to such restoration, repair, replacement or rebuilding, Mortgagee shall receive and approve (such approval not to be unreasonably withheld or delayed) plans and specifications and a detailed budget and cost breakdown with respect to such work; and (v) such restoration, repair, replacement or rebuilding is reasonably susceptible to completion not less than six months prior to the Maturity Date.

(c) In the event that proceeds of insurance, if any, shall be made available to Mortgagor for the restoration, repair, replacement or rebuilding of the Premises, Mortgagor hereby covenants to restore, repair, replace or rebuild the same, to at least equal value, and substantially the same character as prior to such damage or destruction, all to be effected in accordance with plans and specifications submitted to and reasonably approved by Mortgagee, and to expend all such proceeds and any funds deposited by Mortgagor pursuant to Section 6(b)(ii) hereof prior to the further disbursement of any Loan proceeds. If the amount of such insurance proceeds shall be in excess of \$500,000, such proceeds shall be disbursed through an escrow pursuant to an escrow agreement reasonably approved by Mortgagee.

(d) If all of the conditions described in paragraph (b) of this Section with respect to the application of proceeds of insurance shall not be met, Mortgagee may, in its sole discretion, apply such proceeds to the indebtedness secured hereby in such order or manner as Mortgagee may elect.



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(e) Subject to the rights of any senior mortgagee, To the extent that any amount of proceeds of insurance remain unexpended after completion of the restoration, repair, replacement or rebuilding of the Premise, such amount shall be applied to the indebtedness secured hereby.

(f) To the extent that any terms or conditions contained in this Section 6, with respect to the restoration of the Property after a casualty, conflict with the insurance section of the Mixed Finance-Amendment to the Consolidated Annual Contributions Contract ("ACC Amendment"), the ACC Amendment shall prevail.

6. **Condemnation/Eminent Domain.** Mortgagor shall give Mortgagee prompt notice of any proceedings, pending or threatened, seeking condemnation or taking by eminent domain or any like process ("Taking"), of all or any portion of the Premises or affecting any easement thereon or appurtenance thereto and shall deliver to Mortgagee copies of any and all papers served in connection with any such proceedings, and Mortgagor hereby assigns and transfers to Mortgagee, the entire proceeds of all awards resulting from any Taking. Mortgagee is hereby authorized to collect and receive from the condemnation authorities said awards and is further authorized to give appropriate receipts therefor. In the event of any such Taking, the proceeds of all awards resulting from such taking shall be applied subject to the Mixed Finance ACC Amendment and the Regulatory and Operating Agreement: (i) to reimburse Mortgagor for or, at the option of the Mortgagee, pay directly, the cost of restoring, repairing, replacing or rebuilding the Premises to the extent provided for in the Ground Lease; and (ii) the balance of such proceeds shall be applied to the indebtedness secured hereby in such order or manner as Mortgagee may elect.

Notwithstanding the foregoing, if any provision of this Section 6 conflicts with the ACC Amendment, the provisions of Section 11 of the ACC Amendment shall control.

7. **Transfer and Encumbrance of Premises.**

Section 9 of the Regulatory Agreement sets forth restrictions on the transferability of the Premises and on interests in the Mortgagor and its constituent partners. Any violation of the provisions thereof shall constitute a violation of this Mortgage. Any transfer not permitted by such provisions is hereinafter referred to as a "Prohibited Transfer."

8. **Mortgagee's Options.**

(a) In case of an Event of Default hereunder by Mortgagor, Mortgagee may receive and utilize the Operating Subsidy (as defined in the Regulatory Agreement) to pay the operating expenses of the CHA Units, and further may (but is not obligated to) make any payment or perform any act herein required of Mortgagor in any form and manner deemed expedient, and may (but is not obligated to) make full or partial payments of principal or interest on prior encumbrances, if any, and purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof, or redeem the Premises from any tax sale or forfeiture affecting the Premises or contest any tax or assessment thereon. All monies paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including reasonable attorneys' fees,

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and any other monies advanced by Mortgagee to protect the Premises and the lien hereof, shall be deemed additional indebtedness secured hereby, and shall become immediately due and payable, with interest thereon at a rate of the lesser of three percent (3%) above Prime Rate per annum or the maximum permitted by law. Inaction of Mortgagee shall never be considered as a waiver of any right accruing to it on account of any default on the part of Mortgagor.

(b) To the extent that Mortgagee, on or after the date hereof, pays any sum under any provision of law or any instrument or document creating any lien or other interest prior or superior to the lien of this Mortgage, or Mortgagor or any other person or entity pays any such sum with the proceeds of the indebtedness secured hereby, Mortgagee shall have and be entitled to a lien or other interest on the Premises equal in priority to the lien or other interest discharged and Mortgagee shall be subrogated to, and receive and enjoy all rights and liens possessed, held or enjoyed by, the holder of such lien, which shall remain in existence and benefit Mortgagee in securing the indebtedness secured hereby.

9. **Events of Default.** Each of the following shall constitute an "Event of Default" under this Mortgage:

(a) Mortgagor's failure to pay, when due, any installment of principal or interest if any, on the Note, or to pay when due (including any applicable notice and/or cure periods) any other sums required to be paid by Mortgagor under the Loan Documents;

(b) default by Mortgagor in the performance or observance of any condition, warranty, representation, covenant, provision or term (other than as referred to in the other paragraphs of this Section) contained herein or in the other Loan Documents, which remains unremedied for thirty (30) days after notice thereof from Mortgagee to Mortgagor; provided, however, that if any such default cannot reasonably be remedied within said 30-day period and if Mortgagor shall have commenced to remedy such default within said 30-day period and shall thereafter continue diligently to effect such remedy, then said 30-day period shall be extended to 120 days upon written request from Mortgagor to Mortgagee delivered during such 30-day period, provided; however, that the written request specifically states that: (1) the Mortgagor continues to remedy such default; and (2) the default cannot reasonably be remedied within said 30 day period;

(c) a writ of execution, attachment or any similar process shall be issued or levied against all or any portion of the Premises or any interest therein, or any judgment involving monetary damages shall be entered against Mortgagor which shall become a lien on all or any portion of the Premises or any interest therein and such execution, attachment or similar process or judgment is not released, bonded, satisfied, vacated or stayed within ninety (90) days after its entry or levy;

(d) any warranty, representation or statement made or furnished to Mortgagee by or on behalf of Mortgagor proving to have been false in any material respect when

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made or furnished, so as to diminish in a material way the security provided in this Mortgage;

(e) the abandonment by Mortgagor of all or any portion of the Premises for thirty (30) days;

(f) Mortgagor's failure to discharge any Charge in accordance with the terms hereof or a failure to procure or maintain any insurance required hereunder;

(g) the dissolution of Mortgagor or the entry of a decree or order for relief by a court having jurisdiction with respect to Mortgagor in an involuntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or other similar law, or appointing a receiver, liquidator, assignee, custodian, trustee or sequestrator (or other similar official) of Mortgagor or for the Premises or for any substantial part of the property of Mortgagor or ordering the winding-up or liquidation of the affairs of Mortgagor and the continuance of any such decree or order unstayed and in effect for a period of up to one-hundred twenty (120) days.

(h) the commencement by Mortgagor of a voluntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or other similar law, or the consent by Mortgagor to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian or sequestrator (or other similar official) of Mortgagor or the Premises or of any substantial part of the property of Mortgagor or of any royalties, revenues, rents, issues or profits therefrom, or the making by Mortgagor of any assignment for the benefit of creditors or the failure of Mortgagor generally to pay its debts as such debts become due or the taking of action by Mortgagor in furtherance of any of the foregoing;

(i) a final judgment for the payment of money in excess of \$100,000 shall be rendered by a court of record against Mortgagor and Mortgagor shall not discharge the same or provide for its discharge in accordance with its terms, or procure a stay of execution thereof, within sixty (60) days from the date of entry thereof, or such longer period during which execution of such judgment shall have been stayed;

(j) except as permitted pursuant to the terms in Section 8 hereof Mortgagor's sale, partial sale, transfer, refinancing, conveyance, mortgage, pledge, grant of security interest, assignment, syndication or other disposition of all or any portion of the Premises or any interest therein without the prior written consent of Mortgagee, whether by operation of law, voluntarily or otherwise or if Mortgagor shall enter into a contract to do any of the foregoing without the prior written consent of Mortgagee or any other violation of Section 8 hereof.

(k) except as expressly permitted pursuant to the terms of Section 8 hereof, the sale or other transfer by Mortgagor, if any, of all or a controlling interest in the ownership of the General Partner without prior written consent of Mortgagee; and

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(l) any event of default under any of the other Loan Documents which has not been cured within any applicable grace period.

(m) any event of default under the Ground Lease which has not been cured within any applicable grace period.

(n) failure to complete construction of the Premises in accordance with applicable deadlines for low income housing tax credits under Section 42 of the Internal Revenue Code.

10. **Acceleration Etc.** Upon the occurrence of an Event of Default hereunder, Mortgagee may elect to accelerate the maturity of the Note causing the full principal balance of and accrued interest, if any, on the Note, together with all other amounts then due and owing by Mortgagor to Mortgagee under any of the Loan Documents, to become immediately due and payable at the place of payment as aforesaid, and Mortgagee may proceed to foreclose this Mortgage and to exercise any rights and remedies available to Mortgagee under this Mortgage, the Assignment of Rents and Leases or any of the other Loan Documents and to exercise any other rights and remedies against Mortgagor, or with respect to the Note, which Mortgagee may have at law, in equity or otherwise; provided, however, that upon the occurrence of an Event of Default under Section 10(viii) or (ix) hereof, the entire unpaid principal of and interest, if any, on the Note shall, without any declaration, notice or other action on the part of Mortgagee, be immediately due and payable. Mortgagee may also elect to commence an action to enforce specifically any of the provisions contained in any of the Loan Documents.

11. **Remedies.** Mortgagee's remedies as provided in this Mortgage or the other Loan Documents shall be cumulative and concurrent and may be pursued singularly, successively or together, at the sole discretion of Mortgagee and may be exercised as often as occasion therefor shall arise, and shall not be exclusive but shall be in addition to every other remedy now or hereafter existing at law, in equity or by statute. Failure of Mortgagee, for any period of time or on more than one occasion, to exercise any such remedy shall not constitute a waiver of the right to exercise the same at any time thereafter or in the event of any subsequent Event of Default. No act of omission or commission of Mortgagee, including specifically any failure to exercise any right or remedy, shall be deemed to be a waiver or release of the same; any such waiver or release is to be effected only through a written document executed by Mortgagee and then only to the extent specifically recited therein. A waiver or release with reference to any one event shall not be construed as a waiver or release of any subsequent event or as a bar to any subsequent exercise of Mortgagee's rights or remedies hereunder. Except as otherwise specifically required herein, notice of the exercise of any right or remedy granted to Mortgagee by the Loan Documents is not required to be given.

12. **Additional Indebtedness.** In the event that: (a) the Note is placed in the hands of an attorney for collection or enforcement or is collected or enforced through any legal proceeding; (b) an attorney is retained to represent Mortgagee in any bankruptcy, reorganization, receivership or other proceedings affecting creditors' rights and involving a claim under any of the Loan Documents; (c) an attorney is retained to protect or enforce the lien of this Mortgage, or the liens or security interests of any of the other Loan Documents; or (d) an attorney is retained to represent Mortgagee in any other proceedings whatsoever in connection with the Loan

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Documents, or any property subject thereto, then Mortgagor shall pay to Mortgagee all reasonable attorneys' fees, and all costs and expenses incurred in connection therewith.

13. **Waiver.** Mortgagee's failure to require strict performance by Mortgagor of any provision of this Mortgage shall not waive, affect or diminish any right of Mortgagee thereafter to demand strict compliance and performance therewith, nor shall any waiver by Mortgagee of an Event of Default waive, suspend or affect any other Event of Default under this Mortgage, whether the same is prior or subsequent thereto, or of the same or a different type. Mortgagee's delay in instituting or prosecuting any action or proceeding or otherwise asserting its rights hereunder or under any of the other Loan Documents, shall not operate as a waiver of such rights or limit them in any way so long as an Event of Default shall be continuing.

14. **Right of Possession.** To the extent permitted by law, in any case in which, under the provisions of this Mortgage, Mortgagee has a right to institute foreclosure proceedings, whether before or after the institution of such proceedings or before or after sale thereunder, Mortgagor shall, at the option of Mortgagee, surrender to Mortgagee, and Mortgagee shall be entitled to take, actual possession of all or any portion of the Premises personally or by its agents or attorneys, and Mortgagee, in its sole discretion, may enter upon, take and maintain possession of all or any portion of the Premises, subject to the terms of the other Loan Documents.

Upon taking possession of the Premises, Mortgagee may make all necessary or proper repairs, decoration, renewals, replacements, alterations, additions, betterments and improvements in connection with the Premises as it may deem judicious to insure, protect and maintain the Premises against all risks incidental to Mortgagee's possession, operation and management thereof, and may receive all rents, issues and profits therefrom. Mortgagee shall have, in addition to any other power provided herein, all powers and duties as provided for in Sections 5/15-1701, 5/15-1702 and 5/15-1703 of the Act.

15. **Appointment of Receiver.** Upon or at any time after the filing of any complaint to foreclose the lien of this Mortgage, the court may, upon application, appoint a receiver of the Premises. Such appointment may be made either before or after foreclosure sale, after notice, without regard to the solvency or insolvency, at the time of application for such receiver, of the person or persons, if any, liable for the payment of the indebtedness hereby secured, without regard to the value of the Premises at such time and whether or not the same is then occupied as a homestead, and without bond being required of the applicant. Mortgagee or any employee or agent thereof may be appointed as such receiver. The receiver shall have the power to take possession, control and care of the Premises and to collect all rents and profits thereof during the pendency of such foreclosure suit, and all powers and duties provided for in Section 5/15-1704 of the Act, and such other powers as the court may direct.

16. **Foreclosure Sale.** The Premises or any interest or estate therein sold pursuant to any court order or decree obtained under this Mortgage shall be sold in one parcel, as an entirety, or in such parcels and in such manner or order as Mortgagee, in its sole discretion, may elect, to the maximum extent permitted by Illinois law. At any such sale, Mortgagee may bid for and acquire, as purchaser, all or any portion of the Premises and, in lieu of paying cash therefore, may make settlement for the purchase price by crediting upon the indebtedness due the amount of Mortgagee's bid.

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17. **Adjudication of Proceeds from Foreclosure Sale.** Proceeds of any foreclosure sale of the Premises shall be distributed and applied in the following order of priority: (i) on account of all costs and expenses incident to the foreclosure proceedings, (ii) all other items which, under the terms hereof, constitute secured indebtedness additional to that evidenced by the Note, with interest thereon, (iii) all principal and interest, if any, remaining unpaid on the Note, and (iv) any surplus or remaining funds to Mortgagor, its successors or assigns, as their rights may appear.

18. **Insurance Upon Foreclosure.** Wherever provision is made in this Mortgage for insurance policies to bear mortgage clauses or other loss payable clauses or endorsements in favor of Mortgagee, or to confer authority upon Mortgagee to settle or participate in the settlement of losses under policies of insurance or to hold and disburse or otherwise control use of insurance proceeds, from and after the entry of judgment of foreclosure all such rights and powers of Mortgagee shall continue in Mortgagee as judgment creditor or mortgagee until confirmation of sale. Upon confirmation of sale, Mortgagee shall be empowered to assign all policies of insurance to the purchaser at the sale. In case of an insured loss after foreclosure proceedings have been instituted, the proceeds of any insurance policy or policies, if not applied in restoring the Premises, shall be used to pay the amount due in accordance with any foreclosure decree that may be entered in any such proceedings, and the balance, if any, shall be paid as the court may direct.

19. **Waiver of Statutory Rights.** To the extent permitted by law, Mortgagor shall not apply for or avail itself of any appraisal, valuation, redemption, reinstatement, stay, extension or exemption laws or any so-called "Moratorium Laws" now existing or hereafter enacted, in order to prevent or hinder the enforcement of foreclosure of this Mortgage and hereby waives the benefit of such laws. Mortgagor, for itself and all who may claim through or under it, waives any and all right to have the property and estates comprising the Premises marshaled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Premises sold as an entirety. To the extent permitted by law, Mortgagor hereby expressly waives any and all rights of redemption and reinstatement, on its own behalf and on behalf of each and every person having a beneficial interest in Mortgagor, it being the intent hereof that any and all such rights of redemption or reinstatement of Mortgagor and of all other persons are and shall be deemed to be hereby waived. Mortgagor acknowledges that the Premises do not constitute agricultural real estate, as said term is defined in Section 5/15-1201 of the Act or residential real estate as defined in Section 5/15-1219 of the Act.

20. **Partial Payments.** Acceptance by Mortgagee of any payment which is less than payment in full of all amounts due and payable at the time of such payment shall not constitute a waiver of Mortgagee's right to exercise its option to declare the whole of the principal sum then remaining unpaid, together with all accrued interest, if any, thereon, immediately due and payable without notice, or any other rights of Mortgagee at that time or any subsequent time, without its express written consent, except and to the extent otherwise provided by law.

21. **Rescission of Election.** Acceleration of maturity, once made by Mortgagee, may at the option of Mortgagee be rescinded, and any proceedings brought to enforce any rights or remedies hereunder may, at Mortgagee's option, be discontinued or dismissed. In either of such events, Mortgagor and Mortgagee shall be restored to their former positions, and the rights,

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remedies or powers of Mortgagee shall continue as if such acceleration had not been made or such proceedings had not been commenced, as the case may be.

22. **Notice.** Unless otherwise specified, any notice, demand or request required hereunder shall be given in writing at the addresses set forth below, by any of the following means: (a) personal service; (b) electronic communications, whether by telex, telegram or telecopy; (c) overnight courier, receipt requested; or (d) registered or certified mail, return receipt requested.

IF TO MORTGAGEE: Chicago Housing Authority  
626 West Jackson Boulevard,  
Chicago, Illinois 60661  
Attention: Chief Executive Officer

WITH COPIES TO: Chicago Housing Authority  
200 West Adams Street,  
Suite 2100  
Chicago, Illinois 60606  
Attention: Office of the General Counsel

The Habitat Company, as Receiver for  
Chicago Housing Authority  
350 West Hubbard Street  
Chicago, Illinois 60610  
Attn: President

IF TO MORTGAGOR: Pershing & State, L.P.  
c/o The Davis Group  
54 West Hubbard St., Suite 205  
Chicago, IL 60610  
Attention: Allison Davis

WITH COPIES TO: Applegate & Thorne-Thomsen  
322 S. Green Street, Suite 400  
Chicago, IL 60607  
Attention: Bennett Applegate

Such addresses may be changed by notice to the other parties given in the same manner as above provided. Any notice, demand or request sent pursuant to either clause (a) or (b) above shall be deemed received upon completion of such personal service or upon dispatch by electronic means with confirmation of receipt. Any notice, demand or request sent pursuant to clause (c) above shall be deemed received on the Business Day immediately following deposit with the overnight courier and, if sent pursuant to clause (d) above, shall be deemed received two (2) Business Days following deposit in the mail.

23. **Time.** Time is of the essence with respect to the Loan Documents.

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24. **Modifications.** This Mortgage may not be altered, amended, modified, cancelled, changed or discharged except by written instrument signed by Mortgagor and Mortgagee or their respective successors and assigns.

25. **Headings.** The headings of articles, sections, paragraphs and subparagraphs in this Mortgage are for convenience of reference only and shall not be construed in any way to limit or define the content, scope or intent of the provisions hereof.

26. **Construction of Mortgage.** This Mortgage shall be construed and enforced according to the internal laws of the State of Illinois without regard to its conflict of laws principles.

27. **Severability.** If any provision of this Mortgage, or any paragraph, sentence, clause, phrase or word, or the application thereof, in any circumstance, is held invalid, the remainder of this Mortgage shall be construed as if such invalid part were never included herein and this Mortgage shall be and remain valid and enforceable to the fullest extent permitted by law.

28. **Grammar.** As used in this Mortgage, the singular shall include the plural, and masculine, feminine and neuter pronouns shall be fully interchangeable, where the context so requires.

29. **Successors and Assigns.** This Mortgage and each and every covenant, agreement and other provision hereof shall be binding upon Mortgagor and its successors and assigns (including, without limitation, each and every record owner of the Premises or any other person having an interest therein), and shall inure to the benefit of Mortgagee and its successors and assigns. Whenever Mortgagee is referred to herein, such reference shall also include the Holder of the Note, whether so expressed or not.

30. **Further Assurances.** Mortgagor will perform, execute, acknowledge and deliver every act, deed, conveyance, transfer and assurance necessary or proper, in the reasonable judgment of Mortgagee, for assuring, conveying, mortgaging, assigning and confirming to Mortgagee all property mortgaged hereby or property intended so to be, whether now owned or hereafter acquired by Mortgagor, and for creating, maintaining and preserving the lien and security interest created hereby on the Premises. Upon any failure by Mortgagor to do so, Mortgagee may make, execute and record any and all such documents for and in the name of Mortgagor, and Mortgagor hereby irrevocably appoints Mortgagee and its agents as attorney-in-fact for that purpose. Mortgagor will reimburse Mortgagee for any sums expended by Mortgagee in making, executing and recording such documents including attorneys' fees and court costs.

31. **Indemnification.** In addition to all other indemnities in favor of Mortgagee specifically provided in this Mortgage, Mortgagor shall indemnify Mortgagee and save Mortgagee harmless from and against any and all loss, cost, damage, claim, liability or expense ("Loss") incurred by Mortgagee in connection with any and all claims, demands, actions, notices, liens, suits, causes of action, complaints, citations and legal and administrative proceedings ("Claims") in connection with the loan excluding, however, (1) any Loss arising out



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of Mortgagee's gross negligence or willful misconduct, and (2) any loss arising after Mortgagee's acquisition of title to or control of the Premises.

32. **Security Agreement.** This Mortgage shall be construed as a "security agreement" within the meaning of and shall create a security interest under the Uniform Commercial Code as adopted by the State of Illinois with respect to any part of the Premises which constitutes fixtures or personal property. Mortgagee shall have all the rights with respect to such fixtures or personal property afforded to it by said Uniform Commercial Code in addition to, but not in limitation of, the other rights afforded Mortgagee by this Mortgage or any other agreement. Upon the recording hereof, this Mortgage shall constitute a financing statement under the Uniform Commercial Code.

33. **No Merger.** It being the desire and intention of the parties hereto that this Mortgage and the lien thereof do not merge in fee simple title, it is hereby understood and agreed that should Mortgagee acquire any additional or other interests in or to the Premises or the ownership thereof, then unless a contrary interest is manifested by Mortgagee, as evidenced by an appropriate document duly recorded, this Mortgage and the lien thereof shall not merge in the fee simple title, toward the end that this Mortgage may be foreclosed as if owned by a stranger to the fee simple title.

34. **Protective Advances: Maximum Amount of Indebtedness.** All advances, disbursements and expenditures made by Mortgagee before and during a foreclosure, and before and after judgment of foreclosure, and at any time prior to sale, and, where applicable, after sale and during the pendency of any related proceedings, for the following purposes, in addition to those otherwise authorized by this Mortgage or by the Act collectively "Protective Advances"), shall have the benefit of all applicable provisions of the Act, including those provisions of the Act hereinbelow referred to:

- (a) all advances by Mortgagee in accordance with the terms of this Mortgage to: (i) preserve or maintain, repair, restore or rebuild the improvements upon the Premises; (ii) preserve the lien of this Mortgage or the priority thereof; or (iii) enforce this Mortgage, as referred to in Subsection (b)(5) of Section 5/15-1302 of the Act;
- (b) payments by Mortgagee of: (i) when due, installments of principal, interest or other obligations in accordance with the terms of this Mortgage or other prior lien or encumbrance; (ii) when due, installments of real estate taxes and assessments, general and special and all other taxes and assessments of any kind or nature whatsoever which are assessed or imposed upon the Premises or any part thereof; (iii) other obligations authorized by this Mortgage; or (iv) with court approval, any other amounts in connection with other liens, encumbrances or interests reasonably necessary to preserve the status of title, as referred to in Section 5/15-1505 of the Act;
- (c) advances by Mortgagee in settlement or compromise of any claims asserted by claimants under or any other prior liens;
- (d) reasonable attorneys' fees and other costs incurred: (i) in connection with the foreclosure of this Mortgage as referred to in Sections 5/15-1504(d)(2) and 5/15-1510

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of the Act; (ii) in connection with any action, suit or proceeding brought by or against Mortgagee for the enforcement of this Mortgage or arising from the interest of Mortgagee hereunder; or (iii) in the preparation for the commencement or defense of any such foreclosure or other action;

(e) reasonable Mortgagee's fees and costs, including attorneys' fees, arising between the entry of judgment of foreclosure and the confirmation hearing as referred to in Subsection (b)(1) of Section 5/15-1508 of the Act;

(f) advances of any amount required to make up a deficiency in deposits for installments of taxes and assessments and insurance premiums as may be authorized by this Mortgage;

(g) expenses deductible from proceeds of sale as referred to in Subsections (a) and (b) of Section 5/15-1512 of the Act; and

(h) expenses incurred and expenditures made by Mortgagee for any one or more of the following: (i) if any interest in the Premises is a leasehold estate under a lease or sublease, rentals or other payments required to be made by the lessee under the terms of the lease or sublease, (ii) premiums for casualty and liability insurance paid by Mortgagee whether or not Mortgagee or a receiver is in possession, if reasonably required, in reasonable amounts, and all renewals thereof, without regard to the limitation to maintaining of existing insurance in effect at the time any receiver or mortgagee takes possession of the Premises imposed by Subsection (c)(1) of Section 5/15-1704 of the Act; (iii) repair or restoration of damage or destruction in excess of available insurance proceeds or condemnation awards; (iv) payments required or reasonably deemed by Mortgagee to be for the benefit of the Premises or required to be made by the owner of the Premises under any grant or declaration of easement, easement agreement, agreement with any adjoining land owners or instruments creating covenants or restrictions for the benefit of or affecting the Premises; and (v) pursuant to any lease or other agreement for occupancy of the Premises. All Protective Advances shall be so much additional indebtedness secured by this Mortgage, and shall become immediately due and payable without notice and with interest, if any, thereon from the date of the advance until paid at the rate of interest payable after default under the terms of the Note.

This Mortgage shall be a lien for all Protective Advances as to subsequent purchasers and judgment creditors from the time this Mortgage is recorded pursuant to Subsection (b)(1) of Section 5/15-1302 of the Act.

All Protective Advances shall, except to the extent, if any, that any of the same is clearly contrary to or inconsistent with the provisions of the Act, apply to and be included in:

(1) the determination of the amount of indebtedness secured by this Mortgage at any time;

(2) the indebtedness found due and owing to Mortgagee in the judgment of foreclosure and any subsequent supplemental judgments, orders, adjudications or findings by the court of any additional indebtedness becoming due after such entry of

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judgment, it being agreed that in any foreclosure judgment, the court may reserve jurisdiction for such purpose;

(3) if the right of redemption has not been waived by this Mortgage, computation of amount required to redeem, pursuant to Subsections (d)(2) and (e) of Section 5/15-1603 of the Act;

(4) the determination of amounts deductible from sale proceeds pursuant to Section 5/15-1512 of the Act;

(5) the application of income in the hands of any receiver or mortgagee in possession; and

(6) the computation of any deficiency judgment pursuant to Subsections (b)(2) and (c) of Sections 5/15-1508 and Section 5/15-1511 of the Act.

The maximum amount of indebtedness secured by this Mortgage shall be Nine Million & No/100 (\$9,000,000.00) plus interest under the Note, plus any disbursements for the payment of taxes and insurance on the Premises, and any other sums advanced in accordance with the terms hereof or any of the other Loan Documents to protect the security of this Mortgage or any of the other Loan Documents plus interest thereon.

All obligations of the Mortgagor shall terminate upon the discharge of all indebtedness secured by this Mortgage. Upon that discharge Mortgagee shall execute, record and deliver to Mortgagor in favor of Mortgagee a Release of this Mortgage.

35. **Non-Recourse Loan.** Subject to the terms contained in the next succeeding paragraph of this Section 36, the indebtedness secured hereunder shall be non-recourse and in the event of default hereunder, Mortgagee's sole source of satisfaction of repayment of the amount due to Mortgagee hereunder or under any of the Loan Documents shall be limited to Mortgagee's rights with respect to the collateral pledged and assigned hereunder or under the Assignment of Rents and Leases, the Assignment of Contract or any of the other Loan Documents.

Nothing herein or in any of the Loan Documents shall limit the rights of Mortgagee, following any of the events hereinafter described to take any action as may be necessary or desirable to pursue Mortgagor, if any, for any and all Losses incurred by Mortgagee arising from: (i) a material misrepresentation or fraud made in writing or misappropriation of funds by Mortgagor, if any; (ii) intentional or material waste to the Premises; (iii) use of proceeds of the indebtedness evidenced by the Note for costs other than Eligible Costs if such costs are not disbursed pursuant to the terms of the Construction Loan and Escrow and Disbursement Agreement; (iv) the occurrence of a Prohibited Transfer without Mortgagee's prior written consent, to the extent such Prohibited Transfer results from the intentional, willful, voluntary and/or negligent acts or omissions of Mortgagor or General Partner; (v) the occurrence of any uninsured casualty to the Premises or other collateral or security provided under any of the Loan Documents for which there has been a failure to maintain insurance coverage as required by the terms and provisions of the Loan Documents; (vi) the misappropriation or misapplication of insurance proceeds or condemnation awards relating to the Premises or other collateral or security provided under any of the Loan Documents; Mortgagee waives any and all right to seek

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or demand any personal deficiency judgment against Mortgagor, in conjunction with a foreclosure proceeding, under or by reason of any of the non-recourse monetary obligations of Mortgagor; provided, however, that the foregoing shall not limit or affect Mortgagee's right to sue or otherwise seek recourse against Mortgagor or General Partner, in any separate action or proceeding for all Losses incurred by Mortgagee arising from any of the matters described in the foregoing paragraphs of this paragraph 36.

36. **Subordination to Extended Use Agreement.** By acceptance of this Mortgage, Mortgagee agrees that the lien of the Mortgage shall be subordinate to any "extended low-income housing commitment" (as defined in Code Section 42(h)(6)(B) of the Internal Revenue Code of 1986, as amended ["Code"]) (the "Extended Use Agreement") to be recorded in the real property records of the Recorder of Deeds of Cook County, Illinois; provided that the under the terms of the Extended Use Agreement, if the Mortgagee or its successors or assigns (collectively, the "REO Owner") acquires the Premises by foreclosure (or instrument in lieu of foreclosure), then the "extended use period" (as defined in Code Section 42(h)(6)(D)) shall terminate, except for the obligation of the REO Owner to comply with the limitations on evictions, termination of tenancy and increase in rents for the three year period following the REO Owner's acquisition of the Real Property, as set forth in Code Section 42(h)(6)(E)(ii).

37. **Investor Protective Provisions.** So long as NEF Assignment Corporation ("Investor") or its affiliates is a limited partner in Mortgagor, copies of all notices shall be sent thereto as provided in Section 23 hereof. Mortgagee hereby agrees that Investor shall have the same cure rights as Mortgagor with respect to any default hereunder.

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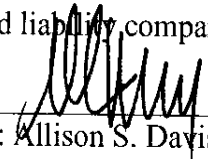
IN WITNESS WHEREOF, Mortgagor has caused these presents to be signed and attested to on the day and year first above written.

**PERSHING & STATE L.P.**, an Illinois limited partnership

By: Stateway Pershing, LLC, an Illinois limited liability company, its general partner

By: NRP Stateway, LLC, an Illinois limited liability company, its manager

By: Davis Associates Managers LLC, an <sup>Delaware</sup>~~Illinois~~ limited liability company, its manager

By:  \_\_\_\_\_

Name: Allison S. Davis

Its: Manager

Property of Cook County Clerk's Office

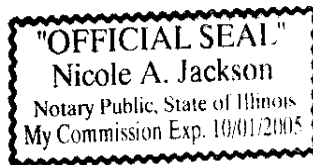
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STATE OF ILLINOIS     )  
   )  
 COUNTY OF COOK        )     SS.

I, the undersigned, a Notary Public in and for the said County and State aforesaid, DO HEREBY CERTIFY that Allison S. Davis personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that she/he signed, sealed and delivered the said instrument as her/his free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 18<sup>th</sup> day of December, A.D. 2003.

Nicole A. Jackson  
 Notary Public



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## EXHIBIT A

### LEGAL DESCRIPTION PERSHING COURTS

#### PARCEL 1

The South 25 feet (except the East 25 feet and except street) of Lot 2 in Block 3 in Page's Subdivision of the South 10 Acres of the West ½ of the Southwest 1/4 of Section 34, Township 39 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois

PIN:17-34-321-011-0000

COMMON ADDRESS: 3839 South State Street, Chicago, Illinois

#### PARCEL 2

The North 50 feet of Lot 3 (except the East 25 feet taken for elevated railroad and the West 34 feet for widening South State Street) in Block 3 in Page's Subdivision of the South 10 Acres of the West ½ of the Southwest 1/4 of Section 34, Township 39 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois

PIN:17-34-321-012-0000

COMMON ADDRESS: 3841-45 South State Street, Chicago, Illinois

#### PARCEL 3

The South 25 feet of the North 75 feet (except the East 25 feet and except street) of Lot 3 in Block 3 in Page's Subdivision of the South 10 Acres of the West ½ of the Southwest 1/4 of Section 34, Township 39 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois

PIN:17-34-321-013-0000

COMMON ADDRESS: 3847 South State Street, Chicago, Illinois

#### PARCEL 4

The South 25 feet of Lot 3 (except that part taken or used for widening South State Street and except the East 25 feet of said Lot 3 as described in deed recorded as document number 1408281 conveyed to the Chicago and South Side Rapid Transit Railroad Company, now known as the Chicago Transit Authority, in Block 3 in Page's Subdivision of the South 10 Acres of the West ½ of the Southwest 1/4 of Section 34, Township 39 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois

PIN:17-34-321-014-0000

COMMON ADDRESS: 3849 South State Street, Chicago, Illinois

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## PARCEL 5

That Part of Lot 6 in Block 3 in Page's Subdivision of the South 10 Acres of the West ½ of the Southwest ¼ of Section 34, Township 39 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois, bounded and described as follows: beginning at a point 34 feet East of the Northwest corner of said Lot 5 and on the East line of South State Street as now established; thence East along the North line of said Lot 6 122½ feet; thence South 45 feet; thence West 6 feet; thence South 55 feet on the North Line of 39<sup>th</sup> Street; thence West along the North Line of 39<sup>th</sup> Street 116½ feet to the East Line of South State Street as now established; thence North along said East Line of South State Street 100 feet to the point of beginning.

PIN: 17-34-321-015-0000

COMMON ADDRESS: 10-12 East Pershing Road, Chicago, Illinois

## PARCEL 6

The South 43 7/12 feet of the North 72 Feet (except the East 25 Feet and except street) of Lot 2 in Block 3 in Page's Subdivision of the South 10 Acres of the West ½ of the Southwest ¼ of Section 34, Township 39 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois.

PIN: 17-34-321-009

COMMON ADDRESS: 3831 South State Street, Chicago, Illinois

## PARCEL 7

The North 28 5/12 feet of the North 72 Feet (except the East 25 feet and except street) of Lot 2 in Block 3 in Page's Subdivision of the South 10 Acres of the West ½ of the Southwest ¼ of Section 34, Township 39 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois.

PIN: 17-34-321-010

COMMON ADDRESS: 3831 South State Street, Chicago, Illinois

## PARCEL 8 (Leasehold)

The East 25 feet of Lots 2 and 3, and the East 25 feet of the North 45 feet and the East 31 feet of the South 55 feet of Lot 6, in Block 3 in Page's Subdivision of the South 10 acres of the West ½ of the Southwest ¼ of Section 34, Township 39 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois.

PINS: 17-34-500-030, 17-34-500-031, 17-34-500-032



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The above parcels also described as:

Lots 2 and 3, except the East 25.00 feet and except the West 34.00 feet of said lots; and Lot 6, except the West 34.00 feet thereof and also except the East 25.00 feet of the North 45.00 feet and except the East 31.00 feet of the South 55.00 feet thereof; all in Block 3 of Page's Subdivision of the South 10 acres of the West Half of the Southwest Quarter of Section 34, Township 39 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

And

The East 25 feet of Lots 2 and 3, the North 45 feet of the East 25 feet of Lot 6, and the South 55 feet of the East 31 feet of Lot 6; all in Block 3 of Page's Subdivision of the South 10 acres of the West Half of the Southwest Quarter of Section 34, Township 39 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

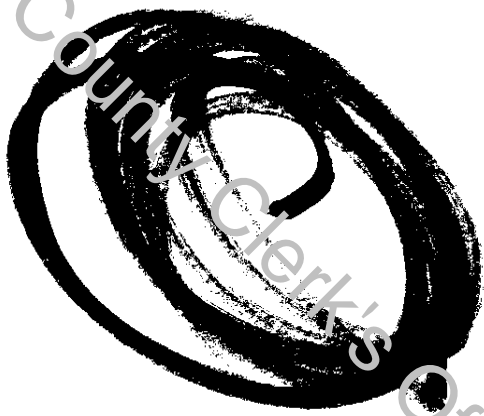
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## EXHIBIT B

### NOTE

See following pages.

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## NOTE

\$2,978,100

Chicago, Illinois  
December 1, 2003

**FOR VALUE RECEIVED, PERSHING & STATE L.P.**, an Illinois limited partnership ("Maker"), hereby promises to pay to the Chicago Housing Authority, an Illinois municipal corporation ("Holder"), at 626 West Jackson Boulevard, Chicago, Illinois 60661, Attention: Chief Executive Officer, or at such other place as Holder may appoint, Two Million Nine Hundred and Seventy-Eight Thousand One Hundred and No/100 Dollars (\$2,978,100.00), together with interest accrued thereon as herein provided.

This Note has been issued to evidence that certain loan to be made by the Holder named herein to the Maker pursuant to that certain Chicago Housing Authority Loan Agreement of even date herewith between the Maker and such Holder (the "Loan Agreement"). All terms not defined herein shall have the meaning set forth in the Loan Agreement.

**1. Definitions.** Maker agrees that, for purposes of this Note, the following terms shall have the respective meanings ascribed thereto as follows:

(a) "Business Day" shall mean a day upon which banks in the City of Chicago are not authorized or required to remain closed and which is not a public holiday under the laws of the State of Illinois.

(b) "Default Rate" shall mean a rate of interest equal to three percent (3%) per annum in excess of the Prime Rate.

(c) "Interest Rate" shall mean one percent (1.00 %) per annum.

(d) "Maturity Date" shall mean the first day of the 480th calendar month after the month in which the Completion Date (as defined in the Loan Agreement) occurs.

(e) "Outstanding Balance" shall mean the aggregate of (i) all sums advanced by any Holder to and for the benefit of Maker pursuant to the Loan Agreement or any other Loan Document, and (ii) all accrued and unpaid interest.

**2. Principal and Interest Payments.**

(a) Interest shall accrue on the Outstanding Balance at the Interest Rate. On December 31 of each calendar year, accrued and unpaid interest shall be added to the Outstanding Balance and shall thereafter bear interest.

(b) The entire Outstanding Balance and all accrued and unpaid interest shall be due and payable on the Maturity Date.

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(c) All payments made on account of this Note shall be applied (i) first to pay for costs of collection and attorneys' fees entitled to be recovered by the Holder hereunder, (ii) next to late charges and accrued and unpaid interest which has accrued at the Default Rate; (iii) next to accrued and unpaid interest; and (iv) thereafter to the remainder of the Outstanding Balance.

3. **Security for Note.** The payment of the indebtedness evidenced by this Note is secured by, among other things, the Third Mortgage, Security Agreement and Financing Statement dated of even date herewith from Maker to Holder (the "Mortgage") and other Loan Documents (as defined in the Mortgage).

4. **Late Charges; Default Interest.** If the Outstanding Balance is not paid at the Maturity Date, such Outstanding Balance shall thereafter bear interest at the Default Rate.

5. **Default and Acceleration.** Upon Maker's failure to pay any payment required to be paid hereunder in accordance with the terms hereof; or upon Maker's failure to perform or observe any covenant, term or provision hereof which failure to perform or observe remains unremedied for thirty (30) days after notice thereof from Holder to Maker or for such period as may be extended pursuant to the Mortgage (provided however, that if Maker shall have commenced to remedy the default within said 30 day period and shall thereafter continue diligently to effect such remedy, then said 30 day period shall be extended to 120 days upon written request from Maker to Holder delivered during such 30 day period, provided, however, that the written request specifically states that: (1) the Maker continues to remedy such default; and (2) the default cannot reasonably be remedied within said 30 day period provided); or upon the occurrence of an Event of Default (including applicable notice or cure period) under any of the other Loan Documents; then, Maker shall be deemed in default hereunder and, at the option of Holder hereof, Holder may elect after notice to Maker to accelerate the maturity of this Note and upon such election the Outstanding Balance, together with accrued interest, if any, thereon and any additional indebtedness due by Maker to Holder under any of the Loan Documents, shall become at once due and payable at the place of payment as aforesaid, and Holder may proceed to exercise any other rights and remedies against Maker or with respect to this Note which Holder may have under the Loan Documents and at law, in equity or otherwise; provided further, however, that upon the occurrence of an Event of Default under Section 10 (vii) or (viii) of the Mortgage, the entire unpaid principal of and interest in, if any, on this Note shall, after notice, be immediately due and payable. None of the rights or remedies of Holder hereunder or under any of the Loan Documents are to be deemed waived or affected by any failure to exercise the same. All remedies conferred upon Holder by the Mortgage, Loan Documents or any other instrument, document or agreement to which Maker is a party or under which Maker is bound, shall be cumulative and not exclusive; any such remedies may be exercised singularly, concurrently or consecutively at Holder's option.

6. **Notices.** Unless otherwise specified, any notice, demand or request required hereunder shall be given in writing at the addresses set forth below, by any of the following means: (a) personal service; (b) electronic communications, whether by telex, telegram or telecopy; (c) overnight courier, receipt requested; or (d) registered or certified mail, return receipt requested.

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IF TO HOLDER: Chicago Housing Authority  
626 West Jackson Boulevard,  
Chicago, Illinois 60661  
Attention: Chief Executive Officer

WITH COPIES TO: Chicago Housing Authority  
200 West Adams Street,  
Suite 2100  
Chicago, Illinois 60606  
Attention: Office of the General Counsel

IF TO MAKER: Pershing & State L.P.  
c/o The Davis Group  
54 West Hubbard Street, Suite 205  
Chicago, IL 60610

WITH COPIES TO: Applegate & Thorne-Thomsen, P.C.  
322 S. Green Street, Suite 400  
Chicago, IL 60607  
Attention: Bennett Applegate

Such addresses may be changed by notice to the other parties given in the same manner as above provided. Any notice, demand or request sent pursuant to either clause (a) or (b) above shall be deemed received upon completion of such personal service or upon dispatch by electronic means with confirmation of receipt. Any notice, demand or request sent pursuant to clause (c) shall be deemed received on the Business Day immediately following deposit with the overnight courier and, if sent pursuant to clause (d) above, shall be deemed received three Business Days following deposit in the mail.

7. **Miscellaneous.**

(a) Provided that Holder shall prevail in such litigation, Maker will pay all reasonable costs and expenses of collection, including reasonable attorneys' fees, incurred or paid by Holder in enforcing this Note or the obligations evidenced by the Loan Documents to the extent permitted by law.

(b) Maker hereby waives presentment, demand, notice, protest and all other demands or notices in connection with the delivery, acceptance, endorsement, performance, default or enforcement of this Note except for notices required hereunder or under any Loan Documents.

(c) No delay or omission on the part of Holder in exercising any right hereunder shall operate as a waiver of such right or of any other right of Holder, nor shall any delay, omission or waiver on any one occasion be deemed a bar to or waiver of the same or any other right on any future occasion.

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(d) The parties hereto intend and believe that each provision in this Note comports with all applicable law. However, if any provision in this Note is found by a court of law to be in violation of any applicable law, and if such court should declare any provision of this Note to be unlawful, void or unenforceable as written, then it is the intent of all parties hereto that such provision shall be given full force and effect to the fullest possible extent that is legal, valid and enforceable, that the remainder of this Note shall be construed as if such unlawful, void or unenforceable provision were not contained herein, and that the rights, obligations and interests of Maker and Holder under the remainder of this Note shall continue in full force and effect.

(e) MAKER HEREBY CONSENTS TO THE JURISDICTION OF ANY FEDERAL COURT LOCATED IN THE COUNTY OF COOK STATE OF ILLINOIS. MAKER HEREBY WAIVES ANY OBJECTION BASED UPON FORUM NON CONVENIENS, AND ANY OBJECTION TO VENUE OF ANY ACTION INSTITUTED HEREUNDER. NOTHING IN THIS PARAGRAPH SHALL AFFECT THE RIGHT OF HOLDER TO SERVE LEGAL PROCESS IN ANY MANNER PERMITTED BY LAW OR AFFECT THE RIGHT OF HOLDER TO BRING ANY ACTION OR PROCEEDING AGAINST MAKER OR ITS PROPERTY IN THE COURTS OF ANY OTHER JURISDICTION.

(f) This Note shall be construed and enforced according to the internal laws of the State of Illinois without regard to its conflict of laws principles.

(g) In any case where the date of payment of interest, if any, on or principal of this Note shall not be a Business Day, then payment of such interest or principal need not be made on such date but may be made on the next succeeding Business Day and, if interest is charged on this Note, this Note shall continue to bear interest until such date of payment.

## 8. Non-Recourse Obligation.

Subject to the terms contained in the next paragraphs, the indebtedness evidenced by this Note shall be non-recourse and in the event of default hereunder, Holder's sole source of satisfaction of repayment of the amounts due to Holder hereunder or under any of the Loan documents shall be limited to Holder's rights with respect to the collateral pledged and assigned under the Mortgage or any of the other Loan Documents.

Notwithstanding the immediately preceding paragraph, nothing herein or in any of the Loan Documents shall limit the rights of Holder, following any of the events hereinafter described, to take any action as may be necessary or desirable to pursue Maker or General Partner for any and all Losses incurred by Holder arising from (i) a material misrepresentation, fraud made in writing or misappropriation of funds by Maker or General Partner, (ii) intentional or material waste to the Premises; (iii) use of proceeds of the Loan for costs other than Eligible Costs if such cost are not disbursed pursuant to the terms of the Construction Loan Escrow and Disbursement Agreement; (iv) the occurrence of a Prohibited Transfer (as defined in the Mortgage) without Holder's prior written consent, to the extent such Prohibited Transfer results from the intentional, willful, voluntary and/or negligent acts or omissions of Maker and/or

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General Partner; (v) the occurrence of any uninsured casualty to the Premises or other collateral or security provided under any of the Loan Documents for which there has been a failure to maintain insurance coverage as required by the terms and provisions of the Loan Documents; (vi) the misappropriation or misapplication of insurance proceeds or condemnation awards relating to the Premises or other collateral or security provided under any of the Loan Documents; Holder waives any and all right to seek or demand any personal deficiency judgment against Maker, in conjunction with a foreclosure proceeding, under or by reason of any of the non-recourse monetary obligations of maker; provided, however, that the foregoing shall not limit or affect Holder's right to sue or otherwise seek recourse against Maker, General Partner or any other party, if any, in any separate action or proceeding for all Losses incurred by Holder arising from any of the matters described in the foregoing paragraphs of this paragraph 8.

THE TERMS AND PROVISIONS OF THE LOAN DOCUMENTS ARE HEREBY INCORPORATED BY REFERENCE AND MADE APART OF THIS NOTE.

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**IN WITNESS WHEREOF**, Maker has caused this Note to be duly executed on the date first above written.

**PERSHING & STATE L.P.**,  
an Illinois limited partnership

By: Stateway Pershing, LLC,  
an Illinois limited liability company  
Its: General Partner

By: NRP Stateway, LLC,  
an Illinois limited liability company,  
its manager

By: Davis Associates Managers LLC,  
an Illinois limited liability company,  
its manager

By: \_\_\_\_\_  
Name: Allison S. Davis  
Its: Manager

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## EXHIBIT C

### INSURANCE REQUIREMENTS

#### I. CONSTRUCTION INSURANCE REQUIREMENTS

Mortgagor shall procure and maintain, directly or through its general contractor, at all times the types of insurance specified below in order to protect the Mortgagee, its Commissioners, Board, officers, agents and employees, (collectively, the "Authority") and the Receiver, in its capacity as Receiver, from the acts, omissions and negligence of the Mortgagor, its officers, officials, general contractor(s), contractors, subcontractors, joint venture, partners, agents or employees with regard to the construction of the Premises. The insurance carriers used must be authorized to conduct business in the State of Illinois and shall have a BEST Rating of not less than an "A" except where noted.

#### A. Required Insurance Coverages for Mortgagor:

1. Workers Compensation and Occupational Disease Insurance in accordance with the laws of the State of Illinois (Statutory) Coverage A, and Employer's Liability, Coverage B, in an amount of not less than \$500,000/\$500,000/\$500,000
2. Commercial Liability Insurance. Commercial Liability Insurance provided is to have a limit of not less than One Million Dollars (\$1,000,000) per occurrence with an aggregate of not less than Two Million Dollars (\$2,000,000) (i.e. \$1,000,000/\$2,000,000). In addition to the stipulations outlined above, the insurance policy is to include coverage for Contractual Liability, Products-Completed Operations, Personal & Advertising Injury and will also cover injury to Mortgagor's and its general contractor's respective officers, employees, agents, subcontractors, invitees and guests and their personal property. The Authority and Receiver are to be endorsed as additional insureds on the policy and such insurance will be endorsed as primary and non-contributory with any other insurance available to the Authority.
3. Excess Liability. The Mortgagor shall secure Excess Liability insurance in the amount of not less than Ten Million Dollars (\$10,000,000). This coverage will be excess of the General Liability, Auto Liability and Employer's Liability coverage. Mortgagor's Employer's Liability coverage shall also be required in coverages and amounts sufficient to satisfy all of the policy, certificate and coverage requirements specified herein for all primary, liability and employers' liability coverages.
4. Automobile Liability Insurance. When any motor vehicles (owned, non-owned and/or hired) are used in connection with the construction to be performed for the Premises, Comprehensive Automobile Liability Insurance with limits of not less than One Million Dollars (\$1,000,000) per occurrence CSL, for bodily injury and property damage. The Authority and Receiver are to be endorsed as additional

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insured on the policy and such insurance will be endorsed as primary and non-contributory with any other insurance available to the Authority.

5. **Builders Risk.** The Mortgagor shall provide directly, on behalf of the general contractor(s), contractors, and subcontractors, for the Premises, an All Risk Builders Risk Insurance policy in accordance with HUD's 5370 form (paragraph 36b) covering new construction, improvements, betterments, and/or repairs, at replacement cost, for all materials, supplies, equipment, machinery and fixtures that are or will be part of the permanent project. The Authority shall be named as loss payee.
  6. **Professional Liability (Errors & Omissions).** Mortgagor shall require any architects and engineers of record, property manager, security companies and other professional consultants who perform work in connection with the Redevelopment to provide Professional Liability Insurance. Such insurance covering acts, errors or omissions by any architects and engineers of record and other professional consultants shall be maintained with limits of not less than Two Million Dollars (\$2,000,000) per occurrence. Such insurance covering acts or omissions by any construction manager, property manager or security companies shall be maintained with limits of not less than Five Million Dollars (\$5,000,000) per occurrence. When policies are renewed or replaced, the policy retroactive date must coincide with, or precede, start of the services for which Mortgagor is required to provide such coverage. A Claims-made policy which is not renewed or replaced must have an extended reporting period of two (2) years.
- B. Required Insurance Coverage for general contractor(s), contractors and subcontractors of every tier:**
1. **Workers Compensation and Occupational Disease Insurance** in accordance with the laws of the State of Illinois (Statutory) Coverage A, and Employer's Liability, Coverage B, in an amount of not less than \$500,000/\$500,000/\$500,000.
  2. **Commercial Liability Insurance.** Commercial Liability Insurance provided is to have a limit of not less than One Million Dollars (\$1,000,000) per occurrence with a per Premises aggregate of not less than Two Million Dollars (\$2,000,000) (i.e. \$1,000,000/\$2,000,000). Included without limitation, the following coverages: Premises/Operations, including deletion of explosion, collapse and underground (XCU) exclusions; Independent Contractors' Protective Liability; Broad Form Contractual Liability, specifically referring to the indemnity obligations under and pursuant to this Agreement, subject to the standard industry terms, conditions and exclusions of the policy; Broad Form Property Damage, including Products/Completed Operations; Personal Injury Liability, with employee and contractual exclusions deleted. In addition to the stipulations outlined above, the insurance policy is to include coverage for Contractual Liability, Products-Completed Operations, Personal & Advertising Injury. The Authority and Receiver, and Mortgagor, are to be endorsed as additional insureds

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on the policy and such insurance will be endorsed as primary and non-contributory with any other insurance available to the Additional Insureds.

Products-Completed Operations. general contractor and subcontractors shall procure and maintain (and require subcontractor's subcontractors of any tier to procure and maintain) until expiration of the applicable warranty period and, with regard to Products/Completed Operations coverage for two (2) years after final completion of the Work.

It is further agreed that the coverage afforded to the Additional Insureds shall exclude indemnification of the architect for claims arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications, or (2) the giving of or the failure to give directions or instructions by the architects, his agents or employees provided such giving or failure to give is the primary cause of the injury or damage.

3. Automobile Liability Insurance. When any motor vehicles (owned, non-owned and/or hired) are used in connection with the construction to be performed for such Premises, Mortgagor shall provide directly or through its general contractor(s), Comprehensive Automobile Liability Insurance with limits of not less than One Million Dollars (\$1,000,000) per occurrence CSL, for bodily injury and property damage. The Authority, Receiver, and Mortgagor, are to be endorsed as additional insureds on the policy and such insurance will be endorsed as primary and non-contributory with any other available insurance available to the Authority.
4. Excess Liability. The Mortgagor's general contractor(s) shall secure Excess Liability insurance in the amount of not less than Ten Million Dollars (\$10,000,000) Per Occurrence. This coverage will be excess of the General Liability, Auto Liability and Employers Liability coverages. Such general contractor's insurance coverage will be excess of all subcontractors with which it contracts to provide services for this development. The Authority, Receiver, and the Mortgagor are to be endorsed as additional insureds on such general contractor's Excess Liability policy. Subcontractors excess limits will be determined by such general contractor as the general contractor deems appropriate.
5. Contractors Pollution Liability. If the scope of work covers working with or around hazardous materials or pollutants, the Mortgagor and its general contractor shall require and provide a Contractor's Pollution Liability insurance policy, on an claims made basis, covering any bodily injury, liability, and property damage liability, arising out of pollutants including hazardous materials such as asbestos, lead, etc. or contaminated soil, including while in transit to a permanent disposal facility which may arise from activities under or incidental to the contract, whether such activities be by the Mortgagor, its general contractor, any of their contractors, or subcontractors, or by anyone directly or indirectly employed or

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otherwise contracted by any of them. This policy shall be maintained with limits of not less than Three Million Dollars (\$3,000,000) per claim and in the aggregate. The Authority, Receiver and Mortgagor are to be endorsed as additional insureds on the policy and such insurance will be endorsed as primary and non-contributory with any other insurance available to the Authority. Mortgagor shall provide proof of this insurance to Authority.

6. **Lead/Asbestos Abatement Liability.** When any lead and/or asbestos abatement liability work is performed in connection with the contract, Lead/Asbestos Abatement Liability Insurance shall be provided by the general contractor(s), contractor, or subcontractor performing such services, with limits of not less than \$3,000,000 per occurrence/per claim insuring bodily injury, property damage and environmental clean-up. The Authority, Receiver, Mortgagor, and its general contractor, are to be endorsed as additional insureds on the policy and such insurance will be endorsed as primary and non-contributory with any other insurance available to the Authority. When claims made policies are renewed or replaced, the policy retroactive date must coincide with, or precede, start of the services, work and/or activities for which Mortgagor is required to provide such coverage. A Claims-made policy which is not renewed or replaced must have an extended reporting period of two (2) years.
  7. **Railroad Protective Liability Insurance.** When, in connection with the Premises, any work is to be done adjacent to or on property owned by a railroad or public transit entity, the Mortgagor or its general contractor shall procure and maintain, or cause to be procured and maintained, with respect to the operations that contractor or any subcontractor shall perform, railroad protective liability insurance in the name of such railroad or public transit entity. The policy shall have limits of not less than Two Million Dollars (\$2,000,000) per occurrence, combined single limits, and Six Million Dollars (\$6,000,000) in the aggregate for losses arising out of injuries to or death of all persons, and for damage to or destruction of property, including the loss of use thereof.
- C. **Evidence of Insurance.** Prior to the commencement of construction activities, the Mortgagor directly or through its general contractor shall furnish the Authority for record keeping purposes only, with satisfactory evidence that the Mortgagor, its general contractor(s), contractors and subcontractors have the insurance coverages set forth above. The Mortgagor directly or through its general contractor(s) shall be required to ensure that all general contractors, contractors and subcontractors comply with the Authority's minimum coverage requirements. It is the responsibility of the Mortgagor directly or through its general contractor(s) to secure and maintain proof of coverage for all entities contracted with that provide services to the Premises. At closing, certificates of insurance records must be delivered. Post closing, certificates must be made available for review by the Authority and/or Receiver within twenty-four (24) hours of being requested. Said policies and coverages shall not be modified, canceled, non-renewed, or permitted to lapse until final completion and approval of the performance of the general contractor's contract and the policies shall contain a provision that the coverages will not

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be modified, canceled, non-renewed or permitted to lapse until not less than 30 days after the Authority has received written notice, by certified or registered mail, that the modification, cancellation, non-renewal or lapse of such coverages is contemplated.

THE REQUIRED DOCUMENTATION MUST BE RECEIVED PRIOR TO MORTGAGOR COMMENCING WORK AND RECEIVING NOTIFICATION FROM THE AUTHORITY TO PROCEED.

- D. Mortgagor shall advise, and cause its general contractor(s) and contractors for the Premises to advise, all insurers of the contract provisions regarding insurance. The failure of the Mortgagor, or any general contractor(s) to notify insurers of the contract provisions shall not relieve Mortgagor from its insurance obligations hereunder. Nonfulfillment of the insurance provisions shall constitute a breach of the general contractor's contract and of this Mortgage and the Authority retains the right to stop work until proper evidence of insurance is provided.
- E. Renewal Certificates of Insurance, requested endorsements, or such similar evidence is to be received by the Authority's Risk Management Department, with a copy to the Authority's designated representative and the Receiver, prior to expiration of insurance coverage. At the Authority's option, non-compliance may result in one or more of the following actions, in addition to any rights or remedies otherwise available to Authority and/or the Receiver: (1) The Receiver or Authority may purchase insurance on behalf of Mortgagor and charge back all costs to Mortgagor; (2) Mortgagor may cause the general contractor(s), contractors, and any subcontractors to be immediately removed from the Premises; (3) all payments due Mortgagor, general contractor(s) and contractors may be held until Mortgagor has complied with the requirements. The receipt of any certificate by the Authority or the Receiver does not constitute agreement by the Authority or the Receiver that the insurance requirements in the Agreement have been fully met or that the insurance policies indicated on the certificate are in compliance with the requirements of the Agreement. The Mortgagor, directly or through its general contractor(s) shall be required to ensure that all contractors and subcontractors comply with the Authority's minimum coverage requirements. It is the responsibility of the Mortgagor, directly or through its general contractor(s) to secure and maintain proof of coverage for all entities contracted with that provide services to the Premises. Proof of insurance records must be available for review by the Authority within twenty-four (24) hours of being requested.
- F. If any of the required insurance is underwritten on a claims made basis, the retroactive date shall be prior to or coincident with the date of the general contractor's contract, and the Certificate of Insurance shall state the coverage is "claims made" and also the Retroactive Date. A Claims-Made policy which is not renewed or replaced must have an extended reporting period (tail coverage) of two (2) years. Any extended reporting period premium (tail coverage) shall be paid by Mortgagor directly or through the general contractor for the Premises. It is further agreed that all insurance policies required hereunder shall provide the Authority with not less than a thirty (30) days notice in the event of the occurrence of any of the following conditions: aggregate erosion in advance of the Retroactive Date, cancellation and/or non renewal.

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- G. Mortgagor shall provide to the Authority, prior to commencement of construction and upon each renewal or replacement a builder risk policy required hereunder, and in any event not less than annually, a certified copy of the insurance policies required hereunder and all endorsements.
- H. Mortgagor shall require, directly or through its general contractor(s) for the Premises, that all subcontractors performing work for the Premises carry insurance required herein or such general contractor may provide the coverages for any or all of its subcontractors, and if so, the evidence of insurance submitted shall so stipulate and adhere to the same requirements and conditions as outlined in Section "B" above. Evidence of such coverage must be submitted to the Authority for record keeping purposes only.

## II. MORTGAGOR'S INSURANCE REQUIREMENTS

The Mortgagor agrees to procure and maintain at all times the types of insurance specified below in order to protect the Authority and the Receiver from the acts, omissions and negligence of the selected respondent, its officers, officials, general contractor(s), contractors, subcontractors, joint venture, partners, agents or employees. The insurance carriers used by the Mortgagor must be authorized to conduct business in the State of Illinois and shall have a BEST Rating of not less than an "A". The insurance provided shall cover all operations at and/or relating to the Premises, whether performed by the Mortgagor, its general contractor(s) and/or by any of their contractors or subcontractors.

### A. Required Insurance Coverages:

1. Workers Compensation and Occupational Disease Insurance in accordance with the laws of the State of Illinois (Statutory) Coverage A, and Employer's Liability, Coverage B, in an amount of not less than \$500,000/\$500,000/\$500,000.
2. All-Risk Property Damage: Mortgagor shall obtain an all-risk property policy in the amount of the full replacement value, including improvements and betterments, covering damage to or loss of the Premises. The insurance shall include the following extensions: business interruption/loss of rents, and boiler and machinery, if applicable. The policy shall list the Authority as loss payee.
3. Commercial Liability Insurance. Commercial Liability Insurance provided is to have a limit of not less than One Million Dollars (\$1,000,000) per occurrence with a Per Location aggregate of not less than Two Million Dollars (\$2,000,000) (i.e. \$1,000,000/\$2,000,000). In addition to the stipulations outlined above, the insurance policy is to include coverage for Contractual Liability, Products-Completed Operations, Personal & Advertising Injury. The Authority and Receiver are to be endorsed as additional insureds on the Mortgagor's policy and such insurance will be endorsed as primary and non-contributory with any other insurance available to the Authority
4. Automobile Liability Insurance. When any motor vehicles (owned, non-owned and hired) are used in connection with the services to be performed, the Mortgagor shall provide Comprehensive Automobile Liability Insurance with limits of not less than One Million

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Dollars (\$1,000,000) per occurrence CSL, for bodily injury and property damage. The Authority and Receiver are to be endorsed as additional insureds on the Mortgagor's policy and such insurance will be endorsed as primary and non-contributory with any other insurance available to the Authority.

5. Professional Liability. When any construction manager, property manager and security company perform work in connection with this Agreement, Mortgagor shall require any such construction manager, property manager and/or security company to provide Professional Liability insurance covering acts, errors or omissions with limits of not less than Five Million Dollars (\$5,000,000.00) per occurrence. Coverage extensions shall include Blanket contractual liability. When policies are renewed or replaced, the policy retroactive date must coincide with, or precede the start of services relating to the Property and/or Improvements. A claims-made policy which is not renewed or replaced must have an extended reporting period of two (2) years.
6. Blanket Crime. The Mortgagor shall provide Blanket Crime coverage in a form reasonably acceptable to the Authority against loss by dishonesty, robbery, burglary, theft, destruction or disappearance, computer fraud, credit card forgery and other related crime risks. The policy limit shall be written to cover losses in the amount of the maximum monies collected, received and/or in the Mortgagor's care at any given time, but shall in no event be less than the aggregate amount of two months operating subsidy and projected tenant rents.

## B. Related Requirements

1. The Mortgagor shall advise all insurers of the contract provisions regarding insurance. The failure of the Mortgagor to notify insurers of the contract provisions shall not relieve Mortgagor from its insurance obligations under this contract. Nonfulfillment of the insurance provisions shall constitute a breach of the contract and the Authority retains the right to stop work until proper evidence of insurance is provided.
2. The Mortgagor shall furnish the Authority (Chicago Housing Authority, Risk Management Department, 626 West Jackson Blvd., Fifth Floor, Chicago, Illinois 60661) original Certificates of Insurance evidencing the required coverages to be in force on the Effective Date of this Agreement. In addition, copies of the endorsement(s) adding the Authority and Receiver to the policies as additional insureds is required.
3. Renewal Certificates of Insurance, requested endorsements, or such similar evidence is to be received by the Risk Management Department, with a copy to the Authority's designated representative, prior to expiration of insurance coverage. At the Authority's option, non-compliance may result in one or more of the following actions, in addition to any rights or remedies in any Loan Documents: (1) The Authority will purchase insurance on behalf of Authority, and/or Mortgagor and will charge back all costs to Mortgagor; (2) Mortgagor's affiliates will be immediately removed from the Premises and their contracts

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revoked; (3) all payments due Mortgagor and/or its affiliates will be held until they have fully complied with the requirements; or (4) Mortgagor, its general contractor(s), and/or its affiliates, as applicable, will be assessed Five Hundred Dollars (\$500) for every day of non-compliance. The receipt of any certificate does not constitute agreement by the Authority that the insurance requirements have been fully met or that the insurance policies indicated on the certificate are in compliance with the requirements. The insurance policies shall provide for thirty (30) days written notice to be given to the Authority in the event coverage is substantially changed, canceled or non-renewed.

4. If any of the required insurance is underwritten on a claims made basis, the retroactive date shall be prior to or coincident with the date of this Agreement and the Certificate of Insurance shall state the coverage is "claims made" and also the Retroactive Date. The Mortgagor shall maintain coverage for the duration of this mortgage. A Claims-Made policy which is not renewed or replaced must have an extended reporting period (tail coverage) of two (2) years. Any extended reporting period premium (tail coverage) shall be paid by Mortgagor. The Mortgagor shall provide to the Authority, annually, a certified copy of the insurance policies obtained pursuant hereto. It is further agreed that the Mortgagor shall provide the Authority thirty (30) days notice in the event of the occurrence of any of the following conditions: aggregate erosion in advance of the Retroactive Date, cancellation and/or non renewal.
5. The Mortgagor shall require all general contractors, contractors, and subcontractors to carry the insurance required herein or the Mortgagor may provide the coverage for any or all of its general contractors, contractors, and subcontractors, and if so, the evidence of insurance submitted shall so stipulate and adhere to the same requirements and conditions as outlined in Section "A" above.



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## EXHIBIT D

Those matters set forth as Schedule B title exceptions in Mortgagee's title insurance policy issued by Lawyers Title Insurance Corporation as of the closing of the Loan evidenced by the Loan Documents, but only so long as applicable title endorsements issued in conjunction with such closing, if any, remain in full force and effect.

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