



Doc#: 0419434135  
Eugene "Gene" Moore Fee: \$258.50  
Cook County Recorder of Deeds  
Date: 07/12/2004 02:48 PM Pg: 1 of 118

S:\Finance\Gaynor New\Housing\Restructurings &  
Misc\5001 South Drexel\Assignment - City to TWG (mlg  
6).doc

## Assignment Of Mortgage And Other Loan Documents And Assumption of Regulatory Agreement ("Assignment")

SPACE ABOVE THIS LINE RESERVED FOR  
RECORDER'S USE ONLY

I. FOR VALUE RECEIVED, in the amount of \$550,000 and other good and valuable consideration (the "Assignment Price"), the undersigned, CITY OF CHICAGO, ILLINOIS, an Illinois municipal corporation ("Assignor"), DOES HEREBY ASSIGN, SET OVER, TRANSFER AND CONVEY to TWG FUNDING XI LLC, ("Assignee"), whose address is 7635 North Greenview, Chicago, Illinois 60626, all of Assignor's right, title and interest in, to and under the following instruments:

1. Junior Mortgage and Security Agreement ("the Security Instrument") dated May 20, 1994 made by LaSalle National Bank, not individually, but as successor trustee to Central National Bank of Chicago under Trust Agreement dated December 28, 1979 and known as Trust No. 10-24161-08 and the sole beneficiary of the Trust, 5001 S. Drexel, Inc., an Illinois corporation (collectively "the Debtor"), in favor of Assignor, and recorded with the Recorder of Deeds of Cook County, Illinois ("Recorder") on May 23, 1994, as Document No. 94461298 encumbering the Property located at:

LOTS 9 AND 10 IN THE SUBDIVISION OF LOTS 1 TO 4 INCLUSIVE IN BLOCK 8 IN DREXEL AND SMITH'S SUBDIVISION OF THE WEST ½ OF THE NORTHWEST ¼ AND THE WEST ½ OF THE WEST ½ OF THE SOUTHWEST ¼ OF SECTION 11, TOWNSHIP 38 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

P.I.N.: 20-11-114-001-0000

ADDRESS OF PROPERTY: 5001-5005 South Drexel Boulevard, Chicago, Illinois 60615; also known as: 909-19 East 50<sup>th</sup> Street, Chicago, Illinois 60615.

# UNOFFICIAL COPY

2. Any and all other documents and instruments (except for the Regulatory Agreement and Modification Agreement referred to in Section V hereof below) securing that certain Note dated May 20, 1994 in the original principal amount of One Million Nine Hundred Fifty-Three Thousand Nine Hundred Fifty-One and 00/100 Dollars (\$1,953,951.00) (the "Loan Amount") made by the Debtor to the order of Assignor.
  3. That certain Housing Loan Agreement dated May 20, 1994 made by and between the Assignor and Debtor (the Security Instrument, the Note, and the Housing Loan Agreement shall collectively be known herein as the "Loan Documents").
- II. The Assignee shall, on the date hereof, deposit the Assignment Price into an interest-bearing joint escrow account for the benefit of the Assignor and the Assignee with Chicago Title & Trust, Escrow Account # 24046561 (the "Escrow Account") and pursuant to terms and conditions set forth herein. The Assignor and Assignee shall share equally in the cost of the Escrow Account. The Assignor and Assignee shall both execute a joint letter of direction to disburse the Assignment Price according to the terms set forth below:
1. If the Debtor reinstates the Loan pursuant to the Illinois Mortgage Foreclosure Act, or if the Debtor otherwise cures any event or events default under the Loan Documents by paying the necessary amount of money (the "Cure Amount") to bring the Loan current, and the Assignee accepts such reinstatement or cure, then: (a) this Assignment shall be rescinded and terminated; (b) the Assignee shall assign the Loan Documents back to the Assignor and shall execute all instruments necessary to accomplish such assignment; (c) the Assignee shall remit to the Assignor the Adjusted Cure Amount, which means, for purposes of this Assignment, the Cure Amount minus a special servicing fee in the amount of \$25,000.00, the Assignee's attorney's fees, and Assignee's costs and/or other advances included in the Cure Amount (the "Adjusted Cure Amount"); and (d) any and all funds held in the Escrow Account shall be disbursed to the Assignee after the Assignee has provided to the Assignor a detailed statement of the Adjusted Cure Amount which is due the Assignee and payment of the Adjusted Cure Amount.
  2. If the Assignee forecloses upon the Property pursuant to the Security Instrument and the Debtor redeems the Property by paying the amount of money necessary to redeem pursuant to the Illinois Mortgage Foreclosure Act (the "Redemption Amount"), then the Assignee shall pay to the Assignor the difference between the Loan Amount and the Assignment Price minus Assignee's attorney's fees and costs and advances. The remainder of any funds included in the Redemption Amount shall be retained by the Assignee, and any and all funds held in the Escrow Account shall be disbursed to the Assignor. Assignee shall provide to

# UNOFFICIAL COPY

Assignor a detailed statement of the Redemption Amount including additional costs and fees.

3. If the Assignee forecloses upon the Property pursuant to the Security Instrument and a third party bidder acquires title to the Property pursuant to an order approving the foreclosure sale, then any and all funds held in the Escrow Account shall be disbursed to the Assignor. In addition, Assignee shall pay Assignor \$600,000.00. This total amount reflects the current appraised value of the Property without the restrictions from that certain Regulatory Agreement noted in section IV below, \$1,800,000.00, less: 1) the Assignment Price, and less 2) the Assignee's cost of purchasing the first lien \$[650,000].
4. If the Assignee forecloses upon the Property pursuant to the Security Instrument and acquires title to the Property pursuant to an order approving the foreclosure sale, any and all of the funds held in the Escrow Account shall be disbursed to the Assignor upon the issuance of a judicial or sheriff's deed in the name of the Assignee.
5. In the event the Assignee acquires title to the Property pursuant to a deed-in-lieu of foreclosure, a consent judgment (as that term is defined in the Illinois Mortgage Foreclosure Act) or any other similar means, any and all of the funds held in the Escrow Account shall be disbursed to the Assignor.

III. The Assignee hereby represents, warrants and covenants to the Assignor that if the Assignee bids for the Property at any foreclosure sale of the Property then the Assignee shall bid no less than the amount of the judgment of foreclosure plus additional costs and interest.

IV. In the event that the Assignee shall acquire legal or beneficial title to the Property pursuant to a deed or similar instrument (the "Deed"), the Assignee shall simultaneously assume all of the Debtor's obligations under:

1. That certain Regulatory Agreement dated May 20, 1994 made by and between the Assignor and Debtor and recorded with the Recorder on May 23, 1994 as Document No. 94460684 (the "Original Regulatory Agreement"); and
2. That certain Modification Agreement dated October 1, 1995 made by and between the Assignor and Debtor and recorded with the Recorder on October 12, 1995 as Document No. 95694881 (the "Modification Agreement").

V. In the event that the Assignee shall acquire legal or beneficial title to the Property, in connection with the Assignee's assumption of all of the Debtor's obligations under the Original Regulatory Agreement and the Modification

# UNOFFICIAL COPY

Agreement, the Assignee shall simultaneously enter into a Regulatory Agreement with the Assignor in the form attached hereto as Exhibit A, record the Regulatory Agreement with the Recorder simultaneously with the recordation of the Deed, and provide the Assignor with evidence of the recordation of the Regulatory Agreement.

VI. The Assignee hereby represents, warrants and covenants to the Assignor that:

1. No current occupants of the Property leasing the Property or portions thereof ("Tenants") pursuant to Leases between the Debtor and such Tenants ("Leases") shall be displaced, removed or evicted from the Property in connection with, on account of, or as a result of the Assignee's exercise of any remedies afforded the Assignee pursuant to the Security Instrument. Nothing in this paragraph will alter the Assignee's legal right to file eviction actions against Tenants who fail to pay rent, or otherwise violate the terms of their Leases.
2. In the event that the Assignee shall acquire legal or beneficial title to the Property, Assignee shall not increase the rents paid by the Tenants pursuant to the Leases except as may be permitted by the terms and conditions of the Leases, subject to the terms and conditions of the Original Regulatory Agreement and the Modification Agreement.
3. In the event that the Assignee shall acquire legal or beneficial title to the Property, the Assignee shall expend not less than \$250,000 to rehabilitate the Property as detailed in the anticipated Scope of Work attached hereto as Exhibit C, and any additional work which may be necessary as determined by Assignee's full inspection of the Property.
4. The Assignee shall proceed with the pending foreclosure proceeding of both the Security Instrument and the first priority mortgage on the Property and proceed to judgment of foreclosure, foreclosure sale and confirmation of foreclosure sale on both such mortgages. If the foreclosure action is dismissed, then (a) this Assignment shall be rescinded and terminated, (b) the Assignee shall assign the Loan Documents back to the Assignor and shall execute all instruments necessary to accomplish such assignment, and (c) unless the dismissal is a result of an event as provided in Section II hereof (in which event the provisions of Section II shall control as applicable), any and all funds held in the Escrow Account shall be disbursed to Assignee, and the Assignee and Assignor shall execute a joint letter of direction for this purpose.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK  
– SIGNATURE PAGE FOLLOWS]



# UNOFFICIAL COPY

**PREPARED BY AND MAIL TO:**  
TWG FUNDING X LLC  
C/O THE WOLCOTT GROUP LLC  
7635 NORTH GREENVIEW  
CHICAGO, ILLINOIS 60626

PROPERTY OF COOK COUNTY CLERK'S OFFICE

# UNOFFICIAL COPY

## EXHIBIT A

### THE REGULATORY AGREEMENT

Property of Cook County Clerk's Office



# UNOFFICIAL COPY

**THIS INSTRUMENT WAS PREPARED  
BY AND AFTER RECORDING RETURN**

**TO: TWG Funding XI LLC  
c/o The Wolcott Group LLC  
7635 North Greenview  
Chicago, Illinois 60626  
Property Address:  
5001 South Drexel Boulevard  
Chicago, Illinois**

S:\Finance\Gaynor New\Housing\Restructurings & Misc\5001 South Drexel\Regulatory Agreement - City - 4th  
Draft.doc

## REGULATORY AGREEMENT

This **REGULATORY AGREEMENT** (this "Agreement"), is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2004, by and between **TWG FUNDING XI LLC**, an Illinois limited liability company ("TWG") and the **CITY OF CHICAGO, ILLINOIS**, an Illinois municipal corporation (the "City") by and through its Department of Housing, having its principal office at 318 South Michigan Avenue, Chicago, Illinois 60604.

### WITNESSETH:

**WHEREAS**, on May 20, 1994, LaSalle National Bank, not individually, but as successor trustee to Central National Bank of Chicago under Trust Agreement dated December 28, 1979 and known as Trust No. 10-24161-08 and the sole beneficiary of the Trust, 5001 S. Drexel, Inc., an Illinois corporation (collectively "the Debtor") executed and delivered to the City a Note in the principal amount of \$1,953,951.00 (the "City Note") which evidences a loan from the City to the Debtor in the principal amount of \$1,953,951.00 (the "City Loan"), and a Junior Mortgage and Security Agreement dated as of May 20, 1994 encumbering the property commonly known as 5001 South Drexel, Chicago, Illinois (the "Real Estate"), which is legally described on Exhibit "A" attached hereto (the "City Mortgage"), from the Debtor to the City, which City Mortgage was recorded in the Cook County Recorder's Office (the "Recorder") on May 23, 1994 as Document No. 94461298, to secure repayment of the City Loan and the City Note; and

**WHEREAS**, in connection with the City Loan, the Debtor executed and delivered to the City, among other documents, a Regulatory Agreement dated as of May 20, 1994 (the "Original Regulatory Agreement"), by and between the City and the Debtor encumbering the Real Estate, and recorded with the Recorder on May 20, 1994 as Document No. 94460684, a copy of which is attached hereto as Exhibit "B"; and

**WHEREAS**, subsequent to the closing of the City Loan, a Modification Agreement dated October 1, 1995 was executed and entered into by and between the Debtor and the City for the purpose of correcting certain omissions and inaccurate information contained in the Original Regulatory Agreement, and said Modification Agreement was recorded with the Recorder on



# UNOFFICIAL COPY

October 12, 1995 as Document No. 95694881, a copy of which is attached hereto as Exhibit "C"; and

**WHEREAS**, the City has assigned and sold the City Loan to the first priority mortgage holder, TWG (the "Sale"), pursuant to the settlement of litigation; and

**WHEREAS**, TWG is the fee owner of the Real Estate; and

**WHEREAS**, as a condition of the Sale, TWG has agreed to comply with all of the terms, covenants and restrictions of the Original Regulatory Agreement and the Modification Agreement;

**NOW, THEREFORE**, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties hereto agree as follows:

1. **Incorporation.** The foregoing recitals and the terms, covenants, and agreements set forth in the Original Regulatory Agreement and the Modification Agreement are incorporated in this Agreement and shall have the same force and effect as if set forth in full herein.
2. **Agreement.** TWG shall comply with this Agreement and specifically, all of the terms, covenants and restrictions of the Original Regulatory Agreement and Modification Agreement entered into by and between the Debtor and the City.
3. **Term of Agreement; Covenants Run with Development; Termination; Business Relationships; Events of Default and Remedies.**
  - A. This Agreement and the Original Regulatory Agreement and Modification Agreement incorporated herein shall remain in full force and effect until May 20, 2014 (the "Termination Date");
  - B. This Agreement and the Original Regulatory Agreement and Modification Agreement incorporated herein shall encumber the Real Estate and be binding on any other future owners of the Real Estate and the holder of any legal, equitable or beneficial interest in it until the Termination Date.
  - C. On or after the Termination Date, the City and TWG shall release this Agreement, the Original Regulatory Agreement, and the Modification Agreement upon TWG's written request to the City to execute said release.
  - D. In the event of a conflict between any of the provisions of the Original Regulatory Agreement, the Modification Agreement, and/or this instrument, the provisions of this instrument shall override and control.
  - E. Notwithstanding any of the foregoing, any provision of the Original Regulatory Agreement or the Modification Agreement which is intended, pursuant to the

# UNOFFICIAL COPY

terms of the Original Regulatory Agreement or the Modification Agreement, to survive beyond the Termination Date (as defined above), including but not limited to Sections 2.16 and 2.17 of the Original Regulatory Agreement, shall survive beyond the Termination Date.

F. Pursuant to Section 2-156-030(b) of the Municipal Code of Chicago, it is illegal for any elected official of the City, or any person acting at the direction of such official, to contact, either orally or in writing, any other City official or employee with respect to any matter involving any person with whom the elected official has a [Business Relationship] (as defined in Section 2-156-080 of the Municipal Code of Chicago), or to participate in any discussion in any City Council committee hearing or in any City Council meeting or to vote on any matter involving the person with whom an elected official has a Business Relationship. Violation of Section 2-156-030(b) by any elected official, or any person acting at the direction of such official, with respect to this Regulatory Agreement, or in connection with the transactions contemplated thereby, shall be grounds for termination of this Regulatory Agreement and the transactions contemplated thereby. TWG hereby represents and warrants that, to the best of its knowledge after due inquiry, no violation of Section 2-156-030(b) has occurred with respect to this Regulatory Agreement or the transactions contemplated thereby.

G. In the event of a breach by TWG of TWG's obligations hereunder, TWG shall pay to the City \$[1,403,951.00] (the "Default Payment"), subject to the following: the Default Payment shall be reduced monthly by \$11,897.89 of the original amount of the Default Payment as set forth above for 118 consecutive months commencing on July 1, 2004\_\_ and on the first day of each month thereafter until May 1, 2014.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK  
 - SIGNATURE PAGE FOLLOWS]

# UNOFFICIAL COPY

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed by their authorized officers as of the day and year first above written.

**TWG FUNDING XI LLC**, an Illinois  
limited liability company

**CITY OF CHICAGO**, an Illinois  
municipal corporation

By: \_\_\_\_\_  
Printed Name: Victor Michel  
Its: Manager-Member

By: \_\_\_\_\_  
Printed Name: JOHN G MARKOWSKI

Its: Commissioner of the Department of Buildings

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

STATE OF ILLINOIS     )  
  ) SS  
COUNTY OF COOK     )

I, the undersigned, a Notary Public in and for the County and State aforesaid, certify that \_\_\_\_\_, personally known to me to be a Member of TWG FUNDING XI LLC, and 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 he signed and delivered the said instrument in his capacity as a Member of TWG FUNDING XI LLC, as his free and voluntary act and deed and as the free and voluntary act and deed of \_\_\_\_\_, as Member, for the uses and purposes therein set forth.

Given under my hand and official seal this \_\_\_\_ day of \_\_\_\_\_, 2004.

\_\_\_\_\_  
Notary Public

Property of Cook County Clerk's Office



# UNOFFICIAL COPY

## EXHIBIT "A"

### LEGAL DESCRIPTION

LOTS 9 AND 10 IN THE SUBDIVISION OF LOTS 1 TO 4 INCLUSIVE IN BLOCK 8 IN DREXEL AND SMITH'S SUBDIVISION OF THE WEST ½ OF THE NORTHWEST ¼ AND THE WEST ½ OF THE WEST ½ OF THE SOUTHWEST ¼ OF SECTION 11, TOWNSHIP 38 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

P.I.N.: 20-11-114-001-0000

ADDRESS OF PROPERTY: 5001-5005 South Drexel Boulevard, Chicago, Illinois 60615; also known as: 909-19 East 50<sup>th</sup> Street, Chicago, Illinois 60615.

# UNOFFICIAL COPY

## EXHIBIT "B"

"ORIGINAL REGULATORY AGREEMENT"

ATTACHED HERETO

Property of Cook County Clerk's Office



UNOFFICIAL COPY

GIT

4163243

Ullery

(CDBG and Rental Rehab; no DOH tax credits) 5/5/94

This document prepared by and when recorded return to:



Clara Rubinsten  
Office of Corporation Counsel  
Room 511  
121 North LaSalle Street  
Chicago, Illinois 60602

LaSALLE NATIONAL TRUST, N.A. DEPT-41 RECORDING  
REGULATORY AGREEMENT  
18222 TRAM 2175 05/23/94 16664  
40827 : KR # -94-466  
COOK COUNTY RECORDER

THIS REGULATORY AGREEMENT entered into and effective this 10th day of May, 1994 (this "Regulatory Agreement"), by and between the City of Chicago, Illinois (the "City"), an Illinois municipal corporation, by and through its Department of Housing ("DOH"), with offices at 318 South Michigan Avenue, Chicago, Illinois 60604, and LaSalle National Bank, not individually, but as successor trustee to Central National Bank of Chicago (the "Trustee") under the trust agreement dated December 28, 1970 and known as Trust No. 24161 (the "Trust") and the sole beneficiary of the Trust, 5001 S. Drexel, Inc., an Illinois corporation (the "Beneficiary") (the Beneficiary and the Trustee being referred to herein collectively as the "Borrower").

WITNESSETH  
18222 TRAM 2175 05/23/94 16664  
40827 : KR # -94-466  
COOK COUNTY RECORDER

WHEREAS, DOH is an executive department of the City established pursuant to Title 2 of the Municipal Code of Chicago, Chapter 2-44, Section 2-44-010, which supervises and coordinates the formulation and execution of projects and programs creating safe, decent and affordable housing for residents of the City; and

WHEREAS, the City has received an allocation of Community Development Block Grant funds under Title I of the Housing and Community Development Act of 1974, 42 U.S.C. 55301 et seq., as from time to time amended, supplemented and restated, which created the Community Development Block Grant ("CDBG") program; and

WHEREAS, the City has programmed \$7,060,000 of CDBG funds for its Multi-Family Loan Program in Program Year XIX ("Multi-Family Program"), wherein acquisition and rehabilitation loans are made available to owners of rental properties containing five or more dwelling units located in low- and moderate-income areas; and

WHEREAS, the City has received an allocation of \$1,441,100 of Rental Rehabilitation Program Rental Program grant funds



UNOFFICIAL COPY

Program Year VII pursuant to the Housing and Community Development Act, which program provides for federal grants to local governments to help finance rehabilitation of privately owned residential structures devoted primarily to rental use and which units are eligible for rent subsidy programs so as to increase their accessibility to low- and moderate-income persons; and

WHEREAS, the City intends to loan \$1,340,751 of Multi-Family Program funds and \$613,200 of Rental Program funds (hereinafter collectively referred to as the "Loan") to the Borrower for the purposes set forth below, and has requested that DOH administer the Loan; and

WHEREAS, the Borrower will utilize the Loan proceeds to rehabilitate the building located at 5001 S. Drexel Boulevard, Chicago, Illinois, into 33 multi-family residential dwelling units (the "Project"), wherein one, two- and three-bedroom units shall be occupied by individuals, groups of unrelated individuals or families qualifying as Low-Income Families (as hereinafter defined); and

WHEREAS, as a specific condition precedent to the Borrower receiving the Loan, the Borrower has agreed to execute this Regulatory Agreement with the City governing the use of the Project;

NOW, THEREFORE, in consideration of the mutual promises and covenants hereinafter set forth, and of other valuable consideration, the Borrower and the City each agree as follows:

#### SECTION 1. DEFINITIONS AND INTERPRETATIONS.

The following terms shall have the respective meaning assigned to them in this Section 1 unless the context in which they are used clearly requires otherwise:

"Affirmative Marketing Plan" shall mean the affirmative marketing plan submitted by the Borrower and approved by the City identifying those racial, ethnic and gender groups least likely to apply for housing in the Project, and specifying the commercial media, community contacts and other means to be used to attract such groups to the Project.

"Affordable Rent" shall mean the rent amounts determined by the City for rental housing pursuant to 24 C.F.R. §570.203(a)(3), as may be adjusted for unit size.

"Annual Owner's Certification" shall mean the report from the Borrower in substantially the form set forth in Schedule 1 attached hereto and hereby made a part hereof, as the same may be amended from time to time.

5-23-94  
LCS

UNOFFICIAL COPY

"Borrower" shall mean the person or persons, an Illinois corporation, and its any subsequent heirs, executors, the person or persons, if any, who shall succeed to the legal or beneficial ownership of all or any part of the Project.

"Business Day" shall mean a day on which banks in the City of Chicago, Illinois are not authorized or required to remain closed and which shall not be a public holiday under the laws of the State or any ordinance or resolution of the City of Chicago, Illinois.

"CDBG" shall mean the Community Development Block Grant program created under the CDBG Act.

"CDBG Act" shall mean the Housing and Community Development Act of 1974, 42 U.S.C. §5301 et seq.

"CDBG Funds" shall mean Community Development Block Grant funds awarded by HUD under the CDBG Act.

"Certificate re Owner and Contractor" shall mean the certificate from the Borrower in substantially the form set forth in Exhibit B attached hereto and hereby made a part hereof, as the same may be amended from time to time.

"City" shall mean the City of Chicago, Illinois, an Illinois municipal corporation, and its successors and assigns.

"Completion Date" shall mean the date as of which all necessary rehabilitation work has been performed and the Project in HUD's judgment complies with the requirements of the Multi-Unit Rehabilitation Construction Guidelines of DOH, and as of which the final disbursement of Loan proceeds derived from RRP Funds for the Project shall have been made, and as of which a project completion report has been submitted and processed in the cash and management information system prescribed by HUD.

"Davis-Bacon Act" shall mean 40 U.S.C. Section 276a-5.

"DOH" shall mean the Department of Housing of the City, and any successor to said Department.

"Family" shall have the meaning assigned to such term in 24 C.F.R. Section 812.2.

"First Reporting Date" shall mean the first January 1 following completion of rehabilitation of the Project.

"Foreclosure Date" shall mean the date of a Transfer.

"HUD" shall mean the U.S. Department of Housing and Urban Development.

"Last Reporting Date" shall mean the first January 1

5-23-94  
APCEL

# UNOFFICIAL COPY

following the end of the Project Term:

"Loan" shall mean a loan by the City to the Borrower in the principal amount of \$1,953,951 for financing a portion of the costs of the Project.

"Loan Agreement" shall mean the Housing Loan Agreement, of even date herewith, between the City and the Borrower with respect to the Loan, as hereafter amended, supplemented and restated from time to time.

"Loan Documents" shall have the meaning given to such term in the Loan Agreement.

"Low-Income Families" shall mean and include Families whose annual income does not exceed 80% of the Chicago-area median income, adjusted for Family size, as such annual income and Chicago-area median income are determined from time to time by HUD, and thereafter such income limits shall apply to this definition.

"Low-Income Project" shall mean the 33 units in the Project financed with CDBG Funds and RRP Funds and required to be occupied by Low-Income Families.

"Mortgage" shall mean that certain Junior Mortgage and Security Agreement of even date herewith from the Borrower to the City, as hereafter supplemented, amended and restated from time to time.

"Multi-Family Program" shall mean the Multi-Family Loan Program of DOH.

"People" shall have the meaning assigned to such term in Section 2.22 hereof.

"Permitted Tenants" shall have the meaning assigned to such term in Section 6.3 hereof.

"Persons" shall mean natural persons, firms, partnerships, associations, corporations, trusts and public bodies.

"Project" shall mean the low-income housing development erected or to be erected on real property located within the Chicago area and legally described on Exhibit A hereto.

"Project Term" shall mean the number of years during which the Project must comply with this Regulatory Agreement. The Project Term shall begin on the date hereof and shall continue, except as provided in Sections 2.16, 2.17 and 5.2 hereof, through and including the Termination Date, and shall end on the Termination Date.

"RRP Act" shall mean Section 17 of the United States Housing Act of 1949.

**UNOFFICIAL COPY**

Act of 1937, 42 U.S.C. §1437c et seq.

"RRP Funds" shall mean the Rental Rehabilitation Program funds awarded by HUD under the RRP Act.

"Regulatory Agreement" shall mean this Regulatory Agreement, as supplemented, amended and restated from time to time.

"Rental Program" shall mean the Rental Rehabilitation Program created under the RRP Act.

"Repayment Date" shall mean the date as of which the principal of and interest on the Loan and all other amounts due and payable to the City under the Loan Documents shall have been paid in full (or deemed by the City in its sole discretion to have been paid in full).

"Senior Lender" shall mean Harris Trust and Savings Bank located at 111 West Monroe Street, Chicago, Illinois 60603, and its successors and assigns.

"Senior Loan" shall mean a loan by the Senior Lender to the Borrower in the principal amount of \$720,000 for financing a portion of the costs of the Project.

"Senior Mortgage" shall mean that certain Construction Mortgage, Security Agreement and Financing Statement dated as of \_\_\_\_\_, granted by the Borrower to the Senior Lender and securing repayment of the Senior Loan.

"State" shall mean the State of Illinois.

"Tenant Certification" shall mean the certification in substantially the form set forth in Exhibit B to Schedule I attached hereto and hereby made a part hereof, as the same may be amended from time to time.

"Termination Date" shall mean the earlier of (a) Foreclosure Date or (b) the Repayment Date.

"Transfer" shall mean the transfer of the Project (a) by foreclosure of the Senior Mortgage (or, if the City so elects, of the Mortgage), or (b) by an instrument in lieu of foreclosure of the Senior Mortgage (or, if the City so elects, of the Mortgage).

"Very Low Income Family" shall mean any Family whose adjusted annual income does not exceed the Very Low Income Limit.

"Very Low Income Limit" shall mean 50% of the Chicago-area median income, adjusted for Family size, as such annual income and Chicago-area median income are determined from time to time by HUD, and thereafter such income limits shall apply to this definition.

5-13-80  
LCE

# UNOFFICIAL COPY

Capitalized terms used herein and not otherwise defined herein shall have the same meanings given such terms in the Loan Agreement.

## SECTION 2. BORROWER'S REPRESENTATIONS, WARRANTIES AND COVENANTS.

The Borrower hereby represents, warrants, covenants and agrees as follows:

2.1 The Project shall be acquired, constructed and rehabilitated for the purpose of providing residential rental property, and the Borrower shall own, manage and operate the Project as residential rental units and facilities functionally related and incidental thereto.

2.2 The Project shall consist of residential units, together with facilities functionally related and incidental thereto, and which units are similar in quality and type of construction and amenities.

2.3 Each unit in the Project shall contain separate and complete facilities for living, sleeping, eating, cooking and sanitation.

2.4 None of the units in the Project shall at any time be used on a transient basis, and neither the Project nor any portion thereof shall ever be used as a hotel, motel, dormitory, fraternity house, sorority house, rooming house, hospital, nursing home, sanitarium, rest home or trailer park or court.

2.5 The units in the Project shall be made available for lease by members of the general public and the Borrower shall not give preference in renting units in the Project to any particular class or group of individuals other than Low-Income Families as provided herein. No preference in tenant selection for the Project will be given to elderly or handicapped individuals or Families.

2.6 (a) Each building in the Project shall consist of the following unit configuration:

(i) Building Address: 5001 S. Drexel Boulevard

<u>Number of Bedrooms</u>	<u>Number of Units</u>
1	6
2	13
3	14

(b) Prior to rehabilitation, each building in the Low-Income Project consists of the following unit configuration:

5-22-79  
APC

**UNOFFICIAL COPY**

(1) Building Address: 5001 S. Drexel Boulevard

Number of Bedrooms

Number of Units

1

6

2

13

3

14

(c) After the Completion Date, each building in the Low-Income Project shall consist of the following unit configuration for Low-Income Family households:

(1) Building Address: 5001 S. Drexel Boulevard

Number of Bedrooms

Number of Units

1

6

2

13

3

14

2.7 The Borrower shall not convert any units in the Project to condominium ownership or to any form of cooperative ownership that is not eligible to receive CDBG Funds or RRP Funds from HUD.

2.8 The Borrower shall not discriminate against prospective tenants on the basis (a) of their receipt of, or eligibility for housing assistance under any federal, State or local housing assistance program, (b) that they have a minor child or children who will be residing with them, or (c) of familial status.

2.9 All of the units described in Section 2.6 hereof shall be, after completion of the rehabilitation of the Project, and shall remain suitable for occupancy.

2.10 All of the units in the Low-Income Project shall be leased only to tenants who are Low-Income Families at the time of initial occupancy by such Low-Income Families.

2.11 The rent charged each month for any unit in the Low-Income Project shall not exceed at any time the Affordable Rent for such unit.

2.12 The Borrower shall include in leases for all units provisions which authorize the Borrower to immediately terminate the tenancy of any tenant who misrepresented any fact material to the tenant's qualification as a Low-Income Family.

2.13 All tenant lists, applications, and waiting lists relating to the Project shall at all times be kept separate and identifiable from any other business of the Borrower which is unrelated to the Project, shall be maintained, as required by the City, in a reasonable condition for proper audit and subject to

5-23-74  
JCEL A. CO. CO.

**UNOFFICIAL COPY**

examination during business hours by representatives of the City and HUD. If the Borrower employs a management agent for the Project, the Borrower shall require such agent to comply with the requirements of this Regulatory Agreement and shall include such requirements in any and all management agreements or contracts entered into with respect to the Project.

2.14 All tenant leases shall be written, shall be for a period of not less than six months, shall be in conformity with all applicable laws, including without limitation the City of Chicago Residential Landlord and Tenant Ordinance, and, with respect to units in the Low-Income Project, shall contain clauses, *inter alia*, wherein each individual lessee: (i) certifies the accuracy of the statements made in the Tenant Certification and (ii) agrees that the Family income and other eligibility requirements shall be deemed substantial and material obligations of his/her tenancy, that he/she will comply with all requests for information with respect thereto from the Borrower, the City or HUD, and that the failure to provide accurate information in the Tenant Certification or refusal to comply with a request for information with respect thereto shall be deemed a substantial violation of an obligation of his/her tenancy.

2.15 The Borrower shall permit and shall cause any management agent for the Project to permit, during normal business hours and upon reasonable notice, any duly authorized representative of the City or HUD to inspect any books and records of the Borrower or such agent regarding the Project with respect to the incomes of Low-Income Families residing as tenants in the Low-Income Project or which pertain to compliance with the provisions of this Regulatory Agreement, the RRP Act, the CDBG Act or regulations under either of said Acts. The Borrower shall permit, and shall cause any management agent for the Project to permit, the City, HUD and/or their agents to inspect the Project at all reasonable times and access thereto shall be permitted for that purpose.

2.16 The Borrower shall obtain and maintain on file during the Project Term a sworn and notarized Tenant Certification with respect to each and every individual, group of unrelated individuals or Family who is intended to be a tenant in the Low-Income Project, signed by the tenant or tenants (i.e., the individual or individuals whose name or names appear on the lease) and obtained by the Borrower (a) prior to such tenant or tenants occupying the unit or signing a lease with respect thereto, and (b) thereafter at least annually so long as such individual, individuals or Family remain as tenants in the Low-Income Project. Each Tenant Certification shall be kept on file with the Borrower until three years after the end of the Project Term; this covenant shall survive beyond the Termination Date. The Borrower shall assist each of the tenants in the Low-Income Project in completing the Tenant Certification by referring to the instructions on Exhibit C to Schedule I hereto.

UNOFFICIAL COPY

2.17 The Borrower shall comply with all actions required by the City, including, but not limited to, submitting to the City an Annual Owner's Certification executed by the Borrower, commencing on the First Reporting Date and on each January 1 thereafter through and including the Last Reporting Date. This covenant shall survive beyond the Termination Date.

2.18 The Borrower shall provide to the City a tenant profile (in the form provided to the Borrower by DOH) for each Low-Income Family for each unit in the Low-Income Project within 30 days after such unit is leased to such tenant(s) (or, for units occupied by Low-Income Families) as of the date hereof, within 30 days from the date hereof). For each unit in the Low-Income Project, promptly after the first leasing of such unit after the completion of rehabilitation of the Project, the Borrower shall provide the City, unless prohibited by law, with data on the racial, ethnic, gender and income-level characteristics of (a) [the tenants, if any, occupying such unit before rehabilitation, (b)] the tenants moving into such unit initially after completion of rehabilitation of the Project, and [(b)] [(c)] the applicants for tenancy of such unit within 90 days following completion of rehabilitation of the Project. For each subsequent leasing of the unit, the Borrower shall provide the City, unless prohibited by law, with data on the racial, ethnic, gender and income-level characteristics of each tenant moving into the unit.

2.19 The Borrower shall notify the City of the occurrence of any event of which the Borrower has notice and which event would violate any of the provisions of this Regulatory Agreement.

2.20 No Person in the United States shall on the grounds of race, color, national origin, religion or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination in connection with the Project. The Borrower shall cause the Project to comply at all times with the Chicago Fair Housing Ordinance, Section 5-8-010 et seq. of the Municipal Code of Chicago.

2.21 During the Project Term, the Project shall comply with the requirements of Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. §1701u), and implementing regulations at 24 C.F.R. Part 135, to the effect that: (a) to the greatest extent feasible, opportunities for training and employment arising in connection with the planning and carrying out of the Project be given to low-income individuals residing within the City, and (b) to the greatest extent feasible, contracts for work to be performed in connection with the Project be awarded to business concerns, including but not limited to individuals or firms doing business in the fields of planning, consulting, design, architecture, building construction, rehabilitation, maintenance or repair, which are located in or owned in substantial part by individuals residing in the City.

5-23-74  
ARCEL 4 22 00



**UNOFFICIAL COPY**

2.22 The Borrower shall cause all persons who are to acquire the Project, including individuals, businesses, not-for-profit organizations and others (herein for the purposes of this paragraph collectively called "People"), as a result of the Project, if displacement of People does occur as a result of the Project, the Borrower shall comply with the requirements of 24 C.F.R. Sections 511.14 and 570.506, with respect to, among other things, temporary and permanent relocation of displaced People. The Borrower shall provide or cause all "displaced persons" (as defined in 24 C.F.R. Sections 511.14 and 570.606) to be provided with relocation assistance in accordance with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 ("URA"), 42 U.S.C. Section 5403 *et seq.*, and 49 C.F.R. Part 24, and shall cause all such "displaced persons" to be advised of their rights under the Fair Housing Act, 40 U.S.C. Section 3601 *et seq.*

2.23 The acquisition of the real property on which the Project is located is subject to the requirements of the URA and the requirements of 49 C.F.R. Part 24, Subpart B.

2.24 The Project shall constitute HUD-associated housing for purposes of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. Section 4821 *et seq.*) and comply with the requirements thereof and of 24 C.F.R. Sections 511.15 and 570.608, including without limitation the requirements of notice to tenants, prohibition of the use of lead-based paint and for the elimination of the hazards of lead-based paint. Any lead-based paint and defective paint debris shall be disposed of in accordance with applicable federal, State or local requirements.

2.25 Any contracts for the rehabilitation of the Project shall contain a provision requiring that not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act, will be paid to all laborers and mechanics employed in the rehabilitation of the Project. All such contracts shall also be subject to the Contract Work Hours and Safety Standards Act, 40 U.S.C. Sections 327-332, the regulations promulgated in connection therewith and with the Davis-Bacon Act, and with other federal laws and regulations pertaining to labor standards and HUD Handbook 1344.1 (Federal Labor Standards Compliance in Housing and Community Development Programs), as applicable. Notwithstanding the foregoing, the requirement of this Section with respect to the payment of prevailing wages shall not apply to volunteers in accordance with 24 C.F.R. Part 70.

2.26 The Borrower shall obtain and maintain flood insurance for the Project if the Project is located in an area which is identified by the Federal Emergency Management Agency as having special flood hazards.

2.27 The Beneficiary is not a primarily religious organization nor is it controlled by a primarily religious

# UNOFFICIAL COPY

organization and the Project will be used solely for secular purposes.

2.28 The Borrower has not and shall not execute any other agreement with provisions contradictory to, or in opposition to, the provisions hereof, and in any event, the requirements of this Regulatory Agreement are paramount and controlling as to the rights and obligations herein set forth and supersede any other requirements in conflict herewith.

2.29 Except as otherwise disclosed to the City in writing, all of the statements, representations and warranties of the Beneficiary contained in (i) the Beneficiary's application for the Loan, and (ii) any other document submitted by the Beneficiary to the City in connection with the Project remain true and in effect as of the date hereof.

2.30 The Project shall remain in private ownership and in primarily residential rental use (i.e., at least 51% of the rentable floor space of the Project will be used for residential rental purposes after rehabilitation) unless the Project is sold to another private owner who agrees to continue to manage the Project in accordance with the requirements of the Rental Program for the remainder of the Project term, or a hardship exception is approved by the City for reasons that occur after the Completion Date.

2.31 For every unit in the Project which is not rented to a Low-Income Family with housing assistance provided by a Public Housing Agency (as defined in 24 C.F.R. §511.2), the Borrower shall comply with affirmative marketing requirements established by DOH from time to time, including the following:

- (a) based on the Affirmative Marketing Plan, advertise in pre-identified commercial media, contact pre-identified churches, community groups and other agencies, and undertake other means to inform targeted groups of the availability of such units in the Project;
- (b) display conspicuously HUD's fair housing poster wherever rentals and showings of such units take place;
- (c) provide DOH upon request with an annual report describing the Borrower's affirmative marketing activities with respect to the Project, including a description of the Borrower's outreach efforts (including copies of all advertisements and brochures) and, unless prohibited by law, a record of the racial/ethnic/gender characteristics of all individuals who look at units in the Project, those who apply for leases for such units, and those who actually sign such leases; and

344-1111

**UNOFFICIAL COPY**

- (d) submit a record of all transactions entered into with respect to the Project, including, but not limited to, such unit to be made available for review by DCM for a period equal to the Project Term.

2.32 The Borrower hereby acknowledges and affirms that it has reviewed the provisions of, and that the Project shall during the Project Term be in compliance with, each of the following:

(a) the requirements of the Fair Housing Act, 42 U.S.C. §3601 et seq., and implementing regulations at 24 C.F.R. Parts 100, 106 and 107; Executive Order 11063, as amended by Executive Order 12259 (3 C.F.R., 1958-1963 Comp., p.652 and 3 C.F.R., 1980 Comp., p.307) (Equal Opportunity in Housing) and implementing regulations at 24 C.F.R. Part 107; and Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000d, and implementing regulations at 24 C.F.R. Part 1; (b) the prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975, 42 U.S.C. §6101 et seq., and the implementing regulations at 24 C.F.R. Part 146; (c) the prohibitions against discrimination on the basis of handicap under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §794, and implementing regulations at 24 C.F.R. Part 8; (d) the requirements of Executive Order 11246 (3 C.F.R., 1964-1965 Comp., p.339) (Equal Employment Opportunity) and the regulations issued under such Order at 41 C.F.R. Chapter 60, and (e) the requirements of Section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. §1701u, and implementing regulations at 24 C.F.R. Part 135.

2.33 The rehabilitation of the Project shall not cause the displacement of any Very Low Income Family by a Family that is not a Very Low Income Family.

2.34 The Borrower has provided to the City a fully executed and completed Certificate re Owner and Contractor as of the date hereof.

### SECTION 3. RELIANCE.

The City and the Beneficiary hereby recognize and agree that the representations and covenants set forth herein made by the City and the Beneficiary, respectively, may be relied upon by the Beneficiary and the City, respectively. In performing its duties and obligations hereunder, the City may rely upon statements and certificates of the Beneficiary and Low-Income Families and upon audits of the books and records of the Beneficiary pertaining to occupancy of the Project. In addition, the City may consult with counsel and the opinion of such counsel shall be evidence that such action or failure to act by the City was in good faith and in conformity with such opinion. The City and the Beneficiary agree that it is the Beneficiary's responsibility to determine that each potential tenant in the Low-Income Project qualifies as a Low-Income Family, and that in making each such determination, the Borrower shall exercise due diligence.

# UNOFFICIAL COPY

## SECTION 4. SALE OR TRANSFER OF THE PROJECT.

The Borrower hereby covenants and agrees not to sell, transfer or otherwise dispose of the Project or any portion thereof (including without limitation, a transfer by assignment of any beneficial interest under a land trust) or to violate any provision of the Mortgage relating to prohibitions on sales or transfers of the Project or any interest therein (whether or not the Mortgage remains of record), at any time during the Project Term, except as expressly permitted by the City. The Borrower hereby agrees and covenants that no portion of any building to which this Regulatory Agreement applies shall be transferred to any Person unless all of such building is transferred to such Person. It is hereby expressly stipulated and agreed that any sale, transfer or other disposition of the Project in violation of this Section 4 shall be null, void and without effect, shall cause a reversion of title to the Borrower or any successor or assignee of the Borrower last permitted by the City, and shall be ineffective to relieve the Borrower or such successor or assignee, as applicable, of its obligations hereunder.

## SECTION 5. TERM.

5.1 This Regulatory Agreement shall become effective upon its execution and delivery. Subject to Sections 2.16, 2.17 and 5.2 hereof, this Regulatory Agreement shall remain in full force and effect for a term equal to the Project Term, it being expressly agreed and understood that the provisions hereof are intended to survive throughout the Project Term.

5.2 Notwithstanding any other provision herein to the contrary, the covenants and restrictions contained in Sections 2.7, 2.8, 2.30, 2.31 and 2.32 hereof shall not cease prior to the tenth anniversary of the Completion Date.

## SECTION 6. ENFORCEMENT.

6.1 If a violation of any of the foregoing representations or covenants occurs or is attempted, and such occurrence or attempt is uncorrected for a period of 30 days after notice thereof from the City to the Borrower (provided, however, that if any such occurrence or attempt cannot reasonably be cured within said 30-day period and if the Borrower shall have commenced to cure such occurrence or attempt within said 30-day period and shall thereafter continue diligently to effect such cure, then said 30-day period shall be extended to 60 days upon written request from the Borrower to the City delivered during such 30-day period, and upon further written request from the Borrower to the City delivered during such 60-day period, said 60-day period shall be extended to 90 days; provided further, however, that the

UNOFFICIAL COPY

City shall not be precluded during any such periods from exercising any remedies hereunder. If the City shall receive a request or notice from HUD to do so or if the City shall determine that the continuation of such uncorrected occurrence or attempt shall result in any liability by the City to HUD, the City and its successors and assigns, without regard to whether the City or its successors and assigns is an owner of any land or interest therein to which these covenants relate, may institute and prosecute any proceeding at law or in equity to abate, prevent or enjoin any such violation or attempted violation or to compel specific performance by the Borrower of its obligations hereunder, or may declare an event of default under the Loan Documents and exercise its rights thereunder, including without limitation foreclosure under the Mortgage. No delay in enforcing the provisions hereof as to any breach or violation shall impair, damage or waive the right of any party entitled to enforce the provisions hereof or to obtain relief against or recovery for the continuation or repetition of such breach or violations or any similar breach or violation hereof at any later time.

6.2 All fees, costs and expenses of the City incurred in taking any action pursuant to this Section 6 shall be the sole responsibility of the Borrower.

6.3 To the extent permitted by law, all individuals who are or may qualify as Low-Income Families with respect to the Project (whether as prospective, present or former tenants of the Project) (the "Permitted Tenants") shall have the right to enforce in any court of the State the requirement of Section 6.1 hereof.

6.4 The Borrower further specifically acknowledges that the beneficiaries of the Borrower's obligations hereunder cannot be adequately compensated by monetary damages in the event of a breach or violation of any of the foregoing representations and covenants.

#### SECTION 7. RECORDING AND FILING.

The Borrower shall cause this Regulatory Agreement and all amendments and supplements hereto to be recorded and filed in the conveyance and real property records of the county in which the Project is located and in such other places as the City may reasonably request. The Borrower shall pay all fees and charges incurred in connection with any such recording. Upon recording, the Borrower shall immediately transmit to the City an executed original of this Regulatory Agreement showing the date and recording number of record.

UNOFFICIAL COPY

## SECTION 8. COVENANTS, RESERVATIONS AND RESTRICTIONS.

The Borrower hereby subjects the Project to the covenants, reservations and restrictions set forth in this Regulatory Agreement. The City and the Borrower hereby declare their express intent that the covenants, reservations and restrictions set forth herein shall, throughout the Project term, be deemed covenants, reservations and restrictions running with the land to the extent permitted by law, and shall pass to and be binding upon the Borrower's successors in title to the Project throughout the Project Term. The Borrower hereby covenants to include the requirements and restrictions contained in this Regulatory Agreement in any documents transferring any interest in the Project to another Person in order that such transferee has notice of, and is bound by, such restrictions, and to obtain any transferee the agreement to be bound by and comply with requirements set forth in this Regulatory Agreement; provided however, that each and every contract, deed, mortgage or other instrument hereafter executed covering or conveying the Project or any portion thereof or interest therein (including, without limitation, any transfer of a beneficial interest in a land or a portion thereof) shall conclusively be held to have been executed, delivered and accepted subject to such covenants, reservations and restrictions, regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed or other instrument.

## SECTION 9. GOVERNING LAW.

This Regulatory Agreement shall be construed in accordance with and governed by the internal laws of the State without regard to its conflict of laws principles and, where applicable, the laws of the United States of America. In the event of conflict between this Regulatory Agreement and the RRP Act, CDBG Act, the RRP Act or the CDBG Act, as applicable shall control.

## SECTION 10. AMENDMENTS.

This Regulatory Agreement shall be amended only by a written instrument executed by the parties hereto or their successors in title, and duly recorded in the real property records of the county in which the Project is located. The Borrower hereby expressly agrees to enter into all amendments hereto which, in the opinion of the City, are reasonably necessary or desirable for maintaining compliance under the RRP Act and the CDBG Act.

## SECTION 11. NOTICE.

Unless otherwise specified, any notice, demand or request required hereunder shall be given in writing at the address set forth below, by any of the following means: personal delivery

**UNOFFICIAL COPY**

(b) electronic communication, (c) overnight courier, receipt requested, (d) registered or certified mail, return receipt requested.

**IF TO CITY:**

City of Chicago, Illinois  
c/o Department of Housing  
318 South Michigan Avenue  
Chicago, Illinois 60604  
Attention: Commissioner

**WITH COPIES TO:**

Department of Finance  
City of Chicago  
121 North LaSalle Street, Room 500  
Chicago, Illinois 60602  
Attention: Comptroller

and

Office of the Corporation Counsel  
City Hall, Room 511  
121 North LaSalle Street  
Chicago, Illinois 60602  
Attention: Finance and Economic  
Development Director

**IF TO BORROWER:**

5001 S. Drexel, Inc.  
c/o Miller and Ferguson  
9415 South State Street  
Chicago, Illinois 60619

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

**SECTION 12. SEVERABILITY.**

If any provision of this Regulatory Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

**SECTION 13. COUNTERPARTS.**

This Regulatory Agreement may be executed in any number of counterparts, each of which shall constitute an original, but

# UNOFFICIAL COPY

of which taken together shall constitute the entire Regulatory Agreement.

## SECTION 14. EFFECTIVE DATE.

This Regulatory Agreement shall be deemed to be in effect as of the date first set forth above.

## SECTION 15. RIGHT TO INSPECT.

The Borrower agrees that the City shall have the right to perform an on-site inspection of the Project and to review the records maintained by the Borrower or its agent as described in Section 2.15 hereof, upon 30 days' prior notice by the City to the Borrower, at least annually during each year of the Project Term.

## SECTION 16. NO THIRD PARTY BENEFITS.

Subject to Section 6.3 hereof, this Regulatory Agreement is made for the sole benefit of the City and the Beneficiary and their respective successors and assigns and, except as provided in Section 6.3 hereof or otherwise expressly provided herein, no other party shall have any legal interest of any kind hereunder or by reason of this Regulatory Agreement. Whether or not the City elects to employ any or all of the rights, powers or remedies available to it hereunder, the City shall have no obligation or liability of any kind to any third party by reason of this Regulatory Agreement or any of the City's actions or omissions pursuant hereto or otherwise in connection herewith.

## SECTION 17. REFERENCES TO STATUTES, ETC.

All references herein to statutes, regulations, rules, executive orders, ordinances, resolutions, rulings, notices or circulars issued by any governmental body shall be deemed to include any and all amendments, supplements and restatements from time to time to or of such statutes, regulations, rules, executive orders, ordinances, resolutions, rulings, notices and circulars.

## SECTION 18. AFFIRMATIVE MARKETING.

- (a) DOH shall maintain on-going contacts with local churches, community organizations, employment centers, fair housing groups and other organizations which, in the sole judgment of DOH, may be useful in marketing the units in the Project. DOH shall also notify the Chicago Housing Authority as necessary for referrals to their waiting list.



UNOFFICIAL COPY

- (1) copies of all advertisements placed by DOH or the Borrower;
- (2) copies of all information included in information packets to the public regarding affirmative marketing policies and procedures and fair housing laws;
- (3) copies of all correspondence to the Borrower, tenants, community groups, etc., regarding affirmative marketing and fair housing laws;
- (4) tenant profiles including racial, ethnic and gender characteristics of the Low-Income Families before and after rehabilitation of the Project;
- (5) annual tenant information used in assessment of the Rental Program; and
- (6) relocation data for households displaced from the Project.

**SECTION 19. AGREEMENT TO PROVIDE LOAN, START CONSTRUCTION, COMPLETION DATE.**

19.1 The City agrees to provide the Loan to the Borrower in accordance with the terms and conditions of the Loan Agreement for the purposes described therein. The Borrower agrees to start construction on the Project within 90 days from the date hereof.

19.2 The City agrees to provide, upon the written request of the Borrower, a certification, in a form eligible for recordation in the conveyance and real property records of the county in which the Project is located, identifying the Completion Date promptly after such date. The Borrower shall pay all expenses of recordation of such certificate.

**SECTION 20. TRUSTEE EXCULPATION.**

20.01 This instrument is executed by LaSalle National Bank ("LaSalle"), as Trustee as aforesaid, in the exercise of the power and authority conferred upon and vested in it as such Trustee (and LaSalle hereby warrants that it possesses full power and authority to execute this instrument). It is expressly understood and agreed by every person, firm or corporation hereafter claiming any interest under this instrument that LaSalle, as Trustee as aforesaid, and not personally, has joined in the execution of this instrument for the sole purpose of subjecting the title holding interest and the trust estate under said Trust No. 24161 to the terms of this instrument; that any and all obligations, duties, covenants, undertakings and agreements of every nature herein set forth by LaSalle, as Trustee as aforesaid, to be kept or performed by the Borrower

# UNOFFICIAL COPY

not performed and the Trustee of said Trust No. 24161, or their successors, or assigns, personally, and further, that no duty shall be imposed on said Trustee, either personally or as such Trustee, to request, list assets, rentals, avails, or proceeds of any kind, or otherwise to see to the fulfillment or discharge of any obligation, express or implied, arising under the terms of this instrument, except where said Trustee is acting pursuant to direction as provided by the terms of said Trust No. 24161 after the Trustee has been supplied with funds required for the purpose.

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

IN WITNESS WHEREOF, the undersigned have executed this Regulatory Agreement by their duly authorized representatives, all as of the date first written hereinabove.

CITY OF CHICAGO, ILLINOIS, by and through its Department of Housing

By: Angie Malinda for  
Commissioner Maria Carratt

5001 S. DREXEL, INC., an Illinois corporation

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

Its: \_\_\_\_\_

ATTEST:

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

Its: \_\_\_\_\_

LASALLE NATIONAL TRUST, S.A. Successor Trustee of  
LASALLE NATIONAL BANK, as successor trustee under Trust No. 24161 as aforesaid

By: [Signature]

Its: \_\_\_\_\_

ATTEST:

By: [Signature]

Its: Trustee Secretary

Property of Cook County Clerk's Office

7-23-94  
LASEL

# UNOFFICIAL COPY

IN WITNESS WHEREOF, the City and the Borrower have executed this Regulatory Agreement by their duly authorized representatives, all as of the date first written hereinabove.

CITY OF CHICAGO, ILLINOIS, by and through its Department of Housing

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

5001 S. DEXEL, INC.

By: Gregory White

Its: President

ATTEST:

By: Anthony B. Ferguson

Its: Secretary

LASALLE NATIONAL BANK, as successor trustee under Trust No. 24161 as aforesaid

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

Its: \_\_\_\_\_

ATTEST:

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

Its: \_\_\_\_\_

# UNOFFICIAL COPY

STATE OF ILLINOIS

COUNTY OF COOK

*DuPage*

I, the undersigned, a Notary Public in and for the county and State aforesaid, do hereby certify that *Robert V. Miller* and *Anthony J. Ferguson*, personally known to me to be the *President* and *Secretary*, respectively, of 500<sup>th</sup> A. Drexel, Inc, an Illinois corporation (the "Corporation"), and known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such *President* and *Secretary*, they signed and delivered the said instrument pursuant to authority given by the Board of Directors of the Corporation, and as their respective free and voluntary acts and deeds and as the free and voluntary act and deed of the Corporation for the uses and purposes therein set forth.

GIVEN under my hand and official seal this *20<sup>th</sup>* day of *May*

*Alice M. Lange*  
 \_\_\_\_\_  
 Notary Public

"OFFICIAL SEAL"  
 ALICE M. LANGE  
 Notary Public, State of Illinois  
 My Commission Expires 3/11/98

(SEAL)

County Clerk's Office

UNOFFICIAL COPY

STATE OF ILLINOIS

SS

COUNTY OF COOK

I, the undersigned, a notary public in and for the County and State aforesaid, DO HEREBY CERTIFY THAT SONYA HALUNDA personally known to me to be the FIRST DEPUTY Commissioner of the Department of Housing of the City of Chicago, Illinois (the "City") and 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 \_\_\_\_\_ Commissioner, (s)he signed and delivered the said instrument pursuant to authority, as his/her free and voluntary act, and as the free and voluntary act and deed of said City, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 6th day of

MAY, 1994.

John Muhammad  
Notary Public

(SEAL)



5-23-94

1025 11:20

# UNOFFICIAL COPY

STATE OF ILLINOIS )  
COUNTY OF COOK ) SS

*National Trust  
N.A.*

I, the undersigned, a Notary Public in and for the county and State aforesaid, do hereby certify that William Beck and William H. Dillon personally known to me to be the Vice President and Assistant Secretary of Home Trust Savings Bank (the "Trustee"), and personally known to me to be the same persons whose names are subscribed to the foregoing instruments, appeared before me this day in person and severally acknowledged that as such Vice President and Assistant Secretary they signed and delivered the said instrument, pursuant to authority given by the Board of Directors of Trustee as their free and voluntary act, and as the free and voluntary act and deed of the Trustee for the uses and purposes therein set forth.

GIVEN under my hand and official seal this 23 day of May, 1931.

*[Handwritten Signature]*  
Notary Public

(SEAL)

"OFFICIAL SEAL"  
MARY ANN BUNNELL  
Notary Public State of Illinois  
My Commission Expires 9/24/97

Cook County Clerk's Office

5-23-31  
1065

# UNOFFICIAL COPY

EXHIBIT A

LEGAL DESCRIPTION:

LOTS 9 AND 10 IN THE SUBDIVISION OF LOTS 1 TO 4 INCLUSIVE IN BLOCK 8 IN DREXEL AND SMITH'S SUBDIVISION OF THE WEST 1/2 OF THE NORTHWEST 1/4 AND WEST 1/2 OF THE WEST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 11, TOWNSHIP 38 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

ADDRESS COMMONLY KNOWN AS:

5001 S. DREXEL BOULEVARD AND 909-19 E. 50TH STREET IN CHICAGO, ILLINOIS.

PERMANENT INDEX NO.:

20-11-114-001

Property of Cook County Clerk's Office

20-11-114-001



UNOFFICIAL COPY

**EXHIBIT A**

**CERTIFICATE RE OWNER AND CONTRACTOR**

RE: 5001 S. Draxel Boulevard  
Chicago, Illinois

The undersigned, 5001 S. Draxel, Inc., an Illinois limited partnership (the "Owner"), hereby certifies that it is the sole owner of the beneficial interest and power of direction in the land trust holding fee simple title to that certain property located at the address shown above (the "Project"). The Owner has received a loan in the principal amount of \$1,953,951 (the "Loan") from the City of Chicago, Illinois (the "City") in connection with the rehabilitation of the Project.

The Owner hereby certifies that the following information is true, correct and complete:

- A. 1. Name: 5001 S. Draxel, Inc.
  - 2. Race/Ethnicity: \_\_\_\_\_
  - 3. Gender: \_\_\_\_\_
  - 4. Annual Income: \$ \_\_\_\_\_
- B. 1. Name: East East Construct. Co. Company, Inc.
  - 2. Race/Ethnicity: \_\_\_\_\_
  - 3. Gender: \_\_\_\_\_

DeKalb County Clerk's Office

5-23-08  
10:25 AM

# UNOFFICIAL COPY

IN WITNESS WHEREOF, the Owner has executed this Certificate  
as of this \_\_\_\_\_ day of \_\_\_\_\_

5001 S. Drexel, Inc.

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

Its: \_\_\_\_\_

ATTEST:

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

Its: \_\_\_\_\_

Property of Cook County Clerk's Office

5-23-94

**UNOFFICIAL COPY****SCHEDULE I****ANNUAL OWNER'S CERTIFICATION FOR PROJECT RECEIVING  
CDBG AND RRP FUNDS FROM THE CITY OF CHICAGO, DEPARTMENT OF HOUSING**

Borrower: \_\_\_\_\_

Project Name: \_\_\_\_\_

Project Number: \_\_\_\_\_

Borrower Federal Employer Identification Number: \_\_\_\_\_

The City of Chicago, Illinois, acting by and through its Department of Housing (the "City"), has entered into a Housing Loan Agreement dated \_\_\_\_\_ with the Borrower pursuant to which the City has loaned Rental Rehabilitation Program ("RRP") funds and Community Development Block Grant ("CDBG") funds to the Borrower for the Project. The Borrower is required to maintain certain records concerning the Project and the City is required to monitor the Project's compliance with the RRP regulations and the CDBG regulations and the agreements executed by the City and the Borrower in connection with the Project. The Borrower further agreed, in the Regulatory Agreement dated as of \_\_\_\_\_ between the City and the Borrower (the "Regulatory Agreement"), to maintain certain records, to prepare and deliver certain reports to the City. This Annual Certification must be completed in its entirety and must be executed by the Borrower, notarized and returned to the City by January 1 of each year for the period commencing on the first January 1 following completion of rehabilitation of the Project, and ending on the first January 1 following the Termination Date. In addition, a copy of Exhibit A must be completed for each building which comprises a part of the Project. No changes may be made to the language contained herein without the prior approval of the City. Except as otherwise specifically indicated, capitalized terms contained herein shall have the meanings ascribed to them in the Regulatory Agreement.

# UNOFFICIAL COPY

## A. INFORMATION

1. Please list the address for each building included in the Project. (If there are additional buildings in the Project, please provide the requested information on a separate sheet and attach to this document.)

### Building Address

Property of Cook County Clerk's Office

---



---



---



---



---



---



---



---



---



---

2. Complete Exhibit A for each building included in the Project.
3. Has any change occurred, either directly or indirectly, (a) in the identity of the Borrower, (b) in the identity of any general partner(s), if any, of the Borrower, (c) in the ownership of any interests in any general partner of the Borrower or in any shareholder, trustee or beneficiary of the Borrower, or (d) which would otherwise cause a change in the identity of the individuals who possess the power to direct the management and policies of the Borrower since the date of the Regulatory Agreement or the most recent Annual Owner's Certification?

Yes  No

If Yes, provide all the appropriate documents.

4. Have the Borrower's organizational documents been amended or otherwise modified since they were submitted to the City?

Yes  No

If Yes, provide all amendments and modifications of the Borrower's organizational documents

**UNOFFICIAL COPY**

5. Provide the City with independently audited financial statements for the Project for the most recent fiscal year, including an income and expense statement, a balance sheet listing assets and liabilities, a detailed schedule of operating, maintenance and administrative expenses and a cash flow statement.
6. (a) The Borrower hereby certifies to the City that no change shall occur in the Borrower or the general partner of the Borrower without the prior written consent of the City.
- (b) Provide to the City copies of each lease and each Tenant Certification executed in connection with the Low-Income Project since the later of the date of the Regulatory Agreement or the last Annual Owner's Certification submitted to the City. For each such unit in the Low-Income Project, provide to the City the data with respect to tenant characteristics as required by Section 2.18 of the Regulatory Agreement.
- (c) Provide the City with evidence of compliance with Section 2.21 of the Regulatory Agreement since the later of the execution of the Regulatory Agreement or the last Annual Owner's Certification, including copies of any required notices given to prospective tenants regarding lead-based paint with the signature of each tenant in the Low-Income Project.
- (d) Did the Project cause the displacement of any People?  
 Yes \_\_\_\_\_ No \_\_\_\_\_
- If Yes, provide evidence to the City of compliance with Section 2.22 of the Regulatory Agreement (The information required by this question need only be supplied to the City once.)
- (e) If the Project is not less than eight units, provide to the City payroll records of the General Contractor indicating compliance with Section 2.25 of the Regulatory Agreement.

**UNOFFICIAL COPY****B. REPRESENTATIONS, WARRANTIES AND COVENANTS**

The Borrower hereby represents and warrants to the City that each of the following statements is true and accurate and covenants as follows:

1. The Borrower is [check as applicable]:
    - (a)  an individual.
    - (b)  a group of individuals.
    - (c)  a corporation incorporated and in good standing in the State of \_\_\_\_\_.
    - (d)  a general partnership organized under the laws of the State of \_\_\_\_\_.
    - (e)  a limited partnership organized under the laws of the State of \_\_\_\_\_.
    - (f)  other [please describe]: \_\_\_\_\_
  
  2. The Borrower is [check as applicable] (a) \_\_\_\_\_ the owner of fee simple title to, or (b) \_\_\_\_\_ the owner of 100% of the beneficial interest in, the hereinafter described Project.
  
  3. The Project consists of \_\_\_\_\_ building(s) containing a total of \_\_\_\_\_ residential unit(s).
  
  4. The Project is in compliance with all of the currently applicable requirements of the RRP Act, the RRP regulations, the CDBG Act, the CDBG regulations and the Regulatory Agreement. The Borrower will take whatever action is required to ensure that the Project complies with all requirements imposed by the RRP Act, the RRP regulations, the CDBG Act, the CDBG regulations and the Regulatory Agreement during the periods required thereby.
- The Borrower shall retain all tenant selection documents, which include but are not limited to: income verification, employment verification, credit reports, leases and low-income computation forms, to be available for periodic inspections by the City or its representative. The City, at its option, can periodically inspect the Project, and all tenancy-related documents to determine continued compliance of the Project with all applicable requirements.
5. No litigation or proceedings have been threatened in writing or are pending which may affect the interest of the Borrower in the Project or the ability of the Borrower to perform its obligations with respect thereto, except as disclosed on Exhibit \_\_\_\_\_ attached hereto and hereby made a part hereof.
  
  6. The Borrower has taken affirmative action to ensure that women- and minority-owned businesses have had the maximum opportunity to compete for and perform as contractors for supplies and/or services, and will continue to do so with

**UNOFFICIAL COPY**

- future contracts and awards as provided in Sections 2-92-00 through 2-92-570, inclusive, of the Municipal Code of Chicago as from time to time implemented, amended and restated.
7. All units in each building included in the Project are affirmatively marketed and available for occupancy by all persons regardless of race, national origin, religion, creed, sex, age or handicap.
  8. Other than in connection with the construction or rehabilitation of the Project, the Borrower has not demolished any part of the Project or substantially subtracted from any real or personal property of the Project or permitted the use of any residential rental unit for any purpose other than rental housing. The Borrower has used its best efforts to repair and restore the Project to substantially the same condition as existed prior to the occurrence of any event causing damage or destruction, or to relieve the condemnation, and thereafter to operate the Project in accordance with the terms of the Regulatory Agreement.
  9. The Borrower is in possession of all records which it is required to maintain pursuant to the terms of the RRP Act, the RRP regulations, the CDBG Act, the CDBG regulations and the Regulatory Agreement, as well as any additional records which the City has determined to be necessary to the compliance and administration of the Project.
  10. The Borrower has not executed any agreement with provisions contradictory to, or in opposition to, the provisions of the Regulatory Agreement and in any event the requirements of the Regulatory Agreement are paramount and controlling as to the rights and obligations therein set forth and supersede any other requirements in conflict therewith. The Borrower shall continue to cooperate with the City and furnish such documents, reports, exhibits or showings as are required by the RRP Act, the RRP regulations, the CDBG Act, the CDBG regulations, the Regulatory Agreement, and the City or the City's counsel.

If the Borrower is unable to make any representation or warranty set forth above, the Borrower must immediately contact the City and inform the City of the reason that the Borrower is unable to make such representation or warranty; provided, however, that the foregoing shall not be deemed to negate any notice and/or cure periods available to the Borrower under the Loan Documents (as defined in the Regulatory Agreement).

Under penalties of perjury, the Borrower declares that, to the best of its knowledge and belief, each response, representation, warranty and document delivered by the Borrower in connection herewith is true, correct and complete and will continue to be true, correct and complete.

UNOFFICIAL COPY

INDemnIFICATION

The Borrower hereby agrees to fully and unconditionally indemnify, defend and hold harmless the City from and against judgments, losses, liabilities, damages (including consequential damages), costs and expenses of whatever kind or nature, including without limitation, attorneys' fees, expert witness fees, and any other professional fees and litigation expenses and other obligations, incurred by the City that may arise in any manner out of or in connection with actions or omissions which result from the Borrower's responses or documents provided to the terms of this Annual Owner's Certification, including breaches of the representations and warranties herein contained other than those judgments, losses, liabilities, damages, expenses arising out of the City's gross negligence or willful misconduct following the City's acquisition of title to or of the Project, unless such act is taken in response to (1) willful misconduct or negligent act or omission of the Borrower or (2) any breach (other than failure to repay the Loan) by the Borrower of any provisions of the instruments executed by the Borrower in connection with the Loan.

County Clerk's Office



**UNOFFICIAL COPY**

IN WITNESS WHEREOF, the Borrower has caused this **Owner's Certification** this \_\_\_\_\_ day of \_\_\_\_\_

**BORROWER:**

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

Its: \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_

\_\_\_\_\_  
Notary Public

(SEAL)

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Borrower: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Date of Regulatory Agreement: \_\_\_\_\_

Project Name and No.: \_\_\_\_\_

Building Address: \_\_\_\_\_

1. (a) Note utilities paid by tenants:  
\_\_\_\_\_  
\_\_\_\_\_

(b) Note utilities paid by Borrower for which tenants  
reimburse Borrower:  
\_\_\_\_\_  
\_\_\_\_\_

(c) For each Residential Rental Unit in the Project, provide  
the following:

UNITS RENTED TO LOW-INCOME FAMILIES:

<u>Unit</u>	<u>Bx</u>	<u>Rent</u>	<u>Family's Income</u>	<u>Family Size</u>
-------------	-----------	-------------	------------------------	--------------------

_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

5703  
11/11/20

**UNOFFICIAL COPY**

OTHER UNITS				
DATE	RENT	AGE	FAMILY INCOME	FAMILY SIZE

2. Has the rent in any Low-Income Unit in this Building increased since the filing of the previous Annual Owner's Certification, or, if this Annual Owner's Certification is the first Annual Owner's Certification filed with respect to this Building, has the rent been increased from the amounts projected during the construction period?

Yes  No

If Yes, please provide details.

---



---

3. How many Low-Income Units in this Building are now occupied by tenants that did not occupy such units at the time of the last Annual Owner's Certification filed for this Building?

---



---

4. What steps did the Borrower take to insure that the new tenants qualified as Low-Income Families?

---



---

# UNOFFICIAL COPY

5. Have any Low-Income Families been evicted since the time of the last Annual Owner's Certification or if this Report is the first Annual Owner's Certification filed with respect to this Building, since the initial rent-up of this Building?

Yes \_\_\_\_\_ No \_\_\_\_\_

If Yes, please provide details.

---

---

6. Has any legal or administrative action been instituted by any Low-Income Family against the Borrower?

Yes \_\_\_\_\_ No \_\_\_\_\_

If Yes, please provide details.

---

---

Property of Cook County Clerk's Office

**UNOFFICIAL COPY****TENANT CERTIFICATION****RE:** \_\_\_\_\_**Chicago, Illinois****Name of Tenant (i.e., person(s)  
whose name appears on the lease):** \_\_\_\_\_**Address of Apartment:** \_\_\_\_\_**Apartment Number:** \_\_\_\_\_

Some or all of the cost of the apartment development in which you are to lease an apartment was financed by a loan made by the City of Chicago, Illinois (the "City") to the owner of the apartment development, through U.S. Department of Housing and Urban Development programs. In order for the development to continue to qualify for this loan, there are certain requirements which must be met with respect to the apartment development and its tenants. To satisfy one of those requirements it is necessary for you to provide the information requested in this Tenant Certification the time you sign your lease and annually thereafter so long as you remain a tenant in the apartment development.

**CERTIFICATION**

I, the undersigned, state that I have read and answered fully, frankly and personally each of the following questions for a persons who are to occupy the unit in the above apartment development for which application is made, all of whom are listed on the following page:

# UNOFFICIAL COPY

Income Statement  
(Anticipated Income)

Name of Members of the Household	Relationship to Head of Household	Age (if 18 or under)	Social Security Number	Place of Employment
_____	HEAD	_____	_____	_____
_____	SPOUSE	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

On the lines below indicate the anticipated income from all sources received by the family and spouse (even if temporarily absent) by each additional member of the family over the age of 18 during the 12-month period beginning this date:

Name	Annual Wages/Salary	Other Income	Total Income
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

### (Capital Assets)

2. If any of the persons described above (or whose income or contributions were included in item (1)) has any real property, savings, stocks, bonds or other forms of capital investment, excluding interest in Indian trust land and equity in a housing cooperative unit or in a manufactured home in which the family resides and except for necessary items of personal property such as furniture and automobiles, provide:
  - a. the total value of all such assets owned by all such persons: \$ \_\_\_\_\_
  - b. the amount of income expected to be derived from such assets in the 12-month period commencing this date: \$ \_\_\_\_\_, and
  - c. the amount of such income which is included in item (1): \$ \_\_\_\_\_

### (Students)

3. a. Will all of the persons listed in column 1 above be or have they been full-time students during five calendar months of this calendar year at an educational institution (other than a correspondence school) with regular faculty and students?  
 Yes \_\_\_\_\_ No \_\_\_\_\_

# UNOFFICIAL COPY

b. Is any such person (other than nonresident Aliens) married and eligible to file a joint federal income tax return?

Yes \_\_\_\_\_ No \_\_\_\_\_

I acknowledge that all of the above information is or may be the basis of my qualifying as a tenant and further is relevant to the status of the funds provided through the U.S. Department of Housing and Urban Development to finance rehabilitation of the apartment for which application is being made. I consent to and authorize the disclosure of such information to the City and HUD and any agent acting on their behalf. If I am accepted as a tenant or my lease is renewed, and if any of the foregoing information is inaccurate or misleading, I understand that it will constitute a material breach of my lease. I understand that the submission of this information is one of the requirements for tenancy and does not constitute an approval of my application, or my acceptance as a tenant.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this \_\_\_\_\_ day of \_\_\_\_\_ at Chicago, Illinois.

\_\_\_\_\_

Tenant

Applicant for an apartment \_\_\_\_\_  
or Residing in Apt. No. \_\_\_\_\_

Office

5-22-74



UNOFFICIAL COPY

STATE OF ILLINOIS )  
COUNTY OF COOK ) SS

On the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ personally  
appeared before me \_\_\_\_\_, the signor of  
the above certification, who duly acknowledged to me that he/she  
executed the same.

(SEAL)

\_\_\_\_\_  
NOTARY PUBLIC

Property of Cook County Clerk's Office

513-74

# UNOFFICIAL COPY

## FOR COMPLETION BY OWNER ONLY:

### 1. Calculation of eligible income:

a. Total amount entered for entire household in 1 above: \_\_\_\_\_

b. If the amount entered in 2.a above exceeds \$5,000, enter the greater of (i) the amount entered in 2.b less the amount entered in 2.c and (ii) the passbook savings rate as designated by HUD multiplied by the amount entered in 2.a: \_\_\_\_\_

c. TOTAL ELIGIBLE INCOME (Line 1.a plus line 1.b): \_\_\_\_\_

### 2. For each Low-Income Unit, complete the following:

a. The amount entered in 1.c is: (place "x" on appropriate line)

(i) \_\_\_\_\_ Less than \$\_\_\_\_\_ which is the maximum income at which a household of \_\_\_\_\_ persons may be determined to be a Low-Income Family as that term is defined in the Regulatory Agreement dated as of \_\_\_\_\_ between the City of Chicago, Illinois and \_\_\_\_\_ (the "Regulatory Agreement").

(ii) \_\_\_\_\_ More than the amount mentioned in line (i).

### b. Applicant:

\_\_\_\_\_ Qualifies as Low-Income Family.

\_\_\_\_\_ Does not qualify as a Low-Income Family.

BORROWER:

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

Its: \_\_\_\_\_

5-23-74  
1021 1 30

**UNOFFICIAL COPY****EXHIBIT C**

In order to assist a proposed or existing tenant in completing the attached Tenant Certification, you should refer to the definition of "annual income" contained in 24 C.F.R. §813.106, as amended, supplemented and restated from time to time. The following may need to be included in calculating "Annual Wages/Salary" and "Other Income":

- A. Annual Wages and Salary, including, before payroll deduction, all wages and salaries, overtime pay, commissions, fees, tips, bonuses and other compensation for personal services;
- B. "Other Income" includes but is not limited to:
- (i) net income from operation of a business or profession. Expenditures for business expansion or amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation of assets used in a business profession may be deducted, based on straight line depreciation, as provided in Internal Revenue Service regulations. Any withdrawal of cash or assets from the operation of a business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the family;
  - (ii) interest, dividends and other net income of any kind from real or personal property. Expenditures for amortization of capital indebtedness shall not be used as a deduction in determining net income. An allowance for depreciation is permitted only as authorized in paragraph (B) (i) above. Any withdrawal of cash or assets from an investment will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested by the family;
  - (iii) the full amount of periodic payments received from social security, annuities, insurance policies, retirement funds, pensions, disability or death benefits and other similar types of periodic receipts, including a lump-sum payment for the delayed start of a periodic payment;
  - (iv) payments in lieu of earnings such as unemployment and disability compensation, worker's compensation and severance pay.

UNOFFICIAL COPY

## EXHIBIT B

## LOAN DOCUMENTS

The term "Loan Documents," as used herein, means the following documents and any other documents previously, now, or hereafter given to evidence, secure, or govern the disbursement of the indebtedness secured hereby including any and all extensions, renewals, amendments, modifications, and supplements thereof or thereto:

1. That certain Multi-Family Residential Revolving Loan Agreement (the "Loan Agreement") of even date herewith executed by 5001 S. Drexel, Inc., an Illinois corporation, ("Corporation"), which is the sole beneficiary of Mortgage, and Lender;
2. The Adjustable Rate Promissory Note (the "Note") of even date herewith executed by the Corporation;
3. The following security documents:
  - (a) This Mortgage creating a first lien in the Property;
  - (b) an Assignment of Leases and Rents, executed by Mortgage, assigning to Lender all rents, issues, deposits, and profits pertaining to the Property owned by Borrower;
  - (c) a Security Agreement of even date herewith, executed by the Corporation granting Lender a security interest in certain personal property more fully described therein, under the Uniform Commercial Code as adopted in Illinois;
  - (d) certain Uniform Commercial Code Financing Statements, executed by the Corporation pertaining to the personal property described in the aforesaid Security Agreement;
  - (e) an Assignment of Contracts and Documents of even date herewith executed by the Corporation granting Lender a security interest in all contracts, permits, licenses, etc. executed or obtained by Mortgage in connection with the rehabilitation of operation of the Property; and
  - (f) an Environmental Indemnity of even date herewith executed by the Corporation.

**UNOFFICIAL COPY**

**CERTIFICATE RE OWNER AND CONTRACTOR**

RE: 5001 S. Drexel Boulevard  
Chicago, Illinois 60615

The undersigned, 5001 S. Drexel, Inc., an Illinois corporation (the "Owner"), hereby certifies that it is the sole owner of the beneficial interest and power of direction in the land trust holding fee simple title to that certain property located at the address shown above (the "Project"). The Owner has received a loan in the principal amount of \$1,953,551 (the "Loan") from the City of Chicago, Illinois (the "City") in connection with the rehabilitation of the Project.

The Owner hereby certifies that the following information is true, correct and complete:

- A.
  - 1. Name: 5001 S. Drexel, Inc.
  - 2. Race/Ethnicity: Minority (African-American)
  - 3. Gender: Male
  - 4. Annual Income: \$ 1,00,000
- B.
  - 1. Name: Batteast Construction Company, Inc.
  - 2. Race/Ethnicity: Minority (African-American)
  - 3. Gender: Male

IN WITNESS WHEREOF, the Owner has executed this certificate as of this 23 day of May, 1994.

5001 S. Drexel, Inc.

By: [Signature]  
Title: [Signature]

WITNESSES  
By: \_\_\_\_\_  
Title: \_\_\_\_\_

UNOFFICIAL COPY

- (v) public assistance. If the public assistance payment includes an amount specifically designated for shelter and utilities that is subject to adjustment by the public assistance agency in accordance with the actual cost of shelter and utilities, the amount of public assistance to be included as income shall consist of: (a) the amount of the allowance or grant exclusive of the amount specifically designated for shelter or utilities, plus (b) the maximum amount that the public assistance agency could in fact allow the family for shelter and utilities. If the family's public assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated shall be the amount resulting from one application of the percentage;
- (vi) periodic and determinable allowances, such as alimony and child support payments and regular contributions or gifts received from persons not residing in the dwelling;
- (vii) all regular pay, special pay and allowances of a member of the Armed Forces (whether or not living in the dwelling) who is a member of the family; and
- (viii) any earned income tax credit to the extent it exceeds income tax liability.

Please note however, that the following types of income should be excluded:

- (i) income from employment of children (including foster children) under the age of 18 years;
- (ii) temporary, nonrecurring or sporadic income including gifts;
- (iii) amounts which are specifically for or in reimbursement of medical expenses for any family member;
- (iv) lump sum additions to family assets such as inheritances, insurance payments including payments under health and accident insurance and worker's compensation, gratuity, bonus and settlement for personal or professional services.

3140100

**UNOFFICIAL COPY**

- to a veteran, for use in meeting the costs of tuition, fees, books, equipment, materials, supplies, transportation and miscellaneous personal expenses of the student, but in either case only to the extent used for such purposes;
- (vi) special pay to a family member serving in the Armed Forces and exposed to hostile fire;
- (vii) foster child care payments;
- (viii) income of a live-in aide, as defined in 24 C.F.R. Section 813.102;
- (ix) amounts received under training programs funded by HUD;
- (x) amounts received by a disabled person that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency;
- (xi) amounts received by a participant in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred and which are made solely to allow participation in a specific program;
- (xii) reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era; and
- (xiii) amounts specifically excluded by other federal statutes from consideration as income for purposes of determining eligibility for benefits under a category of assistance programs that includes assistance under the United States Housing Act of 1937. Federal programs under this section include, but are not limited to:
- (a) the value of the allotment provided to an eligible household under the Food Stamp Act of 1977;
- (b) payments received under the Domestic Volunteer Services Act of 1973 (employment through VISTA, Retired Senior Volunteer Program, Foster Grandparents Program, and other similar programs);

**UNOFFICIAL COPY**

- (c) payments received under the Alaska Native Claims Settlement Act;
- (d) payments from certain submarginal U.S. land held in trust for certain Indian tribes;
- (e) payments or allowances made under the U.S. Department of Health and Human Services' Low-Income Home Energy Assistance Program, including any winter differentials given to elderly;
- (f) payments received under programs funded in whole or in part under the Job Training Partnership Act (employment and training programs for Native Americans and migrant and seasonal farm workers, Job Corps, veterans employment programs, state job training programs, career intern programs);
- (g) income derived from the disposition of funds of the Grand River Band of Ottawa Indians;
- (h) the first \$2,000 of per capita shares received from judgment funds awarded by the Indian Claims Commission or the Grant of Claims or from funds held in trust for an Indian tribe by the Secretary of the Interior;
- (i) amounts of scholarships funded under Title IV of the Higher Education Act of 1965, including awards under the federal work-study program or under the Bureau of Indian Affairs student assistance programs;
- (j) payments received from programs funded under Title V of the Older Americans Act of 1965;
- (k) payments received from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in the In Re Agent Orange product liability litigation, M.D.L. No. 3810 (E.D.N.Y.);

9440000



# UNOFFICIAL COPY

- (p) amounts received under the Native Indian Child Welfare Act of 1980;
- (q) the value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred under such care) under the Child Care and Development Block Grant Act of 1990; and
- (r) earned income tax credit refund payments.

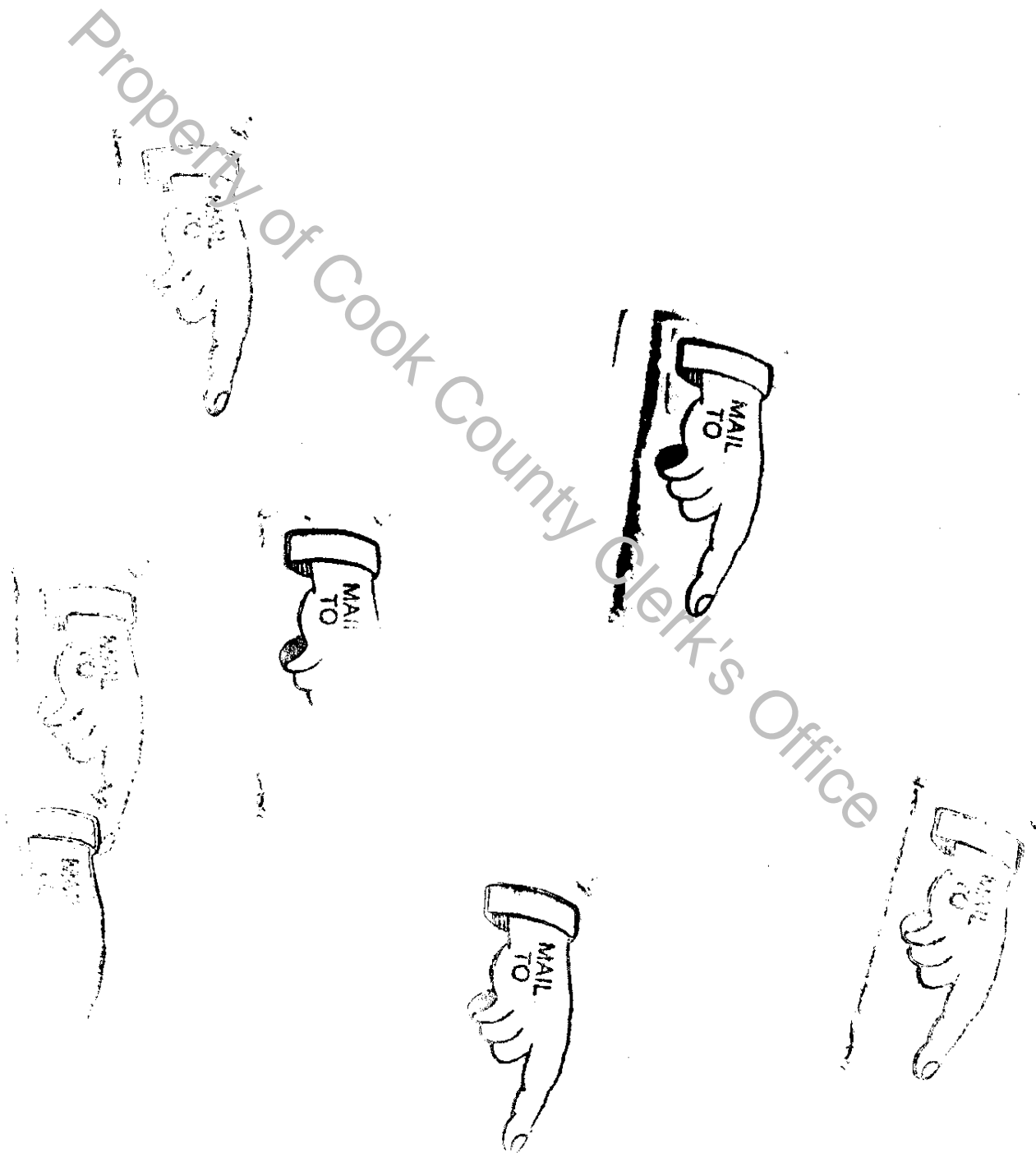
Property of Cook County Clerk's Office

# UNOFFICIAL COPY

## EXHIBIT "C"

"MODIFICATION AGREEMENT"

ATTACHED HERETO



# UNOFFICIAL COPY

95694881

. DEPT-01 RECORDING \$41.5  
 . T#7777 TRAN 0959 10/12/95 13:13:00  
 . #8702 SK \*-95-69488  
 . COOK COUNTY RECORDER

Property of Cook County Clerk



This document prepared by  
 and when recorded return to:  
 Brendan M. Cournane  
 Alexandra M. Burrell  
 Office of Corporation Counsel  
 Room 511  
 121 North LaSalle Street  
 Chicago, Illinois 60602

## MODIFICATION AGREEMENT

This Modification Agreement is dated as of October 1, 1995 (the "Modification Agreement"), and is executed and delivered by and among the City of Chicago, Illinois, an Illinois municipality (the "City"), acting through its Department of Housing ("DOH"), LaSalle National Trust, N.A., not individually, but as successor trustee to Central National Bank of Chicago (the "Trustee") under the trust agreement dated December 28, 1970, and known as Trust No. 10-24161-08 (the "Trust") and 5001 S. Drexel, Inc., an Illinois corporation (the "Beneficiary"), owner of 100% of the beneficial interest of the Trust (the Beneficiary and the Trustee being referred to herein, collectively, as the "Borrower").

## RECITALS:

A. Borrower owns fee simple title to certain real estate commonly known as 5001 South Drexel, Chicago, Illinois, which is legally described on Exhibit A attached hereto (the "Real Estate").

95694881

AKS  
10

**UNOFFICIAL COPY**

B. On May 20, 1994, the City and the Borrower executed and delivered a Housing Loan Agreement (the "City Loan Agreement") pursuant to which Borrower executed and delivered to the City a Note in the principal amount of \$1,953,951 (the "City Note") which evidences a loan from the City to the Borrower in the principal amount of \$1,953,951 (the "City Loan"), and a Junior Mortgage and Security Agreement dated as of May 20, 1994 (the "City Mortgage"), from the Borrower to the City, which City Mortgage was recorded in the Cook County Recorder's Office on May 23, 1994, as Document No. 94-461298, to secure the repayment of the City Loan and the City Note. In connection with the City Loan, the Borrower executed and delivered to the City, among other documents, a Regulatory Agreement dated as of May 20, 1994 (the "Original Regulatory Agreement"), by and between the City and the Borrower covering the Real Estate, which Original Regulatory Agreement was recorded in the Cook County Recorder's Office on May 23, 1994, as Document No. 94-460884.

C. The City Loan was made with monies allocated from the Multi-Family Program and the Rental Program (as those terms are defined in the Original Regulatory Agreement) based, in part, on representations of the Borrower that the Project (as defined in the City Loan Agreement) contained a configuration of 6 one-bedroom units, 13 two-bedroom units and 14 three-bedroom units. Subsequent to the closing of the City Loan, it was discovered that the Original Regulatory Agreement contained certain omissions and inaccurate information which has had an affect on the monies to be disbursed under the Rental Program.

**NOW, THEREFORE,** in consideration of good and valuable consideration, the parties agree as follows:

1. The definition of "Senior Mortgage" appearing in Section 1 of the Original Regulatory Agreement is hereby amended to read as follows:

"Senior Mortgage" shall mean that certain Construction Mortgage, Security Agreement and Financing Statement dated as of May 20, 1994, granted by the Borrower to the Senior Lender and securing repayment of the Senior Loan.

2. Section 2.6 of the Original Regulatory Agreement is hereby modified and amended to read as follows:

(a) Each building in the Project shall consist of the following unit configuration:

Building Address: 5001 South Drexel Boulevard

**UNOFFICIAL COPY**Number of BedroomsNumber of Units

1	12
2	7
3	14

(b) Prior to rehabilitation, each building in the Low-Income Project consists of the following unit configuration:

Building Address: 5001 South Drexel Boulevard

Number of BedroomsNumber of Units

1	39
---	----

(c) After the Completion Date, each building in the Low-Income Project shall consist of the following unit configuration for Low-Income Family households:

Building Address: 5001 South Drexel Boulevard

Number of BedroomsNumber of Units

1	12
2	7
3	14

3. As a result of the modifications and amendments contained in section 2 above, the Project Budget (as defined in the City Loan Agreement) has changed and the cost of the Project has been reduced by \$14,400. The parties hereto agree that the reduction in the Project Costs (as defined in the City Loan Agreement) will be repaid by the Borrower as a prepayment under the City Note, the City Loan Agreement and the City Mortgage. BOH shall withhold the amount of \$14,400 from the final Disbursement and apply said amount as a prepayment under the City Note, the City Loan Agreement, and the City Mortgage, to be applied as payment to the Rental Program.

4. This Modification Agreement shall be effective upon the receipt by the City of this Modification Agreement executed by the parties hereto.

5. The Original Regulatory Agreement, as amended and modified by this Modification Agreement (collectively, the "Regulatory Agreement") shall constitute the Regulatory Agreement as defined in the City Loan Agreement, and any reference made to the Regulatory Agreement therein and in the related documents defined in the City Loan Agreement shall be deemed to be a reference to the Original Regulatory Agreement as hereby modified and amended. All other provisions of the Original Regulatory Agreement remain unchanged. Nothing herein contained shall in any

UNOFFICIAL COPY

manner affect the lien or priority of the Regulatory Agreement, the City Mortgage or the covenants, conditions and agreements therein contained.

6. In the event of conflict between any of the provisions of the Original Regulatory Agreement and this instrument, the provisions of this instrument shall override and control.

7. Borrower hereby renews, remakes and affirms the representations and warranties contained in the Original Regulatory Agreement, the City Loan Agreement, the City Note and the City Mortgage as if made on the date of execution and delivery hereof.

8. Borrower hereby agrees to pay all of the expenses of the City arising out of and in connection with this Modification Agreement including, but not limited to, title insurance premiums, recording fees and fees performed in the preparation of necessary documentation, if any.

Property of Cook County Clerk's Office

Faint, illegible text from the reverse side of the page, likely bleed-through from the other side of the document.

# UNOFFICIAL COPY

IN WITNESS WHEREOF, the parties hereto have executed this Modification Agreement as of the date set forth above, but actually executed and delivered on October 10, 1995.

CITY OF CHICAGO, ILLINOIS

By: Maurice Carvatt  
Commissioner,  
Department of Housing

LASALLE NATIONAL TRUST, N.A.,  
as trustee under Trust No.  
10-24161-08 and

By: [Signature]  
Its: VICE PRESIDENT

Attest:  
By: Nancy A. Stuck  
Its: SECRETARY

5001 S. DREXEL, INC., an  
Illinois corporation

By: [Signature]  
Its: PRESIDENT

Attest:  
By: [Signature]  
Its: SECRETARY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

STATE OF ILLINOIS )

COUNTY OF COOK )

SS

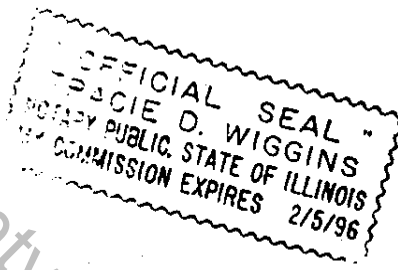
The undersigned, a Notary Public in and for the State and County aforesaid, does hereby certify that ~~\_\_\_\_\_ and \_\_\_\_\_~~ and ~~\_\_\_\_\_ and \_\_\_\_\_~~ respectively, of 5001 S. Drexel, Inc., an Illinois corporation, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed and delivered said instrument as their own free and voluntary acts, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal

*October 10, 1995*

*[Signature]*  
Notary Public

Property of Cook County Clerk's Office





# UNOFFICIAL COPY

STATE OF ILLINOIS )  
 )  
COUNTY OF COOK ) SS

The undersigned, a Notary Public in and for the State and County aforesaid, does hereby certify that MARINA CARROTT, the \_\_\_\_\_ Commissioner of the City of Chicago Department of Housing ("DOH"), 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 (s)he signed and delivered said instrument as his/her own free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal \_\_\_\_\_, 1995.

Clarice Hall  
Notary Public



Property of Cook County Clerk's Office

95694881

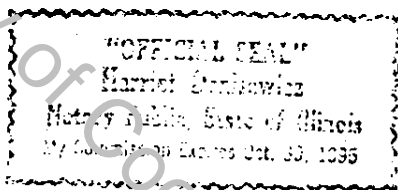
# UNOFFICIAL COPY

STATE OF ILLINOIS )  
COUNTY OF COOK ) SH

The undersigned, a Notary Public in and for the State and County aforesaid, does hereby certify that JOSEPH W. LANG and WANCY A. STACK, the VICE PRESIDENT and Assistant Secretary respectively, of LaSalle National Trust, N.A., under Trust No. 10-24161-08, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed and delivered said instrument as their own free and voluntary acts, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal Oct. 12<sup>th</sup>, 1995.

*Harriet S. Stankiewicz*  
Notary Public



Property of Cook County Clerk's Office

9569 1881

# UNOFFICIAL COPY

## EXHIBIT A

### LEGAL DESCRIPTION:

LOTS 9 AND 10 IN THE SUBDIVISION OF LOTS 1 AND 4 INCLUSIVE IN BLOCK 8 IN DREXEL AND SMITH'S SUBDIVISION OF THE WEST 1/2 OF THE NORTHWEST 1/4 AND WEST 1/2 OF THE WEST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 11, TOWNSHIP 38 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

### ADDRESS COMMONLY KNOWN AS:

5001 SOUTH DREXEL BOULEVARD AND 909-19 E. 50TH STREET IN CHICAGO, ILLINOIS.

### PERMANENT INDEX NO.:

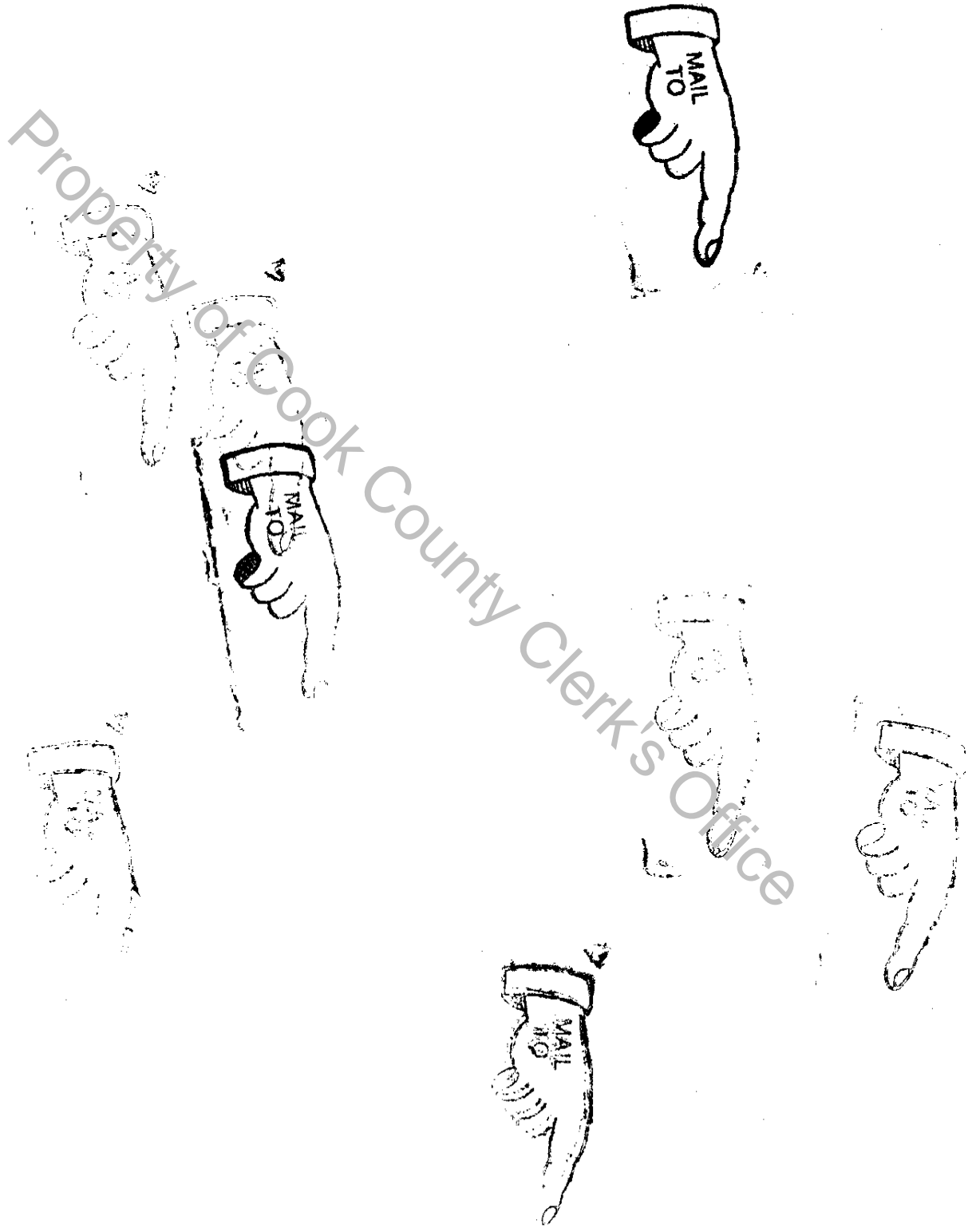
20-11-114-001

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

EXHIBIT B

THE MORTGAGE



**UNOFFICIAL COPY**

CR13ADREXELWFMORT.2

**JUNIOR MORTGAGE AND SECURITY AGREEMENT**

THIS JUNIOR MORTGAGE AND SECURITY AGREEMENT ("Mortgage") is made as of this 20th day of May, 1994, by LaSalle National Bank, not individually, but as successor trustee to Central National Bank of Chicago (the "Trustee") under Trust Agreement dated December 28, 1979 and known as Trust No. 10-24161-08 (the "Trust") and the sole beneficiary of the Trust, 5001 S. Drexel, Inc., an Illinois corporation (the "Beneficiary") (Beneficiary and Trustee being referred to herein collectively as the "Mortgagor"), to the City of Chicago, Illinois together with its successors and assigns, having its principal office at 121 North LaSalle Street, Chicago, Illinois 60602 ("Mortgagee").

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

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

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

**WHEREAS**, Mortgagee desires to secure repayment of the indebtedness evidenced by the Note, together with interest, if any, thereon, in accordance with the terms of the Loan Documents and any additional indebtedness or obligations incurred by Mortgagor on account of any future payments, advances or expenditures made by Mortgagee pursuant to the Loan Documents;

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

# UNOFFICIAL COPY

security interest in and to, all of the following rights, interests, claims and property:

(A) all of the real estate, as more particularly described on Exhibit A attached hereto and hereby made a part hereof, together with all easements, water rights, hereditaments, mineral rights and other rights and interests appurtenant thereto (the "Real Property");

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

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

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

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

(F) all of the estate, interest, right, title or other claim or demand which Mortgagor now has or may acquire with

**UNOFFICIAL COPY**

respect to (i) proceeds of insurance in effect with respect to the Real Property, the Improvements or the Equipment, and (ii) any and all awards, claims for damages, judgments, settlements and other compensation made for or consequent upon the taking by condemnation, eminent domain or any like proceeding of all or any portion of the Real Property, the Improvements or the Equipment;

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

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

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

All of the property referred to in the preceding clauses (A) through (I) shall be called, collectively, the "Premises."

**IT IS FURTHER** agreed, intended and declared that all the aforesaid property rights and interests shall, so far as permitted by law, be deemed to form a part and parcel of the Premises and be covered by this Mortgage.

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

The Loan Agreement is referred to herein as the "Commitment". Mortgagee has bound itself and does hereby bind itself to make advances pursuant to and subject to the terms of the Commitment, and the parties hereby acknowledge and intend that all such advances, including future advances whenever hereafter made, shall be a lien from the time this Mortgage is recorded, as provided in Section 15-1302(b)(1) of the Illinois Mortgage Foreclosure Law, 735 ILCS 5/15-1101 et seq., as amended, supplemented and restated from time to time (the "Act").

If Mortgagor hereunder is described as a trustee under a trust agreement, said trust arrangement constitutes a "land trust" as said term is defined in Section 5/15-1205 of the Act.

**UNOFFICIAL COPY**

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

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

Mortgagor shall pay promptly when due any sums due under the Senior Loan Documents and shall perform promptly and fully any acts required under the Senior Loan Documents. Mortgagor will not, without prior written consent of Mortgagee, modify, extend or amend the Senior Loan Documents, increase the amount of the indebtedness secured thereby or change the repayment terms of such indebtedness. Mortgagor shall promptly give Mortgagee a copy of any notice received by Mortgagor from Senior Lender or given by Mortgagor to Senior Lender pursuant to any of the Senior Loan Documents.

(2) Preservation, Restoration and Use of Premises. Mortgagor shall:

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

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

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

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



# UNOFFICIAL COPY

(e) upon completion of the Project, make no material alterations in the Premises (except those required by law) without Mortgagee's prior written consent;

(f) upon completion of the Project, suffer or permit no change in the general nature of the occupancy or use of the Premises without Mortgagee's prior written consent;

(g) pay all operating costs of the Premises when due, including all utility charges and all other assessments or charges of a similar nature;

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

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

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

(k) not permit any unlawful use or nuisance to exist upon the Premises; and

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

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

Mortgagor shall furnish Mortgagee within 30 days after the date upon which any Charge is due and payable by Mortgagor, official receipts of the appropriate authority, or other proof

## UNOFFICIAL COPY

satisfactory to Mortgagee, evidencing the payment thereof. Mortgagor shall have the right before any delinquency occurs to contest or object to the amount or validity of any Charge by appropriate legal proceedings properly instituted and prosecuted in such manner as shall stay collection of the contested Charge and prevent the imposition of a lien or the sale or forfeiture of the Premises to collect the same; provided that no such contest or objection shall be deemed or construed in any way as relieving, modifying or extending Mortgagor's covenant to pay any such Charge at the time and in the manner provided in this Mortgage unless Mortgagor has given prior written notice to Mortgagee of Mortgagor's intent to contest or object to a Charge and, unless at Mortgagee's sole option, (i) Mortgagor shall demonstrate to Mortgagee's satisfaction that legal proceedings instituted by Mortgagor contesting or objecting to such Charge shall conclusively operate to prevent a lien against or the sale or forfeiture of the Premises or any part thereof as satisfaction of such Charge prior to final determination of such proceedings, and (ii) Mortgagor shall furnish to Mortgagee or Senior Lender, if any, (and if to Senior Lender, notice thereof to Mortgagee) a good and sufficient bond or surety, or a good and sufficient undertaking as may be required or permitted by law to accomplish a stay of any such sale or forfeiture of the Premises during the pendency of such contest, in an amount (x) not less than 125% of such Charge and (y) adequate fully to pay all such contested Charges and all interest and penalties upon the adverse determination of such contest.

(4) Insurance. Mortgagor shall procure and maintain at all times, at Mortgagor's own expense, until final repayment of the indebtedness secured hereby, the types of insurance specified below, with insurance companies authorized to do business in the State of Illinois covering all operations contemplated in connection with the Project, whether performed by Mortgagor or others.

The kinds and amounts of insurance required are as follows:

(a) commercial liability insurance with limits of not less than \$1,000,000 per occurrence, combined single limit, for bodily injury and/or property damage liability; such insurance shall include products/completed operation, independent contractors and contractual liability coverages; Mortgagee shall be named as an additional insured;

(b) all risk property insurance, including improvements and betterments, in the amount of the full replacement value of the Premises; extensions of coverage shall include business interruption/loss of rents, and boiler and machinery, if applicable; such policy shall list Mortgagee as loss payee/mortgagee;

(c) during any construction work to the Premises, all risk builder's risk insurance covering the materials, equipment,

# UNOFFICIAL COPY

machinery and fixtures that are to be part of the Premises; Mortgagee shall be named as a loss payee;

(d) during any construction work to the Premises, insurance with respect to the General Contractor (including without limitation worker's compensation and automobile liability) with such insurers and limits as may be satisfactory to Mortgagee, in its sole discretion; at Mortgagee's request, Mortgagee shall be named as an additional insured; and

(e) such additional coverage as Mortgagee may require, in form, content and amount and with such insurers as may be satisfactory to Mortgagee, in its sole discretion; at Mortgagee's request, Mortgagee shall be named as an additional insured and/or loss payee/mortgagee.

All insurance policies shall provide that Mortgagee shall be given 30 days' prior written notice of any modification, nonrenewal or cancellation. Certificates evidencing the required coverages, along with paid receipts, shall be delivered to Mortgagee on or prior to the Closing Date followed by certified copies of the policies within 30 days after the Closing Date. If Mortgagor fails to obtain or maintain any of the insurance policies required under this Mortgage or to pay any premium in whole or in part when due, Mortgagee may (without waiving or releasing any obligation or Event of Default by Mortgagor hereunder) obtain and maintain such insurance policies and take any other action which Mortgagee deems advisable to protect its interest in the Premises, including acceleration of the Note. All sums so disbursed by Mortgagee, including reasonable attorneys' fees, court costs and expenses, shall be reimbursed by Mortgagor upon demand by Mortgagee.

Mortgagor shall require all contractors and subcontractors to carry the insurance required herein, or Mortgagor may provide the coverage for any or all contractors and subcontractors, and, if so, the evidence of insurance submitted shall so stipulate.

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

Mortgagor agrees and shall cause each contractor and subcontractor in connection with the Project to agree that all insurers shall waive their rights of subrogation against Mortgagee.

Mortgagor expressly understands and agrees that any insurance maintained with respect to the Premises by Mortgagee shall apply in excess of and not contribute with insurance provided by Mortgagor under this Section.

# UNOFFICIAL COPY

Mortgagee maintains the right to modify, delete, alter or change these requirements.

(5) Inspection of Premises and of Books and Records.

Mortgagor shall permit Mortgagee, the United States Department of Housing and Urban Development and/or their agents to inspect the Premises at all reasonable times, and access thereto shall be permitted for that purpose. Mortgagor shall keep and maintain full and correct records at Mortgagor's office showing in detail the income and expenses of the Premises and shall make such books, records and all supporting vouchers, data and other documents available for inspection, copying (including excerpts and transcriptions), audit and examination upon request by Mortgagee, HUD and their respective agents, successors and assigns as long as the Loan is outstanding.

(6) Insurance Proceeds.

In the event of any damage to, or destruction of the Premises, Mortgagor will give written notice to Mortgagee of such damage or destruction within five Business Days thereafter and, subject to the rights granted to Senior Lender, if any, under the Senior Mortgage, if any, authorize Mortgagee to proceed as follows:

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

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

# UNOFFICIAL COPY

repair, replacement or rebuilding is reasonably susceptible to completion not less than six months prior to the Maturity Date.

(c) In the event that proceeds of insurance, if any, shall be made available to Mortgagor for the restoration, repair, replacement or rebuilding of the Premises, Mortgagor hereby covenants to restore, repair, replace or rebuild the same, to at least equal value, and substantially the same character as prior to such damage or destruction, all to be effected in accordance with plans and specifications submitted to and approved by Mortgagee, and to expend all such proceeds and any funds deposited by Mortgagor pursuant to Section 6(b)(ii) hereof prior to the further disbursement of any Loan proceeds. If the amount of such insurance proceeds shall be in excess of \$50,000, such proceeds shall be disbursed through an escrow pursuant to an escrow agreement approved by Mortgagee.

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

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

(7) Condemnation/Eminent Domain. Mortgagor shall give Mortgagee prompt notice of any proceedings, pending or threatened, seeking condemnation or taking by eminent domain or any like process ("Taking"), of all or any portion of the Premises or affecting any easement thereon or appurtenance thereto and shall deliver to Mortgagee copies of any and all papers served in connection with any such proceedings, and Mortgagor hereby assigns and transfers to Mortgagee, subject to the rights granted to Senior Lender, if any, under the Senior Mortgage, if any, the entire proceeds of all awards resulting from any Taking. Mortgagee is hereby authorized to collect and receive from the condemnation authorities said awards and is further authorized to give appropriate receipts therefor. In the event of any such Taking, but subject to any rights granted to Senior Lender, if any, under the Senior Mortgage, if any, Mortgagee may, in its sole discretion, (i) apply the proceeds of all awards resulting from such Taking to the indebtedness secured hereby in such order or manner as Mortgagee may elect, or (ii) apply such proceeds to reimburse or, at the option of Mortgagee, pay directly Mortgagor for the cost of restoring, repairing, replacing or rebuilding the Premises. In the event that such proceeds, if any, shall be made available to Mortgagor for the restoration, repair, replacement or rebuilding of the Premises, Mortgagor hereby covenants to restore, repair, replace or rebuild the same, to at least equal value and substantially the same character as prior to such Taking, all to be effected in

# UNOFFICIAL COPY

accordance with plans and specifications submitted to and approved by Mortgagee. If the amount of such proceeds shall be in excess of \$50,000, such proceeds shall be disbursed through an escrow pursuant to an escrow agreement approved by Mortgagee.

(8) Transfer and Encumbrance of Premises. Subject to Exhibit B, Mortgagor shall not create, effect, contract for, commit to, consent to, suffer or permit any conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation (or any agreement to do any of the foregoing, other than a contract for sale or financing to pay in full the Note and all other amounts due and owing by Mortgagor to Mortgagee under the Loan Documents, provided that any such contract shall be expressly contingent upon the receipt of prior written consent to such sale or financing by Mortgagee, which consent shall not be unreasonably withheld by Mortgagee with respect to any contract providing for payment in full of the Note and all other amounts due and owing by Mortgagor to Mortgagee under the Loan Documents), directly or indirectly, by willful act, by operation of law or otherwise, of all or any portion of the Premises or any interest therein, other than Permitted Encumbrances, (each of the foregoing being referred to herein as a "Prohibited Transfer"), without Mortgagee's prior written consent. If Mortgagor shall do or allow any of the foregoing Prohibited Transfers without Mortgagee's prior written consent, Mortgagee at its option, has the right to accelerate the maturity of the Note causing the full principal balance thereof and accrued interest, if any, thereon to be immediately due and payable without notice to Mortgagor. Any waiver by Mortgagee of the provisions of this paragraph shall not be deemed to be a waiver of the right of Mortgagee to insist upon strict compliance with the provisions of this paragraph in the future.

The addendum contained on Exhibit B is hereby incorporated into and made a part of this Section 8.

(9) Mortgagee's Options; Subrogation. (a) In case of an Event of Default hereunder by Mortgagor, Mortgagee may (but is not obligated to) make any payment or perform any act herein required of Mortgagor in any form and manner deemed expedient, and may (but is not obligated to) make full or partial payments of principal or interest on prior encumbrances, if any, and purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof, or redeem the Premises from any tax sale or forfeiture affecting the Premises or contest any tax or assessment thereon. All monies paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including attorneys' fees, and any other monies advanced by Mortgagee to protect the Premises and the lien hereof, shall be deemed additional indebtedness secured hereby, and shall become immediately due and payable, with interest thereon at a rate of the lesser of 15% per annum or the maximum amount permitted by law. Inaction of Mortgagee shall never be

**UNOFFICIAL COPY**

considered as a waiver of any right accruing to it on account of any default on the part of Mortgagor.

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

(10) Events of Default. The following shall constitute an "Event of Default" under this Mortgage:

- (i) Mortgagor's failure to pay, when due, any installment of principal of or interest, if any, on the Note, or to pay when due (including any applicable notice and/or cure periods) and other sums required to be paid by Mortgagor under the Loan Documents;
- (ii) subject to Section 33 hereof, default by Mortgagor in the performance or observance of any condition, warranty, representation, covenant, provision or term (other than as referred to in the other paragraphs of this Section 10) contained herein or in the other Loan Documents (including any default described in Section VIII of Exhibit C to the Loan Agreement), which remains unremedied for 30 days after notice thereof from Mortgagee to Mortgagor, provided, however, that if any such default cannot reasonably be remedied within said 30-day period and if Mortgagor shall have commenced to remedy such default within said 30-day period and shall thereafter continue diligently to effect such remedy, then said 30-day period shall be extended to 60 days upon written request from Mortgagor to Mortgagee delivered during such 30-day period, and upon further written request from Mortgagor to Mortgagee delivered during said 60-day period, said 60-day period shall be extended to 90 days (provided, however, that Mortgagee shall not be precluded during any such periods from exercising any remedies available under any of the Loan Documents if its security becomes or is about to become materially jeopardized

## UNOFFICIAL COPY

- by any failure to cure a default within such period);
- (iii) the occurrence of a default or an event of default under any of the Senior Loan Documents which default or event of default is not timely cured pursuant to any applicable cure period as set forth in the Senior Loan Documents whichever is applicable;
- (iv) a writ of execution, attachment or any similar process shall be issued or levied against all or any portion of the Premises or any interest therein, or any judgment involving monetary damages shall be entered against Mortgagor which shall become a lien on all or any portion of the Premises or any interest therein and such execution, attachment or similar process or judgment is not released, bonded, satisfied, vacated or stayed within 30 days after its entry or levy;
- (v) any warranty, representation or statement made or furnished to Mortgagee by or on behalf of Mortgagor proving to have been false in any material respect when made or furnished;
- (vi) prepayment of principal of the Senior Loan, without a pro rata concurrent prepayment of principal of the Note;
- (vii) the abandonment by Mortgagor of all or any portion of the Premises;
- (viii) the occurrence of any event of default with respect to the payment of any monies due and payable to Mortgagee by Mortgagor other than in connection with the Loan or the Senior Loan to which Mortgagor is now or hereafter a party, or the occurrence of a default in the performance or observance of any material obligation, provision or condition by Mortgagor under any agreement or other instrument other than in connection with the Loan or the Senior Loan to which Mortgagor is now or hereafter a party, or the occurrence of any other event under any such agreement or instrument upon which any holder of indebtedness outstanding thereunder may



## UNOFFICIAL COPY

declare the same due and payable, and in each such case the continuation of such default beyond any applicable cure periods;

- (ix) Mortgagor's failure to discharge any Charge in accordance with the terms hereof or a failure to procure or maintain any insurance required hereunder;
- (x) the dissolution of Mortgagor or the entry of a decree or order for relief by a court having jurisdiction with respect to Mortgagor in an involuntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or other similar law, or appointing a receiver, liquidator, assignee, custodian, trustee or sequestrator (or other similar official) of Mortgagor or for the Premises or for any substantial part of the property of Mortgagor or ordering the winding-up or liquidation of the affairs of Mortgagor and the continuance of any such decree or order unstayed and in effect for a period of 30 consecutive days;
- (xi) the commencement by Mortgagor of a voluntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or other similar law, or the consent by Mortgagor to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian or sequestrator (or other similar official) of Mortgagor or the Premises or of any substantial part of the property of Mortgagor or of any royalties, revenues, rents, issues or profits therefrom, or the making by Mortgagor of any assignment for the benefit of creditors or the failure of Mortgagor generally to pay its debts as such debts become due or the taking of action by Mortgagor in furtherance of any of the foregoing;
- (xii) a final judgment for the payment of money in excess of \$100,000 shall be rendered by a court of record against Mortgagor and Mortgagor shall not discharge the same or provide for its discharge in accordance with its terms, or procure a stay of execution thereof, within 60 days from the date of entry thereof, or such longer period during which execution of such judgment shall have been stayed;

## UNOFFICIAL COPY

- (xiii) Mortgagor's sale, partial sale, transfer, refinancing, conveyance, mortgage, pledge, grant of security interest, assignment, syndication or other disposition of all or any portion of the Premises or any interest therein without the prior written consent of Mortgagee, whether by operation of law, voluntarily or otherwise or if Mortgagor shall enter into a contract to do any of the foregoing without the prior written consent of Mortgagee or any other violation of Section 8 hereof (except as may be expressly permitted in Section 8 hereof or except a contract for sale or financing to pay in full the Note and all other amounts when due and owing by Mortgagor to Mortgagee under the Loan Documents, provided that any such contract shall be expressly contingent upon the receipt of prior written consent to such sale or financing by Mortgagee, which consent shall not be unreasonably withheld by Mortgagee with respect to any contract providing for payment in full of the Note and all other amounts due and owing by Mortgagor to Mortgagee under the Loan Documents);
- (xiv) any event of default under any of the other Loan Documents which has not been cured within any applicable grace period; and
- (xv) the sale or other transfer by any shareholder of the Beneficiary of all or a controlling interest in his shares of the Beneficiary without the prior written consent of the City.

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

# UNOFFICIAL COPY

specifically any of the provisions contained in any of the Loan Documents.

Upon the occurrence of an event of default under any of the Senior Loan Documents, Mortgagee may at its option proceed to cure, if possible, such event of default; subject to Section 9(b) hereof, all amounts so expended by Mortgagee in the course of such action shall be reimbursed by Mortgagor to Mortgagee upon demand and shall be additional indebtedness of Mortgagor secured by this Mortgage, the Assignment of Rents and the other Loan Documents.

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

(13) Additional Indebtedness. In the event that: (a) the Note is placed in the hands of an attorney for collection or enforcement or is collected or enforced through any legal proceeding; (b) an attorney is retained to represent Mortgagee in any bankruptcy, reorganization, receivership or other proceedings affecting creditors' rights and involving a claim under any of the Loan Documents; (c) an attorney is retained to protect or enforce the lien of this Mortgage, or the liens or security interests of any of the other Loan Documents; or (d) an attorney is retained to represent Mortgagee in any other proceedings whatsoever in connection with the Loan Documents, or any property subject thereto, then Mortgagor shall pay to Mortgagee all reasonable attorneys' fees, and all costs and expenses incurred in connection therewith.

(14) Waiver. Mortgagee's failure to require strict performance by Mortgagor of any provision of this Mortgage shall not waive, affect or diminish any right of Mortgagee thereafter to demand strict compliance and performance therewith, nor shall any waiver by Mortgagee of an Event of Default waive, suspend or

# UNOFFICIAL COPY

affect any other Event of Default under this Mortgage, whether the same is prior or subsequent thereto, or of the same or a different type. Mortgagee's delay in instituting or prosecuting any action or proceeding or otherwise asserting its rights hereunder or under any of the other Loan Documents, shall not operate as a waiver of such rights or limit them in any way so long as an Event of Default shall be continuing.

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

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

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

(17) Foreclosure Sale. The Premises or any interest or estate therein sold pursuant to any court order or decree obtained under this Mortgage shall be sold in one parcel, as an entirety, or in such parcels and in such manner or order as Mortgagee, in its sole discretion, may elect, to the maximum extent permitted by Illinois law. At any such sale, Mortgagee may bid for and acquire, as purchaser, all or any portion of the

# UNOFFICIAL COPY

Premises and, in lieu of paying cash therefor, may make settlement for the purchase price by crediting upon the indebtedness due the amount of Mortgagee's bid.

(18) Application of Proceeds from Foreclosure Sale.

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

(19) Insurance Upon Foreclosure.

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

(20) Waiver of Statutory Rights.

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

**UNOFFICIAL COPY**

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

(22) Rescission of Election. Acceleration of maturity, once made by Mortgagee, may at the option of Mortgagee be rescinded, and any proceedings brought to enforce any rights or remedies hereunder may, at Mortgagee's option, be discontinued or dismissed. In either of such events, Mortgagor and Mortgagee shall be restored to their former positions, and the rights, remedies and powers of Mortgagee shall continue as if such acceleration had not been made or such proceedings had not been commenced, as the case may be.

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

IF TO MORTGAGEE: Department of Housing  
City of Chicago  
318 South Michigan Avenue  
Chicago, Illinois 60604  
Attention: Commissioner

WITH COPIES TO: Office of the Corporation Counsel  
City of Chicago  
City Hall  
121 North LaSalle Street, Room 511  
Chicago, Illinois 60602  
Attention: Finance & Economic  
Development Division

Department of Finance  
City of Chicago  
121 North LaSalle Street, Room 501  
Chicago, Illinois 60602  
Attention: Comptroller

IF TO MORTGAGOR: As specified on Exhibit B.

Such addresses may be changed by notice to the other parties given in the same manner as above provided. Any notice, demand or request sent pursuant to either clause (a) or (b) above shall

# UNOFFICIAL COPY

be deemed received upon such personal service or upon dispatch by electronic means with confirmation of receipt. Any notice, demand or request sent pursuant to clause (c) above shall be deemed received on the Business Day immediately following deposit with the overnight courier and, if sent pursuant to clause (d) above, shall be deemed received two Business Days following deposit in the mail.

(24) Time. Time is of the essence with respect to the Loan Documents.

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

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

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

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

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

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

(31) Further Assurances. Mortgagor will perform, execute, acknowledge and deliver every act, deed, conveyance, transfer and assurance necessary or proper, in the sole judgment of Mortgagee, for assuring, conveying, mortgaging, assigning and confirming to Mortgagee all property mortgaged hereby or property intended so to be, whether now owned or hereafter acquired by Mortgagor, and for creating, maintaining and preserving the lien and security interest created hereby on the Premises. Upon any failure by

# UNOFFICIAL COPY

Mortgagor to do so, Mortgagee may make, execute and record any and all such documents for and in the name of Mortgagor, and Mortgagor hereby irrevocably appoints Mortgagee and its agents as attorney-in-fact for that purpose. Mortgagor will reimburse Mortgagee for any sums expended by Mortgagee in making, executing and recording such documents including attorneys' fees and court costs.

(32) Indemnification. In addition to all other indemnities in favor of Mortgagee specifically provided in this Mortgage, Mortgagor shall indemnify Mortgagee and save Mortgagee harmless from and against any and all Losses incurred by Mortgagee in any Claim brought by reason of any such Loss, excluding, however, any Loss arising out of Mortgagee's gross negligence or willful misconduct following Mortgagee's acquisition of title to or control of the Premises, unless such act is taken in response to (i) any willful misconduct or negligent act or omission of Mortgagor or (ii) any breach (other than failure to repay the Loan) by Mortgagor of any provisions of the instruments executed by Mortgagor in connection with the Loan.

(33) Junior Mortgage. This is a junior mortgage on the Premises and is subject and subordinate in each and every respect to any and all rights of any kind created by:

That certain Construction Mortgage, Security Agreement and Financing Statement dated as of the date hereof from Trustee to Harris Trust and Savings Bank ("Senior Lender") and recorded prior hereto in the Office of the Cook County Recorder of Deeds, securing a note of even date therewith in the principal amount of \$720,000 in favor of Senior Lender.

So long as the Senior Mortgage is in effect, in the event of any conflict between the provisions of this Mortgage and the Senior Mortgage, the provisions of the Senior Mortgage shall prevail. Any waiver or forbearance by the Senior Lender under the Senior Loan Documents shall not impair the priority of its lien under the Senior Loan Documents. Notwithstanding any other provision herein to the contrary, the failure by Mortgagor to provide to Mortgagee any dollar amounts or any documents as may be required herein because such amounts or documents are required to be deposited with Senior Lender pursuant to the provisions of the Senior Mortgage shall not be deemed an "Event of Default" hereunder; provided, however, that Mortgagor shall promptly provide to Mortgagee written notice of the deposit of such amounts or documents with Senior Lender (together with copies of such documents). Notwithstanding any other provision herein to the contrary, the failure by Mortgagor to comply with any provision hereof (other than the payment of amounts or the provision of documents to Mortgagee) due to conflict between the provisions of the Senior Mortgage and the provisions hereof shall not be deemed an "Event of Default" hereunder; provided, however, that Mortgagor shall promptly provide to Mortgagee written notice



# UNOFFICIAL COPY

of such conflict and of the actions taken by Mortgagor pursuant to the Senior Mortgage.

(34) Security Agreement. This Mortgage shall be construed as a "security agreement" within the meaning of and shall create a security interest under the Uniform Commercial Code as adopted by the State of Illinois with respect to any part of the Premises which constitutes fixtures or personal property. Mortgagee shall have all the rights with respect to such fixtures or personal property afforded to it by said Uniform Commercial Code in addition to, but not in limitation of, the other rights afforded Mortgagee by this Mortgage or any other agreement. Upon the recording hereof, this Mortgage shall constitute a financing statement under the Uniform Commercial Code. This Mortgage is a "construction mortgage" as that term is defined in Section 9-313(1)(c) of said Uniform Commercial Code.

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

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

(a) all advances by Mortgagee in accordance with the terms of this Mortgage to: (i) preserve or maintain, repair, restore or rebuild the improvements upon the Premises; (ii) preserve the lien of this Mortgage or the priority thereof; or (iii) enforce this Mortgage, as referred to in Subsection (b) (5) of Section 5/15-1302 of the Act;

(b) payments by Mortgagee of: (i) when due, installments of principal, interest or other obligations in accordance with the terms of the Senior Mortgage, if any, or other prior lien or encumbrance; (ii) when due, installments of real estate taxes and assessments, general and special and all other taxes and assessments of any kind or nature whatsoever which are assessed or imposed upon the Premises or any part thereof; (iii) other obligations authorized by this Mortgage; or (iv) with court approval, any other amounts in connection with other liens,

# UNOFFICIAL COPY

encumbrances or interests reasonably necessary to preserve the status of title, as referred to in Section 5/15-1505 of the Act;

(c) advances by Mortgagee in settlement or compromise of any claims asserted by claimants under senior mortgages or any other prior liens;

(d) attorneys' fees and other costs incurred: (i) in connection with the foreclosure of this Mortgage as referred to in Sections 5/15-1504(d)(2) and 5/15-1510 of the Act; (ii) in connection with any action, suit or proceeding brought by or against Mortgagee for the enforcement of this Mortgage or arising from the interest of Mortgagee hereunder; or (iii) in the preparation for the commencement or defense of any such foreclosure or other action;

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

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

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

(h) expenses incurred and expenditures made by Mortgagee for any one or more of the following: (i) if the Premises or any portion thereof constitutes one or more units under a condominium declaration, assessments imposed upon the unit owner thereof; (ii) if any interest in the Premises is a leasehold estate under a lease or sublease, rentals or other payments required to be made by the lessee under the terms of the lease or sublease; (iii) premiums for casualty and liability insurance paid by Mortgagee whether or not Mortgagee or a receiver is in possession, if reasonably required, in reasonable amounts, and all renewals thereof, without regard to the limitation to maintaining of existing insurance in effect at the time any receiver or mortgagee takes possession of the Premises imposed by Subsection (c)(1) of Section 5/15-1704 of the Act; (iv) repair or restoration of damage or destruction in excess of available insurance proceeds or condemnation awards; (v) payments required or deemed by Mortgagee to be for the benefit of the Premises or required to be made by the owner of the Premises under any grant or declaration of easement, easement agreement, agreement with any adjoining land owners or instruments creating covenants or restrictions for the benefit of or affecting the Premises; (vi) shared or common expense assessments payable to any association or corporation in which the owner of the Premises is a member in any way affecting the Premises; (vii) if the loan secured hereby is a construction loan, costs incurred by Mortgagee for demolition, preparation for and completion of

# UNOFFICIAL COPY

construction, as may be authorized by the applicable commitment or loan agreement; (viii) pursuant to any lease or other agreement for occupancy of the Premises; and (ix) if this Mortgage is insured, payments of FHA or private mortgage insurance.

All Protective Advances shall be so much additional indebtedness secured by this Mortgage, and shall become immediately due and payable without notice and with interest thereon from the date of the advance until paid at the rate of interest payable after default under the terms of the Note.

This Mortgage shall be a lien for all Protective Advances as to subsequent purchasers and judgment creditors from the time this Mortgage is recorded pursuant to Subsection (b) (1) of Section 5/15-1502 of the Act.

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

- (1) the determination of the amount of indebtedness secured by this Mortgage at any time;
- (2) the indebtedness found due and owing to Mortgagee in the judgment of foreclosure and any subsequent supplemental judgments, orders, adjudications or findings by the court of any additional indebtedness becoming due after such entry of judgment, it being agreed that in any foreclosure judgment, the court may reserve jurisdiction for such purpose;
- (3) if the right of redemption has not been waived by this Mortgage, computation of amount required to redeem pursuant to Subsections (d) (2) and (e) of Section 5/15-1603 of the Act;
- (4) the determination of amounts deductible from sale proceeds pursuant to Section 5/15-1512 of the Act;
- (5) the application of income in the hands of any receiver or mortgagee in possession; and
- (6) the computation of any deficiency judgment pursuant to Subsections (b) (2) and (e) of Sections 5/15-1508 and Section 5/15-1511 of the Act.

The maximum amount of indebtedness secured by this Mortgage is \$3,907,902 plus interest, plus any disbursements for the payment of taxes and insurance on the Premises, plus interest thereon, and any other sums advanced in accordance with the terms hereof or any of the other Loan Documents to protect the security of this Mortgage or any of the other Loan Documents plus interest thereon.

# UNOFFICIAL COPY

## (37) Non-Recourse Loan.

(a) Subject to the terms of Sections 37(b), (c) and (d) hereof and notwithstanding any provision herein to the contrary, the indebtedness secured hereunder shall be non-recourse and in the event of default hereunder, Mortgagee's sole source of satisfaction of repayment of the amounts due to Mortgagee hereunder or under any of the Loan Documents shall be limited to Mortgagee's rights with respect to the collateral pledged and assigned hereunder or under the Assignment of Rents, the Assignment of Contracts or any of the other Loan Documents.

(b) Notwithstanding paragraph (a) of this Section, nothing herein or in any of the Loan Documents shall limit the rights of the Mortgagee, following any of the events hereinafter described, to take any action as may be necessary or desirable to pursue Mortgagee's rights with respect to the collateral pledged and assigned hereunder or under the Assignment of Rents, the Assignment of Contracts or any of the other Loan Documents from: (i) a material misrepresentation, fraud made in writing or misappropriation of funds by Mortgagor; (ii) intentional or material waste to the Premises; (iii) use of proceeds of the indebtedness evidenced by the Note for costs other than Eligible Costs; (iv) the occurrence of a Prohibited Transfer without Mortgagee's prior written consent, to the extent such Prohibited Transfer results from the intentional, willful, voluntary and/or negligent acts or omissions of Mortgagor; (v) any breach of Mortgagor's representations, warranties or covenants regarding Hazardous Materials or Environmental Laws contained in any of the Loan Documents (including, without limitation, the Environmental Agreement); (vi) the occurrence of any uninsured casualty to the Premises or other collateral or security provided under any of the Loan Documents for which there has been a failure to maintain insurance coverage as required by the terms and provisions of the Loan Documents; (vii) the misappropriation or misapplication of insurance proceeds or condemnation awards relating to the Premises or other collateral or security provided under any of the Loan Documents; or (viii) any inaccuracy in the statements in the Affidavit.

(c) Mortgagee waives any and all right to seek or demand any personal deficiency judgment against Mortgagor, in conjunction with a foreclosure proceeding, under or by reason of any of the non-recourse monetary obligations of Mortgagor; provided, however, that the foregoing shall not limit or affect Mortgagee's right to sue or otherwise seek recourse against Mortgagor in any separate action or proceeding for all Losses incurred by Mortgagee arising from any of the matters described in Sections 37(b) hereof.

## (38) Trustee Exculpation.

This instrument is executed by LaSalle National Bank ("LaSalle"), as Trustee as aforesaid, in the exercise of the power and authority conferred upon and vested in it as such Trustee (and LaSalle hereby warrants that it possesses full power