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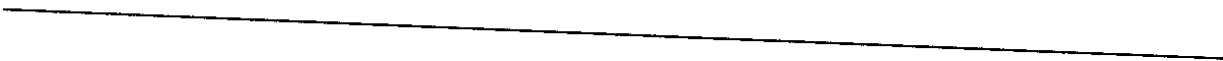
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**JUNIOR LEASEHOLD  
MORTGAGE,  
ASSIGNMENT OF RENTS  
AND SECURITY AGREEMENT  
(ILLINOIS)**



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## JUNIOR LEASEHOLD MORTGAGE, ASSIGNMENT OF RENTS AND SECURITY AGREEMENT

THIS JUNIOR LEASEHOLD MORTGAGE, ASSIGNMENT OF RENTS AND SECURITY AGREEMENT (the "**Instrument**") is dated as of the 15<sup>th</sup> day of September, 2004, between West Maypole, L.P., limited partnership, whose address is c/o The Michaels Development Company, One East Stow Road, Marlton, New Jersey 08053, Attn: John O'Donnell, as mortgagor ("**Borrower**"), and Bank of America Georgia, N.A., whose address is, 600 Peachtree Street, NE, 14<sup>th</sup> Floor, GA1-006-14-23, Atlanta, GA 30308, as mortgagee ("**Lender**").

Borrower is indebted to Lender in the principal amount of \$500,000.00, as evidenced by Borrower's Promissory Note payable to Lender, dated as of the date of this Instrument, and maturing on October 1, 2046.

TO SECURE TO LENDER the repayment of the Indebtedness, and all renewals, extensions and modifications of the Indebtedness, and the performance of the covenants and agreements of Borrower contained in the Loan Documents, Borrower mortgages, warrants, grants, conveys and assigns to Lender Borrower's leasehold interest in the Mortgaged Property, including the Land located in Cook County, State of Illinois and described in Exhibit A attached to and hereby made a part of this Instrument.

Borrower represents and warrants that Borrower is lawfully seized of the Mortgaged Property and has the right, power and authority to mortgage, grant, convey and assign its interest in the Mortgaged Property. Borrower covenants that Borrower will warrant and defend generally the leasehold title to the Land against all claims and demands, subject to any easements and restrictions listed in a schedule of exceptions to coverage in any title insurance policy issued to Lender contemporaneously with the execution and recordation of this instrument and insuring Lender's interest in the Mortgaged Property.

**Covenants.** Borrower and Lender covenant and agree as follows:

### 1. DEFINITIONS.

The following terms, when used in this Instrument (including when used in the above recitals), shall have the following meanings:

(a) "**Borrower**" means all persons or entities identified as "Borrower" in the first paragraph of this Instrument, together with their successors and assigns.

(b) "**Collateral Agreement**" means any separate agreement between Borrower and Lender for the purpose of establishing replacement reserves for the Mortgaged Property, establishing a fund to assure completion of repairs or improvements specified in that agreement, or assuring reduction of the outstanding principal balance of the Indebtedness if the occupancy of or income from the Mortgaged Property does not increase to a level specified in that agreement,

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or any other agreement or agreements between Borrower and Lender which provide for the establishment of any other fund, reserve or account.

(c) "**Environmental Permit**" means any permit, license, or other authorization issued under any Hazardous Materials Law with respect to any activities or businesses conducted on or in relation to the Mortgaged Property.

(d) "**Event of Default**" means the occurrence of any event listed in Section 22.

(e) "**Fixtures**" means all property which is so attached to the Land or the Improvements as to constitute a fixture under applicable law, including: machinery, equipment, engines, boilers, incinerators, installed building materials; systems and equipment for the purpose of supplying or distributing heating, cooling, electricity, gas, water, air, or light; antennas, cable, wiring and conduits used in connection with radio, television, security, fire prevention, or fire detection or otherwise used to carry electronic signals; telephone systems and equipment; elevators and related machinery and equipment; fire detection, prevention and extinguishing systems and apparatus; security and access control systems and apparatus; plumbing systems; water heaters, ranges, stoves, microwave ovens, refrigerators, dishwashers, garbage disposers, washers, dryers and other appliances; light fixtures, awnings, storm windows and storm doors; pictures, screens, blinds, shades, curtains and curtain rods; mirrors; cabinets, paneling, rugs and floor and wall coverings; fences, trees and plants; swimming pools; and exercise equipment.

(f) "**Governmental Authority**" means any board, commission, department or body of any municipal, county, state or federal governmental unit, or any subdivision of any of them, that has or acquires jurisdiction over the Mortgaged Property or the use, operation or improvement of the Mortgaged Property.

(g) "**Hazardous Materials**" means petroleum and petroleum products and compounds containing them, including gasoline, diesel fuel and oil; explosives; flammable materials; radioactive materials; polychlorinated biphenyls ("PCBs") and compounds containing them; lead and lead-based paint; asbestos or asbestos-containing materials in any form that is or could become friable; underground or above-ground storage tanks, whether empty or containing any substance; any substance the presence of which on the Mortgaged Property is prohibited by any federal, state or local authority; any substance that requires special handling; and any other material or substance now or in the future defined as a "hazardous substance," "hazardous material," "hazardous waste," "toxic substance," "toxic pollutant," "contaminant," or "pollutant" within the meaning of any Hazardous Materials Law.

(h) "**Hazardous Materials Laws**" means all federal, state, and local laws, ordinances and regulations and standards, rules, policies and other governmental requirements, administrative rulings and court judgments and decrees in effect now or in the future and including all amendments, that relate to Hazardous Materials and apply to Borrower or to the Mortgaged Property. Hazardous Materials Laws include, but are not limited to, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601, *et seq.*, the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, *et seq.*, the Toxic Substance Control Act, 15 U.S.C. Section 2601, *et seq.*, the Clean Water Act, 33 U.S.C. Section 1251, *et seq.*,

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and the Hazardous Materials Transportation Act, 49 U.S.C. Section 5101, *et seq.*, and their state analogs.

- (i) **"Impositions"** are defined in Section 15(a).
- (j) **"Improvements"** means the buildings, structures, improvements, and alterations now constructed or at any time in the future constructed or placed upon the Land, including any future replacements and additions.
- (k) **"Indebtedness"** means the principal of, interest on, and all other amounts due at any time under, the Note, this Instrument or any other Loan Document, including prepayment premiums, late charges, default interest, and advances as provided in Section 12 to protect the security of this Instrument.
- (l) **"Land"** means the land described in Exhibit A.
- (m) **"Leases"** means all present and future leases, subleases, licenses, concessions or grants or other possessory interests now or hereafter in force, whether oral or written, covering or affecting the Mortgaged Property or any portion of the Mortgaged Property (including proprietary leases or occupancy agreements if Borrower is a cooperative housing corporation), and all modifications, extensions or renewals.
- (n) **"Lender"** means the entity identified as "Lender" in the first paragraph of this Instrument and its successors and assigns, or any subsequent holder of the Note.
- (o) **"Loan Documents"** means the Note, that certain Retention/Repayment Agreement, dated as of the date of this Instrument, among Borrower, Lender and the other parties named therein, this Instrument, all guaranties, all indemnity agreements, all Collateral Agreements, O&M and any other documents now or in the future executed by Borrower, any guarantor or any other person in connection with the loan evidenced by the Note, as such documents may be amended from time to time.
- (p) **"Loan Servicer"** means the entity that from time to time is designated by Lender to collect payments and deposits and receive notices under the Note, this Instrument and any other Loan Document, and otherwise to service the loan evidenced by the Note for the benefit of Lender. Unless Borrower receives notice to the contrary, the Loan Servicer is the entity identified as "Lender" in the first paragraph of this Instrument.
- (q) **"Mortgaged Property"** means all of Borrower's present and future right, title and interest in and to all of the following:
- (1) the Land;
  - (2) the Improvements;
  - (3) the Fixtures;

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- (4) the Personalty;
- (5) all current and future rights, including air rights, development rights, zoning rights and other similar rights or interests, easements, tenements, rights-of-way, strips and gores of land, streets, alleys, roads, sewer rights, waters, watercourses, and appurtenances related to or benefitting the Land or the Improvements, or both, and all rights-of-way, streets, alleys and roads which may have been or may in the future be vacated;
- (6) all proceeds paid or to be paid by any insurer of the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property, whether or not Borrower obtained the insurance pursuant to Lender's requirement;
- (7) all awards, payments and other compensation made or to be made by any municipal, state or federal authority with respect to the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property, including any awards or settlements resulting from condemnation proceedings or the total or partial taking of the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property under the power of eminent domain or otherwise and including any conveyance in lieu thereof;
- (8) all contracts, options and other agreements for the sale of the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property entered into by Borrower now or in the future, including cash or securities deposited to secure performance by parties of their obligations;
- (9) all proceeds from the conversion, voluntary or involuntary, of any of the above into cash or liquidated claims, and the right to collect such proceeds;
- (10) all Rents and Leases;
- (11) all earnings, royalties, accounts receivable, issues and profits from the Land, the Improvements or any other part of the Mortgaged Property, and all undisbursed proceeds of the loan secured by this Instrument and, if Borrower is a cooperative housing corporation, maintenance charges or assessments payable by shareholders or residents;
- (12) all refunds or rebates of Impositions by any municipal, state or federal authority or insurance company (other than refunds applicable to periods before the real property tax year in which this Instrument is dated);
- (13) all tenant security deposits which have not been forfeited by any tenant under any Lease; and

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(14) all names under or by which any of the above Mortgaged Property may be operated or known, and all trademarks, trade names, and goodwill relating to any of the Mortgaged Property.

(r) "**Note**" means the Promissory Note described on page 1 of this Instrument, including all schedules, riders, allonges and addenda, as such Promissory Note may be amended from time to time.

(s) "**O&M Program**" is defined in Section 18(a).

(v) "**Personalty**" means all equipment, inventory, general intangibles which are used now or in the future in connection with the ownership, management or operation of the Land or the Improvements or are located on the Land or in the Improvements, including furniture, furnishings, machinery, building materials, appliances, goods, supplies, tools, books, records (whether in written or electronic form), computer equipment (hardware and software) and other tangible personal property (other than Fixtures) which are used now or in the future in connection with the ownership, management or operation of the Land or the Improvements or are located on the Land or in the Improvements, and any operating agreements relating to the Land or the Improvements, and any surveys, plans and specifications and contracts for architectural, engineering and construction services relating to the Land or the Improvements and all other intangible property and rights relating to the operation of, or used in connection with, the Land or the Improvements, including all governmental permits relating to any activities on the Land.

(w) "**Property Jurisdiction**" is defined in Section 30(a).

(x) "**Rents**" means all rents (whether from residential or non-residential space), revenues and other income of the Land or the Improvements, including subsidy payments received from any sources (including, but not limited to payments under any Housing Assistance Payments Contract), parking fees, laundry and vending machine income and fees and charges for food, health care and other services provided at the Mortgaged Property, whether now due, past due, or to become due, and deposits forfeited by tenants, provided that any assignment of Rents hereunder shall include Operating Subsidies (as "Operating Subsidies" is defined in the R&O Agreement, which is defined in Section 48 hereof) only to the extent permitted by the R&O Agreement, and shall exclude Tenant Housing Payments (as "Tenant Housing Payments" is defined in the R&O Agreement) to the extent that any Tenant Housing Payments constitute the property of the Chicago Housing Authority pursuant to the R&O Agreement.

(y) "**Taxes**" means all taxes, assessments, vault rentals and other charges, if any, general, special or otherwise, including all assessments for schools, public betterments and general or local improvements, which are levied, assessed or imposed by any public authority or quasi-public authority, and which, if not paid, will become a lien, on the Land or the Improvements.

(z) "**Transfer**" means (A) a sale, assignment, transfer or other disposition (whether voluntary, involuntary or by operation of law); (B) the granting, creating or attachment of a lien, encumbrance or security interest (whether voluntary, involuntary or by operation of law); (C) the issuance or other creation of an ownership interest in a legal entity, including a partnership interest, interest in a limited liability company or corporate stock; (D) the withdrawal, retirement, removal or



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involuntary resignation of a partner in a partnership or a member or manager in a limited liability company; or (E) the merger, dissolution, liquidation, or consolidation of a legal entity. "Transfer" does not include (i) a conveyance of the Mortgaged Property at a judicial or non-judicial foreclosure sale under this Instrument or (ii) the Mortgaged Property becoming part of a bankruptcy estate by operation of law under the United States Bankruptcy Code. For purposes of defining the term "Transfer," the term "partnership" shall mean a general partnership, a limited partnership, a joint venture and a limited liability partnership, and the term "partner" shall mean a general partner, a limited partner and a joint venturer.

## 2. UNIFORM COMMERCIAL CODE SECURITY AGREEMENT.

This Instrument is also a security agreement under the Uniform Commercial Code for any of the Mortgaged Property which, under applicable law, may be subject to a security interest under the Uniform Commercial Code, whether acquired now or in the future, and all products and cash and non-cash proceeds thereof (collectively, "UCC Collateral"), and Borrower hereby grants to Lender a security interest in the UCC Collateral, subject and subordinate to the instruments described in Section 48 hereof. Borrower hereby authorizes Lender to file financing statements, continuation statements and financing statement amendments in such form as Lender may require to perfect or continue the perfection of this security interest and Borrower agrees, if Lender so requests, to execute and deliver to Lender such financing statements, continuation statements and amendments. Borrower shall pay all filing costs and all costs and expenses of any record searches for financing statements that Lender may require. Without the prior written consent of Lender, Borrower shall not create or permit to exist any other lien or security interest in any of the UCC Collateral. If an Event of Default has occurred and is continuing, Lender shall have the remedies of a secured party under the Uniform Commercial Code, in addition to all remedies provided by this Instrument or existing under applicable law. In exercising any remedies, Lender may exercise its remedies against the UCC Collateral separately or together, and in any order, without in any way affecting the availability of Lender's other remedies. This Instrument constitutes a financing statement with respect to any part of the Mortgaged Property which is or may become a Fixture.

## 3. ASSIGNMENT OF RENTS; APPOINTMENT OF RECEIVER; LENDER IN POSSESSION.

(a) As part of the consideration for the Indebtedness, and subject and subordinate to the instruments described in Section 48 hereof, Borrower absolutely and unconditionally assigns and transfers to Lender all Rents. It is the intention of Borrower to establish a present, absolute and irrevocable transfer and assignment to Lender of all Rents and to authorize and empower Lender to collect and receive all Rents without the necessity of further action on the part of Borrower. Promptly upon request by Lender, Borrower agrees to execute and deliver such further assignments as Lender may from time to time require. Borrower and Lender intend this assignment of Rents to be immediately effective and to constitute an absolute present assignment and not an assignment for additional security only. For purposes of giving effect to this absolute assignment of Rents, and for no other purpose, Rents shall not be deemed to be a part of the "Mortgaged Property," as that term is defined in Section 1(s). However, if this present, absolute and unconditional assignment of Rents is not enforceable by its terms under the laws of the Property Jurisdiction, then the Rents shall be included as a part of the Mortgaged Property and it is the intention of the Borrower that in this

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circumstance this Instrument create and perfect a lien on Rents in favor of Lender, which lien shall be effective as of the date of this Instrument.

(b) After the occurrence of an Event of Default, Borrower authorizes Lender to collect, sue for and compromise Rents and directs each tenant of the Mortgaged Property to pay all Rents to, or as directed by, Lender, and Borrower shall, upon Borrower's receipt of any Rents from any sources (including, but not limited to subsidy payments under any Housing Assistance Payments Contract), pay the total amount of such receipts to the Lender. However, until the occurrence of an Event of Default, Lender hereby grants to Borrower a revocable license to collect and receive all Rents, to hold all Rents in trust for the benefit of Lender and to apply all Rents to pay the installments of interest and principal then due and payable under the Note and the other amounts then due and payable under the other Loan Documents, and to pay the current costs and expenses of managing, operating and maintaining the Mortgaged Property, including utilities, Taxes and insurance premiums, tenant improvements and other capital expenditures. So long as no Event of Default has occurred and is continuing, the Rents remaining after application pursuant to the preceding sentence may be retained by Borrower free and clear of, and released from, Lender's rights with respect to Rents under this Instrument. From and after the occurrence of an Event of Default, and without the necessity of Lender entering upon and taking and maintaining control of the Mortgaged Property directly, or by a receiver, Borrower's license to collect Rents shall automatically terminate and Lender shall without notice be entitled to all Rents as they become due and payable, including Rents then due and unpaid. Borrower shall pay to Lender upon demand all Rents to which Lender is entitled. At any time on or after the date of Lender's demand for Rents, Lender may give, and Borrower hereby irrevocably authorizes Lender to give, notice to all tenants of the Mortgaged Property instructing them to pay all Rents to Lender, no tenant shall be obligated to inquire further as to the occurrence or continuance of an Event of Default, and no tenant shall be obligated to pay to Borrower any amounts which are actually paid to Lender in response to such a notice. Any such notice by Lender shall be delivered to each tenant personally, by mail or by delivering such demand to each rental unit. Borrower shall not interfere with and shall cooperate with Lender's collection of such Rents.

(c) Borrower represents and warrants to Lender that Borrower has not executed any prior assignment of Rents (other than an assignment of Rents securing indebtedness that will be paid off and discharged with the proceeds of the loan evidenced by the Note), that Borrower has not performed, and Borrower covenants and agrees that it will not perform, any acts and has not executed, and shall not execute, any instrument which would prevent Lender from exercising its rights under this Section 3.

(d) If an Event of Default has occurred and is continuing, Lender may, regardless of the adequacy of Lender's security or the solvency of Borrower and even in the absence of waste, enter upon and take and maintain full control of the Mortgaged Property in order to perform all acts that Lender in its discretion determines to be necessary or desirable for the operation and maintenance of the Mortgaged Property, including the execution, cancellation or modification of Leases, the collection of all Rents, the making of repairs to the Mortgaged Property and the execution or termination of contracts providing for the management, operation or maintenance of the Mortgaged Property, for the purposes of enforcing the assignment of Rents pursuant to Section 3(a), protecting the Mortgaged Property or the security of this Instrument, or for such other purposes as Lender in its discretion may deem necessary or desirable. Alternatively, if an Event of Default has occurred

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and is continuing, regardless of the adequacy of Lender's security, without regard to Borrower's solvency and without the necessity of giving prior notice (oral or written) to Borrower, Lender may apply to any court having jurisdiction for the appointment of a receiver for the Mortgaged Property to take any or all of the actions set forth in the preceding sentence. If Lender elects to seek the appointment of a receiver for the Mortgaged Property at any time after an Event of Default has occurred and is continuing, Borrower, by its execution of this Instrument, expressly consents to the appointment of such receiver, including the appointment of a receiver *ex parte* if permitted by applicable law. Lender or the receiver, as the case may be, shall be entitled to receive a reasonable fee for managing the Mortgaged Property. Immediately upon appointment of a receiver or immediately upon the Lender's entering upon and taking possession and control of the Mortgaged Property, Borrower shall surrender possession of the Mortgaged Property to Lender or the receiver, as the case may be, and shall deliver to Lender or the receiver, as the case may be, all documents, records (including records on electronic or magnetic media), accounts, surveys, plans, and specifications relating to the Mortgaged Property and all security deposits and prepaid Rents. In the event Lender takes possession and control of the Mortgaged Property, Lender may exclude Borrower and its representatives from the Mortgaged Property. Borrower acknowledges and agrees that the exercise by Lender of any of the rights conferred under this Section 3 shall not be construed to make Lender a mortgagee in-possession of the Mortgaged Property so long as Lender has not itself entered into actual possession of the Land and Improvements.

(e) If Lender enters the Mortgaged Property, Lender shall be liable to account only to Borrower and only for those Rents actually received. Lender shall not be liable to Borrower, anyone claiming under or through Borrower or anyone having an interest in the Mortgaged Property, by reason of any act or omission of Lender under this Section 3, and Borrower hereby releases and discharges Lender from any such liability to the fullest extent permitted by law.

(f) If the Rents are not sufficient to meet the costs of taking control of and managing the Mortgaged Property and collecting the Rents, any funds expended by Lender for such purposes shall become an additional part of the Indebtedness as provided in Section 12.

(g) Any entering upon and taking of control of the Mortgaged Property by Lender or the receiver, as the case may be, and any application of Rents as provided in this Instrument shall not cure or waive any Event of Default or invalidate any other right or remedy of Lender under applicable law or provided for in this Instrument.

#### **4. ASSIGNMENT OF LEASES; LEASES AFFECTING THE MORTGAGED PROPERTY.**

(a) As part of the consideration for the Indebtedness, and subject and subordinate to the instruments described in Section 48 hereof, Borrower absolutely and unconditionally assigns and transfers to Lender all of Borrower's right, title and interest in, to and under the Leases, including Borrower's right, power and authority to modify the terms of any such Lease, or extend or terminate any such Lease. It is the intention of Borrower to establish a present, absolute and irrevocable transfer and assignment to Lender of all of Borrower's right, title and interest in, to and under the Leases. Borrower and Lender intend this assignment of the Leases to be immediately effective and to constitute an absolute present assignment and not an assignment for additional security only. For purposes of giving effect to this absolute assignment of the Leases, and for no other purpose, the

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Leases shall not be deemed to be a part of the "Mortgaged Property," as that term is defined in Section 1(s). However, if this present, absolute and unconditional assignment of the Leases is not enforceable by its terms under the laws of the Property Jurisdiction, then the Leases shall be included as a part of the Mortgaged Property and it is the intention of the Borrower that in this circumstance this Instrument create and perfect a lien on the Leases in favor of Lender, which lien shall be effective as of the date of this Instrument.

(b) Until Lender gives notice to Borrower of Lender's exercise of its rights under this Section 4, Borrower shall have all rights, power and authority granted to Borrower under any Lease (except as otherwise limited by this Section or any other provision of this Instrument), including the right, power and authority to modify the terms of any Lease or extend or terminate any Lease. Upon the occurrence of an Event of Default, the permission given to Borrower pursuant to the preceding sentence to exercise all rights, power and authority under Leases shall automatically terminate. Borrower shall comply with and observe Borrower's obligations under all Leases, including Borrower's obligations pertaining to the maintenance and disposition of tenant security deposits.

(c) Borrower acknowledges and agrees that the exercise by Lender, either directly or by a receiver, of any of the rights conferred under this Section 4 shall not be construed to make Lender a mortgagee-in-possession of the Mortgaged Property so long as Lender has not itself entered into actual possession of the Land and the Improvements. The acceptance by Lender of the assignment of the Leases pursuant to Section 4(a) shall not at any time or in any event obligate Lender to take any action under this Instrument or to expend any money or to incur any expenses. Lender shall not be liable in any way for any injury or damage to person or property sustained by any person or persons, firm or corporation in or about the Mortgaged Property. Prior to Lender's actual entry into and taking possession of the Mortgaged Property, Lender shall not (i) be obligated to perform any of the terms, covenants and conditions contained in any Lease (or otherwise have any obligation with respect to any Lease); (ii) be obligated to appear in or defend any action or proceeding relating to the Lease or the Mortgaged Property; or (iii) be responsible for the operation, control, care, management or repair of the Mortgaged Property or any portion of the Mortgaged Property. The execution of this Instrument by Borrower shall constitute conclusive evidence that all responsibility for the operation, control, care, management and repair of the Mortgaged Property is and shall be that of Borrower, prior to such actual entry and taking of possession.

(d) Upon delivery of notice by Lender to Borrower of Lender's exercise of Lender's rights under this Section 4 at any time after the occurrence of an Event of Default, and without the necessity of Lender entering upon and taking and maintaining control of the Mortgaged Property directly, by a receiver, or by any other manner or proceeding permitted by the laws of the Property Jurisdiction, Lender immediately shall have all rights, powers and authority granted to Borrower under any Lease, including the right, power and authority to modify the terms of any such Lease, or extend or terminate any such Lease.

(e) Borrower shall, promptly upon Lender's request, deliver to Lender an executed copy of each residential Lease then in effect. All Leases for residential dwelling units shall be on forms approved by Lender, shall be for initial terms of at least six months and not more than two years, and shall not include options to purchase. If customary in the applicable market, residential Leases with terms of less than six months may be permitted with Lender's prior written consent.

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(f) Borrower shall not lease any portion of the Mortgaged Property for non-residential use except with the prior written consent of Lender and Lender's prior written approval of the Lease agreement. Borrower shall not modify the terms of, or extend or terminate, any Lease for non-residential use (including any Lease in existence on the date of this Instrument) without the prior written consent of Lender. Borrower shall, without request by Lender, deliver an executed copy of each non-residential Lease to Lender promptly after such Lease is signed. All non-residential Leases, including renewals or extensions of existing Leases, shall specifically provide that (1) such Leases are subordinate to the lien of this Instrument (unless waived in writing by Lender); (2) the tenant shall attorn to Lender and any purchaser at a foreclosure sale, such attornment to be self-executing and effective upon acquisition of title to the Mortgaged Property by any purchaser at a foreclosure sale or by Lender in any manner; (3) the tenant agrees to execute such further evidences of attornment as Lender or any purchaser at a foreclosure sale may from time to time request; (4) the Lease shall not be terminated by foreclosure or any other transfer of the Mortgaged Property; (5) after a foreclosure sale of the Mortgaged Property, Lender or any other purchaser at such foreclosure sale may, at Lender's or such purchaser's option, accept or terminate such Lease; and (6) the tenant shall, upon receipt after the occurrence of an Event of Default of a written request from Lender, pay all Rents payable under the Lease to Lender.

## **5. PAYMENT OF INDEBTEDNESS; PERFORMANCE UNDER LOAN DOCUMENTS.**

Borrower shall pay the Indebtedness when due in accordance with the terms of the Note and the other Loan Documents and shall perform, observe and comply with all other provisions of the Note and the other Loan Documents.

## **6. EXCULPATION.**

Borrower's personal liability for payment of the Indebtedness and for performance of the other obligations to be performed by it under this Instrument is limited in the manner, and to the extent, provided in the Note.

## **7. [INTENTIONALLY OMITTED].**

## **8. COLLATERAL AGREEMENTS.**

Borrower shall deposit with Lender such amounts as may be required by any Collateral Agreement and shall perform all other obligations of Borrower under each Collateral Agreement.

## **9. APPLICATION OF PAYMENTS.**

If at any time Lender receives, from Borrower or otherwise, any amount applicable to the Indebtedness which is less than all amounts due and payable at such time, then Lender may apply that payment to amounts then due and payable in any manner and in any order determined by Lender, in Lender's discretion. Neither Lender's acceptance of an amount which is less than all amounts then due and payable nor Lender's application of such payment in the manner authorized shall constitute or be deemed to constitute either a waiver of the unpaid amounts or an accord and

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satisfaction. Notwithstanding the application of any such amount to the Indebtedness, Borrower's obligations under this Instrument and the Note shall remain unchanged.

## 10. COMPLIANCE WITH LAWS.

Borrower shall comply with all laws, ordinances, regulations and requirements of any Governmental Authority and all recorded lawful covenants and agreements relating to or affecting the Mortgaged Property, including all laws, ordinances, regulations, requirements and covenants pertaining to health and safety, construction of improvements on the Mortgaged Property, fair housing, zoning and land use, and Leases. Borrower also shall comply with all applicable laws that pertain to the maintenance and disposition of tenant security deposits. Borrower shall at all times maintain records sufficient to demonstrate compliance with the provisions of this Section 10. Borrower shall take appropriate measures to prevent, and shall not engage in or knowingly permit, any illegal activities at the Mortgaged Property that could endanger tenants or visitors, result in damage to the Mortgaged Property, result in forfeiture of the Mortgaged Property, or otherwise materially impair the lien created by this Instrument or Lender's interest in the Mortgaged Property. Borrower represents and warrants to Lender that no portion of the Mortgaged Property has been or will be purchased with the proceeds of any illegal activity.

## 11. USE OF PROPERTY.

Unless required by applicable law, Borrower shall not (a) except for any change in use approved by Lender, allow changes in the use for which all or any part of the Mortgaged Property is being used at the time this Instrument was executed, (b) convert any individual dwelling units or common areas to commercial use, or (c) initiate or acquiesce in a change in the zoning classification of the Mortgaged Property.

## 12. PROTECTION OF LENDER'S SECURITY.

(a) If Borrower fails to perform any of its obligations under this Instrument or any other Loan Document, or if any action or proceeding is commenced which purports to affect the Mortgaged Property, Lender's security or Lender's rights under this Instrument, including eminent domain, insolvency, code enforcement, civil or criminal forfeiture, enforcement of Hazardous Materials Laws, fraudulent conveyance or reorganizations or proceedings involving a bankrupt or decedent, then Lender at Lender's option may make such appearances, disburse such sums and take such actions as Lender reasonably deems necessary to perform such obligations of Borrower and to protect Lender's interest, including (1) payment of fees and out-of-pocket expenses of attorneys, accountants, inspectors and consultants, (2) entry upon the Mortgaged Property to make repairs or secure the Mortgaged Property, (3) procurement of the insurance required by Section 19, and (4) payment of amounts which Borrower has failed to pay under Sections 15 and 17.

(b) Any amounts disbursed by Lender under this Section 12, or under any other provision of this Instrument that treats such disbursement as being made under this Section 12, shall be added to, and become part of, the principal component of the Indebtedness, shall be immediately due and payable and shall bear interest from the date of disbursement until paid at the rate set forth in the Note.

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(c) Nothing in this Section 12 shall require Lender to incur any expense or take any action.

## 13. INSPECTION.

Lender, its agents, representatives, and designees may make or cause to be made entries upon and inspections of the Mortgaged Property (including environmental inspections and tests) during normal business hours, or at any other reasonable time, provided that Lender shall give Borrower written notice, in the manner described in Section 31 hereof, prior to such entry.

## 14. BOOKS AND RECORDS; FINANCIAL REPORTING.

(a) Borrower shall keep and maintain at all times at the Mortgaged Property or the management agent's offices, and upon Lender's request shall make available to Lender at the Mortgaged Property, complete and accurate books of account and records (including copies of supporting bills and invoices) adequate to reflect correctly the operation of the Mortgaged Property, and copies of records of all rent schedules, security deposits, owners of interests in Borrower, property management reports, written contracts, Leases, and other instruments which affect the Mortgaged Property. The books, records, contracts, Leases and other instruments shall be subject to examination and inspection at any reasonable time by Lender.

(b) If Borrower fails to maintain the records, statements, schedules and reports required by Section 14(a), Lender shall have the right to have Borrower's books and records audited, at Borrower's expense, by independent certified public accountants selected by Lender in order to obtain such statements, schedules and reports, and all related costs and expenses of Lender shall become immediately due and payable and shall become an additional part of the Indebtedness as provided in Section 12.

(c) If an Event of Default has occurred and is continuing, Borrower shall deliver to Lender upon written demand all books and records relating to the Mortgaged Property or its operation.

(d) Borrower authorizes Lender to obtain a credit report on Borrower at any time.

(e) If an Event of Default has occurred and Lender has not previously required Borrower to furnish a quarterly statement of income and expense for the Mortgaged Property, Lender may require Borrower to furnish such a statement within 45 days after the end of each fiscal quarter of Borrower following such Event of Default.

## 15. TAXES; OPERATING EXPENSES.

(a) Borrower shall pay, or cause to be paid, when due, before any interest, fine, collection fees or penalties shall accrue, (1) any water and sewer charges which, if not paid, may result in a lien on all or any part of the Mortgaged Property, (2) the premiums for fire and other hazard insurance, rent loss insurance and such other insurance as Lender may require under Section 19, (3) Taxes, and (4) amounts for other charges and expenses which Lender at any time reasonably deems necessary to protect the Mortgaged Property, to prevent the imposition of liens on

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the Mortgaged Property, or otherwise to protect Lender's interests, all as reasonably estimated from time to time by Lender. The amounts described in clauses (1) through (4) of the preceding sentence are collectively referred to in this Instrument as the "**Impositions**". Should the Borrower fail to make those payments for Impositions, the Lender may at its option and at the expense of the Borrower, pay the amounts due for the account of the Borrower. Upon the request of the Lender, the Borrower shall immediately furnish to the Lender all notices of amounts due and receipts evidencing payment. The Borrower shall promptly notify the Lender of any lien on all or any part of the Mortgaged Property and shall promptly discharge any unpermitted lien or encumbrance.

(b) Borrower shall pay the expenses of operating, managing, maintaining and repairing the Mortgaged Property (including insurance premiums, utilities, repairs and replacements) before the last date upon which each such payment may be made without any penalty or interest charge being added.

(c) Lender shall have no liability to Borrower for failing to pay any Impositions.

(d) Borrower, at its own expense, may contest by appropriate legal proceedings, conducted diligently and in good faith, the amount or validity of any Imposition other than insurance premiums, if (1) Borrower notifies Lender of the commencement or expected commencement of such proceedings, (2) the Mortgaged Property is not in danger of being sold or forfeited, (3) Borrower deposits with Lender reserves sufficient to pay the contested Imposition, if requested by Lender, and (4) Borrower furnishes whatever additional security is required in the proceedings or is reasonably requested by Lender, which may include the delivery to Lender of the reserves established by Borrower to pay the contested Imposition.

## 16. LIENS; ENCUMBRANCES.

Borrower acknowledges that, to the extent provided in Section 21, the grant, creation or existence of any mortgage, deed of trust, deed to secure debt, security interest or other lien or encumbrance (a "**Lien**") on the Mortgaged Property (other than the lien of this Instrument) or on certain ownership interests in Borrower, whether voluntary, involuntary or by operation of law, and whether or not such Lien has priority over the lien of this Instrument, is a "**Transfer**" which constitutes an Event of Default.

## 17. PRESERVATION, MANAGEMENT AND MAINTENANCE OF MORTGAGED PROPERTY.

Borrower (1) shall not commit waste or permit impairment or deterioration of the Mortgaged Property, (2) shall not abandon the Mortgaged Property, (3) shall restore or repair promptly, in a good and workmanlike manner, any damaged part of the Mortgaged Property to the equivalent of its original condition, or such other condition as Lender may approve in writing, whether or not insurance proceeds or condemnation awards are available to cover any costs of such restoration or repair, (4) shall keep the Mortgaged Property in good repair, including the replacement of Personalty and Fixtures with items of equal or better function and quality, and (5) shall give notice to Lender of and, unless otherwise directed in writing by Lender, shall appear in and defend any action or proceeding purporting to affect the Mortgaged Property, Lender's security or Lender's rights under this Instrument. Borrower shall not (and shall not permit any tenant or



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other person to) remove, demolish or alter the Mortgaged Property or any part of the Mortgaged Property except in connection with the replacement of tangible Personalty.

## 18. ENVIRONMENTAL HAZARDS.

(a) Except for matters covered by a written program of operations and maintenance approved in writing by Lender or as set forth in the documents described in Section 48 hereof, or as described in the documents and reports listed on Exhibit C attached hereto and made a part hereof (an "**O&M Program**"), or matters described in Section 18(b), Borrower shall not cause or permit any of the following:

- (1) the presence, use, generation, release, treatment, processing, storage (including storage in above ground and underground storage tanks), handling, or disposal of any Hazardous Materials on or under the Mortgaged Property or any other property of Borrower that is adjacent to the Mortgaged Property;
- (2) the transportation of any Hazardous Materials to, from, or across the Mortgaged Property;
- (3) any occurrence or condition on the Mortgaged Property or any other property of Borrower that is adjacent to the Mortgaged Property, which occurrence or condition is or may be in violation of Hazardous Materials Laws; or
- (4) any violation of or noncompliance with the terms of any Environmental Permit with respect to the Mortgaged Property or any property of Borrower that is adjacent to the Mortgaged Property.

The matters described in clauses (1) through (4) above are referred to collectively in this Section 18 as "**Prohibited Activities or Conditions**".

(b) Prohibited Activities and Conditions shall not include the safe and lawful use and storage of quantities of (1) pre-packaged supplies, cleaning materials and petroleum products customarily used in the operation and maintenance of comparable multifamily properties, (2) cleaning materials, personal grooming items and other items sold in pre-packaged containers for consumer use and used by tenants and occupants of residential dwelling units in the Mortgaged Property; and (3) petroleum products used in the operation and maintenance of motor vehicles from time to time located on the Mortgaged Property's parking areas, so long as all of the foregoing are used, stored, handled, transported and disposed of in compliance with Hazardous Materials Laws.

(c) Borrower shall take all commercially reasonable actions (including the inclusion of appropriate provisions in any Leases executed after the date of this Instrument) to prevent its employees, agents, and contractors, and all tenants and other occupants from causing or permitting any Prohibited Activities or Conditions. Borrower shall not lease or allow the sublease or use of all or any portion of the Mortgaged Property to any tenant or subtenant for nonresidential use by any

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user that, in the ordinary course of its business, would cause or permit any Prohibited Activity or Condition.

(d) If an O&M Program has been established with respect to Hazardous Materials, Borrower shall comply in a timely manner with, and cause all employees, agents, and contractors of Borrower and any other persons present on the Mortgaged Property to comply with the O&M Program. All costs of performance of Borrower's obligations under any O&M Program shall be paid by Borrower, and Lender's out-of-pocket costs incurred in connection with the monitoring and review of the O&M Program and Borrower's performance shall be paid by Borrower upon demand by Lender. Any such out-of-pocket costs of Lender which Borrower fails to pay promptly shall become an additional part of the Indebtedness as provided in Section 12.

(e) Borrower represents and warrants to Lender that, except as previously disclosed by Borrower to Lender in writing or as described in the documents and reports listed on Exhibit C attached hereto:

- (1) Borrower has not at any time engaged in, caused or permitted any Prohibited Activities or Conditions;
- (2) to the best of Borrower's knowledge after reasonable and diligent inquiry, no Prohibited Activities or Conditions exist or have existed;
- (3) except to the extent previously disclosed by Borrower to Lender in writing, the Mortgaged Property does not now contain any underground storage tanks, and, to the best of Borrower's knowledge after reasonable and diligent inquiry, the Mortgaged Property has not contained any underground storage tanks in the past. If there is an underground storage tank located on the Property which has been previously disclosed by Borrower to Lender in writing, that tank complies with all requirements of Hazardous Materials Laws;
- (4) Borrower has complied with all Hazardous Materials Laws, including all requirements for notification regarding releases of Hazardous Materials. Without limiting the generality of the foregoing, Borrower has obtained all Environmental Permits required for the operation of the Mortgaged Property in accordance with Hazardous Materials Laws now in effect and all such Environmental Permits are in full force and effect;
- (5) no event has occurred with respect to the Mortgaged Property that constitutes, or with the passing of time or the giving of notice would constitute, noncompliance with the terms of any Environmental Permit;
- (6) there are no actions, suits, claims or proceedings pending or, to the best of Borrower's knowledge after reasonable and diligent inquiry, threatened that involve the Mortgaged Property and allege, arise out of, or relate to any Prohibited Activity or Condition; and

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- (7) Borrower has not received any complaint, order, notice of violation or other communication from any Governmental Authority with regard to air emissions, water discharges, noise emissions or Hazardous Materials, or any other environmental, health or safety matters affecting the Mortgaged Property or any other property of Borrower that is adjacent to the Mortgaged Property.

The representations and warranties in this Section 18 shall be continuing representations and warranties that shall be deemed to be made by Borrower throughout the term of the loan evidenced by the Note, until the Indebtedness has been paid in full.

(f) Borrower shall promptly notify Lender in writing upon the occurrence of any of the following events:

- (1) Borrower's discovery of any Prohibited Activity or Condition;
- (2) Borrower's receipt of or knowledge of any complaint, order, notice of violation or other communication from any Governmental Authority or other person with regard to present or future alleged Prohibited Activities or Conditions or any other environmental, health or safety matters affecting the Mortgaged Property or any other property of Borrower that is adjacent to the Mortgaged Property; and
- (3) any representation or warranty in this Section 18 becomes untrue after the date of this Agreement.

Any such notice given by Borrower shall not relieve Borrower of, or result in a waiver of, any obligation under this Instrument, the Note, or any other Loan Document.

(g) Borrower shall pay promptly the costs of any environmental inspections, tests or audits ("**Environmental Inspections**") required by Lender in connection with any foreclosure or deed in lieu of foreclosure, or as a condition of Lender's consent to any Transfer under Section 21, or required by Lender following a reasonable determination by Lender that Prohibited Activities or Conditions may exist. Any such costs incurred by Lender (including the fees and out-of-pocket costs of attorneys and technical consultants whether incurred in connection with any judicial or administrative process or otherwise) which Borrower fails to pay promptly shall become an additional part of the Indebtedness as provided in Section 12. The results of all Environmental Inspections made by Lender shall at all times remain the property of Lender and Lender shall have no obligation to disclose or otherwise make available to Borrower or any other party such results or any other information obtained by Lender in connection with its Environmental Inspections. Lender hereby reserves the right, and Borrower hereby expressly authorizes Lender, to make available to any party, including any prospective bidder at a foreclosure sale of the Mortgaged Property, the results of any Environmental Inspections made by Lender with respect to the Mortgaged Property. Borrower consents to Lender notifying any party (either as part of a notice of sale or otherwise) of the results of any of Lender's Environmental Inspections. Borrower acknowledges that Lender cannot control or otherwise assure the truthfulness or accuracy of the results of any of its Environmental Inspections and that the release of such results to prospective

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bidders at a foreclosure sale of the Mortgaged Property may have a material and adverse effect upon the amount which a party may bid at such sale. Borrower agrees that Lender shall have no liability whatsoever as a result of delivering the results of any of its Environmental Inspections to any third party, and Borrower hereby releases and forever discharges Lender from any and all claims, damages, or causes of action, arising out of, connected with or incidental to the results of, the delivery of any of Lender's Environmental Inspections.

(h) If any investigation, site monitoring, containment, clean-up, restoration or other remedial work ("**Remedial Work**") is necessary to comply with any Hazardous Materials Law or order of any Governmental Authority that has or acquires jurisdiction over the Mortgaged Property or the use, operation or improvement of the Mortgaged Property under any Hazardous Materials Law, Borrower shall, by the earlier of (1) the applicable deadline required by Hazardous Materials Law or (2) 10 days after notice from Lender demanding such action, begin performing the Remedial Work, and thereafter diligently prosecute it to completion, and shall in any event complete the work by the time required by applicable Hazardous Materials Law. If Borrower fails to begin on a timely basis or diligently prosecute any required Remedial Work, Lender may, at its option, cause the Remedial Work to be completed, in which case Borrower shall reimburse Lender on demand for the cost of doing so. Any reimbursement due from Borrower to Lender shall become part of the Indebtedness as provided in Section 12.

(i) Borrower shall cooperate with any inquiry by any Governmental Authority and shall comply with any governmental or judicial order which arises from any alleged Prohibited Activity or Condition.

(j) Borrower shall, to the extent of the value of the Mortgaged Property, indemnify, hold harmless and defend (i) Lender, (ii) any prior owner or holder of the Note, (iii) the Loan Servicer, (iv) any prior Loan Servicer, (v) the officers, directors, shareholders, partners, employees and trustees of any of the foregoing, and (vi) the heirs, legal representatives, successors and assigns of each of the foregoing (collectively, the "**Indemnitees**") from and against all proceedings, claims, damages, penalties and costs (whether initiated or sought by Governmental Authorities or private parties), including fees and out-of-pocket expenses of attorneys and expert witnesses, investigatory fees, and remediation costs, whether incurred in connection with any judicial or administrative process or otherwise, arising directly or indirectly from any of the following:

- (1) any breach of any representation or warranty of Borrower in this Section 18;
- (2) any failure by Borrower to perform any of its obligations under this Section 18;
- (3) the existence or alleged existence of any Prohibited Activity or Condition;
- (4) the presence or alleged presence of Hazardous Materials on or under the Mortgaged Property or any property of Borrower that is adjacent to the Mortgaged Property; and
- (5) the actual or alleged violation of any Hazardous Materials Law.

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(k) Counsel selected by Borrower to defend Indemnitees shall be subject to the approval of those Indemnitees. However, any Indemnitee may elect to defend any claim or legal or administrative proceeding at the Borrower's expense.

(l) Borrower shall not, without the prior written consent of those Indemnitees who are named as parties to a claim or legal or administrative proceeding (a "**Claim**"), settle or compromise the Claim if the settlement (1) results in the entry of any judgment that does not include as an unconditional term the delivery by the claimant or plaintiff to Lender of a written release of those Indemnitees, satisfactory in form and substance to Lender; or (2) may materially and adversely affect Lender, as determined by Lender in its discretion.

(m) Lender agrees that the indemnity under this Section 18 shall be limited to the assets of Borrower and Lender shall not seek to recover any deficiency from any natural persons who are general partners of Borrower.

(n) Borrower shall, at its own cost and expense, do all of the following:

- (1) pay or satisfy any judgment or decree that may be entered against any Indemnitee or indemnitees in any legal or administrative proceeding incident to any matters against which Indemnitees are entitled to be indemnified under this Section 18;
- (2) reimburse Indemnitees for any expenses paid or incurred in connection with any matters against which Indemnitees are entitled to be indemnified under this Section 18; and
- (3) reimburse Indemnitees for any and all expenses, including fees and out-of-pocket expenses of attorneys and expert witnesses, paid or incurred in connection with the enforcement by Indemnitees of their rights under this Section 18, or in monitoring and participating in any legal or administrative proceeding.

(o) In any circumstances in which the indemnity under this Section 18 applies, Lender may employ its own legal counsel and consultants to prosecute, defend or negotiate any claim or legal or administrative proceeding and Lender, with the prior written consent of Borrower (which shall not be unreasonably withheld, delayed or conditioned), may settle or compromise any action or legal or administrative proceeding. Borrower shall reimburse Lender upon demand for all costs and expenses incurred by Lender, including all costs of settlements entered into in good faith, and the fees and out-of-pocket expenses of such attorneys and consultants.

(p) The provisions of this Section 18 shall be in addition to any and all other obligations and liabilities that Borrower may have under applicable law or under other Loan Documents, and each Indemnitee shall be entitled to indemnification under this Section 18 without regard to whether Lender or that Indemnitee has exercised any rights against the Mortgaged Property or any other security, pursued any rights against any guarantor, or pursued any other rights available under the Loan Documents or applicable law. If Borrower consists of more than one person or entity, the obligation of those persons or entities to indemnify the Indemnitees under this Section 18 shall be

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joint and several. The obligation of Borrower to indemnify the Indemnitees under this Section 18 shall survive any repayment or discharge of the Indebtedness, any foreclosure proceeding, any foreclosure sale, any delivery of any deed in lieu of foreclosure, and any release of record of the lien of this Instrument.

## 19. PROPERTY AND LIABILITY INSURANCE.

(a) Borrower shall keep the Improvements insured at all times against such hazards as Lender may from time to time require, which insurance shall include but not be limited to coverage against loss by fire and allied perils, general boiler and machinery coverage, and business income coverage. Lender's insurance requirements may change from time to time throughout the term of the Indebtedness. If Lender so requires, such insurance shall also include sinkhole insurance, mine subsidence insurance, earthquake insurance, and, if the Mortgaged Property does not conform to applicable zoning or land use laws, building ordinance or law coverage. If any of the Improvements is located in an area identified by the Federal Emergency Management Agency (or any successor to that agency) as an area having special flood hazards, and if flood insurance is available in that area, Borrower shall insure such Improvements against loss by flood.

(b) All premiums on insurance policies required under Section 19(a) shall be paid directly by Borrower, unless Lender has designated in writing another method of payment. All such policies shall also be in a form approved by Lender. All policies of property damage insurance shall include a non-contributing, non-reporting mortgage clause in favor of, and in a form approved by, Lender. Lender shall have the right to hold the original policies or duplicate original policies of all insurance required by Section 19(a). Borrower shall promptly deliver to Lender a copy of all renewal and other notices received by Borrower with respect to the policies and all receipts for paid premiums. At least 30 days prior to the expiration date of a policy, Borrower shall deliver to Lender the original (or a duplicate original) of a renewal policy in form satisfactory to Lender.

(c) Borrower shall maintain at all times commercial general liability insurance, workers' compensation insurance and such other liability, errors and omissions and fidelity insurance coverages as Lender may from time to time require.

(d) All insurance policies and renewals of insurance policies required by this Section 19 shall be in such amounts and for such periods as Lender may from time to time require, and shall be issued by insurance companies satisfactory to Lender.

(e) Borrower shall comply with all insurance requirements and shall not permit any condition to exist on the Mortgaged Property that would invalidate any part of any insurance coverage that this Instrument requires Borrower to maintain.

(f) In the event of loss, Borrower shall give immediate written notice to the insurance carrier and to Lender. Borrower hereby authorizes and appoints Lender as attorney-in-fact for Borrower to make proof of loss, to adjust and compromise any claims under policies of property damage insurance, to appear in and prosecute any action arising from such property damage insurance policies, to collect and receive the proceeds of property damage insurance, and to deduct from such proceeds Lender's expenses incurred in the collection of such proceeds. This power of attorney is coupled with an interest and therefore is irrevocable. However, nothing contained in this

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Section 19 shall require Lender to incur any expense or take any action. Lender may, at Lender's option, (1) hold the balance of such proceeds to be used to reimburse Borrower for the cost of restoring and repairing the Mortgaged Property to the equivalent of its original condition or to a condition approved by Lender (the "**Restoration**"), or (2) apply the balance of such proceeds to the payment of the Indebtedness, whether or not then due. To the extent Lender determines to apply insurance proceeds to Restoration, Lender shall do so in accordance with Lender's then-current policies relating to the restoration of casualty damage on similar multifamily properties.

(g) Lender shall not exercise its option to apply insurance proceeds to the payment of the Indebtedness if all of the following conditions are met: (1) no Event of Default (or any event which, with the giving of notice or the passage of time, or both, would constitute an Event of Default) has occurred and is continuing; (2) Lender determines, in its discretion, that there will be sufficient funds to complete the Restoration; (3) Lender determines, in its discretion, that the rental income from the Mortgaged Property after completion of the Restoration will be sufficient to meet all operating costs and other expenses, Imposition Deposits, deposits to reserves and loan repayment obligations relating to the Mortgaged Property; (4) Lender determines, in its discretion, that the Restoration will be completed before the earlier of (A) one year before the maturity date of the Note or (B) one year after the date of the loss or casualty; and (5) upon Lender's request, Borrower provides Lender evidence of the availability during and after the Restoration of the insurance required to be maintained by Borrower pursuant to this Section 19.

(h) If the Mortgaged Property is sold at a foreclosure sale or Lender acquires title to the Mortgaged Property, Lender shall automatically succeed to all rights of Borrower in and to any insurance policies and unearned insurance premiums and in and to the proceeds resulting from any damage to the Mortgaged Property prior to such sale or acquisition.

## 20. CONDEMNATION.

(a) Borrower shall promptly notify Lender of any action or proceeding relating to any condemnation or other taking, or conveyance in lieu thereof, of all or any part of the Mortgaged Property, whether direct or indirect (a "**Condemnation**"). Borrower shall appear in and prosecute or defend any action or proceeding relating to any Condemnation unless otherwise directed by Lender in writing. Borrower authorizes and appoints Lender as attorney-in-fact for Borrower to commence, appear in and prosecute, in Lender's or Borrower's name, any action or proceeding relating to any Condemnation and to settle or compromise any claim in connection with any Condemnation. This power of attorney is coupled with an interest and therefore is irrevocable. However, nothing contained in this Section 20 shall require Lender to incur any expense or take any action. Borrower hereby transfers and assigns to Lender all right, title and interest of Borrower in and to any award or payment with respect to (i) any Condemnation, or any conveyance in lieu of Condemnation, and (ii) any damage to the Mortgaged Property caused by governmental action that does not result in a Condemnation.

(b) Lender may apply such awards or proceeds, after the deduction of Lender's expenses incurred in the collection of such amounts, at Lender's option, to the restoration or repair of the Mortgaged Property or to the payment of the Indebtedness, with the balance, if any, to Borrower. Unless Lender otherwise agrees in writing, any application of any awards or proceeds to the Indebtedness shall not extend or postpone the due date of any monthly installments referred to in

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the Note, Section 7 of this Instrument or any Collateral Agreement, or change the amount of such installments. Borrower agrees to execute such further evidence of assignment of any awards or proceeds as Lender may require. All provisions of this Section 20 are and shall remain subject and subordinate to the instruments described in Section 48 hereof.

## 21. [INTENTIONALLY OMITTED].

## 22. EVENTS OF DEFAULT.

The occurrence of any one or more of the following shall constitute an Event of Default under this Instrument:

(a) any failure by Borrower to pay when due any amount required by the Note, this Instrument or any other Loan Document;

(b) any failure by Borrower to maintain any insurance coverage required by Section 19;

(c) any failure by Borrower to comply with the provisions of Section 33;

(d) fraud or material misrepresentation or material omission by Borrower, or any of its officers, directors, trustees, general partners or managers, or any guarantor in connection with (A) the application for or creation of the Indebtedness, (B) any financial statement, rent roll, or other report or information provided to Lender during the term of the Indebtedness, or (C) any request for Lender's consent to any proposed action, including a request for disbursement of funds under any Collateral Agreement;

(e) the commencement of a forfeiture action or proceeding, whether civil or criminal, which, in Lender's reasonable judgment, could result in a forfeiture of the Mortgaged Property or otherwise materially impair the lien created by this Instrument or Lender's interest in the Mortgaged Property;

(f) any failure by Borrower to perform any of its obligations under this Instrument (other than those specified in Sections 22(a) through (e)), as and when required, which continues for a period of 30 days after notice of such failure by Lender to Borrower (or, in the event any such failure cannot be cured within 30 days and Borrower is otherwise diligently pursuing such cure, such longer period as may be reasonably acceptable to Lender), but no such notice or grace period shall apply in the case of any such failure which could, in Lender's judgment, absent immediate exercise by Lender of a right or remedy under this Instrument, result in harm to Lender, impairment of the Note or this Instrument or any other security given under any other Loan Document;

(g) any failure by Borrower to perform any of its obligations as and when required under any Loan Document other than this Instrument which continues beyond the applicable cure period, if any, specified in that Loan Document; and

(h) any exercise by the holder of any other debt instrument secured by a mortgage, deed of trust or deed to secure debt on the Mortgaged Property of a right to declare all amounts due under that debt instrument immediately due and payable.



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## 23. REMEDIES CUMULATIVE.

Each right and remedy provided in this Instrument is distinct from all other rights or remedies under this Instrument or any other Loan Document or afforded by applicable law, and each shall be cumulative and may be exercised concurrently, independently, or successively, in any order.

## 24. FORBEARANCE.

(a) Lender may (but shall not be obligated to) agree with Borrower, from time to time, and without giving notice to, or obtaining the consent of, or having any effect upon the obligations of, any guarantor or other third party obligor, to take any of the following actions: extend the time for payment of all or any part of the Indebtedness; reduce the payments due under this Instrument, the Note, or any other Loan Document; release anyone liable for the payment of any amounts under this Instrument, the Note, or any other Loan Document; accept a renewal of the Note; modify the terms and time of payment of the Indebtedness; join in any extension or subordination agreement; release any Mortgaged Property; take or release other or additional security; modify the rate of interest or period of amortization of the Note or change the amount of the monthly installments payable under the Note; and otherwise modify this Instrument, the Note, or any other Loan Document.

(b) Any forbearance by Lender in exercising any right or remedy under the Note, this Instrument, or any other Loan Document or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any other right or remedy. The acceptance by Lender of payment of all or any part of the Indebtedness after the due date of such payment, or in an amount which is less than the required payment, shall not be a waiver of Lender's right to require prompt payment when due of all other payments on account of the Indebtedness or to exercise any remedies for any failure to make prompt payment. Enforcement by Lender of any security for the Indebtedness shall not constitute an election by Lender of remedies so as to preclude the exercise of any other right available to Lender. Lender's receipt of any awards or proceeds under Sections 19 and 20 shall not operate to cure or waive any Event of Default.

## 25. LOAN CHARGES.

If any applicable law limiting the amount of interest or other charges permitted to be collected from Borrower is interpreted so that any charge provided for in any Loan Document, whether considered separately or together with other charges levied in connection with any other Loan Document, violates that law, and Borrower is entitled to the benefit of that law, that charge is hereby reduced to the extent necessary to eliminate that violation. The amounts, if any, previously paid to Lender in excess of the permitted amounts shall be applied by Lender to reduce the principal of the Indebtedness. For the purpose of determining whether any applicable law limiting the amount of interest or other charges permitted to be collected from Borrower has been violated, all Indebtedness which constitutes interest, as well as all other charges levied in connection with the Indebtedness which constitute interest, shall be deemed to be allocated and spread over the stated term of the Note. Unless otherwise required by applicable law, such allocation and spreading shall

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be effected in such a manner that the rate of interest so computed is uniform throughout the stated term of the Note.

## **26. WAIVER OF STATUTE OF LIMITATIONS.**

Borrower hereby waives the right to assert any statute of limitations as a bar to the enforcement of the lien of this Instrument or to any action brought to enforce any Loan Document.

## **27. WAIVER OF MARSHALLING.**

Notwithstanding the existence of any other security interests in the Mortgaged Property held by Lender or by any other party, Lender shall have the right to determine the order in which any or all of the Mortgaged Property shall be subjected to the remedies provided in this Instrument, the Note, any other Loan Document or applicable law. Lender shall have the right to determine the order in which any or all portions of the Indebtedness are satisfied from the proceeds realized upon the exercise of such remedies. Borrower and any party who now or in the future acquires a security interest in the Mortgaged Property and who has actual or constructive notice of this Instrument waives any and all right to require the marshalling of assets or to require that any of the Mortgaged Property be sold in the inverse order of alienation or that any of the Mortgaged Property be sold in parcels or as an entirety in connection with the exercise of any of the remedies permitted by applicable law or provided in this Instrument.

## **28. FURTHER ASSURANCES.**

Borrower shall execute, acknowledge, and deliver, at its sole cost and expense, all further acts, deeds, conveyances, assignments, estoppel certificates, financing statements, transfers and assurances as Lender may require from time to time in order to better assure, grant, and convey to Lender the rights intended to be granted, now or in the future, to Lender under this Instrument and the Loan Documents.

## **29. ESTOPPEL CERTIFICATE.**

Within 10 days after a request from Lender, Borrower shall deliver to Lender a written statement, signed and acknowledged by Borrower, certifying to Lender or any person designated by Lender, as of the date of such statement, (i) that the Loan Documents are unmodified and in full force and effect (or, if there have been modifications, that the Loan Documents are in full force and effect as modified and setting forth such modifications); (ii) the unpaid principal balance of the Note; (iii) the date to which interest under the Note has been paid; (iv) that Borrower is not in default in paying the Indebtedness or in performing or observing any of the covenants or agreements contained in this Instrument or any of the other Loan Documents (or, if the Borrower is in default, describing such default in reasonable detail); (v) whether or not there are then existing any setoffs or defenses known to Borrower against the enforcement of any right or remedy of Lender under the Loan Documents; and (vi) any additional facts requested by Lender.

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## 30. GOVERNING LAW; CONSENT TO JURISDICTION AND VENUE.

(a) This Instrument, and any Loan Document which does not itself expressly identify the law that is to apply to it, shall be governed by the laws of the jurisdiction in which the Land is located (the "**Property Jurisdiction**").

(b) Borrower agrees that any controversy arising under or in relation to the Note, this Instrument, or any other Loan Document shall be litigated exclusively in the Property Jurisdiction. The state and federal courts and authorities with jurisdiction in the Property Jurisdiction shall have exclusive jurisdiction over all controversies which shall arise under or in relation to the Note, any security for the Indebtedness, or any other Loan Document. Borrower irrevocably consents to service, jurisdiction, and venue of such courts for any such litigation and waives any other venue to which it might be entitled by virtue of domicile, habitual residence or otherwise.

## 31. NOTICE

(a) All notices, demands and other communications ("**notice**") under or concerning this Instrument shall be in writing. Each notice shall be addressed to the intended recipient at its address set forth in this Instrument, and shall be deemed given on the earliest to occur of (1) the date when the notice is received by the addressee; (2) the first Business Day after the notice is delivered to a recognized overnight courier service, with arrangements made for payment of charges for next Business Day delivery; or (3) the third Business Day after the notice is deposited in the United States mail with postage prepaid, certified mail, return receipt requested. As used in this Section 31, the term "Business Day" means any day other than a Saturday, a Sunday or any other day on which Lender is not open for business.

(b) Any party to this Instrument may change the address to which notices intended for it are to be directed by means of notice given to the other party in accordance with this Section 31. Each party agrees that it will not refuse or reject delivery of any notice given in accordance with this Section 31, that it will acknowledge, in writing, the receipt of any notice upon request by the other party and that any notice rejected or refused by it shall be deemed for purposes of this Section 31 to have been received by the rejecting party on the date so refused or rejected, as conclusively established by the records of the U.S. Postal Service or the courier service.

(c) Any notice under the Note and any other Loan Document which does not specify how notices are to be given shall be given in accordance with this Section 31.

(d) Any notice given to Borrower hereunder also shall be delivered to the Chicago Housing Authority, 626 West Jackson Blvd., 7<sup>th</sup> Floor, Chicago, Illinois 60661, Attn: Chief Executive Officer, with a copy to Chicago Housing Authority, Office of the General Counsel, 200 West Adams Street, Suite 2100, Chicago, Illinois 60606, Attn: General Counsel.

## 32. SALE OF NOTE; CHANGE IN SERVICER.

The Note or a partial interest in the Note (together with this Instrument and the other Loan Documents) may be sold or assigned one or more times without prior notice to Borrower. A sale or assignment may result in a change of the Loan Servicer. There also may be one or more changes of

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the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given notice of the change if required by applicable law.

### 33. [INTENTIONALLY OMITTED].

### 34. SUCCESSORS AND ASSIGNS BOUND.

This Instrument shall bind, and the rights granted by this Instrument shall inure to, the respective successors and assigns of Lender and Borrower. However, a transfer not permitted under the Loan Documents shall be an Event of Default.

### 35. JOINT AND SEVERAL LIABILITY.

If more than one person or entity signs this Instrument as Borrower, the obligations of such persons and entities shall be joint and several.

### 36. [INTENTIONALLY OMITTED].

### 37. SEVERABILITY; AMENDMENTS.

The invalidity or unenforceability of any provision of this Instrument shall not affect the validity or enforceability of any other provision, and all other provisions shall remain in full force and effect. This Instrument contains the entire agreement among the parties as to the rights granted and the obligations assumed in this Instrument. This Instrument may not be amended or modified except by a writing signed by the party against whom enforcement is sought.

### 38. CONSTRUCTION.

The captions and headings of the sections of this Instrument are for convenience only and shall be disregarded in construing this Instrument. Any reference in this Instrument to an "Exhibit" or a "Section" shall, unless otherwise explicitly provided, be construed as referring, respectively, to an Exhibit attached to this Instrument or to a Section of this Instrument. All Exhibits attached to or referred to in this Instrument are incorporated by reference into this Instrument. Any reference in this Instrument to a statute or regulation shall be construed as referring to that statute or regulation as amended from time to time. Use of the singular in this Agreement includes the plural and use of the plural includes the singular. As used in this Instrument, the term "including" means "including, but not limited to."

### 39. LOAN SERVICING.

All actions regarding the servicing of the loan evidenced by the Note, including the collection of payments, the giving and receipt of notice, inspections of the Property, inspections of books and records, and the granting of consents and approvals, may be taken by the Loan Servicer unless Borrower receives notice to the contrary. If Borrower receives conflicting notices regarding the identity of the Loan Servicer or any other subject, any such notice from Lender shall govern.

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## 40. DISCLOSURE OF INFORMATION.

Lender may furnish information regarding Borrower or the Mortgaged Property to third parties with an existing or prospective interest in the servicing, enforcement, evaluation, performance, purchase or securitization of the Indebtedness, including other parties to the Loan Documents, trustees, master servicers, special servicers, rating agencies, and organizations maintaining databases on the underwriting and performance of multifamily mortgage loans. Borrower irrevocably waives any and all rights it may have under applicable law to prohibit such disclosure, including any right of privacy.

## 41. NO CHANGE IN FACTS OR CIRCUMSTANCES.

All information in the application for the loan submitted to Lender (the "Loan Application") and in all financial statements, rent rolls, reports, certificates and other documents submitted in connection with the Loan Application are complete and accurate in all material respects. There has been no material adverse change in any fact or circumstance that would make any such information incomplete or inaccurate.

## 42. SUBROGATION.

If, and to the extent that, the proceeds of the loan evidenced by the Note are used to pay, satisfy or discharge any obligation of Borrower for the payment of money that is secured by a pre-existing mortgage, deed of trust or other lien encumbering the Mortgaged Property (a "Prior Lien"), such loan proceeds shall be deemed to have been advanced by Lender at Borrower's request, and Lender shall automatically, and without further action on its part, be subrogated to the rights, including lien priority, of the owner or holder of the obligation secured by the Prior Lien, whether or not the Prior Lien is released. This Section is and shall remain subject and subordinate to the instruments described in Section 48 hereof.

## 43. ACCELERATION; REMEDIES.

At any time during the existence of an Event of Default, Lender, at Lender's option, may declare all of the Indebtedness to be immediately due and payable without further demand, and may foreclose this Instrument by judicial proceeding and may invoke any other remedies permitted by Illinois law or provided in this Instrument or in any other Loan Document. The Indebtedness shall include, Lender shall be entitled to collect, and any decree which adjudicates the amount secured by this Instrument shall include, all costs and expenses incurred in pursuing such remedies, including attorneys' fees, costs of documentary evidence, abstracts and title reports, any of which may be estimated to reflect the costs and expenses to be incurred after the entry of such a decree.

## 44. RELEASE.

Upon payment of the Indebtedness, Lender shall release this Instrument. Borrower shall pay Lender's reasonable costs incurred in releasing this Instrument.

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## 45. WAIVER OF HOMESTEAD AND REDEMPTION.

Borrower releases and waives all rights under the homestead and exemption laws of the State of Illinois. Pursuant to 735 ILCS 5/15-1601(b), Borrower waives any and all rights of redemption from sale under any order of foreclosure of this Instrument, or other rights of redemption, which may run to Borrower or any other Owner of Redemption, as that term is defined in 735 ILCS 5/15-1212. Borrower waives all rights of reinstatement under 735 ILCS 5/15-1602 to the fullest extent permitted by Illinois law.

## 46. MAXIMUM AMOUNT OF INDEBTEDNESS.

Notwithstanding any provision to the contrary in this Instrument, the Note or any other Loan Document which permits any additional sums to be advanced on or after the date of this Instrument, whether as additional loans or for any payments authorized by this Instrument, the total amount of the principal component of the Indebtedness shall not at any time exceed one hundred fifty percent (150%) of the original principal amount of the Note set forth on the first page of this Instrument.

## 47. WAIVER OF TRIAL BY JURY.

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

## 48. SUBORDINATION OF MORTGAGE.

Notwithstanding any terms herein to the contrary, this Instrument is and shall be subject and subordinate in all respects to the following: (i) that certain Ground Lease with respect to the Land by and between Borrower and the Chicago Housing Authority ("CHA") dated December 1, 2002 and recorded with the Recorder's Office of Cook County, Illinois ("Recorder's Office") on December 20, 2002 as Document No. 21419216 and that certain Right of First Refusal Agreement dated December 1, 2002 by and among the CHA, Borrower and West Maypole Partners, LLC, which was entered into pursuant to said Ground Lease; (ii) that certain Declaration of Trust and Restrictive Covenants by and between Borrower and the CHA dated December 1, 2002 and recorded with the Recorder's Office on December 20, 2002 as Document No. 21419217; (iii) that certain Regulatory and Operating Agreement by and between Borrower and the CHA dated December 1, 2002 and recorded with the Recorder's Office on December 20, 2002 as Document No. 21419218 (the "R&O Agreement"); (iv) that certain Regulatory Agreement and Declaration of Restrictive Covenants by and among Borrower, the CHA and LaSalle Bank National Association dated December 1, 2002 and recorded with the Recorder's Office on December 20, 2002 as Document No. 21419219; (v) that certain Regulatory Agreement by and between Borrower and the City of Chicago (the "City") dated December 1, 2002 and recorded with the Recorder's Office on

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December 20, 2002 as Document No. 21419220; (vi) the lien of that certain Multifamily Mortgage, Assignment of Rents and Security Agreement dated December 1, 2002 executed and delivered by Borrower to and in favor of the CHA ("CHA Mortgage") securing repayment of bonds issued by the CHA in the amount of \$3,560,000.00, which CHA Mortgage was recorded with the Recorder's Office on December 20, 2002 as Document No. 21419221, and assigned to LaSalle Bank by an Assignment of Mortgage Loan dated December 1, 2002 and recorded with the Recorder's Office on December 20, 2002 as Document No. 21419222, and any other documents evidencing or securing such indebtedness; (vii) the lien of that certain Junior Leasehold Construction Mortgage, Assignments of Leases and Rents, Security Agreement and Financing Statement dated December 1, 2002 executed and delivered by Borrower to and in favor of Bank of America, N.A. ("BA Mortgage") securing repayment of bond proceeds and loans in the aggregate amount of \$21,838,458.00, which BA Mortgage was recorded with the Recorder's Office on December 20, 2002 as Document No. 21419226, and any other documents evidencing or securing such indebtedness; (viii) the lien of that certain Junior Mortgage, Security Agreement and Financing Statement dated December 1, 2002 executed and delivered by Borrower to and in favor of the CHA ("CHA Junior Mortgage") securing repayment of a loan made by the CHA to Borrower in the amount of \$13,450,644.00, which CHA Junior Mortgage was recorded with the Recorder's Office on December 20, 2002 as Document No. 21419228, and any other documents evidencing or securing such indebtedness; (ix) the lien of that certain Junior Mortgage, Security Agreement and Financing Statement dated December 1, 2002 executed and delivered by Borrower to and in favor of the City ("City Mortgage") securing repayment of a loan made by the City to Borrower in the amount of \$8,500,000.00, which City Mortgage was recorded with the Recorder's Office on December 20, 2002 as Document No. 21419230, and any other documents evidencing or securing such indebtedness; (x) that certain Regulatory and Land Use Restriction Agreement by and between Borrower and the Illinois Housing Development Authority ("IHDA") dated December 1, 2002 and recorded with the Recorder's Office on December 20, 2002 as Document No. 21419232; (xi) the lien of that certain Junior Mortgage and Assignment of Rents and Leases dated December 1, 2002 executed and delivered by Borrower to and in favor of IHDA ("IHDA Mortgage") securing repayment of a loan made by IHDA to Borrower in the amount of \$750,000.00, which IHDA Mortgage was recorded with Recorder's Office on December 20, 2002 as Document No. 21419233, and any other documents evidencing or securing such indebtedness; (xii) the lien of that certain Multifamily Mortgage, Assignment of Rents and Security Agreement dated December 1, 2002 executed and delivered by Borrower to and in favor of Enterprise Mortgage Investments, Inc. ("EMI Mortgage") securing repayment of indebtedness in the amount of \$35,600.00, which EMI Mortgage was recorded with the Recorder's Office on December 20, 2002 as Document No. 21419234, and assigned to Fannie Mae by an Assignment of Mortgage dated December 1, 2002 and recorded with the Recorder's Office on December 20, 2002 as Document No. 21419235; (xiii) that certain Subordination and Intercreditor Agreement dated December 1, 2002 by and among Borrower, the CHA, the City, IHDA, Bank of America, N.A., Fannie Mae and Daniel E. Levin and The Habitat Company (the "Receiver"), recorded with the Recorder's Office on December 20, 2002 as Document No. 21419236; (xiv) Section 10 of that certain Mixed-Finance Amendment to Consolidated Annual Contributions Contract related to the Mortgaged Property entered into by and among the Receiver, the CHA, and the U.S. Department of Housing and Urban Development, dated as of December 20, 2002; (xv) that certain First Amendment To Subordination and Intercreditor Agreement dated September 25, 2003 by and among Borrower, the CHA, the City, IHDA, Bank of America, N.A., Fannie Mae, Receiver and Bank One, N.A., recorded with the Recorder's Office on November \_\_, 2003 as Document No. 0331834128 (referred to together with the

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Subordination and Intercreditor Agreement described in subsection (xiii) of this Section as the "Subordination Agreement"); and (xvi) the lien of that certain Junior Leasehold Mortgage, Assignment of Rents and Security Agreement dated September 30, 2003 executed and delivered by Borrower to and in favor of Bank One, N.A. ("Bank One Mortgage") securing repayment of indebtedness in the amount of \$500,000, which Bank One Mortgage was recorded with the Recorder's Office on November 14, 2003 as Document No. 0331834129.

In addition to the foregoing, Lender agrees that it shall have no right to payment under the Note unless and until the CHA has received all payments due and payable under the note secured by the CHA Junior Mortgage.

Lender acknowledges and agrees that Borrower has entered into the Subordination Agreement for the benefit of the CHA, the City, IHDA, Bank of America, N.A., Fannie Mae, the Receiver and Bank One, N.A., and Lender agrees that Lender shall be bound by and subject to the Subordination Agreement as if Lender had executed and become a party to the Subordination Agreement, and shall be treated as and have the rights of a subordinate lender thereunder.

**ATTACHED EXHIBITS** The following Exhibits are attached to this Instrument:

- |                                     |           |                                     |
|-------------------------------------|-----------|-------------------------------------|
| <input checked="" type="checkbox"/> | Exhibit A | Description of the Land (required). |
| <input checked="" type="checkbox"/> | Exhibit B | Retention/Repayment Agreement       |
| <input checked="" type="checkbox"/> | Exhibit C | Environmental Reports and Plans     |



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**IN WITNESS WHEREOF**, Borrower and Lender have signed and delivered this Instrument or have caused this Instrument to be signed and delivered by their duly authorized representatives.

**BORROWER:**

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

By: West Maypole Partners, LLC, an Illinois limited liability company, its general partner

By: The Michaels Development Company, Inc., a New Jersey corporation, its member

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

and By: Brinshore Inc., an Illinois corporation, its member

By: \_\_\_\_\_  
Name: DAVID B. BLUNT  
Its: \_\_\_\_\_

**LENDER:**

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

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

Property of Cook County Clerk's Office

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IN WITNESS WHEREOF, Borrower and Lender have signed and delivered this Instrument or have caused this Instrument to be signed and delivered by their duly authorized representatives.

**BORROWER:**

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

By: West Maypole Partners, LLC, an Illinois limited liability company, its general partner

By: The Michaels Development Company, Inc., a New Jersey corporation, its member

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

and By: Brinshore Inc., an Illinois corporation, its member

By: \_\_\_\_\_  
Name: DAVID B. BLUNT  
Its: President

**LENDER:**

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

By: \_\_\_\_\_  
Name: ROBERT M. HAMMOCK  
Its: VICE PRESIDENT

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**Peter Mai**  
**Notary Public of New Jersey**  
**My Commission Expires**  
**June 28, 2009**

STATE OF New Jersey )  
 ) ss.  
COUNTY OF Burlington )

On this 13 of September, 2008<sup>4</sup>, before me a notary public in and for said State and County, personally appeared John O'Donnell, the CFO of Michaels Development Company, Inc, for and on behalf of the company.



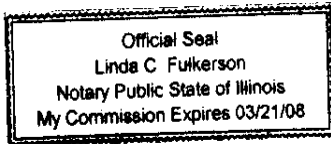
Notary Public

My commission expires: 6.28.09

Property of Cook County Clerk's Office

STATE OF Illinois )  
 ) ss.  
COUNTY OF cook )

On this 17th of September, 2008<sup>4</sup>, before me a notary public in and for said State and County, personally appeared DAVID B BENT the President of Brinabarc, Inc, for and on behalf of the company.



Notary Public

My commission expires: 3/21/08

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ of \_\_\_\_\_, 2003, before me a notary public in and for said State and County, personally appeared \_\_\_\_\_, the \_\_\_\_\_ of \_\_\_\_\_, for and on behalf of the company.

Notary Public

My commission expires: \_\_\_\_\_

# UNOFFICIAL COPY

**Peter Mai**  
**Notary Public of New Jersey**  
**My Commission Expires**  
**June 28, 2009**

STATE OF New Jersey )  
 ) ss.  
COUNTY OF Burlington )

On this 13 of September, 2008, before me a notary public in and for said State and County, personally appeared John O'Donnell, the CFO of Michaels Development Company, Inc, for and on behalf of the company.

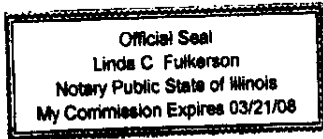


Notary Public

My commission expires: 6.28.09

STATE OF Illinois )  
 ) ss.  
COUNTY OF cook )

On this 17th of September, 2008, before me a notary public in and for said State and County, personally appeared DAVID B Bink the President of Brincker, Inc, for and on behalf of the company.

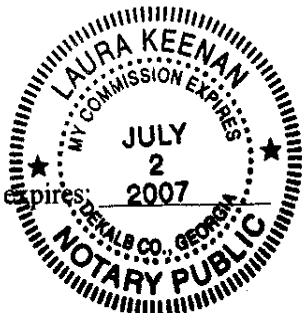


Notary Public

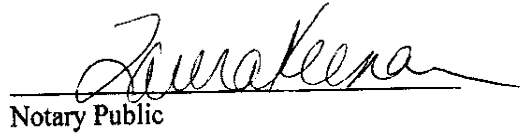
My commission expires: 3/21/08

STATE OF Georgia )  
 ) ss.  
COUNTY OF DeKalb )

On this 6th of October, 2007, before me a notary public in and for said State and County, personally appeared Robert Hammond the Vice President of Bank of America, for and on behalf of the company.



My commission expires:

  
Notary Public

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## EXHIBIT A

### LEGAL DESCRIPTION OF THE LAND

#### **WEST PARCEL:**

LOTS 2, 3, 4, 5, 8, 9, AND 11 IN BELL RESUBDIVISION, BEING A RESUBDIVISION AND CONSOLIDATION OF PART OF CAMPBELL'S SUBDIVISION OF BLOCK 55, AND OF WILSON AND BATES' SUBDIVISION IN CAMPBELL'S SUBDIVISION OF BLOCK 55, INCLUDING EAST-WEST VACATED ALLEY AND VACATED WEST MAYPOLE AVENUE IN SAID BLOCK 55, IN THE CANAL TRUSTEES' SUBDIVISION OF SECTION 7, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED NOVEMBER 7, 2002 AS DOCUMENT NUMBER 0021230667, IN COOK COUNTY, ILLINOIS.

PINs: 17-07-317-044  
17-07-321-034  
17-07-321-035

#### **EAST PARCEL:**

LOTS 1, 3, 4, AND 5 IN MAYPOLE RESUBDIVISION BEING A RESUBDIVISION AND CONSOLIDATION IN BLOCKS 2 AND 3 IN PAGE AND WOOD'S SUBDIVISION OF BLOCKS 50, 63 AND 64, IN THE SUBDIVISION OF LOTS 5 AND 6 IN SAID BLOCK 3 IN PAGE AND WOOD'S SUBDIVISION, INCLUDING EAST-WEST VACATED ALLEYS AND VACATED WEST MAYPOLE AVENUE, IN THE CANAL TRUSTEES' SUBDIVISION OF SECTION 7, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED NOVEMBER 7, 2002 AS DOCUMENT NUMBER 0021230668, IN COOK COUNTY, ILLINOIS.

PINs: 17-07-418-022  
17-07-418-023  
17-07-423-012  
17-07-423-013  
17-07-423-001

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## EXHIBIT B

### RETENTION/REPAYMENT AGREEMENT

[Attached]

Property of Cook County Clerk's Office

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## RETENTION / REPAYMENT AGREEMENT FOR RENTAL PROJECTS USING LOW INCOME HOUSING TAX CREDITS (LIHTCs)

### AFFORDABLE HOUSING PROGRAM REPAYMENT AGREEMENT

**THIS AGREEMENT** is entered into on the \_\_\_\_\_ day of \_\_\_\_\_, 2004, by and among Bank of America Georgia, N.A. (“Bank”), and West Maypole Partners, LLC, an Illinois limited liability company (“Sponsor”), and West Maypole, L.P., an Illinois limited partnership (“Owner”).

#### R E C I T A L S :

A. Pursuant to Section 721 of the Financial Institution’s Reform, Recovery and Enforcement Act of 1989 (“FIRREA”), the Federal Housing Finance Board (“Board”) is required to cause each Federal Home Loan Bank (“FHLBank”) to establish an affordable housing program (“AHP”) to assist members of each FHLBank to finance affordable housing for very low, low and moderate income households.

B. Bank is a member of the Federal Home Loan Bank of Atlanta (“Atlanta Bank”) and submitted an application dated March 17, 2003 (the “Application”) for an AHP grant, the proceeds of which Bank has used to fund a loan to Owner (the “Loan”) to pay a portion of the costs associated with the purchase, construction, or rehabilitation of property commonly known as “Westhaven Park” situated in Chicago, Illinois and legally described on Exhibit A attached hereto and hereby made a part hereof (“Property”). Sponsor has formed Owner for the purpose of acquiring, constructing, or rehabilitating the Property with multi-family apartment buildings and other dwelling units, of which 118 out of 155 dwelling units are to be rented to moderate, low and/or very low income persons (the “Project”). The sole general partner of Owner is Sponsor.

C. Pursuant to regulations (including, without limitation, those contained in 12 CFR Part 951) promulgated by the Board pursuant to FIRREA (“AHP Regulations”), members of each FHLBank are required to provide for the repayment of any subsidized advances or other subsidized assistance in connection with unused or improperly used AHP subsidies.

D. In connection with the referenced AHP grant and the Loan, Bank entered into that certain Affordable Housing Program Agreement (“Subsidy Agreement”) dated July 31, 2003 with Atlanta Bank and Sponsor, pursuant to which Bank agreed to be bound by AHP Regulations and perform certain monitoring functions with respect to the Loan.

E. The parties desire to set forth those circumstances under which Bank shall be entitled to repayment of subsidy funds from either Sponsor or Owner in connection with its Loan to Owner for the purchase, construction, or rehabilitation of the Property.

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## AGREEMENTS

1. Subsidy Amount. The parties hereby acknowledge and agree that Bank has, on even date herewith, disbursed the proceeds of the Loan to Owner in the amount of \$500,000.00. The term during which Sponsor and Owner must comply with the AHP Regulations to qualify and maintain the Loan is 15 years from the date of completion of the Project, at which time this Agreement shall terminate ("Retention Period").
2. Affordability Requirements. Owner agrees, during the term of the Loan, to manage and operate 118 dwelling units on the Property as rental housing for very low, low, and/or moderate income households. For purposes of this Agreement, very low income households shall mean households whose annual income at initial occupancy is 50% or less of area median income, low income households shall mean households whose annual income at initial occupancy is 65% or less of area median income, and moderate income households shall mean households whose annual income at initial occupancy is 80% or less of area median income, as determined from time to time by the U.S. Department of Housing and Urban Development ("HUD"), the AHP Regulations or as further provided in federal regulations. Owner agrees, during the term of the Loan, to make 93 of the dwelling units in the Project affordable for and occupied by very low income households and 25 of the dwelling units located in the Project affordable for and occupied by low income households.
3. Notice of Sale or Refinancing. The Bank and Atlanta Bank shall be given notice by Sponsor and/or Owner of any sale or refinancing of the Property occurring prior to the end of the Retention Period.
4. Sale or Refinancing of the Property. If the Property is sold or refinanced prior to the end of the Retention Period, Sponsor and/or Owner must repay an amount equal to the full amount of the AHP Subsidy, unless the Property continues to be subject to a deed restriction or a mechanism incorporating income-eligibility and affordability restrictions committed to in the Application for the duration of the Retention Period.
5. Foreclosure. The income-eligibility and affordability restrictions applicable to the Property shall terminate after foreclosure on the Property.
6. Compliance Documentation. Sponsor and Owner shall provide to the Bank any information regarding the project and use of the Loan pursuant to the AHP Regulations as amended from time to time and as required by the Atlanta Bank.
7. Compliance. Sponsor and Owner shall at all times comply with all laws, rules and regulations (including, without limitation, AHP Regulations) and with the provisions contained in the Application and those provisions contained in the Subsidy Agreement as they relate to the construction, ownership, management and operation of the Property.



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8. Breach of Affordability Requirements; Breach by Owner.

(a) In the event Owner or Sponsor, at any time during the term of the Loan, defaults in its obligation to manage and operate the Property and the Project and provide compliance information as required pursuant to paragraph 6 above or otherwise fails to comply with the terms of this Agreement or the Application, and such default continues for a period of 60 days after notice to Owner from Bank or such shorter period of time required to avoid a default by Bank under the Subsidy Agreement, it shall be an Event of Default of this Agreement and Owner and Sponsor shall immediately pay Bank that portion of the Loan which Bank may be required to repay to Atlanta Bank.

(b) Owner shall repay to Bank that portion of the Loan, including interest, if appropriate, that, as a result of Owner's actions or omission, is not used in compliance with the terms of the Application or the requirements of the AHP Regulations, unless such noncompliance is cured by Owner within a reasonable period of time or the circumstances of noncompliance are eliminated through a modification of the Application, pursuant to the AHP Regulations.

9. Notices. All Notices, demands and requests given or required to be given by any party hereto to another party shall be in writing to the addresses below, and to the following parties;

if to Owner or Sponsor:

c/o The Michaels Development Company  
One East Stow Road  
Marlton, New Jersey 08053  
Attn: John O'Donnell

And

The Richman Group Capital Corporation  
599 West Putnam Avenue  
Greenwich, Connecticut 06830  
Attn: David A. Salzman

And

Applegate & Thorne Thomsen, P.C.  
322 South Green Street, Suite 412  
Chicago, Illinois 60607  
Attn: Bennett P. Applegate

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if to Bank:

Bank of America, N.A.  
600 Peachtree Street, NE  
14th Floor, GA1-006-14-23  
Atlanta, GA 30308

10. Indemnification and Survival. Sponsor and Owner hereby agree to fully and unconditionally indemnify, defend and hold harmless Bank from and against any judgments, losses, repayment, liabilities, damages (including consequential damages), costs, expenses of whatsoever kind or nature, including, without limitation, attorneys' fees, expert witness fees, and any other professional fees and litigation expenses or other obligations incurred by Bank that may arise in any manner out of actions or omissions which result from Owner or Sponsor's performance or failure to perform pursuant to the terms of this Agreement. The representations, warranties, obligations and indemnification of Owner and Sponsor shall survive the term of this Agreement.

11. Joint and Several. The obligations of Owner and Sponsor hereunder are joint and several.

Executed and delivered as of the date first above written.

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

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

WEST MAYPOLE PARTNERS, LLC, an  
Illinois limited liability company

By: The Michaels Development Company,  
Inc., a New Jersey corporation,  
its member

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

and By: Brinshore Inc., an Illinois corporation,  
its member

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

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

By: West Maypole Partners, LLC, an Illinois limited liability company, its general partner

By: The Michaels Development Company, Inc., a New Jersey corporation, its member

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

and By: Brinshore Inc., an Illinois corporation, its member

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

Property of Cook County Clerk's Office

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## EXHIBIT A LEGAL DESCRIPTION OF PROPERTY

### **WEST PARCEL:**

LOTS 2, 3, 4, 5, 8, 9, AND 11 IN BELL RESUBDIVISION, BEING A RESUBDIVISION AND CONSOLIDATION OF PART OF CAMPBELL'S SUBDIVISION OF BLOCK 55, AND OF WILSON AND BATES' SUBDIVISION IN CAMPBELL'S SUBDIVISION OF BLOCK 55, INCLUDING EAST-WEST VACATED ALLEY AND VACATED WEST MAYPOLE AVENUE IN SAID BLOCK 55, IN THE CANAL TRUSTEES' SUBDIVISION OF SECTION 7, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED NOVEMBER 7, 2002 AS DOCUMENT NUMBER 0021230667, IN COOK COUNTY, ILLINOIS.

PINs: 17-07-317-044  
17-07-321-034  
17-07-321-035

### **EAST PARCEL:**

LOTS 1, 3, 4, AND 5 IN MAYPOLE RESUBDIVISION BEING A RESUBDIVISION AND CONSOLIDATION IN BLOCKS 2 AND 3 IN PAGE AND WOOD'S SUBDIVISION OF BLOCKS 50, 63 AND 64, IN THE SUBDIVISION OF LOTS 5 AND 6 IN SAID BLOCK 3 IN PAGE AND WOOD'S SUBDIVISION, INCLUDING EAST-WEST VACATED ALLEYS AND VACATED WEST MAYPOLE AVENUE, IN THE CANAL TRUSTEES' SUBDIVISION OF SECTION 7, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED NOVEMBER 7, 2002 AS DOCUMENT NUMBER 0021230668, IN COOK COUNTY, ILLINOIS.

PINs: 17-07-418-022  
17-07-418-023  
17-07-423-012  
17-07-423-013  
17-07-423-001

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## EXHIBIT C

### ENVIRONMENTAL REPORTS AND PLANS

Prohibited Activities or Conditions shall not include the presence of any Hazardous Materials on the Mortgaged Property prior to the date of this Instrument that were not initially deposited onto the Mortgaged Property by Borrower, including, without limitation, those Hazardous Materials identified in the SRP Reports applicable to the Mortgaged Property prepared in connection with the enrollment of the Mortgaged Property in the SRP and approved by the Illinois Environmental Protection Agency and/or identified in any one or more of the following reports:

1. Phase I Environmental Assessment - Henry Horner Redevelopment Area - April 10, 2002.
2. Phase I Environmental Assessment - Henry Horner Redevelopment Area - Areas A East and West - June 7, 2002.
3. Environmental Assessment - Henry Horner Home Redevelopment - June 28, 2002.
4. Comprehensive Site Investigation Report - Area A East of the Henry Horner Redevelopment - June 25, 2002.
5. Comprehensive Site Investigation Report - Area A West of the Henry Horner Redevelopment - June 25, 2002.
6. Remedial Objectives Report/Remedial Action Plan - Area A East of the Henry Horner Redevelopment Area - August 22, 2002.
7. Remedial Objectives Report/Remedial Action Plan - Area A West of the Henry Horner Redevelopment Area - August 22, 2002.