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This Mortgage was prepared by and after recording, return to: Thomas M. Jenkins, Illinois Housing Development Authority  
401 N. Michigan Avenue Ste. 900  
Chicago, Illinois 60611  
Property Address:  
1130 North Dearborn Street,  
Chicago, Illinois



Doc#: 0335634094  
Eugene "Gene" Moore Fee: \$118.50  
Cook County Recorder of Deeds  
Date: 12/22/2003 12:07 PM Pg: 1 of 47

IHDA Form No. AI-4  
IHDA Loan No. ML-59

## MORTGAGE, SECURITY AGREEMENT AND ASSIGNMENT OF RENTS AND LEASES

THIS MORTGAGE, SECURITY AGREEMENT AND ASSIGNMENT OF RENTS AND LEASES (this "Mortgage"), made as of this 19th day of December, 2003, by LASALLE BANK\*, N.A., NOT PERSONALLY, BUT SOLEY AS TRUSTEE ("TRUSTEE") PURSUANT TO A CERTAIN TRUST AGREEMENT DATED SEPTEMBER 20, 1974 AND KNOWN AS TRUST NUMBER 33445 and ELM STEET PLAZA VENTURE, an Illinois limited partnership ("Beneficiary") (Trustee and Beneficiary are sometimes collectively referred to herein as "Mortgagor"), in favor of the ILLINOIS HOUSING DEVELOPMENT AUTHORITY ("Mortgagee"), a body politic and corporate established pursuant to the Illinois Housing Development Act, 20 ILCS 3805/1 et seq., as amended from time to time (the "Act"), whose principal office is 401 North Michigan Avenue, Suite 900, Chicago, Illinois 60611.

### W I T N E S S E T H:

WHEREAS, Mortgagor holds title to certain real estate commonly known as Elm Street Plaza and located at and across from 1130 North Dearborn Street, Chicago, Illinois, as described on Exhibit A attached to and made a part of this Mortgage, and all easements and similar rights and privileges appurtenant to and in favor of such real estate (the real estate, easements, rights and privileges are collectively referred to in this Mortgage as the "Real Estate"), free and clear of any and all liens, encumbrances and charges of any kind, except only the matters set forth in the title policy (the "Title Policy") issued to and approved by Mortgagee ("Permitted Exceptions"); the Real Estate and the improvements constructed on it are referred to in this Mortgage as the "Development;" and

WHEREAS, James P. McHugh, Daniel E. Levin, Habitat Levin LLC, and McHugh Realty, L.L.C. are the general partners of Mortgagor (collectively the "General Partners"); and

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**WHEREAS**, Mortgagee and Mortgagor have entered into that certain Conditional Commitment Letter dated as December 10, 2003 (the "Commitment") pursuant to which Mortgagee has agreed to make a mortgage loan to Mortgagor (the "Loan") in the amount of Forty-One Million, Five Hundred Thousand and No/100 Dollars (\$41,500,000.00) for the purpose of the rehabilitation and permanent financing of the Development to provide affordable housing for low income households, as set forth in the Regulatory Agreement (as defined below); and

**WHEREAS**, payments of principal and interest on the Loan are to be insured ("Loan Insurance") by the Ambac Assurance Corporation ("AMBAC") under the an agreement between AMBAC and Mortgagee;

**WHEREAS**, contemporaneously with the execution and delivery of this Mortgage, Mortgagor and Trustee have executed and delivered to Mortgagee its Mortgage Note (together with any renewals, modifications, extensions, amendments and replacements, the "Note") of even date herewith, as evidence of its indebtedness to Mortgagee in the principal sum of Forty-One Million, Five Hundred Thousand and No/100 Dollars (\$41,500,000.00), with interest at the rates and payable at the times and in the manner as specified in the Note; and

**WHEREAS**, the Loan is evidenced, secured and governed by, among other things: (a) the Commitment, (b) the Note of even date herewith executed by Mortgagor and Trustee, (c) this Mortgage, (d) the Regulatory Agreement of even date herewith executed by Mortgagor, Trustee and Mortgagee (the "Regulatory Agreement"), and (e) the Environmental Indemnity executed by Mortgagor and the General Partners, and as indemnitor, and delivered to Mortgagee, as indemnitee (the "Environmental Indemnity"). This Mortgage, the Commitment, the Note, the Regulatory Agreement, the Environmental Indemnity, and all other documents executed by Mortgagor or General Partners that evidence, govern or secure the Loan are sometimes collectively referred to in this Mortgage as the "Loan Documents;" the Loan Documents are incorporated in this Mortgage by this reference.

**NOW, THEREFORE**, to secure the payment of (i) the Loan, interest on it and other sums in strict accordance with the terms, provisions and limitations of this Mortgage and the Note, and Mortgagor's performance of the agreements contained on this Mortgage and the other Loan Documents; (ii) any other indebtedness of Mortgagor to Mortgagee now or hereafter owing, howsoever incurred, evidenced or otherwise secured, (iii) any future advances of any indebtedness evidenced or to be evidenced by the Note and (iv) any renewals and extensions of any of the

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indebtedness secured by this Mortgage (collectively sometimes referred to in this Mortgage as the "Secured Indebtedness"), **Mortgagor MORTGAGES AND WARRANTS to Mortgagee**, its successors and assigns, the Development.

**TOGETHER WITH** (i) all improvements, easements, rights of way, gores of land, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances whatsoever, in any way belonging, relating or appertaining to the Development, or that hereafter shall in any way belong, relate or appertain to it, whether now owned or hereafter acquired by Mortgagor, and the reversion and reversions, remainder and remainders, rents, issues and profits of, and all the estate, rights, title, interest, property, possession, claim and demand whatsoever, at law as well as in equity, of Mortgagor of, in and to them;

(ii) all rents from the Development, to be applied against Secured Indebtedness;

(iii) all rights, title and interest of Mortgagor in and to any and all leases of units and other space, if any, in the Development (the "Leases") and all security for, all monies payable under, and guaranties of, the Leases;

(iv) any monies on deposit with Mortgagee as Tax and Insurance Deposits (as defined in **Paragraph 5.F** hereof) and all proceeds paid for damage done to the collateral described under this Mortgage or to the Development;

(v) all right, title and interest of Mortgagor in any Replacement Reserve Account, Rehabilitation Reserve, Debt Service Reserve Account, Operating Reserve, Tax and Insurance Reserve Account, Residual Receipts, Residual Receipts Account or Development Funds (all as defined in the Regulatory Agreement);

(vi) all fixtures and articles of personal property now or hereafter owned by Mortgagor and used in connection with the Development wherever located, or building materials and supplies delivered to and stored upon the Real Estate for which, while not owned by Mortgagor, Mortgagor is indebted, and forming a part of or used, or intended to be used, in connection with the Development or its operation, including, but not limited to, any and all air conditioners, antennae, appliances, apparatus, awnings, basins, bathtubs, bidets, boilers, bookcases, cabinets, carpets, coolers, curtains, dehumidifiers, disposal, doors, drapes, dryers, ducts, dynamos, elevators, engines, equipment, escalators, fans, fittings, floor coverings, furnaces, furnishings, furniture, hardware, heaters, humidifiers, iceboxes,

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incinerators, light fixtures, lighting, machinery, motors, ovens, pipes, plumbing, pumps, radiators, ranges, recreational facilities, refrigerators, screens, security systems, shades, shelving, sinks, sprinklers, stokers, stoves, toilets, ventilators, wall coverings, washers, windows, window coverings, wiring, and all renewals or replacements of or articles in substitution for them, whether or not they are or shall be attached to the Real Estate or the Development in any manner. All of such property owned or used by Mortgagor in connection with the Development and placed on the Development shall, so far as permitted by law, be deemed to be fixtures, a part of the realty and security for the Secured Indebtedness; to the extent that any of such articles constitute goods (as said term is used in the Illinois Uniform Commercial Code (the "Code")), this instrument shall constitute a security agreement, creating a security interest in such goods, as collateral, in Mortgagee as a secured party from Mortgagor as Debtor, all in accordance with the Code as more particularly set forth in this Mortgage; and

(vii) all proceeds of the items set forth in **subparagraphs (i-vi)** immediately above subject to the provisions set forth in this Mortgage, including, without limitation, all judgments, awards of damages and settlements hereafter made resulting from condemnation proceedings or the taking of the Development, or any portion of it, under the power of eminent domain, any proceeds of any policies of insurance maintained with respect to the Development or proceeds of any sale, option or contract to sell the Development or any portion of it. Mortgagor authorizes, directs and empowers Mortgagee, provided a Default exists and at Mortgagee's option, on behalf of Mortgagor or the successors or assigns of Mortgagor, to adjust, compromise, claim, collect and receive such proceeds, to give proper receipts and acquittances for them, and, after deducting all costs and expenses of collection, to apply the net proceeds as a credit upon any portion, as selected by Mortgagee, of the Secured Indebtedness, notwithstanding the fact that it may not then be due and payable or is otherwise adequately secured.

**TO HAVE AND TO HOLD** the Development, with the aforementioned buildings, improvements, fixtures, appurtenances, apparatus, equipment and personal property, and with all the rights and privileges in connection with them, to Mortgagee, its successors and assigns forever, for the uses set forth in this Mortgage, free from all rights and benefits under the homestead exemption and valuation laws of any state, which rights and benefits Mortgagor releases and waives to the extent not prohibited by applicable law.

**PROVIDED, NEVERTHELESS**, that if Mortgagor pays in full when due the Secured Indebtedness and duly, completely and timely

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performs and observes all of the terms, provisions and agreements in this Mortgage and the Note to be performed and observed by the Mortgagor, then this Mortgage and the estate, right and interest of Mortgagee in the Development shall cease and become void and of no effect.

## MORTGAGOR FURTHER AGREES AS FOLLOWS:

1. Incorporation of Recitals. The foregoing recitals are incorporated in and made a part of this Mortgage.

2. Indebtedness, Covenants and Future Advances.

A. Payment of Indebtedness and Performance of Covenants. Mortgagor shall (a) pay when due the Secured Indebtedness and (b) duly, completely and punctually perform and observe all of the terms, provisions, conditions, and agreements on Mortgagor's part to be performed or observed as provided in the Note, this Mortgage and all of the other Loan Documents.

B. Obligatory Advances. It is specifically understood and agreed that all funds furnished by Mortgagee and used in performance of the obligations of Mortgagor under this Mortgage shall be deemed advanced by Mortgagee under an obligation to do so regardless of (i) the identity of the persons or entities to whom such funds are furnished and (ii) whether certain conditions must be satisfied before Mortgagee is actually obligated to do so. Funds advanced by Mortgagee in the exercise of its judgment that they are needed to complete the Development or to protect Mortgagee's security are to be deemed obligatory advances under this Mortgage and are to be added to the total indebtedness evidenced by the Note and secured by the Mortgage.

3. Additional Agreements of Mortgagor.

A. Purpose of Loan; Single Asset Mortgagor. Mortgagor understands and agrees that Mortgagee is making the Loan to Mortgagor for the purpose of rehabilitating and permanently financing the Development. The Development is to be used to provide at least seventy-four (74) income restricted units (as set forth in Paragraph 5(c) of the Regulatory Agreement) in accordance with Mortgagee's statutory purpose, as set forth in the Act, and the Development shall continue to be used for such purposes for the term of the Loan. Mortgagor shall not permit non-residential use of the Development greater or different than that approved by Mortgagee as of the date of this Mortgage or hereafter approved in writing by Mortgagee. Mortgagor further agrees that it shall be a single asset mortgagor; the only interest in real estate to which the

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Mortgagor shall hold legal title shall be the Development, and Mortgagor shall not be the fee owner of any other real estate, and shall not hold the beneficial interest in any land trust, except that the Beneficiary currently holds and may continue to hold a limited partnership interest in Asbury Plaza Venture, a borrower under another IHDA loan known as Asbury Plaza, ML-135, which interest shall not be subject to the terms of the Loan Documents.

## **B. Maintenance, Repair and Management of Development.**

Mortgagor shall (a) promptly repair, restore, replace or rebuild any portion of the Development that may become damaged or be destroyed; (b) keep the Development and all portions of it in good condition and repair (ordinary wear and tear excepted), free from waste; (c) cause to be paid all operating costs of the Development; (d) comply in all material respects with all federal, state and local laws affecting the Development; (e) refrain from any action and promptly correct any condition that could reasonably be expected to increase the risk of fire or other hazard to the Development or any portion of it; (f) comply with all restrictions and covenants of record with respect to the Development and its use, 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 nonconforming uses), privileges, franchises and concessions that are applicable to the Development or its use and occupancy; (g) cause the Development to be managed in a competent and professional manner by a management agent approved by Mortgagee; and (h) pay, when due, as provided in this Mortgage, any indebtedness that may be secured by a lien or charge on the Development and exhibit to the Mortgagee satisfactory evidence of full payment of it within five (5) business days after such payment. Without the prior written consent of Mortgagee, Mortgagor shall not cause, suffer or permit any (A) alterations of the Development, except as required or permitted to be made by and pursuant to the terms of the Loan Documents; (B) change in the intended use or occupancy of the Development, including, without limitation, any change that could reasonably be expected to increase any risk of fire or other hazard; (C) unlawful use of, or nuisance to exist upon, the Development; (D) grant of any easements, licenses, covenants, restrictions, conditions or declarations of use against the Development, other than as a multifamily housing development containing seventy-four (74) income restricted units; or (E) action or omission that will result in the waste or diminution in value of the Development, or any portion of it, or that will impair Mortgagee's security under this Mortgage. Mortgagor shall not seek or cause any zoning reclassification with respect to the Development without Mortgagee's prior written consent, which consent may be withheld for any reason in Mortgagee's sole

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discretion.

C. **Act and Regulations.** Mortgagor agrees that at all times its acts regarding the Development shall be in conformance with the Act, the rules promulgated under the Act (the "Rules") and the regulations, policies and procedures of Mortgagee, and any applicable amendments to them.

D. **Representations, Warranties, and Agreements.** Mortgagor agrees, warrants and represents to Mortgagee as follows:

(i) Beneficiary now has and hereafter shall maintain the standing, capacity, right, power and lawful authority to own the beneficial interest in the Trust which holds the fee interest in the Development, to carry on the business of and operate the Development, to enter into, execute and deliver the Loan Documents to Mortgagee, to encumber the Development to Mortgagee as provided in this Mortgage and in the Loan Documents and to perform all of Mortgagor's obligations and consummate all of the transactions described in or contemplated by the Loan Documents.

(ii) The execution and delivery of, and performance by Mortgagor under, this Mortgage and the other Loan Documents does not and will not constitute a violation of any federal, state or local laws and does not and will not conflict with or result in a default, breach or acceleration of any obligation arising, existing or created by or under any agreement, instrument, document, mortgage, deed, trust deed, note, judgment, order, award, decree or other restriction to which Mortgagor, or any part of the Development, is a party, or by which Mortgagor or any of the Development is bound, or any law or regulatory provision affecting Mortgagor or any part of the Development.

(iii) The various data and information relating to the Development and its operation and business, including, without limitation, the financial statements, books and records and operating statements, previously and from time to time hereafter delivered by or for Mortgagor to Mortgagee pursuant to the Regulatory Agreement or otherwise, are and shall be correct, complete and accurate in all material respects as of the date identified therein.

(iv) Mortgagor has timely filed, and at all times hereafter shall continue to timely file, all federal, state and other governmental tax and similar returns that they are required by any and all laws to file with respect to Mortgagor and the Development and its operation and

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business; all taxes and other sums that are shown to be due and payable under such returns as of the date of this Mortgage have been fully paid, and, for such future returns, shall be fully paid when due and payable.

(v) There are no suits, actions or proceedings at law or in equity or before any governmental instrumentality or agency now pending or, to the best of Mortgagor's knowledge after due and diligent inquiry, threatened against Mortgagor or the Development.

(vi) Mortgagor now possesses and holds, and at all times hereafter shall maintain, adequate properties, interests in properties, leases, licenses, franchises, rights and governmental and other permits, certificates, consents and approvals to conduct and operate the business of the Development as presently conducted on or as represented to Mortgagee by Mortgagor in the Commitment.

(vii) No default or breach has occurred and at all times hereafter no default or breach will occur under any agreement, instrument or document for borrowed money by which either Mortgagor or the Development are or will be bound or obligated, that has not or will not be cured within the time specified for its cure.

(viii) Intentionally omitted.

(ix) The location, existence and use of all of the Development is, and shall remain in, compliance with all applicable federal, state and local laws, and the Development is, and shall be, in compliance with all other laws, rules, ordinances and regulations, including, but not limited to, building, zoning, health, safety, OSHA, fire and environmental laws and all covenants and restrictions of record affecting the Development in all material respects; in addition, the Development is not in a flood risk or flood plain area or in a federally designated flood hazard area other than an area designated as Zone C, an area of minimal flooding.

(x) Except as disclosed by Mortgagor to Mortgagee in writing prior to the date of this Mortgage, the Leases are, and at all times hereafter shall remain, genuine and in all respects what they purport to be, free of set-offs by tenants or defaults by the landlord, and all of the Leases are valid and enforceable in accordance with their terms. Except as previously disclosed to and approved in writing by Mortgagee, no payments under the Leases have been made or are permitted to be made more than thirty (30) days in



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advance. The landlord and, to the best knowledge of Mortgagor after due and diligent inquiry, all of the tenants have the capacity to contract under the Leases. The Leases described on the rent roll heretofore delivered by Mortgagor to Mortgagee and certified by Mortgagor as of the date of this Mortgage (the "Rent Roll") are the only agreements permitting the occupancy of any portion of the Development.

(xi) Except as expressly set forth in the Rent Roll: (A) there are no rights of renewal, extension, cancellation, termination or modification, options to lease or purchase, rights of refusal to lease or purchase or rental concessions in effect under any of the Leases or with regard to the Development; (B) the landlord under the Leases is not required to perform any leasehold improvements that have not been completed and paid for in full and the landlord under the Leases is not obligated to make any contributions to the tenants under the Leases for leasehold improvements, renovations or alterations that have not been paid in full; and (C) no tenant under any Lease is entitled to any abatement or set-off against the rent payable under such Lease.

(xii) The Loan, the interest payable under the Note and interest rate on the Note, together with any and all fees, charges and other payments under this Mortgage, the Note and all other of the Loan Documents, are not in violation of any applicable statutes, case law, rules, regulations, ordinances or other governmental requirements, including, without limitation, applicable usury laws.

(xiii) The Development shall be managed and operated at all times by Mortgagor or a management company approved in writing by Mortgagee. Mortgagor shall have no right to terminate any contract with any management company without first obtaining the prior written approval of Mortgagee, except as provided in the management agreement approved by Mortgagee.

(xiv) Mortgagor shall (A) pay the mortgage insurance premiums for the Development to Mortgagee for deposit into the Loan Insurance Reserve (as defined in the Commitment) in a timely manner, as provided in the Note and the Regulatory Agreement, and (B) deliver to Mortgagee such certifications and information as may be required under the Regulations.

(xv) Mortgagor shall indemnify and hold Mortgagee harmless, to the full extent allowed by law, from and against any and all damages, losses, costs and expenses, including, but not limited to, reasonable attorneys' fees,

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costs and expenses, incurred by reason of or arising from or on account of or in connection with (A) any claims for brokerage commissions or finders fees arising out of Mortgagor's conduct or alleged conduct or (B) any suit or proceeding, threatened, filed or pending, in or to which Mortgagee is or may become or may have to become a party by reason of or arising out of or on account of or in connection with the Secured Indebtedness, the Development or any of the Loan Documents; however, Mortgagor shall not be required to either indemnify or hold Mortgagee harmless for any damages, losses, costs or expenses of Mortgagee resulting from the gross negligence or willful misconduct of Mortgagee. Upon demand by Mortgagee, Mortgagor shall also defend Mortgagee in a matter set forth above with counsel either selected by Mortgagee or proposed by Mortgagor and approved in writing by Mortgagee.

(xvi) Any and all improvements, fixtures, equipment and facilities comprising the Development are, and at all times hereafter Mortgagor shall maintain them, in good operating condition and repair, except that Mortgagee acknowledges that Mortgagor will perform the Rehabilitation (as defined in the Regulatory Agreement).

(xvii) Mortgagor will provide or cause to be provided such information concerning the Development, the financial condition of the Development and Mortgagor as Mortgagee may reasonably request from time to time.

(xviii) Without limiting the effect of any of the foregoing, the covenants, representations, and warranties set forth in this Mortgage shall be continuing and shall remain true and correct until the lien of this Mortgage is released.

#### 4. Liens.

A. Prohibition. Subject to the provisions of Paragraph 9 hereof and Mortgagor's right to contest liens as contemplated herein, Mortgagor shall not, without the prior written consent of the Mortgagee, create or suffer or permit any encumbrances on the Development, excepting only (a) liens securing the Secured Indebtedness, (b) the lien of real estate taxes and assessments not due and payable and (c) the Permitted Exceptions.

B. Contest of Mechanics Lien Claims. Notwithstanding the foregoing prohibition against liens, Mortgagor, or any party obligated to Mortgagor to do so, may in good faith and with reasonable diligence contest the validity or amount of any

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mechanics lien and defer its payment and discharge of any such mechanics lien during the pendency of such contest, so long as: (i) such contest has the effect of preventing the sale or forfeiture of the Development or any part of or interest in it, to satisfy such mechanics lien; (ii) within ten (10) days after Mortgagor has notice of the filing of such mechanics lien, Mortgagor has notified Mortgagee in writing of Mortgagor's intention to contest, or to cause another party to contest, it; and (iii) Mortgagor has obtained a title insurance endorsement over such mechanics lien insuring Mortgagee against loss or damage in connection with it.

## 5. Taxes, Liens, Insurance-Coverage, Premiums and Deposits.

**A. Payment.** Mortgagor shall (i) pay or cause to be paid when due, and before any penalty attaches, all general and special taxes, assessments, water charges, sewer charges, and other fees, taxes, charges and assessments of every kind and nature whatsoever levied or assessed against the Development or any part of or any interest in it, or any obligation or instrument secured by this Mortgage; and all installments of such fees, charges, taxes and assessments (collectively, "Taxes"), whether or not assessed against Mortgagor. Subject to Mortgagee's payment of Taxes from the Tax and Insurance Reserve, Mortgagor shall furnish to Mortgagee paid receipts evidencing payment in full of such Taxes without demand or further request on or before the date they are due; and (ii) discharge any claim or lien relating to such Taxes upon the Development. Nothing in this section shall require Mortgagor to pay any income, franchise, or excise tax imposed upon the Mortgagee, excepting any such tax which may be levied against such income expressly as and for a specific substitute, in whole or in part, for Taxes, and then only in an amount computed as if the Mortgagee derived no income from any source other than its interest under this Mortgage.

**B. Contest.** Mortgagor may, in good faith and with reasonable diligence, contest or cause to be contested the validity or amount of any Taxes, provided that:

(i) Such contest shall have the effect of preventing the collection of the Taxes so contested and the sale or forfeiture of the Development, or any part of or interest in it, to satisfy such taxes;

(ii) Mortgagor has notified Mortgagee in writing of its intention to contest such Taxes, or to cause them to be contested, before any Tax has been increased by any interest, penalties or costs; and

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(iii) Mortgagor has deposited, or caused to be deposited, with either (a) the title insurance company that has issued the Title Policy (the "Title Company"), or (b) Mortgagee, at such place as Mortgagee may from time to time in writing designate, a sum of money, bond, letter of credit or other security that, when added to the monies or other security, if any, deposited with the Title Company or Mortgagee, is sufficient, in Mortgagee's judgment, to pay in full such contested Taxes and all penalties and interest that might become due on them; Mortgagor shall keep on deposit an amount sufficient, in Mortgagee's reasonable judgment, to pay in full such contested Taxes, increasing such amount to cover additional penalties and interest whenever, in Mortgagee's reasonable judgment, such increase is advisable.

If Mortgagor fails to prosecute such contest with reasonable diligence or fails to maintain sufficient funds on deposit as provided in this **Paragraph 5.B**, Mortgagee may, at its option and without prior notice to Mortgagor, apply the monies so deposited and liquidate any securities deposited with Mortgagee or the Title Company in payment of, or on account of, such Taxes, or any portion of them then unpaid, including all penalties and interest. If the amount of the money and any such security so deposited is insufficient for the payment in full of such Taxes, together with all penalties and interest on them, Mortgagor shall immediately, upon demand by Mortgagee, either (i) deposit with Mortgagee a sum that, when added to other funds then on deposit for the same purpose, is sufficient to make such payment in full; or (ii) if Mortgagee has applied funds on deposit on account of such Taxes, restore such deposit to an amount satisfactory to Mortgagee. Provided that no Default (as defined in **Paragraph 11** hereof) occurs or then exists, Mortgagee shall, if so requested in writing by Mortgagor, after final disposition of such contest and upon Mortgagor's delivery to Mortgagee of an official bill for such Taxes, apply or cause to be applied the money so deposited in full payment of such Taxes or that part of them then unpaid, together with all penalties and interest. If any of the funds deposited with Mortgagee or the Title Company remain after full and complete resolution of such contest and the payment of such Taxes, penalties and interest, and any costs of Mortgagee or the Title Company incurred in connection with such Taxes, such remaining funds shall be returned to Mortgagor if no Default occurs or then exists.

**C. Change in Tax Laws.** If, by the laws of the United States of America, or of any state or municipality having jurisdiction over Mortgagee, Mortgagor or the Development, any tax is imposed or becomes due in respect of the issuance of the

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Note or the recording of this Mortgage or any of the other Loan Documents, Mortgagor shall pay such tax in the manner required by such law. If any law, statute, rule, regulation, order or court decree has the effect of (i) imposing upon Mortgagee the payment of the whole or any part of the taxes required to be paid by the Mortgagor or (ii) changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or the interest of Mortgagee in the Development, or the manner of collection of taxes, so as to affect this Mortgage, the Secured Indebtedness, Mortgagee or any of the other Loan Documents; then, and in any such event, Mortgagor, upon demand by Mortgagee, shall either pay such taxes or reimburse Mortgagee for them on demand.

However, if Mortgagee determines, in Mortgagee's reasonable judgment, that such payment or reimbursement by Mortgagor is unlawful, the Secured Indebtedness shall be due and payable within thirty (30) days after written demand by Mortgagee to Mortgagor.

**D. Insurance Coverage.** Mortgagor shall insure the Development against such perils and hazards, and in such amounts and with such limits, as Mortgagee may from time to time require, including, without limitation, comprehensive public liability, hazard, builder's risk, rent loss, business interruption, steam boiler, machinery and flood insurance (if applicable); Mortgagor shall continuously maintain such insurance policies, to the extent such insurance policies are, in Mortgagee's judgment, reasonably applicable to the character of the Development. Mortgagee may, at any time upon written notice to Mortgagor, require that Mortgagor procure substitutes for any and all of such insurance policies, such other or additional insurance policies, in such amounts, and carried in such companies, as are reasonably acceptable to Mortgagee. If Mortgagor fails to procure such acceptable substitutes within five (5) business days after Mortgagee's written demand, Mortgagee may procure substitutes itself, and all fees, costs and expenses incurred by Mortgagee in connection such procurement shall be paid, upon demand, by Mortgagor, together with interest on such payments at the Default Rate (as defined in the Note).

**E. Insurance Policies.** All insurance policies shall conform to the standards set forth in this Mortgage and shall be in such form and amounts, and written by such insurance companies, as are satisfactory to Mortgagee. All insurance policies insuring against casualty, rent loss and business interruption and other appropriate policies shall include non-contributing mortgage endorsements in favor of and with loss payable to Mortgagee, as its interest may appear as the holder of this Mortgage, as well as standard waiver of subrogation endorsements. All of such insurance policies shall provide that the coverage shall not be terminated or materially modified

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without thirty (30) days' advance written notice to Mortgagee and shall provide that all claims shall be paid to Mortgagee. Mortgagor shall deliver all insurance policies (or certified copies of them), premiums prepaid for a minimum term of one (1) year from their date, to Mortgagee and, in case of insurance policies about to expire, Mortgagor shall deliver renewal or replacement policies not less than thirty (30) days prior to their date of expiration, exclusive of any grace period provided in the policy or by law. The requirements of the preceding sentence shall apply to any separate policies of insurance taken out by Mortgagor concurrent in form, or contributing in the event of loss, with the previously mentioned insurance policies.

**F. Deposits for Taxes and Insurance Premiums.** To assure the payment of Taxes and premiums for insurance policies as and when they become due and payable:

(i) On or before the Initial Closing Date, Borrower shall deposit with Mortgagee the sum of Four Hundred Ninety-Eight Thousand, Nine Hundred Ninety and No/100 Dollars (\$498,990.00) for payment of real estate taxes on the Development for the year 2003 (payable in 2004), and for payment of insurance policies for the year 2004, which Mortgagee shall deposit in the tax and insurance reserve account for the Development. Beginning on the first (1<sup>st</sup>) day of the second (2<sup>nd</sup>) full calendar month after the Initial Closing Date (as defined in the Commitment), Mortgagor shall deposit with Mortgagee, as the tax and insurance deposit (the "Tax and Insurance Deposit"), on the first business day of each and every month for each calendar year, monthly payments in an amount sufficient such that (x) as of the first (1<sup>st</sup>) day of the month before each installment of real estate taxes is due, there shall be on deposit in the Tax and Insurance Reserve Account for real estate taxes an amount equal to one half (1/2) of one hundred five percent (105%) of the real estate tax bill for the Development for the previous calendar year, or such other amount as Mortgagee shall determine, in its reasonable discretion; and (y) as of the first (1<sup>st</sup>) day of the month before the insurance bill is due, there shall be on deposit in the Tax and Insurance Reserve Account for insurance an amount equal to one hundred five percent (105%) of the insurance bill for the Development for the previous calendar year, or such other amount as Mortgagee shall determine, in its reasonable discretion. Mortgagor shall promptly, upon the demand of Mortgagee, make additional Tax and Insurance Deposits as Mortgagee may from time to time require due to (a) failure of Mortgagee to require, or failure of Mortgagor to make, Tax and Insurance Deposits in previous months, (b) underestimation of the amounts of Taxes, insurance premiums

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or both of them, (c) the particular due dates and amounts of Taxes, insurance premiums or both of them, or (d) application of the Tax and Insurance Deposits pursuant to this Mortgage.

(ii) Mortgagee, upon the presentation to Mortgagee of (a) the bills for the Taxes, will pay them out of the Tax and Insurance Reserve Account, provided that the Tax and Insurance Deposits are sufficient to pay such amounts, and (b) the receipted bills for the insurance premiums, will reimburse Mortgagor for such payments made by Mortgagor. If the amount of the Tax and Insurance Deposits on hand is not sufficient to pay or reimburse all of the Taxes when they become due, then Mortgagor shall pay to Mortgagee, on demand, the amount necessary to make up the deficiency.

(iii) Upon the occurrence of a Default, Mortgagee may, at its option, without being required so to do, apply any funds in the Tax and Insurance Reserve Account on hand to any of the Secured Indebtedness, in such order and manner as Mortgagee may elect. All funds in the Tax and Insurance Reserve Account are pledged as additional security for the Secured Indebtedness (and for such purpose, Mortgagor grants to Mortgagee a security interest in them), and shall be held by Mortgagee, and shall not be subject to the direction or control of Mortgagor.

(iv) Notwithstanding anything contained in this Mortgage to the contrary, Mortgagee, or its successors and assigns, shall not be liable for any failure to apply the Tax and Insurance Deposits unless Mortgagor, while no Default exists, has requested Mortgagee in writing to apply such Tax and Insurance Deposits on hand to the payment of the Taxes, accompanied by the bills for such Taxes.

(v) The provisions of this Mortgage are solely for the benefit of Mortgagee and its successors and assigns. No provision of this Mortgage shall be construed as creating in any party other than Mortgagor, Mortgagee, its successors and assigns, and such holders any rights in and to funds in the Tax and Insurance Reserve Account or any rights to have funds in the Tax and Insurance Reserve Account applied to payment of the Taxes and insurance premiums. Mortgagee shall have no obligation or duty to any third party to collect Tax and Insurance Deposits.

**G. Application of Proceeds of Insurance.** In the case of loss or damage by fire or other casualty, Mortgagor is authorized to settle and adjust any claim under insurance policies that insure against such risks, subject to the approval

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of Mortgagee. If at the time of loss or damage there exists a Default, or a default that, with the passage of any applicable cure or grace period, would become a Default, Mortgagee is authorized to settle and adjust any claim under insurance policies that insure against such risks. Mortgagee is authorized to collect and issue a receipt for any such insurance money. Such insurance proceeds shall be held by Mortgagee and shall be used to pay directly or reimburse Mortgagor for the cost of the rebuilding of buildings or improvements on the Development. Whether or not such insurance proceeds are adequate for such purpose, the Development shall be restored, repaired or rebuilt by Mortgagor so as to be of at least equal value and substantially the same character as prior to such damage or destruction. If the estimated or actual cost of completion exceeds the amount of the insurance proceeds available, Mortgagor shall, within ten (10) days following written demand of Mortgagee, deposit with Mortgagee in cash the amount of such estimated excess cost. If the cost of rebuilding, repairing or restoring the Development can reasonably be expected to exceed the sum of Fifty Thousand and No/100 Dollars (\$50,000.00), then Mortgagor shall obtain the written consent of Mortgagee to the plans and specifications of such work before such work is begun.

In any case where the insurance proceeds are made available for repairing and rebuilding, such proceeds shall be disbursed in the manner and under the conditions that Mortgagee may require, provided Mortgagee is furnished with (i) satisfactory evidence of the estimated cost of completion of such work and (ii) architect's certificates, waivers of lien, contractor's and subcontractors' sworn statements and other evidence of cost and payments so that Mortgagee can verify that the amounts disbursed in connection with such work are free and clear of mechanics' lien or other lien claims, other than those contested in accordance with this Mortgage. No payment made prior to the final completion of the work performed shall exceed ninety percent (90%) of the value of the work performed from time to time, and at all times, the undisbursed balance of such proceeds remaining in the hands of Mortgagee shall be at least sufficient to pay for the cost of completion of the work, free and clear of any liens. Any surplus that may remain out of the insurance proceeds after payment of costs of rebuilding, repairing or restoring the Development shall, at the option of Mortgagee, be applied toward the Secured Indebtedness or be paid to any party entitled to it, without interest. Any additional monies advanced by Mortgagee to Mortgagor for the repairing, rebuilding or restoring of the Development shall be added to the Secured Indebtedness and shall be secured by this Mortgage.

## 6. Condemnation and Eminent Domain.

Mortgagor shall give Mortgagee immediate notice of the



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actual or threatened commencement of any condemnation or eminent domain proceedings ("Proceedings") affecting all or any part of the Development and shall deliver to Mortgagee copies of any and all papers served in connection with any such Proceedings. Mortgagor further agrees to make, execute and deliver to Mortgagee, at any time upon request, free, clear and discharged of any encumbrance of any kind whatsoever, any and all further assignments and other instruments deemed necessary by Mortgagee for the purpose of validly and sufficiently assigning all awards (individually, "Award") and other compensation previously and hereafter made to Mortgagor for any taking, either permanent or temporary, under any such Proceeding. If any portion of or interest in the Development is taken by condemnation or eminent domain, either temporarily or permanently, and the remaining portion of the Development is not, in the judgment of Mortgagee, a complete economic unit having substantially equivalent value to the Development as it existed prior to the taking, then, at the option of Mortgagee, the entire Secured Indebtedness shall immediately become due and payable. If, in Mortgagee's judgment, any temporary or partial taking of the Development, or any interest in it, leaves the Development as a complete economic unit having substantially equivalent value to the Development as it existed prior to the taking, then the Award shall be applied in the same order and manner as insurance proceeds.

## 7. Prepayment.

The Loan may not be prepaid in full or in part.

## 8. Mortgagee's Performance of Mortgagor's Obligations.

If a Default occurs and continues to exist, Mortgagee, either before or after acceleration of the Secured Indebtedness or the foreclosure of the lien of this Mortgage, and during the period of redemption, if any, may, but shall not be required to, make any payment or perform any act required of Mortgagor under this Mortgage in any form and manner deemed reasonably expedient to Mortgagee. Mortgagee may, but shall not be required to, rent, operate, and manage the Development and pay operating costs and expenses, including management fees, of every kind and nature in connection with the Development, so that the Development is operational and usable for its intended purposes. All such monies paid by Mortgagee, and all expenses paid or incurred by Mortgagee, including reasonable attorneys' fees to the extent permitted by applicable law, and other monies advanced by Mortgagee to protect the Development and the lien of this Mortgage, or to complete construction, furnishing and equipping of, to rent, operate or manage the Development, to pay any such operating costs and expenses or to keep the Development

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operational and usable for its intended purposes, shall be so much additional Secured Indebtedness, whether or not the Secured Indebtedness, as a result of such payments, exceeds the face amount of the Note. All such payments shall become immediately due and payable on demand, and shall bear interest at the Default Rate. Inaction of Mortgagee shall never be considered as a waiver of any right accruing to it on account of any Default, nor shall the provisions of this **Paragraph 8** or any exercise by Mortgagee of its rights under this **Paragraph 8** prevent any default from constituting a Default. Mortgagee, in making any payment authorized by this **Paragraph 8** (a) relating to Taxes, may do so according to any bill, statement or estimate, without inquiry into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim; (b) for the purchase, discharge, compromise or settlement of any lien, may do so without inquiry as to the validity or amount of any claim for lien which may be asserted; or (c) in connection with the completion of construction, furnishing or equipping of the Development or the rental, operation, management or payment of operating costs and expenses of the Development, may do so in such amounts and to such persons as Mortgagee may deem appropriate, subject to the terms and conditions of the Regulatory Agreement. Nothing contained in this Mortgage shall be construed to require Mortgagee to advance or expend monies for any purpose mentioned in this **Paragraph 8**.

## 9. Security Agreement.

Mortgagor and Mortgagee agree that this Mortgage shall constitute a security agreement within the meaning of the Code with respect to (i) any and all sums at any time on deposit for the benefit of, or held by, Mortgagee (whether deposited by or on behalf of Mortgagor or anyone else) pursuant to any of the provisions of this Mortgage and (ii) any personal property included in the granting clauses of this Mortgage that may not be deemed to be affixed to the Development or that may not constitute a "fixture" within the meaning of Section 9-102(a)(41) of the Code, and all replacements, additions to and proceeds of such property (all of such property, the replacements, substitutions and additions to it and the proceeds of it are sometimes collectively referred to in this Mortgage as the "Collateral"). Mortgagor grants a security interest in and to the Collateral to Mortgagee, and assigns all of its rights, title and interest in it to Mortgagee to secure payment of the Secured Indebtedness. To the extent permitted by applicable law and in accordance with the provisions set forth below, the security interests created by this **Paragraph 9** are specifically intended to cover and include all of the Leases and the rents due under them, including, without limitation, all extensions, amendments, renewals or replacement of them, together with all of the rights,

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title and interest of Mortgagor, as lessor under the Leases. Such rights, title and interest shall include, without limitation, the present and continuing right to (i) make claim for, (ii) bring actions and proceedings for the enforcement of, and (iii) collect, receive and receipt for any and all of, the rents, income, revenues, issues, profits, monies payable as damages, monies payable in place of the rent, monies payable as the purchase price of the Development or any part of any of the foregoing, and all awards and other claims for money and other sums of money payable or receivable under any of the Leases or with respect to the Development and (iv) the right to do any and all things that Mortgagor or any lessor is or may become entitled to do under the Leases. All of the terms, provisions, conditions and agreements contained in this Mortgage pertain and apply to the Collateral as fully and to the same extent as to any other property comprising the Development; the following provisions of this **Paragraph 9** shall be in addition to, and shall not limit the applicability of any other provision of, this Mortgage:

(a) The terms and provisions contained in this **Paragraph 9** shall, unless the context otherwise requires, have the meanings and be construed as provided in the Code;

(b) Mortgagor (the "Debtor", as that term is used in the Code) is and will be the true and lawful owner of the Collateral, subject to no liens, charges or encumbrances other than the lien of this Mortgage, the Permitted Exceptions or any liens being contested in accordance with the terms of this Mortgage;

(c) The Collateral is to be used by Mortgagor solely for business purposes;

(d) The Collateral will be kept at the Development, and, except for obsolete Collateral, will not be removed from the Development without the consent of Mortgagee (the "Secured Party," as that term is used in the Code). The Collateral may be affixed to the Real Estate but shall not be affixed to any other real estate;

(e) The only person or entity presently having any security interest in the Development and the Collateral is Mortgagee;

(f) No financing statement (other than financing statements (i) showing Mortgagee as the secured party, or (ii) with respect to liens or encumbrances, if any, resulting from the Permitted Exceptions covering any of the Collateral or any proceeds of it) is on file in any public office except pursuant to this Mortgage. Mortgagor shall, at its own cost and expense,

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(i) upon demand, furnish to Mortgagee such further information, (ii) execute and deliver to Mortgagee such financing statements and other documents, in form satisfactory to Mortgagee and (iii) do all such acts and things, all as Mortgagee may at any time and from time to time request, or as may be necessary or appropriate, in the discretion of Mortgagee, to establish and maintain a perfected security interest in the Collateral as security for the Secured Indebtedness, subject to no other liens or encumbrances except the Permitted Exceptions or any liens being contested in accordance with the terms of this Mortgage. Mortgagor shall pay the cost of filing or recording such financing statements or other documents and this Mortgage in all public offices wherever filing or recording is deemed by Mortgagee to be necessary or desirable;

(g) Upon the occurrence and during the continued existence of a Default, Mortgagee shall have the remedies of a secured party under the Code, including, without limitation, the right to take immediate and exclusive possession of the Collateral or any part of it, and for that purpose may, so far as Mortgagor can give authority for such actions, with or without judicial process, enter (if this can be done without breach of the peace) upon any place where the Collateral or any part of it may be situated and remove it (provided that if the Collateral is affixed to real estate, such removal shall be subject to the conditions stated in the Code); and Mortgagee shall be entitled to hold, maintain, preserve and prepare the Collateral for sale until disposed of, or may propose to retain the Collateral subject to Mortgagor's right of redemption in satisfaction of Mortgagor's obligations, as provided in the Code. Mortgagee may (i) render the Collateral unusable without removal, (ii) dispose of the Collateral on the Development or (iii) require Mortgagor to make it available to Mortgagee for its possession at a place to be designated by Mortgagee that is reasonably convenient to both parties. Mortgagee will give Mortgagor at least ten (10) days notice of the time and place of any public sale of the Collateral or of the time after which any private sale or any other intended disposition of it is made. The requirements of reasonable notice shall be met if such notice is mailed, by certified United States mail or its equivalent, postage prepaid, to the address of Mortgagor set forth in **Paragraph 34** hereof at least ten (10) days before the time of the sale or disposition. Mortgagee may buy the Collateral at any public sale and, if the Collateral is of a type customarily sold in a recognized market or is of a type that is the subject of widely distributed standard price quotations, may buy it at any private sale. Any such sale may be held as part of and in conjunction with any foreclosure sale of the Development; and the Development, including the Collateral, may be sold as one lot if Mortgagee so elects. The net proceeds realized upon any such disposition,

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after deduction for the expenses of retaking, holding, preparing for sale, selling or the like and the legal expenses and reasonable attorneys' fees incurred by Mortgagee, shall be applied against the Secured Indebtedness in such order or manner as Mortgagee may elect. Mortgagee will account to Mortgagor for any surplus realized on such disposition; and

(h) This Mortgage is intended to be a financing statement within the purview of the Code with respect to both the Collateral and the other property described in this Mortgage that are or may become fixtures relating to the Development. The addresses of Mortgagor (Debtor) and Mortgagee (Secured Party) are set forth in this Mortgage. This Mortgage is to be filed for record with the Recorder of Deeds of the county in which the Development is located. Trustee is the record owner of the Real Estate.

## 10. Restrictions on Transfer.

Mortgagor agrees that, in determining whether or not to make the Loan, Mortgagee evaluated the background and experience of Mortgagor in owning and operating property such as the Development, found them acceptable and relied and continues to rely upon them as the means of maintaining the value of the Development that is Mortgagee's primary security for the Note. Mortgagor is experienced in borrowing money and owning and operating property such as the Development, has been ably represented by a licensed attorney at law in the negotiation and documentation of the Loan and has bargained at arm's length and without duress of any kind for all of the terms and conditions of the Loan, including this provision. Mortgagor further recognizes that any further unpermitted financing placed upon the Development (i) could divert funds that would otherwise be used to pay the Secured Indebtedness, (ii) could result in acceleration and foreclosure of such further encumbrance, which would force Mortgagee to take measures and incur expenses to protect its security, (iii) would detract from the value of the Development should Mortgagee come into possession of it with the intention of selling it and (iv) would impair Mortgagee's right to accept a deed in lieu of foreclosure, because a foreclosure by Mortgagee would be necessary to clear the title to the Development.

In accordance with the foregoing and for the purposes of (A) protecting Mortgagee's security for the repayment of the Loan, the value of the Development, the payment of the Secured Indebtedness and the performance of Mortgagor's obligations under the Loan Documents; (B) giving Mortgagee the full benefit of its bargain and contract with Mortgagor; and (C) keeping the Development free of subordinate financing liens, other than the

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Permitted Exceptions, Mortgagor agrees that if this **Paragraph 10** is deemed a restraint on alienation, it is a reasonable one, and that Mortgagor shall not, without the prior written consent of Mortgagee, create, effect, consent to, suffer or permit any sale or other conveyance, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation, including, but not limited to, the entering into of any contract, sale, installment sale or sale under articles of agreement, the placement or granting of liens or the placement or granting of chattel mortgages, conditional sales contracts, financing or security agreements that would be, or could create, a lien, the placement or granting of a mortgage commonly known as a "wrap around" mortgage or an improvement loan, on any of the following properties, rights or interests without the prior written consent of Mortgagee ("Prohibited Transfer"):

1. the Development, or any part of or interest in it (including the sale, transfer or assignment of any leasehold or subleasehold interest in the Development other than leases to residential tenants in the ordinary course of business or permitted commercial leases), excepting only sales or other dispositions of personal property located on the Development that are permitted under the express terms of this Mortgage;

2. all or any part of the general partnership interest of any of the General Partners, except as provided hereinbelow; or

3. all or any part of the stock, control or other ownership interest of any General Partner, except as provided hereinbelow;

in each case whether any such conveyance, sale (installment or otherwise), assignment, transfer, lien, pledge, mortgage, security interest, encumbrance or alienation is effected directly, indirectly, voluntarily or involuntarily, by operation of law or otherwise. The term Prohibited Transfer shall not include (i) liens securing the Loan, (ii) the lien of current taxes and assessments not yet due and payable, (iii) liens being contested in accordance with the terms of this Mortgage and (iv) Leases made in the ordinary course of business, provided that such Leases have been made in conformity with the Regulatory Agreement and the form of lease has previously been approved by Mortgagee, (v) transfers of general partnership interests or interests in a General Partner pursuant to the death of a General Partner or owner of an interest in a General Partner, and (v) the sale of partnership interests in or of any limited partner of Mortgagor. If Mortgagee consents to a transfer that, without such consent, would be a Prohibited Transfer, as a condition to such

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consent, the transferee shall assume, in writing, each and every of the Loan Documents and each and every of the obligations under them that are to be performed and observed by Mortgagor. The foregoing assumption shall be accomplished with such documentation as may be reasonably required by Mortgagee and shall, if required by Mortgagee, be in recordable form. Any consent by Mortgagee or any waiver of any condition or Default under this **Paragraph 10** shall not constitute a consent to, or waiver of, any right, remedy or power of Mortgagee upon a subsequent Default. Mortgagor acknowledges that any agreements, liens or encumbrances created in violation of the provisions of this **Paragraph 10** shall, at the option of Mortgagee, be voidable and, if Mortgagee exercises the option to void such agreement, lien or encumbrance, it shall be of no further force or effect; to the extent the provisions of this **Paragraph 10** conflict with or are inconsistent with similar provisions of the Note or any of the Loan Documents, the provisions of this **Paragraph 10** shall govern and control.

## 11. Defaults.

An event of default (individually, a "Default") shall be deemed to have occurred and exist if one or more of the following events occurs, and is not cured within any applicable cure or grace period:

**A.** Mortgagor fails to pay any installment of interest or principal on the Note within five (5) days of the date such payment is due (including any prepayment by acceleration or otherwise) or Mortgagor fails to pay any other amount due pursuant to this Mortgage or any of the other Loan Documents ten (10) days after such amounts become due and payable, including, without limitation, any installment of (i) Mortgagee's servicing fee payable under the Note and (ii) the insurance premiums payable to AMBAC;

**B.** Any other event of default occurs under any of the Loan Documents (as set forth and defined in such Loan Document) that is not cured as provided in such Loan Document; however, for non-monetary defaults under the Loan Documents, where a grace or cure period is not otherwise provided or prohibited, Mortgagor shall have thirty (30) days after written notice of such default to cure such defaults, or such other period as Mortgagee may permit in writing, in its sole discretion; however, if such default is incapable of being cured within such thirty (30) days, Mortgagor shall have one hundred twenty (120) additional days to cure such default, so long as (i) that cure is commenced within such thirty (30) day period, (ii) Mortgagor continues to diligently pursue such cure in good faith and (iii) Mortgagee's

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security for the Loan is not, in the sole judgment of Mortgagee, materially impaired as a result of the existence of such default;

C. Mortgagor fails to comply with, keep or perform any of its respective terms, obligations, agreements, undertakings, covenants, conditions or warranties under the terms of this Mortgage and such failure continues for thirty (30) days after written notice of such failure, or such other period as Mortgagee may permit in writing in its sole discretion; however, if such failure is incapable of being cured within such thirty (30) days, Mortgagor shall have one hundred twenty (120) additional days to cure that failure, so long as (i) that cure is commenced within such thirty (30) day period, (ii) Mortgagor continues to diligently pursue such cure in good faith and (iii) Mortgagee's security for the Loan is not, in the sole judgment of Mortgagee, impaired as a result of the existence of such failure;

D. Mortgagor fails to comply with (or to bond or indemnify Mortgagee to its satisfaction with regard to) any requirement of any governmental authority having jurisdiction over the Development (including, without limitation, compliance with all applicable zoning, building, health, fire, flood, and environmental laws, statutes, orders, rules, regulations and ordinances) within thirty (30) days after Mortgagor has notice of such requirement, or earlier if required by such governmental authority;

E. If any representation, warranty, covenant, or statement made by or on behalf of Mortgagor, or any General Partner, as the case may be, in the Mortgage, in any other Loan Document, or in any other document or instrument furnished in connection with, pertaining to, or evidencing or securing the Loan shall prove, in Mortgagee's reasonable judgment, to be false or misleading in any material adverse respect when made or deemed remade;

F. The occurrence of a Prohibited Transfer;

G. If:

(i) Mortgagor files a voluntary petition in bankruptcy or for arrangement, reorganization or other relief under any chapter of the federal Bankruptcy Code or any similar law, state or federal, now or hereafter in effect; or is adjudicated bankrupt or shall have an order for relief entered in respect of such party by any bankruptcy court; or makes an assignment for the benefit of creditors or admits in writing its inability to pay its debts generally as they become due or consents to the appointment of a custodian, receiver or trustee or



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liquidator of all or the major part of its property or the Development;

(ii) Within sixty (60) days after the filing against Mortgagor of any involuntary proceeding under the federal Bankruptcy Code or similar law, state or federal, now or hereafter in effect, such proceedings have not been dismissed; or

(iii) All or a substantial part of the assets of Mortgagor are attached, seized, subjected to a writ or distress warrant, or are levied upon and such attachment, seizure, writ, warrant or levy is not vacated within sixty (60) days; or any order appointing a custodian, receiver, trustee or liquidator of Mortgagor on all or a major part of any of its property or the Development is not vacated within sixty (60) days; or

(iv) Mortgagee deems itself insecure in the reasonable discretion of its Chairman under the Act, in good faith, by reason of the occurrence of an adverse change in the financial condition of any of Mortgagor or any General Partner or otherwise, which change, in Mortgagee's reasonable judgment, may affect the ability of any of them to perform their respective obligations under this Mortgage and the other Loan Documents:

H. Mortgagor fails to deposit, within the time period specified, or if no time period is specified, immediately upon receipt of Mortgagee's request, funds or other security required by Mortgagee as mortgagee under the Mortgage or pursuant to the Regulatory Agreement or any other of the Loan Documents;

I. Mortgagor (i) commits a breach or defaults under any contract or agreement with a third party in connection with the operation, construction, or maintenance of the Development, (ii) such breach or default is not cured within the applicable grace or cure period, if any, and (iii) such breach or default, if uncured, materially and adversely affects the value of the Development or Mortgagor's performance of its obligations under the Mortgage, the Note, the other Loan Documents; however, if the priority, enforceability, or validity of the Mortgage or the lien of the Mortgage or any other security granted by Mortgagor to Mortgagee under the Loan Documents, in Mortgagee's reasonable judgment, by reason of such breach or default, Mortgagor shall not be entitled to such grace or cure period and a Default shall be deemed to have immediately occurred;

J. The dissolution of any of the Mortgagor or any General Partner; however, the death of a Guarantor shall not be

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considered a Default under this Mortgage or a default under the other Loan Documents unless there is already a Default under this Mortgage.

K. There exists or comes to exist any judgments against Mortgagor which could reasonably be expected to have a material adverse effect on, (i) the Development or its rehabilitation, operation, or maintenance, or (ii) Mortgagor's ability to pay the Loan; or

L. Any of Mortgagor fails to execute, within five (5) business days after presentation, all documents that Mortgagee, in its sole discretion, deems necessary to correct any typographical or clerical errors in the Note, any other Loan Document or any other document delivered or to be delivered in connection with the Loan.

## 12. Remedies

If a Default occurs and continues to exist, Mortgagee is authorized and empowered, at its option and without affecting the lien by created by this Mortgage or its priority, or any other right of Mortgagee under this Mortgage, to declare, without further notice, all Secured Indebtedness to be immediately due and payable with interest on it at the Default Rate, whether or not such Default is thereafter remedied by Mortgagor, and Mortgagee may immediately proceed to foreclose this Mortgage and to exercise any right, power or remedy provided by this Mortgage, the Note or any other Loan Document, or that Mortgagee may have at law or in equity. At any time after the occurrence of a Default, and so long as such Default is continuing, Mortgagee, in its sole discretion, may (i) notify any person obligated to Mortgagor under or with respect to any contract for sale or any contract for construction affecting or related to the Development, of the existence of a Default, (ii) require that performance of any such contract be made directly to the Mortgagee at Mortgagor's expense and (iii) advance such sums as are necessary or appropriate to satisfy Mortgagor's obligations under such contract. Mortgagor agrees to cooperate with Mortgagee in all ways reasonably requested by Mortgagee (including the giving of any notices requested by Mortgagee or joining in any notices given by Mortgagee) to accomplish the foregoing provisions of this **Paragraph 12**, and grants to Mortgagee or Mortgagee's designee a security interest in its rights under such contracts for the purpose of securing all of the Secured Indebtedness and Mortgagor's obligations secured by this Mortgage and the other Loan Documents. The granting of a grace or cure period in this Mortgage and the granting of a grace or cure period with respect to the same matters in any other Loan Document shall not be construed to have the effect of extending

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or replicating the grace or cure period relating to such matters.

### 13. Foreclosure.

Upon the occurrence and during the continued existence of a Default, Mortgagee shall have the right to foreclose the lien of this Mortgage in accordance with the laws of the State of Illinois and to exercise any other remedies of Mortgagee that are provided in the Note, this Mortgage or any of the other Loan Documents, or that Mortgagee may have at law, at equity or otherwise. In any suit to foreclose the lien of this Mortgage, there shall be allowed and included as additional Secured Indebtedness in the decree of sale all expenditures and expenses that may be paid or incurred by or on behalf of Mortgagee for reasonable attorneys' fees (to the extent permitted by applicable law), appraisers' fees, outlays for documentary and expert evidence, stenographer's charges, publication costs and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurance with respect to title as Mortgagee may reasonably deem necessary either to prosecute such suit or to evidence to bidders at sales that may be had pursuant to such decree the true condition of the title to or the value of the Development. All expenditures and expenses of the nature mentioned in this **Paragraph 13**, and such other expenses and fees as may be incurred in the protection of the Development, the rents and income from it and the maintenance of the lien of this Mortgage, including the fees of any attorneys employed by Mortgagee in any litigation or proceedings affecting this Mortgage, the Note or the Development, including probate and bankruptcy proceedings, or in preparation of, the commencement or defense of any proceedings or threatened suit or proceeding, or otherwise, in dealing specifically with the Development, shall be so much additional Secured Indebtedness and shall be immediately due and payable by Mortgagor with interest on such payments at the Default Rate until paid.

### 14. Additional Rights upon Foreclosure.

If any provision of this Mortgage restricts Mortgagee's rights under the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1101 et seq.) (the "Foreclosure Law"), as amended from time to time, or this Mortgage otherwise does not grant Mortgagee the full advantage, rights or remedies of the Foreclosure Law, Mortgagee shall be vested with the rights, powers, and remedies of the Foreclosure Law to the full extent permitted by law.

### 15. Certain Rights of the Holder of the Note.

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Upon any sale of the Development, if the holder of the Note is a purchaser at such sale, it shall be entitled to use and apply all or any portion of the Secured Indebtedness for or in settlement or payment of all or any portion of the purchase price of the property purchased, and, in such case, this Mortgage, the Note and documents evidencing expenditures secured by this Mortgage shall be presented to the person conducting the sale in order that the amount of such indebtedness so used or applied may be credited as having been paid.

## 16. Right of Possession.

Upon the occurrence and during the continued existence of a Default and after the expiration of any applicable cure period, Mortgagor shall, immediately upon demand of Mortgagee, surrender to Mortgagee, and Mortgagee shall, to the extent not prohibited by applicable law, be entitled to take actual possession of the Development or any part of it, personally or by its agent or attorneys, and, in its discretion, may enter upon and take possession of the Development and exclude the Mortgagor or the then owner of the Development and any of their agents or servants wholly from the Development. Whether or not Mortgagee takes and maintains possession of all or any part of the Development, together with all documents, books, records, papers and accounts of Mortgagor or the then owner of the Development relating to it, Mortgagee may, on behalf of Mortgagor or such owner, or in its own name as Mortgagee and under the powers granted in this Mortgage:

(a) hold, operate, manage and control all or any part of the Development and conduct the business of the Development, if any, either personally or by its agents, with full power to use such measures, legal or equitable, as in its discretion may be deemed proper or necessary to enforce the payment or security of the rents, issues, deposits, profits and avails of the Development, including, without limitation, actions for recovery of rent, actions in forcible detainer and actions in distress for rent, all without notice to Mortgagor;

(b) notify any or all of the obligors under the Leases that the Leases have been assigned to Mortgagee, and Mortgagee (in its name, in the name of Mortgagor or in both names) may direct such obligors thereafter to make all payments due from them under the Leases directly to Mortgagee;

(c) cancel or terminate any Lease for any cause or on any ground that would entitle Mortgagor to cancel it;

(d) elect to disaffirm any Lease made subsequent to this Mortgage without Mortgagee's prior written consent, as

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provided in this Mortgage;

(e) extend or modify any then existing Leases and make new Leases of all or any part of the Development, which extensions, modifications and new Leases may provide for terms to expire, or for options to tenants to extend or renew terms to expire, beyond the Maturity Date (as defined in the Note) and the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale. It is understood and agreed that any such Leases, and the options or other such provisions contained in them, shall be binding upon Mortgagor, all persons or entities whose interests in the Development are subject to the lien of the Mortgage, and the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the Secured Indebtedness, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any such purchaser;

(f) make all necessary or proper repairs, decorations, renewals, replacements, alterations, additions, betterments and improvements in connection with the Development as may seem judicious to Mortgagee, to insure and reinsure the Development and all risks incidental to Mortgagee's possession, operation and management of it, and to receive all rents, issues, deposits, profits and avails from it; and

(g) apply the net income after allowing a reasonable fee for the collection of such income and for the management of the Development, to the payment of Taxes, insurance premiums and other charges applicable to the Development or to reduce the Secured Indebtedness, in such order and manner as Mortgagee shall elect.

Nothing contained in this Mortgage shall be construed as constituting Mortgagee as a mortgagee-in-possession in the absence of the actual taking of possession of the Development.

## 17. Receiver.

Upon the occurrence or existence of a Default, Mortgagee may apply to any court of competent jurisdiction for the appointment of a receiver for the Development. Such appointment may be made either before or after sale, upon notice, if any, required by applicable law, without regard to the solvency or insolvency of Mortgagor at the time of application for such receiver, and without regard to the then value of the Development or whether or not it is then occupied as a homestead; Mortgagee or any of its employees or agents may be appointed as such receiver. Such receiver shall have the power to collect the rents, issues and profits of the Development during the pendency of such

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foreclosure suit and, in case of a sale and deficiency, during the full statutory period of redemption, if any, whether there is a redemption or not, as well as during any further times when Mortgagor, except for the intervention of such receiver, would be entitled to collection of such rents, issues and profits; such receiver shall also have all other powers that may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Development during the whole of such period. The court may, from time to time, authorize the receiver to apply the net income from the Development in payment, in whole or in part, of: (a) the Secured Indebtedness or the indebtedness secured by a decree foreclosing this Mortgage, or any tax, special assessment or other lien that may be or become superior to the lien of this Mortgage or of such decree, provided that such application is made prior to the foreclosure sale; or (b) the deficiency, in case of a sale and deficiency.

## 18. Proceeds of Sale.

The proceeds of any sale of the Development shall be distributed and applied in the following order of priority: first, on account of all costs and expenses incident to the foreclosure proceedings, including all such items mentioned in **Paragraph 12** hereof, or incident to any sale under **Paragraph 13** hereof, including, but not limited to, the expenses of sale, the reasonable attorneys' fees of Mortgagee (to the extent not prohibited by applicable law), the actual cost of providing, recording, mailing and posting notice, the cost of any search or other evidence of title procedures in connection with such foreclosure and sale and any transfer tax on any deed or conveyance; second, all other items that, under the terms of this Mortgage, constitute Secured Indebtedness in addition to that evidenced by the Note, with interest on such items as provided in this Mortgage; third, to interest remaining unpaid upon the Note, including interest, if any, at the Default Rate; fourth, to the principal remaining unpaid upon the Note; and fifth, the payment of surplus, if any, to any person or entity that may be lawfully entitled to receive it.

## 19. Insurance During Foreclosure.

In the event of an insured loss after the right to foreclose has accrued under this Mortgage, the proceeds of any insurance policy, if not applied in rebuilding or restoring the Development, as aforesaid, shall be applied in the same order and manner as sale proceeds set forth in **Paragraph 18** hereof. In the event of foreclosure of this Mortgage, the mortgagee's clause attached to each of the casualty insurance policies may be cancelled and a new loss clause may be attached to each such

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casualty insurance policy making the loss under such insurance policies payable to the party acquiring the Development pursuant to foreclosure or other sale; Mortgagee is authorized, without the consent of Mortgagor, to assign any and all insurance policies to the purchaser at the sale to the extent assignable pursuant to such policies, or to take such other steps as Mortgagee may deem advisable to cause the interest of such purchaser to be protected by any of the insurance policies, in either case without credit or allowance to Mortgagor for prepaid premiums on them.

## **20. Waiver of Right of Redemption and Other Rights.**

To the fullest extent permitted by law, Mortgagor (i) agrees that it will not at any time insist upon or plead, or in any manner whatsoever claim or take any advantage of, any stay, exemption or extension law or any so-called "Moratorium Law" now or at any time hereafter in force, (ii) agrees that it will not claim, take or insist upon any benefit or advantage of or from any law now or hereafter in force providing for the valuation or appraisal of the Development, or any part of it, prior to any sale or sales of it to be made pursuant to any provisions contained in this Mortgage, or to any decree, judgment or order of any court of competent jurisdiction; or after such sale or sales claim or exercise any rights under any statute now or hereafter in force to redeem the property so sold, or any part of it, or relating to the marshaling of it, upon the foreclosure sale or other enforcement of this Mortgage; and (iii) expressly waives any and all rights of reinstatement or redemption from sale under any order or decree of foreclosure of this Mortgage on its own behalf, on behalf of all persons claiming or having an interest (direct or indirect) by, through or under Mortgagor and on behalf of each and every person acquiring any interest in or title to the Development subsequent to the date of this Mortgage; it is the intent of this Mortgage that any and all such rights of reinstatement or redemption of Mortgagor and all other persons, are and shall be deemed to be waived to the fullest extent permitted by applicable law. To the fullest extent permitted by law, Mortgagor agrees that it will not, by invoking or utilizing any applicable law or laws or otherwise, hinder, delay or impede the exercise of any right, power or remedy granted or delegated to Mortgagee in this Mortgage or otherwise, but will suffer and permit the exercise of every such right, power and remedy as though no such law or laws have been made or enacted. Mortgagor expressly waives any right that it may have to direct the order in which any of the Development shall be sold in the event of its sale pursuant to this Mortgage.

## **21. Rights Cumulative.**

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Each right, power and remedy conferred upon Mortgagee in this Mortgage is cumulative and in addition to every other right, power or remedy, express or implied, now or hereafter provided by law or in equity, and each and every right, power and remedy set forth in this Mortgage or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient to Mortgagee. The exercise of one right, power or remedy shall not be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy; and no delay or omission of Mortgagee in the exercise of any right, power or remedy accruing under this Mortgage or arising otherwise shall impair any such right, power or remedy, or be construed to be a waiver of any Default or acquiescence in it. Except as otherwise specifically required in this Mortgage, notice of the exercise of any right, remedy or power granted to Mortgagee by this Mortgage is not required to be given.

## 22. Successors and Assigns.

A. Holder of the Note. This Mortgage and each and every agreement and other provision of it shall be binding upon Mortgagor and its successors and assigns (including, without limitation, each and every record owner from time to time of the Development or any other person having an interest in it), and shall inure to the benefit of Mortgagee and its successors and assigns. Wherever Mortgagee is referred to in this Mortgage, such reference shall be deemed to include the holder from time to time of the Note, whether so expressed or not; and each such holder shall have and enjoy all of the rights, privileges, powers, options and benefits afforded by and under this Mortgage, and may enforce all and every one of its terms and provisions as fully, to the same extent and with the same effect as if such holder were in this Mortgage by name specifically granted such rights, privileges, powers, options and benefits and designated Mortgagee.

B. Covenants Run With Land; Successor Owners. All of the covenants of this Mortgage shall encumber the Real Estate and be binding on any successor in interest to the obligations of the Mortgagor under this Mortgage until this Mortgage is released or foreclosed. If the ownership of the Development or any portion of it becomes vested in a person or persons other than Mortgagor, Mortgagee may, without notice to Mortgagor, deal with such successor or successors in interest of Mortgagor with reference to this Mortgage and the Secured Indebtedness in the same manner as with Mortgagor without in any way releasing or discharging Mortgagor from its obligations under this Mortgage, unless the Development has been assigned or otherwise transferred with Mortgagee's written consent pursuant to this Mortgage. Mortgagor shall give immediate written notice to Mortgagee of any



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conveyance, transfer or change of ownership of the Development, but nothing in this **Paragraph 22.B** shall vary or negate the provisions of **Paragraph 10** hereof.

## **23. Effect of Extensions and Amendments.**

If the payment of the Secured Indebtedness, or any part of it, is extended, modified or amended, or if any part of the security or guaranties, if any, for it is released, all persons now or at any time hereafter liable for the Secured Indebtedness, or interested in the Development, shall be held to assent to such extension, modification, amendment or release, and their liability, and the lien of the Mortgage, and all of its provisions shall continue in full force and effect. Mortgagee expressly reserves the right of recourse against all such persons, but only to the extent provided in **Paragraph 45** hereof, notwithstanding any such extension, variation or release. Any person or entity taking a junior mortgage or other lien upon the Development, or any part of or any interest in it, shall take such lien subject to the rights of Mortgagee to amend, modify, extend or release the Note, this Mortgage or any other Loan Document, in each and every case without obtaining the consent of the holder of such junior lien and without the lien of this Mortgage losing its priority over the rights of any such junior lien. Any such rights or actions of Mortgagee shall not negate the prohibition against such secondary financing contained in this Mortgage or affect the obligation of any such junior lien holder not to proceed with any action against either the Mortgagor or the Development or both.

## **24. Leases and Rents, Present Assignment.**

As additional security for the repayment of the Loan and for the faithful performance of the terms and conditions contained in the Loan Documents, Mortgagor bargains, sells, transfers, assigns, conveys, sets over and delivers to Mortgagee all of its rights, title and interest as landlord in and to all Leases now existing, or that may be executed by any landlord at any time in the future, and all guaranties, amendments, extensions and renewals of such Leases; Mortgagor agrees, represents and warrants to Mortgagee as follows:

**A.** All Leases are and shall be subject to the criteria set forth in the Regulatory Agreement. Except with respect to any lease for actual occupancy of any dwelling unit or commercial space in the Development entered into in the normal course of business and in conformity with the Regulatory Agreement, Mortgagor shall not enter into, amend, modify, extend, renew, terminate, surrender or cancel any Lease in any respect without the prior written consent of Mortgagee, which approval or

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consent shall not be unreasonably withheld or delayed.

B. Notwithstanding the present assignment of the rents and Leases and guaranties, if any, so long as no Default has occurred and continues to exist, Mortgagor shall have a license to collect all of the rents arising from the Leases, or their renewals. All rents or other sums secured by Mortgagor pursuant to the Leases and guaranties, if any, after and during the continuance of a Default shall be deemed to be held and maintained by Mortgage in trust for the benefit of Mortgagee and shall be covered by **Paragraph 45(v)** hereof.

C. At all times, Mortgagee or its agent shall have the right to verify the validity, amount of or any other matter relating to any or all of the Leases, by mail, telephone, telecopy or otherwise, in the name of Mortgagor, Mortgagee, a nominee of the Mortgagee or any or all of such names.

D. Mortgagor shall inform Mortgagee, in writing, of any written assertion of any claims, offsets or counterclaims by any of the obligors under any of the Leases promptly upon its receipt of them.

E. Within ten (10) business days after written demand by Mortgagee from time to time, Mortgagor shall deliver to Mortgagee, in form and substance acceptable to Mortgagee, a detailed certified Rent Roll, copies of all Leases and such other matters and information relating to it as Mortgagee may request.

## **25. Execution of Separate Security Agreements, Financing Statements, Etc.; Estoppel Letter.**

Mortgagor shall do, execute, acknowledge and deliver, or cause to be done, executed, acknowledged and delivered, all such further acts, conveyances, mortgages, security agreements, financing statements and assurances as Mortgagee reasonably requires for the better assuring, conveying, mortgaging, assigning and confirming unto Mortgagee all property mortgaged or intended to be so mortgaged by this Mortgage, whether now owned by Mortgagor or hereafter acquired. Without limitation of the foregoing, Mortgagor shall assign to Mortgagee, upon request, by instruments satisfactory to Mortgagee, as further security for the Secured Indebtedness, Mortgagor's interests in all agreements, contracts, licenses and permits affecting the Development; however, no such assignment shall be construed (i) as a consent by Mortgagee to any agreement, contract, license or permit, or (ii) to impose upon Mortgagee any obligations with respect to any such agreement, contract, license or permit. From time to time, Mortgagor shall furnish, within five (5) business days after Mortgagee's request, a written and duly acknowledged

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statement of the amount due under the Note, this Mortgage and the other of the Loan Documents and whether, to Mortgagor's best knowledge, any alleged offsets or defenses exist against the Secured Indebtedness and whether, to Mortgagor's best knowledge, any Default on the part of Mortgagor (or events which, with the passing of time or the giving of notice, or both, would become a Default) exists under this Mortgage.

## **26. Subrogation.**

If any part of the Secured Indebtedness is used directly or indirectly to pay off, discharge or satisfy, in whole or in part, any prior lien or encumbrance upon the Development or any part of it, then Mortgagee shall be subrogated to the rights of the holder of such other lien or encumbrance and any additional security held by such holder, and shall have the benefit of the priority of such lien or encumbrance, regardless of whether they are acquired by assignment or have been released of record by their holder upon repayment. The foregoing right of subrogation is a material inducement to Mortgagee to make the Loan, and Mortgagee expects to be benefitted by such right. Nothing in this Paragraph 26 shall be construed as extending the benefits of any personal guarantee of such prior lien or encumbrance to Mortgagee in excess of the amount of the Guaranty or for different purposes than those covered by the Guaranty.

## **27. Option to Subordinate.**

At the option of Mortgagee, this Mortgage shall become subject and subordinate, in whole or in part (but not with respect to priority of entitlement to insurance proceeds or any Award), to any and all Leases of all or any part of the Development upon the execution and recording by Mortgagee, at any time hereafter, in the Office of the Recorder of the County in which the Development is located, of a unilateral declaration to that effect.

## **28. Governing Law.**

This Mortgage, having been negotiated, executed and delivered within the State of Illinois, shall be construed and governed by and according to the laws of that State, without reference to its conflicts of law principles.

## **29. Business Loan.**

Mortgagor represents and agrees that the proceeds of the Loan will be used for the purposes specified in 815 ILCS 205/4, Paragraph 1(c), as amended, and that the principal obligation secured by this Mortgage constitutes a business loan that comes

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within the purview of that Paragraph.

### **30. Inspection of Development and Records.**

Mortgagor shall keep and maintain full, complete and correct books, records and accounts showing the assets, liabilities, operations, transactions and financial condition of the Development. The books and records of Mortgagor and of the operations of the Development shall be kept in accordance with the auditing standards of Mortgagee. Mortgagor shall allow Mortgagee or its representatives or agents to inspect the Development at any reasonable time, and from time to time at any time during normal business hours upon reasonable prior notice, access to the records and books of account related to the operation of the Development, including any supporting or related vouchers or papers, kept by or on behalf of Mortgagor and their representatives or agents; such access will include the right to make extracts or copies of them. In addition, upon request of Mortgagee, which may be made at any time and from time-to-time, Mortgagor shall deliver to Mortgagee true and complete copies of monthly operating statements of the Development. Mortgagee shall be entitled to reimbursement for its costs, reasonably incurred incident to the inspection of the Development, all of which shall be payable after written demand and if not so paid, shall be included within the Secured Indebtedness and bear interest at the Default Rate. Mortgagee, in its sole discretion reasonably exercised, will determine the necessity for and the number of inspectors required, and will determine which inspector shall be used incident to an inspection. Except when a Default has occurred and continues to exist, Mortgagee will give reasonable advance written notice of its intent to perform or have performed such inspections.

### **31. Financial Statements.**

A. Mortgagor shall keep accurate, full and complete books, records and accounts showing the assets, liabilities, operations, transactions and financial condition of the Development. All books, records, accounts and financial statements shall (i) be accurate and complete in all material respects, (ii) present fairly the financial position and results of the operation of the Development and (iii) be prepared in accordance with the requirements of Mortgagee.

B. Mortgagor shall furnish, or cause to be furnished, to Mortgagee such financial statements and other records of Mortgagor as Mortgagee may reasonably require, each certified by the providing party as to their truth, validity and accuracy in all material respects; each such financial statement shall not contain any material omissions that would make such information

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incomplete. Such financial information shall be prepared according to generally accepted accounting principles, consistently applied.

## 32. Time of the Essence.

Time is of the essence of the Note, this Mortgage, all other of the Loan Documents and any other document or instrument evidencing or securing the Secured Indebtedness.

## 33. Captions and Gender.

The captions and headings of the various sections of this Mortgage are for convenience only, and are not to be construed as confining or limiting in any way the scope or intent of its provisions. Whenever the context requires or permits, the singular shall include the plural, the plural shall include the singular, and the masculine, feminine and neuter shall be freely interchangeable.

## 34. Notices.

Any notice, demand, request or other communication that any party may desire or may be required to give to any other party under this Mortgage shall be given in writing, at the addresses set forth below, by any of the following means: (a) personal service; (b) overnight courier; or (c) registered or certified United States mail, postage prepaid, return receipt requested.

If to Mortgagee:

Illinois Housing Development Authority  
401 North Michigan Avenue  
Suite 900  
Chicago, Illinois 60611  
Attention: Director, Multifamily Programs

with a copy to:

Illinois Housing Development Authority  
401 North Michigan Avenue  
Suite 900  
Chicago, Illinois 60611  
Attention: General Counsel

If to Mortgagor:

Elm Street Plaza Venture  
C/o The Habitat Company  
350 West Hubbard Street

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Chicago, Illinois 60610  
Attention: Daniel E. Levin

Such addresses may be changed by notice to the other party given in the same manner as provided in this **Paragraph 34**. Any notice, demand, request or other communication sent pursuant to subsection (a) shall be served and effective upon such personal service. Any notice, demand, request or other communication sent pursuant to subsection (b) shall be served and effective one (1) business day after deposit with the overnight courier. Any notice, demand, request or other communication sent pursuant to subsection (c) shall be served and effective three (3) business days after proper deposit with the United States Postal Service.

### **35. Provisions Severable.**

If a court of competent jurisdiction holds any provision of this Mortgage to be illegal, unenforceable or invalid, then it is the intent of Mortgagor and Mortgagee that such provision shall be given full force and effect to the fullest possible extent that is legal, valid and enforceable. It is the intent of Mortgagor and Mortgagee that the Mortgagee have a valid and enforceable lien created by this Mortgage securing each and all of the sums described in this Mortgage and that this Mortgage be construed as creating such a valid lien in favor of Mortgagee notwithstanding the unenforceability of one or more of its provisions; the unenforceability or invalidity of any provision or provisions of this Mortgage shall not render any other provision or provisions of it unenforceable or invalid.

### **36. Waiver of Defense.**

No action for the enforcement of the lien or any provisions of this Mortgage shall be subject to any defense that would not be good and available to the party interposing it in an action at law upon the Note.

### **37. Further Assurances.**

Mortgagor shall sign, execute, acknowledge and deliver to Mortgagee upon request such security agreements, assignments for security purposes and other documents in form and substance required by Mortgagee as Mortgagee may, in its reasonable judgment, request from time to time, to perfect, preserve, continue, extend or maintain the assignments contained in this Mortgage or the Loan Documents, the lien and security interests under this Mortgage or the other Loan Documents, and their priority.

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## **38. Reimbursement.**

If (a) Mortgagee is made a party to, or intervenes in any action or proceeding affecting the Development, title to it or the interest of Mortgagee under this Mortgage, or (b) Mortgagee employs an attorney to collect any or all of the Secured Indebtedness or to foreclose this Mortgage by judicial proceedings or (c) Mortgagee conducts Mortgagee's sale proceedings under this Mortgage, Mortgagee shall be reimbursed by Mortgagor, immediately and without demand, for all costs, charges and reasonable attorneys' fees incurred by Mortgagee, and such costs, charges and fees shall be secured by this Mortgage as a further charge and lien upon the Development and shall bear interest at the Default Rate. Notwithstanding the above, the provisions of this **Paragraph 38** shall not apply if any such matter results from the gross negligence or willful misconduct of Mortgagee.

## **39. Further Security.**

As further security for the Note and this Mortgage, Mortgagor grants Mortgagee a security interest in and to all and any property of Mortgagor of any kind or description, tangible or intangible, now or hereafter delivered, transferred, in transit to, or kept in the possession, control or custody of Mortgagee, or any agent or bailee of Mortgagee, whether expressly as collateral security or for any other property of Mortgagor now or hereafter in the possession, control or custody or assigned to Mortgagee and used or useful in connection with the Development. All of the aforesaid property is referred to collectively in this Mortgage as the "Further Collateral." Upon the occurrence and during the continued existence of any Default under this Mortgage, Mortgagee shall have the right to exercise any rights and remedies available to it under the Code and, subject to the rights of prior lienholders, if any, shall have the right to sell any or all of the Further Collateral at public or private sale upon such terms and conditions as Mortgagee deems proper, and to apply the net proceeds of such sale, after deducting all costs, expenses and attorneys' fees incurred at any time in the collection and sale of the Further Collateral, to the payment of sums due under the Note, this Mortgage or both of them.

## **40. No Partnership; Joint and Several Obligations.**

Nothing contained in this Mortgage, the Note or any other document or instrument evidencing or securing the Secured Indebtedness shall be deemed to create a joint venture or partnership relationship between Mortgagor and Mortgagee; the relationship between Mortgagor and Mortgagee is solely that of creditor and debtor, lender and borrower, and mortgagor and

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mortgagee, as the case may be. If this Mortgage is signed by more than one entity, the liability of such Mortgagor shall be joint and several in all respects.

## **41. No Liability.**

Anything contained in this Mortgage to the contrary notwithstanding, it is expressly understood and agreed that the Mortgagee's inspection and approval of the documentation pertaining to this Mortgage and any inspection of the Development made by Mortgagee shall be solely for Mortgagee's benefit, and Mortgagee shall have no liability to Mortgagor or any other person or entity by reason of such inspection.

## **42. Hazardous Material.**

If Mortgagor (for purposes of Paragraph 42 only, Mortgagor shall be referred to as the "Parties") shall receive: (a) any written notice of any violation or administrative or judicial complaint or order having been filed or about to be filed against any of the Parties alleging violations of any law requiring any of them to take any action in connection with the release of any toxic materials or hazardous wastes, pollutants or contaminants into the environment, or (b) any written notice from any governmental agency or any other person or entity alleging that any of the Parties may be liable or responsible for costs associated with a response or cleanup of a release of toxic materials, hazardous wastes, pollutants or contaminants into the environment or any damages caused by such release, the Party receiving such notice shall provide Mortgagee with a copy of it promptly upon its receipt. Within five (5) days after having learned of the enactment or promulgation of any environmental law that may result in any adverse change in the condition, financial or otherwise, of any of the Parties or the Development, Mortgagor shall provide Mortgagee with notice of such law promptly upon learning of it. Mortgagor (x) shall not use, allow or suffer any part of the Development to be used as a facility for the handling, treatment, storage, or disposal of any Hazardous Materials (as defined in the Environmental Indemnity) or to be used as a landfill, without the prior written consent of Mortgagee (which consent may be granted or denied in Mortgagee's sole and absolute discretion), except for immaterial amounts of Hazardous Materials, not in violation of any Environmental Laws (as defined in the Environmental Indemnity), customarily found in construction sites and otherwise used in the daily operation of the Development, and (y) at its sole cost and expense, shall comply in all respects with the foregoing notices and in all events shall satisfy the requirements of, and maintain the Development in compliance with, all Environmental Laws.



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Mortgagor represents and warrants that no portion of the Development has been used for or as a landfill; and that there are no known, nor have there been any, nor shall any of the Parties cause there to be any, Hazardous Materials generated, released, stored, buried or deposited over, beneath, in or on (or used in the construction or renovation of) the Development from any source whatsoever, except for immaterial amounts of Hazardous Materials, not in violation of any Environmental Laws (as defined in the Environmental Indemnity), customarily found in construction sites and otherwise used in the daily operation of the Development or as previously disclosed in writing to Mortgagee. Mortgagor agrees to indemnify, hold harmless, and defend Mortgagee and all persons claiming by, through or under Mortgagee from any and all claims, loss, damages, response costs, clean-up costs and expenses arising out of or in any way relating to the existence at any time of any Hazardous Materials in, on, under, at or used in the construction or operation of the Development, including, but not limited to: (i) claims of third parties, (including governmental agencies) for damages, penalties, response costs, clean-up costs or injunctive or other relief; (ii) costs of removal and restoration, including experts' and reasonable attorneys' fees, and costs of reporting the existence of Hazardous Materials to any governmental agency; and (iii) any and all expenses or obligations incurred at, before and after any trial or appeal from such trial, whether or not taxable as costs, including, without limitation, reasonable attorneys' fees, witness fees, deposition costs, copying and telephone charges and other expenses, all of which shall be paid by Mortgagor when incurred. The representations, warranties, covenants and agreements contained in this **Paragraph 42** and the obligations of Mortgagor to indemnify, hold harmless and defend Mortgagee and all persons claiming by, through or under Mortgagee with respect to the expenses, damages, losses, costs, damages and liabilities set forth in this **Paragraph 42**, shall survive the repayment of all amounts due under the Note, the cancellation of the Note and the release of this Mortgage, the foreclosure of any liens on the Development by Mortgagee or a third party, or the conveyance of the Development by any power of sale, trustee's sale, deed in lieu of foreclosure or otherwise, and shall not be limited to the amount of any deficiency in any foreclosure or other sale of the Development. Notwithstanding the above, upon the occurrence of repayment of all amounts due under the Note, the cancellation of the Note and release of this Mortgage (the "Payoff"), only the indemnification provisions of this **Paragraph 42** shall continue to be applicable thereafter to Mortgagor, except for any other covenant or agreement contained in this **Paragraph 42** which arose, or the event of which occurred prior to the Payoff. If there is any conflict between this **Paragraph 42** and the Environmental Indemnity, the Environmental Indemnity shall control. Notwithstanding Mortgagor agrees that Mortgagee

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may, in its sole discretion from time to time, retain an environmental expert at the expense of Mortgagor to perform one or more tests to determine the level, if any, of Hazardous Materials in, on or at the Development. Notwithstanding the above, the indemnification provisions of this **Paragraph 42** shall not apply if any such matter results from the gross negligence or willful misconduct of Mortgagee.

#### **43. Maximum Indebtedness.**

The maximum amount secured by this Mortgage is One Hundred Million and No/100 Dollars (\$100,000,000.00).

#### **44. Indemnification of the Mortgagee.**

Mortgagor agrees to defend and indemnify and hold harmless Mortgagee from and against any and all damages, including, but not limited to, any past, present or future claims, actions, causes of action, suits, demands, liens, debts, judgments, losses, costs, liabilities and other expenses, including, but not limited to, reasonable attorneys' fees, costs, disbursements, and other expenses, that Mortgagee may incur or suffer by reason of or in connection with the Real Estate or the Development. Mortgagor further agrees that Mortgagee, if it so chooses, shall have the right to select its own counsel with respect to any such claims. Notwithstanding the above, the provisions of this **Paragraph 44** shall not apply if any such matter results from the gross negligence or willful misconduct of Mortgagee.

**45. Nonrecourse.** Except as otherwise set forth in this **Paragraph 45** and the Environmental Indemnity, Mortgagor's liability created under this Mortgage and the Loan Documents shall be nonrecourse, and neither Mortgagor nor any of its successors or assigns nor any of Mortgagor's general or limited partners, principal, tenant in common, officer, director, trustee, beneficiary, shareholder, controlling person, employee, agent, or affiliate of any of the foregoing (the "Exculpated Persons") shall have any personal liability thereunder. Mortgagee will look only to the Development and its reserves and other funds relating to the Development for repayment of the Loan. The foregoing shall in no way limit Mortgagor's liability for, or as a result of, (i) fraud in connection with the representations or warranties contained in this Mortgage and the other Loan Documents by, through or under Mortgagor, (ii) the fair market value of the personalty or fixtures removed or disposed of from the Development in violation of the terms of the Loan Documents, (iii) the misapplication of any funds or proceeds under any insurance policies or awards resulting from condemnation or the exercise of the power of eminent domain, (iv) any misapplication of any security deposits attributable to any

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leases for the Development, or failure to pay interest on such security deposits as required by law or the collection of rents in violation of any of the Loan Documents, (v) Mortgagor's receipt and retention or conversion of funds to which it is not entitled, including, but not limited to, any funds that it is not entitled to retain pursuant to the Regulatory Agreement, (vi) waste committed on the Development to the extent Replacement Reserves (as defined in the Commitment) and Surplus Cash (as defined in the Regulatory Agreement) are available to remedy such waste and Mortgagor has failed to remedy the waste despite the written instructions of Mortgagee; and (vii) a Prohibited Transfer, which shall exclude therefrom changes to or among the General Partners relating to the death of a General Partner. Notwithstanding the above, neither Mortgagor nor any Exculpated Person shall be personally liable for any of the above non-recourse exceptions resulting from Mortgagee's gross negligence or willful misconduct. It is expressly understood that no Exculpated Person shall be liable to Mortgagee for any loss, cost, expense or damage suffered by Mortgagee, and none of the property or assets of any Exculpated Person other than its interest in the Development shall be subject to any enforcement procedure for the satisfaction of the remedies of Mortgagee hereunder, by reason of the acts or omissions described in the foregoing clause (i), (ii), (iii), (iv), (v), (vi), or (vii) of this **Paragraph 45**, unless such Exculpated Person perpetrates or knowingly cooperates with or acquiesces in such act or omission. The limitation on the liability of any Exculpated Person shall not modify or discharge the liability of any person who is not an Exculpated Person or entities perpetrating or knowingly cooperating with or acquiescing in such act or omission.

#### 46. Trustee Exculpation.

This Mortgage is executed and delivered by LaSalle Bank, ~~N.A.~~, not personally, but solely as Trustee under a certain Trust Agreement dated September 20, 1974, and known as Trust No. 33445 in the exercise of the power and authority conferred upon and invested in it as such Trustee. It is expressly understood and agreed by each original and successive holder of this Mortgage, that no personal liability shall be asserted or be enforceable against the Trustee by Mortgagee, and each successive holder of the Mortgage expressly waives such liability. Mortgagee accepts the Mortgage upon the express condition that no duty shall rest upon the Trustee, either personally or as the Trustee, to sequester the rents, issues and profits arising from the collateral given in connection with the Loan or the proceeds arising from the sale or other disposition thereof.

NATIONAL ASSOCIATION


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IN WITNESS WHEREOF, Mortgagor has caused this Mortgage to be duly executed and delivered the day and year first above written.

**MORTGAGOR:**

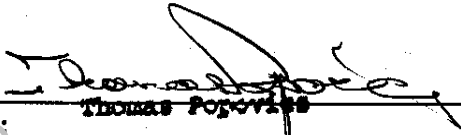
**BENEFICIARY:**

ELM STREET PLAZA VENTURE,  
an Illinois limited partnership

By:   
Daniel E. Levin  
Its general partner

**TRUSTEE**

NATIONAL ASSOCIATION  
LASALLE BANK, N.A.,  
not personally but solely as  
Trustee as aforesaid

By:   
Name: THOMAS POTOVICK  
Its ASSISTANT VICE PRESIDENT

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STATE OF ILLINOIS    )  
                                  ) SS  
COUNTY OF COOK     )

### ACKNOWLEDGMENT OF MORTGAGOR

I, the undersigned, a notary public in and for the State and County aforesaid, certify that Daniel E. Levin 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, as such general partner of Elm Street Plaza Venture, he signed and delivered such instrument as his free and voluntary act, as the free and voluntary act of Elm Street Plaza Venture, for the uses and purposes therein set forth.

Given under my hand and official seal this 18<sup>th</sup> day of December, 2003.



Arlene D. Scarlato  
Notary Public



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## EXHIBIT A

### LEGAL DESCRIPTION FOR ELM STREET PLAZA, ML-059

#### PARCEL 1:

LOT 22 IN BLOCK 18 IN BUSHNELL'S ADDITION TO CHICAGO IN THE EAST  $\frac{1}{2}$  OF THE SOUTHEAST  $\frac{1}{4}$  OF SECTION 4, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

ALSO

#### PARCEL 2:

LOT 23 IN BLOCK 18 IN BUSHNELL'S ADDITION TO CHICAGO IN THE EAST  $\frac{1}{2}$  OF THE SOUTHEAST  $\frac{1}{4}$  OF SECTION 4, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

ALSO

#### PARCEL 3:

LOT 24 IN BLOCK 18 IN BUSHNELL'S ADDITION TO CHICAGO IN THE EAST  $\frac{1}{2}$  OF THE SOUTHEAST  $\frac{1}{4}$  OF SECTION 4, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

ALSO

#### PARCEL 4:

LOTS 1 TO 8 BOTH INCLUSIVE AND THAT PART OF LOT 9 DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF SAID LOT 9; THENCE EAST ALONG THE NORTH LINE OF SAID LOT 9 TO THE WEST LINE OF THE ALLEY AT THE REAR OF SAID LOT; THENCE SOUTH ALONG THE WEST LINE OF SAID ALLEY 3 FEET 6  $\frac{3}{8}$  INCHES; THENCE WESTERLY TO A POINT OF THE WEST LINE OF SAID LOT 9 WHICH IS 3 FEET 9  $\frac{7}{8}$  INCHES SOUTH OF NORTH WEST CORNER THEREOF; THENCE NORTH TO THE POINT OF BEGINNING, ALL IN BLOCK 18 IN BUSHNELL'S ADDITION TO CHICAGO IN THE EAST  $\frac{1}{2}$  OF THE SOUTHEAST  $\frac{1}{4}$  OF SECTION 4, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PROPERTY ADDRESS: 1130 NORTH DEARBORN  
CHICAGO, ILLINOIS 60610

PERMANENT INDEX NO.: 17-04-413-001-0000  
17-04-413-015-0000