



Doc#: 0428718132
Eugene "Gene" Moore Fee: \$110.00
Cook County Recorder of Deeds
Date: 10/13/2004 12:25 PM Pg: 1 of 44

Document prepared by
and after recording to
be returned to:

Brian C. Flavell, Esq.
Sidley Austin Brown & Wood LLP
555 West Fifth Street, 40th Floor
Los Angeles, CA 90013

**THIRD MORTGAGE, ASSIGNMENT OF RENTS AND LEASES,
SECURITY AGREEMENT AND FIXTURE FINANCING STATEMENT**

THIS THIRD MORTGAGE, ASSIGNMENT OF RENTS AND LEASES,
SECURITY AGREEMENT AND FIXTURE FINANCING STATEMENT (this "**Mortgage**") is
made as of October 2, 2004 by LASALLE BANK NATIONAL ASSOCIATION not personally, but as
Trustee under Trust Agreement dated June 6, 2001 and known as Trust No. 127726 ("**Project
Owner**") and ROOSEVELT/CLARK DEVELOPMENT, L.P., a Delaware limited partnership, the
sole beneficiary of Trust, with a mailing address in care of Rezmar Corporation, 853 North
Elston Avenue, Chicago, Illinois 60627 ("**Beneficial Owner**"; Project Owner and Beneficial
Owner are sometimes hereinafter collectively referred to as "**Borrower**") to LEHMAN
BROTHERS HOLDINGS INC., a Delaware corporation, ("**Lender**") having an address at 399 Park
Avenue, 8th Floor, New York, New York 10022 and its successors, transferees and assigns, and
pertains to the real estate described in Exhibit A attached hereto and made a part hereof (the
"**Land**"). All terms as used in this Agreement shall, unless otherwise defined in the main body
of this Agreement, have the meanings given to such terms in Exhibit C attached hereto.

ARTICLE I

RECITALS

A. Borrower and Lender have executed and delivered a Loan Agreement of
even date herewith (together with all renewals, amendments, supplements, restatements,
extensions, and modifications thereof and thereto, the "**Loan Agreement**"), wherein Lender has
agreed to loan to Borrower the sum of up to Thirteen Million Five Hundred Thousand and
No/100 Dollars (\$13,500,000.00) (the "**Loan**"). Capitalized terms used herein and not otherwise
defined herein shall have the meanings set forth in the Loan Agreement.

B. Borrower has executed and delivered to Lender a Secured Promissory
Note of even date herewith (together with all renewals, amendments, supplements, restatements,
extensions, and modifications thereof and thereto, the "**Note**"), wherein Borrower promises to
pay to the order of Lender the principal amount of Thirteen Million Five Hundred Thousand and
No/100 Dollars (\$13,500,000.00) in repayment of the Loan, together with interest thereon, as set
forth in the Note, which Note is due and payable on or before the Maturity Date (as defined
therein).

1084
8174835 D2 CD

44

Box 333

UNOFFICIAL COPY

C. As security for the repayment of the Loan, in addition to this Mortgage, Loan Parties have executed and delivered to Lender the other Loan Documents. The terms and provisions of the other Loan Documents are hereby incorporated herein by this reference.

D. In consideration of advances, credits and other financial accommodations heretofore or hereinafter made to Borrower by Lender, Lender has required Borrower hereby to deliver, pledge, assign, transfer, mortgage and warrant to Lender the Mortgaged Property (as that term is hereinafter defined) as security for repayment of the Loan as well as any and all other amounts owed to Lender under the terms of the Loan Documents.

E. The Land and certain additional property of Borrower are also encumbered by the First Mortgage Loan Documents, senior to this Mortgage, granted to First Mortgage Lender.

F. The Land and certain additional property of Borrower are also encumbered by the Second Mortgage Loan Documents, senior to this Mortgage, granted to Second Mortgage Lender.

G. In connection with the making of the Loan and concurrently herewith, (i) Lender and Senior Lenders are executing that certain Amended and Restated Intercreditor Agreement (the "**Tri-Party Intercreditor Agreement**") to govern the rights, priorities and obligations of the parties thereto with respect to this Loan, the First Mortgage Loan and the Second Mortgage Loan, which Tri-Party Intercreditor Agreement shall be effective until such time as the Second Mortgage Loan is fully repaid, and (ii) Lender and First Mortgage Lender are executing that certain Subordination and Recognition Agreement (the "**Two-Party Intercreditor Agreement**") to govern the rights, priorities and obligations of the parties thereto with respect to this Loan and the First Mortgage Loan, which Two-Party Intercreditor Agreement shall be effective from and after such time as the Second Mortgage Loan is fully repaid. In the event of any conflict between the provisions of this Mortgage or the other Loan Documents, on the one hand, and the Tri-Party Intercreditor Agreement or Two-Party Intercreditor Agreement, on the other hand, the terms of the Tri-Party Intercreditor Agreement or Two-Party Intercreditor Agreement, as the case may be, shall control.

ARTICLE II

THE GRANT

NOW, THEREFORE, as additional security for the payment of the principal amount of the Note and interest thereon, and all fees and premiums, if any, thereon, and all other sums due thereunder or advanced by Lender in accordance with the Loan Documents and all costs and expenses incurred by Lender in connection with any of the Loan Documents (all such obligations and payments are sometimes referred to herein as the "indebtedness secured hereby") and to secure the observance and performance of the agreements contained herein and in the other Loan Documents, Borrower hereby GRANTS, BARGAINS, CONVEYS, WARRANTS and MORTGAGES to Lender, its successors and assigns, forever all of Borrower's estate, right, title and interest, whether now or hereafter acquired, in and to the Land, together with the following described property, whether now or hereafter acquired (the Land, together with a

UNOFFICIAL COPY

security interest in and a lien on the following described property being hereinafter referred to collectively as the "**Mortgaged Property**"), all of which other property is hereby pledged on a parity with the Land and not secondarily:

(a) All buildings and other improvements of every kind and description now or hereafter erected or placed thereon and all materials intended for construction, reconstruction, alteration and repair of such improvements now or hereafter erected thereon, all of which materials shall be deemed to be included within the Mortgaged Property immediately upon the delivery thereof to the Land;

(b) All right, title and interest of Borrower, if any, including, without limitation, any after acquired title or reversion, in and to the beds of the ways, streets, avenues, sidewalks and alleys adjoining the Land;

(c) Each and all of the tenements, hereditaments, easements, appurtenances, passages, waters, water courses, riparian rights and any and all other rights, liberties and privileges of the Land or in any way now or hereafter appertaining thereto, including homestead and any other claim at law or in equity, as well as any after-acquired title, franchise or license and the reversions and remainders thereof;

(d) All leases now or hereafter on or affecting the Land, whether written or oral, and all agreements for use of the Land, together with all rents, issues, deposits, profits and other benefits (including the right to proceeds of any letter of credit issued as or for security for any such leases) now or hereafter arising from or in respect of the Land accruing and to accrue from the Land and the avails thereof;

(e) All fixtures and personal property now or hereafter owned by Borrower and attached to, contained in or used in connection with the Land or the aforesaid improvements thereon, including, without limitation, any and all air conditioning, antennae, appliances, apparatus, awnings, basins, bathtubs, boilers, bookcases, cabinets, carpets, coolers, curtains, dehumidifiers, disposals, doors, drapes, dryers, ducts, elevators, engines, equipment, escalators, fans, fittings, floor coverings, furnaces, furnishings, furniture, hardware, heaters, humidifiers, incinerators, inventory, lighting, machinery, motors, ovens, pipes, plumbing, pumps, radiators, ranges, recreational facilities, refrigerators, screens, security systems, shade, shelving, sinks, sprinklers, stoves, toilets, ventilators, wall coverings, washers, windows, window coverings, wiring and all renewals or replacements thereof or articles in substitution therefor whether or not the same be attached to such improvements, it being agreed that all such property owned by Borrower and placed on the Land or used in connection with the operation or maintenance thereof shall, so far as permitted by law, be deemed for the purpose of this Mortgage to be part of the real estate constituting and located on the Land and covered by this Mortgage;

(f) All judgments, insurance proceeds, awards of damages and settlements which may result from any damage to all or any portion of the Land and the other Mortgaged Property, or any part thereof, or to any rights appurtenant thereto;

(g) All compensation, awards, damages, claims, rights of actions and proceeds of or on account of (i) any damage or taking, pursuant to the power of eminent domain, of the

UNOFFICIAL COPY

Land and the other Mortgaged Property or any part thereof, (ii) damage to all or any portion of the Land and the other Mortgaged Property by reason of the taking, pursuant to the power of eminent domain, of all or any portion of the Land and the other Mortgaged Property or of other property, or (iii) the alteration of the grade of any street or highway on or about the Land and the other Mortgaged Property or any part thereof; and except as otherwise provided herein, Lender is hereby authorized to collect and receive said awards and proceeds and to give proper receipts and acquittances therefor and to apply the same toward the payment of the indebtedness and other sums secured hereby;

(h) All accounts, contract rights, general intangibles (including payment intangibles and software) letter of credit rights, arising from or relating to the Mortgaged Property, the Beneficial Owner's beneficial interest under Project Owner and all actions and rights in action, including, without limitation, all rights to insurance proceeds and unearned premiums arising from or relating to damage to the Land or the other Mortgaged Property or any part thereof;

(i) All proceeds, products, replacements, additions, substitutions, renewals and accessions of and to the Land or the other Mortgaged Property;

(j) All building materials and goods which are procured or to be procured for use on or in connection with the Mortgaged Property, whether or not such materials and goods have been delivered to the Land;

(k) All plans, specifications, architectural renderings, drawings, licenses, permits, soil test reports, other reports of examinations or analyses, contracts for services to be rendered to Borrower, or otherwise in connection with the Mortgaged Property and all other property, contracts, reports, proposals, and other materials now or hereafter existing in any way relating to the Land or the other Mortgaged Property or construction of additional improvements thereto; and

(l) The proceeds from any sale, transfer, pledge or other disposition of any or all of the foregoing described Mortgaged Property and its rights, title and interest in any contracts therefor,

To have and to hold the same unto Lender and its successors and assigns forever, for the purposes and uses herein set forth together with all right to possession of the Land after the occurrence of any Event of Default (as hereinafter defined in Paragraph 4.01 hereof) hereunder subject only to the Permitted Encumbrances, as hereinafter defined; Borrower hereby **RELEASING AND WAIVING** all rights under and by virtue of the homestead exemption laws of the State where the Land are located.

PROJECT OWNER REPRESENTS, AND BENEFICIAL OWNER REPRESENTS, WARRANTS AND COVENANTS, to Lender that Borrower is lawfully seized of the Land, that the same is unencumbered except by the Permitted Liens, and that it has good right, full power and lawful authority to convey and mortgage the same, and that Borrower will warrant and forever defend said parcels and the quiet peaceful possession of the same against the lawful claims of all persons whomsoever.

UNOFFICIAL COPY

Anything herein to the contrary notwithstanding, Borrower makes no representations, warranties or covenants of title with respect to the 16th Street Parcel, identified on Exhibit A.

If and when the principal amount of the Note and all interest as provided thereunder has been paid, and Borrower has satisfied all obligations thereunder and under the other Loan Documents, then this Mortgage shall be released at the cost of Borrower, but otherwise shall remain in full force and effect.

ARTICLE III

GENERAL AGREEMENTS

3.01 Public Infrastructure Improvements. The indebtedness secured by the First Mortgage Loan Documents may be increased or indebtedness not secured by the First Mortgage Loan Documents may be incurred and the lien of this Mortgage shall be subordinate to a lien securing the repayment of an amount equal to the hard and soft costs expended by Borrower to construct the improvements which constitute that portion of Wells Street from its connection at the North line of the Property, in a straight line, to its termination at the South line of the Property, including the improvements which are required by the City of Chicago to accept such portion of South Wells Street as a dedicated street including, in any case, whether or not required by the City of Chicago, curbs, gutters, utilities under the roadway, street lights, sewer mains thereunder, and water lines therein; but excepting therefrom any improvements normally allocated to individual parcels available for development within the Property ("South Wells Street Public Infrastructure Improvement"), and public and private infrastructure improvements located within Public Infrastructure Parcels (as hereinafter defined in Paragraph 3.07 hereof) and Private Infrastructure Parcels (as hereinafter defined in Paragraph 3.07 hereof), but in no event more than the total of (a) the hard and soft costs of construction of the South Wells Street Public Infrastructure Improvement and (b) an amount equal to five percent (5%) of the then outstanding principal balance of the note evidencing the debt secured by the Second Mortgage Loan Documents, for the construction of such public and private infrastructure improvements, such balance to be measured at the date the Borrower obtains a loan for the cost of construction of such public and private infrastructure, provided that Borrower shall first have delivered to Lender detailed drawings for the South Wells Street Public Infrastructure Improvement and such public and private infrastructure improvements and a budget for same. As used herein, references to hard and soft costs expended by Borrower include, but are not limited to, engineering and architect fees, interest costs, loan charges and similar items. Borrower covenants that all contracts for construction and loan documents, and other agreements for hard and soft costs, shall be in accordance with normal business practices and at arms-length. Lender shall execute such documents as are required to evidence its subordination of this Mortgage to the total of (a) and (b) above, provided that (a) Borrower shall have furnished to Lender all of the documents necessary for Lender to evaluate the lien to which it will subordinate, a description of the improvements to be constructed and the cost thereof, not less than fourteen (14) days prior to the date that the execution by Lender of any such subordination document is required, and (b) the holder of the note secured by the lien to which this Mortgage shall be subordinate, pursuant to the provisions of this Paragraph 3.01, shall have executed an intercreditor agreement in form and substance satisfactory to Lender in its reasonable discretion.

UNOFFICIAL COPY

3.02. Subordination to Easements. In the event that Borrower grants Permitted Easements, this Mortgage shall be subject and subordinate to such easements, and Lender in its discretion, not to be unreasonably withheld, shall execute documents required to subordinate the lien of this Mortgage to any such Permitted Easement, or shall advise Borrower that it will not execute such documents, if and only if the easement is not a Permitted Easement, provided that a copy of any such easement shall first be delivered to Lender not less than fourteen (14) days prior to the date execution is required.

3.03. Subrogation to Prior Lienholder's Rights. If the proceeds of the Loan secured hereby or any amount paid out or advanced by Lender is used directly or indirectly to pay off, discharge or satisfy, in whole or in part, any prior lien or encumbrance upon the Mortgaged Property or any part thereof, then Lender shall be subrogated to the rights of the holder thereof in and to such other lien or encumbrance and any additional security held by such holder, and shall have the benefit of the priority of the same.

3.04. Lender's Dealings with Transferee. In the event of the sale or transfer, by operation of law, voluntarily or otherwise, of all or any part of the Mortgaged Property, Lender shall be authorized and empowered to deal with the vendee or transferee with regard to the Mortgaged Property, the indebtedness secured hereby and any of the terms or conditions hereof as fully and to the same extent as it might with Borrower, without in any way releasing or discharging Borrower from its covenants hereunder or under any other Loan Document, specifically including those contained in Article VII of the Loan Agreement, and without waiving Lender's right of acceleration pursuant to Section 9.1(c) of the Loan Agreement.

3.05. Other Amounts Secured; Maximum Indebtedness. Borrower acknowledges and agrees that this Mortgage is additional security for the entire principal amount of the Note and interest accrued thereon, regardless of whether any or all of the loan proceeds are disbursed and regardless of whether the outstanding principal is repaid in whole or part and future advances made at a later date, as well as any Protective Advances, any and all litigation and other expenses pursuant to Paragraphs 4.05 and 4.06 hereof and any other amounts as provided herein or in any of the Loan Documents, including, without limitation, the payment of any and all loan commissions, service charges, liquidated damages, expenses and advances due to or paid or incurred by Lender in connection with the Note, all in accordance with the Loan Documents. Under no circumstances, however, shall the total indebtedness secured hereby exceed two hundred percent (200%) of the face amount of the Note.

3.06. Declaration of Subordination. At the option of Lender, this Mortgage shall become subject and subordinate, in whole or in part (but not with respect to priority of entitlement to insurance proceeds or any condemnation or eminent domain award) to any and all leases of all or any part of the Mortgaged Property upon the execution by Lender and recording thereof, at any time hereafter, in the appropriate official records of the county wherein the Land are situated, of a unilateral declaration to that effect.

3.07. Releases. (a) Lender, without notice and without regard to the consideration, if any, paid therefor, and notwithstanding the existence at that time of any inferior liens thereon, may release from the liens of Lender all or any part of the Mortgaged Property, or release from liability any person or entity obligated to repay any indebtedness secured hereby, without in any

UNOFFICIAL COPY

way affecting the liability of any party pursuant to the Note, this Mortgage or any of the other Loan Documents, including, without limitation, any indemnity or guaranty given as additional security for the indebtedness secured hereby, and without in any way affecting the priority of the lien of this Mortgage, and may agree with any party liable therefor to extend the time for payment of any part or all of such indebtedness. Any such agreement shall not in any way release or impair the lien created by this Mortgage or reduce or modify the liability of any person or entity obligated personally to repay the indebtedness secured hereby, but shall extend the lien hereof as against the title of all parties having any interest, subject to the indebtedness secured hereby, in the Mortgaged Property.

(b) Partial Release.

(1) Definitions: When used in this Section the following terms shall have the respective meanings set forth after each term:

(aa) Intentionally Deleted.

(bb) Development Plan: As defined in the Loan Agreement.

(cc) Intentionally Deleted.

(dd) Net Release Price: The net release price, in cash, for each Release Parcel in connection with a Release Parcel Transaction shall be an amount which is the greater of (x) the Full Consideration, as hereinafter defined, to be paid or if deemed to be paid to Borrower, determined pursuant to **Subparagraph 3.07(b)(1)(j)(i)** hereof, reduced by the actual out of pocket expenses of the Release Parcel Transaction such as arms-length brokerage fees payable to (i) brokers that are not directly or indirectly affiliated with the Borrower and (ii) brokers that are directly or indirectly affiliated with the Borrower, provided such brokers are acting pursuant to a valid marketing plan for the Project, title fees and transfer taxes, reasonable legal fees, escrow fees, the total of which shall not exceed five percent (5%) of the full or deemed consideration, and (y) the minimum amount ("**Minimum Release Price**") of Forty and XX/100 Dollars (\$40.00) per square foot for any portion of the Land lying south of the center line of vacated or dedicated Fourteenth (14th) Street extended to the east and west boundaries of the Land and the minimum amount of Fifty and XX/100 Dollars (\$50.00) per square foot for any portion of the Land lying north of the center line of vacated or dedicated Fourteenth (14th) Street extended to the east and west boundaries of the Land.

(ee) Non-Developable Parcels: Those portions of the Land, as delineated on the Development Plan, which are not Public Infrastructure Parcels or Release Parcels and which Borrower does not currently or in the near future intend to develop due to railroad or other easements or other impediments.

(ff) Private Infrastructure Parcels. Those Release Parcels upon which Borrower, prior to seeking a release of such Release Parcel from the lien of this Mortgage, desires to commence and complete the construction of private infrastructure, such as storm drainage systems, water and sewer lines, other utilities and similar items of infrastructure.

UNOFFICIAL COPY

(gg) Public Infrastructure Parcels: Those portions of the Land delineated on the Development Plan as areas to be developed for public uses, such as roadways and parks and intended to thereafter be dedicated.

(hh) Intentionally Deleted.

(ii) Release Parcel: The various portions of the Land delineated by Borrower on the Development Plan as developable, excluding only Public Infrastructure Parcels and Non-Developable Parcels, for which the Borrower seeks a release of this Mortgage and which satisfies the following conditions:

(i) the Release Parcel can be developed pursuant to the Development Plan;

(ii) the proposed development of the Release Parcel does not violate the Declaration; and

(iii) each of the Release Parcels remaining after the release of such Release Parcel adjoins a publicly dedicated street or a proposed street which is to be publicly dedicated pursuant to the Development Plan.

(jj) Release Parcel Transaction: A transaction hereinafter described which would permit the Borrower, in connection with the sale, grant, lease, or any other grant of the right to the beneficial use of a Release Parcel or Borrower's contribution of a Release Parcel to an entity (such sale, lease, grant or contribution hereinafter collectively referred to as the "**Transfer**"), to seek the release of such Release Parcel from the lien of the First Mortgage Loan Documents, the Second Mortgage Loan Documents and this Mortgage, other than in connection with the payment in full of the notes secured by the First Mortgage Loan Documents, the Second Mortgage Loan Documents and this Mortgage. Borrower and Lender contemplate that there will be two (2) possible types of transactions, as follows:

(i) Borrower seeks the release of a Release Parcel in connection with the development of such Release Parcel by Borrower, or a Transfer to an entity formed by Borrower and 100% owned and controlled by Borrower, or a transfer to an entity which is either wholly owned or partially owned by an entity which is a partial owner or an affiliate, directly or indirectly, of a partial owner of the ownership interests of Borrower. In such event, the Full Consideration, as hereinafter defined, pursuant to **Subparagraph 3.07(b)(1)(dd)(x)**, to be paid to Borrower shall be deemed to be the fair market value of such Release Parcel as mutually agreed by Borrower and Senior Lenders (or after the Senior Loans are repaid, as mutually agreed by Borrower and Lender), and failing such agreement within thirty (30) days of Borrower's request for approval of such release, then the Minimum Release Price pursuant to **Subparagraph 3.07(b)(1)(dd)(y)** above will be Forty Eight Dollars (\$48.00) per square foot for any portion of the Land lying south of the center line of vacated or dedicated Fourteenth (14th) Street extended to the east and west boundaries of the Land, and Sixty Dollars (\$60.00) per square foot for any portion of the Land lying north of vacated or dedicated Fourteenth (14th) Street extended to the east and west boundaries of the Land.

(ii) The Borrower seeks the release of a Release Parcel in connection with its Transfer to an entity which is not (i) Borrower, or (ii) an entity which is either wholly owned or

UNOFFICIAL COPY

partially owned by an entity which is a partial owner or an affiliate, directly or indirectly, of a partial owner of the ownership interests of Borrower, i.e. an arms length third party. In such event, the full consideration ("**Full Consideration**") to be paid to Borrower shall be the purchase price for the Transfer of such Release Parcel.

Notwithstanding anything to the contrary contained herein, the application of the provisions of this **Subparagraph 3.07(b)(1)(ii)** shall not be stifled by a so-called "flip" transaction whereby the Transfer requested by Borrower is merely the first step in (x) a transaction where the Borrower obtains a release under **Subparagraph 3.07(b)(1)(jj)(i)** above for the Minimum Release Price specified therein and then transfers the Release Parcel to an arms length purchaser for an amount greater than the Minimum Release Price or (y) a transaction whereby a release is issued in connection with a third party purchase at or in excess of the Minimum Release Price pursuant to **Subparagraph 3.07(b)(1)(jj)(ii)** and then a transfer of the Release Parcel is made to Borrower or a related entity at a price less than the Full Consideration.

(kk) **Release Price:** Zero until such time as the note or notes secured by the First Mortgage Loan Documents and the Second Mortgage Loan Documents have been paid in full, and thereafter an amount equal to one hundred percent (100%) of the Net Release Price.

(2) (aa) Provided that no Event of Default has occurred and is continuing, Lender shall permit the Borrower to proceed with the development of all or any portion of the public infrastructure improvements on a Public Infrastructure Parcel shown on, or required to develop, on such Public Infrastructure Parcel in the manner depicted on the Development Plan, and release the Mortgage on such Public Infrastructure Parcel after it is developed, dedicated and such dedication has been accepted by the City of Chicago. Except as hereinafter provided, there shall be no release price required to be paid to Lender in connection with the release of this Mortgage on a Public Infrastructure Parcel that has been dedicated to public use and such dedication is accepted by the City of Chicago in accordance with the Development Plan and no consideration is paid to Borrower for such portion of the Property, provided, however, that Borrower shall reimburse Lender for the costs provided for in **Subparagraph 3.07(b)(5)**. An amount equal to any cash consideration paid or to be paid to Borrower by the City, when actually paid to Borrower, reduced by the costs incurred by Borrower in improving the Public Infrastructure Parcel in connection with any such dedication, shall be deemed to be Net Release Price and Borrower covenants to pay same to the First Mortgage Lender, Second Mortgage Lender and Lender, in accordance with the provisions of **Subparagraph 3.07(b)(3)**, contemporaneous with the release of the First Mortgage Loan Documents, the Second Mortgage Loan Documents and this Mortgage on such Public Infrastructure Parcel or, should Borrower receive cash consideration, in excess of costs funded by the Borrower, after such release, then Borrower covenants to pay same to the First Mortgage Lender, Second Mortgage Lender and Lender, in accordance with the provisions of **Subparagraph 3.07(b)(3)** any time thereafter until the Note is paid in full. In the event Borrower has increased the loan secured by the First Mortgage Loan Documents or the Second Mortgage Loan Documents or has obtained another mortgage, pursuant to **Paragraph 3.01**, to pay for the South Wells Street Public Infrastructure Improvements or other public infrastructure improvements as described in such **Paragraph 3.01**, the amount of any cash consideration paid to the Borrower to reduce costs incurred by Borrower for such South Wells Street Public Infrastructure Improvement and other public infrastructure

UNOFFICIAL COPY

improvements, up to the balance on that portion of the loan secured by the First Mortgage Loan Documents or the Second Mortgage Loan Documents or such other permitted mortgage as described in **Paragraph 3.01**, which was advanced to pay for (a) the hard and soft costs of the Borrower in making the South Wells Street Public Infrastructure Improvements and (b) the amount borrowed by Borrower pursuant to clause (b) of **Paragraph 3.01** for such public infrastructure improvements, shall be applied to the reduction of the loan secured by the First Mortgage Loan Documents or the Second Mortgage Loan Documents or such other permitted mortgage as described in **Paragraph 3.01** hereof.

(bb) Provided that no Event of Default has occurred and is continuing, and provided Lender agrees that the fair market value (the “**Acceptable Post Improvement Fair Market Value**”) of the remaining portion of the Land encumbered with this Mortgage, after construction of private infrastructure improvements, will equal or exceed the aggregate of (x) the fair market value of the remaining portion of the Land encumbered with this Mortgage prior to making such private infrastructure improvements, and (y) the maximum amount of the loan, including principal and accrued and unpaid interest, secured by the mortgage to which Lender is to subordinate this Mortgage pursuant to **Paragraph 3.01**, Lender shall permit Borrower to proceed with the development of the private infrastructure improvements, shown on the Development Plan, on the remaining portion of the Land encumbered with this Mortgage. In the event the Lender believes that the fair market value of the remaining portion of the Land encumbered with this Mortgage after the private infrastructure improvements is less than the Acceptable Post Improvement Fair Market Value, such determination shall be made by appraisal in accordance with the appraisal provisions in Exhibit B attached hereto. Notwithstanding anything to the contrary contained herein, Borrower shall not commence construction of private infrastructure improvements unless Borrower provides Lender with adequate security, including but not limited to a bond, or such other security acceptable to Lender, in its sole discretion, securing the completion of such infrastructure improvements, in amounts and upon such terms as are reasonably acceptable to Lender.

(3) Except as set forth in **Subparagraph 3.07(b)(6)**, and provided that no Event of Default has occurred and is continuing, Lender shall, within fourteen (14) days of receipt of all of the deliveries, other than the payment of the Net Release Price, required pursuant to this Mortgage for the release of the liens of the First Mortgage Loan Documents, the Second Mortgage Loan Documents and this Mortgage on a Release Parcel, execute and deliver from time to time when requested in writing by Borrower a release of the lien of this Mortgage on a Release Parcel, upon the following terms and conditions:

(aa) Prior to the payment in full of the First Mortgage Loan Documents and the Second Mortgage Loan Documents.

(i) Delivery to First Mortgage Lender of an amount, in cash, equal to Eighty percent (80%) of the Net Release Price.

(ii) Delivery to Second Mortgage Lender of an amount, in cash, equal to Twenty percent (20%), of the Net Release Price plus the costs provided for under the Second Mortgage Loan Documents.

UNOFFICIAL COPY

(bb) After payment in full of the First Mortgage Loan Documents, but prior to payment in full of the Second Mortgage Loan Documents, delivery to Second Mortgage Lender of One Hundred percent (100%) of the Net Release Price plus the costs provided for under the Second Mortgage Loan Documents.

(cc) After payment in full of the Second Mortgage Loan Documents, but prior to payment in full of the First Mortgage Loan Documents, delivery to First Mortgage Lender of One Hundred percent (100%) of the Net Release Price.

(dd) After payment in full of both the First Mortgage Loan Documents and the Second Mortgage Loan Documents, upon delivery to Lender of an amount, in cash, equal to One Hundred percent (100%), of the Net Release Price plus the costs provided for in **Subparagraph 3.07(b)(5)**.

(ee) In the event the Mortgaged Property or any portion thereof is encumbered with a lien of a mortgage securing a loan for private infrastructure improvements pursuant to **Paragraph 3.01** and **Subparagraph 3.07(b)(2)(bb)**, and all or any portion of such private infrastructure improvements are located on a Release Parcel for which Borrower seeks a release of the lien of this Mortgage, the proceeds of the Net Release Price shall be first applied to reduce the loan made pursuant to **Paragraph 3.01** to pay for the hard and soft costs of that portion of the private infrastructure improvements located on such Release Parcel, and the remaining balance of such Net Release Price and the remaining balance shall be distributed pursuant to (aa), (bb), (cc) and (dd) immediately above.

(4) Contemporaneous with Lender's release of the lien of this Mortgage on a Release Parcel, and provided that (x) such Release Parcel is adjacent to a Non-Developable Parcel, and (y) such portion of the Non-Developable Parcel requested to be conveyed is to be conveyed to the purchaser of such adjacent Release Parcel without any consideration over and above the Net Release Price for such Release Parcel, then Lender shall also without additional payment, release the lien of this Mortgage on such portion of the Non-Developable Parcel as is included in an area created by extending each boundary line of such Release Parcel to the property lines of the Land.

(5) All costs, including reasonable attorney's fees and costs, incurred from time to time, by Lender in connection with the release of the lien of this Mortgage on a Release Parcel or the release of the lien of this Mortgage on any Public Infrastructure Parcel which has been dedicated to public use and such dedication has been accepted by the City of Chicago shall be reimbursed to Lender by Borrower within ten (10) days after notice from Lender to Borrower.

(6) Should (a) a dispute exist between Lender and Borrower based upon a claim by Borrower against Lender other than a dispute related to the amount of the Net Release Price, and Borrower has filed a lawsuit to resolve any such claim, if during the pendency of such lawsuit and until a final non-appealable judgment in favor of Borrower and against Lender, Borrower desires to obtain the release of this Mortgage from a Release Parcel then, provided Lender has not filed a proceeding to foreclose the lien of this Mortgage, upon delivery to Lender of the Release Price determined pursuant to this **Paragraph 3.07**, Lender will release its lien under this Mortgage therefrom; provided, however, that if the ad damnum made in good faith by Borrower in such

UNOFFICIAL COPY

lawsuit exceeds an amount equal to the indebtedness secured by this Mortgage, determined as of the date of the request for such release, reduced by the amount of the Net Release Price, such Net Release Price, up to such excess, shall be deposited in a joint deposit escrow to be established with Chicago Title and Trust Company and the balance of the Net Release Price shall be paid to the Lender, or (b) a dispute exists between the Lender and the Borrower relating to the amount of the Net Release Price for a Release Parcel, Borrower may obtain a release of the such Release Parcel by paying the Lender the Release Price for such Release Parcel based upon the greater of (a) the Minimum Net Release Price for such Release Parcel, and (b) the Release Price for such Release Parcel which Borrower, in good faith, believes is the Release Price for such Release Parcel, and contemporaneously depositing in a joint deposit escrow to be established with Chicago Title and Trust Company an amount equal to the difference between the Net Release Price asserted by the Lender and the sum paid to Lender pursuant to this **Subparagraph 3.07(b)(6)** to be invested at the discretion of the Borrower, to guarantee payment to the Lender of its Release Price for such Release Parcel. Interest shall accrue and be payable as provided in the Note on the unpaid principal balance under the Note notwithstanding the deposit of funds into any escrow established pursuant to this **Subparagraph 3.07(b)(6)**. Any such escrow shall be disbursed upon the agreement of the parties or final adjudication of such claim by a court of competent jurisdiction. Interest earned upon any deposit shall be paid to Borrower, except in the case of default by Borrower.

3.08. Assignment of Rents (c) As further security for the repayment of the Note, and any amounts due pursuant to this Mortgage and the other Loan Documents, Borrower does hereby sell, assign and transfer to Lender all rents, leases, issues, deposits and profits now due and which may hereinafter become due under or by reason of any lease, use, occupancy or any letting of, occupancy of the Land or any portion thereof (whether written or verbal), which may have been heretofore or may hereafter be made or agreed to or which may be made or agreed to by Lender under the powers herein granted, including without limitation leases, tenancies and other similar agreements, it being Borrower's intention hereby to establish an absolute transfer and assignment of all such leases, and agreements pertaining thereto (such leases, tenancies and other similar agreements being collectively referred to hereinbelow as "**agreements**" and any such individual lease, tenancy or other similar agreement being referred to hereinbelow as an "**agreement**"), and all the avails thereof, to Lender.

Borrower does hereby irrevocably appoint Lender as its true and lawful attorney in its name and stead (with or without taking possession of the Land) to rent, lease, let, or sell all or any portion of the Land to any party or parties at such price and upon such term as Lender in its sole and absolute discretion may determine, to exercise any and all rights including rights of first refusal and options of Borrower to purchase and otherwise acquire title to all or any part of the Mortgaged Property, and to collect all of such rents, issues, deposits, profits and avails now due or that may hereafter become due under any and all of such agreements or other tenancies now or hereafter existing on the Land, with the same rights and powers and subject to the same immunities, exoneration of liability and rights of recourse and indemnity as Lender would have upon taking possession of the Land pursuant to the provisions set forth hereinbelow.

This assignment confers upon Lender a power coupled with an interest and it cannot be revoked by Borrower.

UNOFFICIAL COPY

(b) Borrower represents and agrees that, without the prior written consent of the Lender, no rent for right of future possession will be paid by any person in possession of any portion of the Land in excess of one installment thereof paid in advance and that no payment of rents to become due for any portion of the Land has been or will be waived, conceded, released, reduced, discounted, or otherwise discharged or compromised by Borrower. Borrower agrees that it will not assign any of such rents, issues, profits, deposits or avails.

(c) Borrower further agrees to assign and transfer to Lender all future leases, tenancies and other similar agreements pertaining to all or any portion of the Land and to execute and deliver to Lender, immediately upon demand of Lender, all such further assurances and assignments pertaining to the Land as Lender may from time to time require.

(d) Borrower shall, at its own cost: (i) at all times perform and observe all of the covenants, conditions and agreements of the lessor under the terms of any or all leases, tenancies or other similar agreements affecting all or any part of the Land; (ii) at all times enforce and secure the performance and observance of all of the material covenants, conditions and agreements of the lessees under the terms of any or all of said leases, tenancies or other similar agreements; (iii) appear in and defend any action or other proceeding arising out of or in any manner connected with said leases, tenancies and other similar agreements, and to pay any and all costs of Lender incurred by reason of or in connection with said proceedings, including, without limitation, reasonable attorneys' fees, expenses and court costs; and (iv) promptly furnish Lender with copies of any notices of default either sent or received by Borrower under the terms of or pursuant to any of said leases, tenancies or other similar agreements.

(e) Although it is the intention of Borrower and Lender that the assignment, including, without limitation, the power of attorney appointment, contained in this Paragraph 3.08 is a present assignment, it is expressly understood and agreed, anything herein contained to the contrary notwithstanding, that Lender shall not exercise any of the rights and powers conferred upon it herein unless and until an Event of Default hereunder has occurred hereunder.

(f) Lender, in the exercise of the rights and powers conferred upon it herein, shall have full power to use and apply the rents, issues, deposits, profits and avails of the Land to the payment of or on account of the following, in such order as Lender may in its sole and absolute discretion determine:

(i) operating expenses of the Land (including without limitation all costs of management, sale and leasing thereof, which shall include reasonable compensation to Lender and its agents, if management be delegated thereto, reasonable attorneys' fees, expenses and court costs, and lease or sale commissions and other compensation and expenses of seeking and procuring tenants or purchasers and entering into leases or sales), establishing any claims for damages, and premiums on insurance authorized hereinabove;

(ii) taxes, special assessments, water and sewer charges on the Land now due or that may hereafter become due;

(iii) any and all repairs, decorating, renewals, replacements, alterations, additions, betterments and improvements of the Land (including without limitation the cost from

UNOFFICIAL COPY

time to time of installing or replacing personal property therein, and of placing the Land in such condition as will, in the sole and absolute judgment of Lender, make them readily rentable or salable);

(iv) any indebtedness secured hereby or any deficiency that may result from any foreclosure sale pursuant thereto; and

(v) any remaining funds to Borrower or its successors or assigns, as their interests and rights may appear.

(g) Borrower does further specifically authorize and instruct each and every present and future lessee to pay all unpaid rentals or deposits agreed upon in any lease, tenancy or other similar agreement pertaining to the Land to Lender upon receipt of demand from Lender to pay the same without any further notice or authorization by Borrower, and Borrower hereby waives any rights or claims it may have against any lessee by reason of such payments to Lender.

(h) Lender shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under any lease, tenancy or other similar agreement pertaining to the Land, and Borrower shall and does hereby agree to indemnify and hold Lender harmless from and against any and all liability, loss and damage that Lender may or might incur under any such lease, tenancy or other similar agreement or under or by reason of the assignment thereof, as well as any and all claims and demands whatsoever which may be asserted against Lender by reason of any alleged obligations or undertakings on Lender's part undertaken prior to the date that Lender takes possession of the Property and exercises its rights under this Paragraph 3.08 to perform or discharge any of the terms, covenants or conditions contained in such leases or agreements. Should Lender incur any such liability, loss or damage under any such lease or agreement, or under or by reason of the assignment thereof, or in the defense of any claims or demands relating thereto, Borrower shall reimburse Lender for the amount thereof (including, without limitation, reasonable attorneys' fees, expenses and court costs) immediately upon demand, and shall constitute additional indebtedness secured hereby.

(i) Nothing herein contained shall be construed as making or constituting Lender a "mortgagee in possession" in the absence of the taking of actual possession of the Land by Lender pursuant to the provisions set forth herein. In the exercise of the powers herein granted Lender, no liability shall be asserted or enforced against Lender, all such liability being expressly waived and released by Borrower.

(j) Borrower may enter new leases or amend, modify, terminate or cancel any existing lease or waive any rights thereunder, or accept a voluntary surrender of any lease, only upon the prior written consent of Lender.

3.09. Security Agreement.

(a) This Mortgage shall be deemed a "Security Agreement" as defined in the Illinois Uniform Commercial Code, and creates a security interest in favor of Lender in all property including, without limitation, all personal property, fixtures and goods affecting property either referred to or described herein or in any way connected with the use or enjoyment

UNOFFICIAL COPY

of the Mortgaged Property. The remedies for any violation of the covenants, terms and conditions of the agreements herein contained shall be as prescribed herein or by general law or, as to such part of the security which is also reflected in any Financing Statement filed to perfect the security interest herein created, by the specific statutory consequences now or hereinafter enacted and specified in the Illinois Uniform Commercial Code, all at Lender's sole election. Borrower and Lender agree that the filing of such a Financing Statement in the records normally having to do with personal property shall not be construed as in any way derogating from or impairing the intention of the parties hereto that everything used in connection with the production of income from the Land or adapted for use therein or which is described or reflected in this Mortgage is, and at all times and for all purposes and in all proceedings both legal or equitable shall be, regarded as part of the real estate irrespective of whether (i) any such item is physically attached to the improvements, (ii) serial numbers are used for the better identification of certain equipment items capable of being thus identified in a recital contained herein or in any list filed with Lender, or (iii) any such item is referred to or reflected in any such Financing Statement so filed at any time. Similarly, the mention in any such Financing Statement of (1) the rights in or the proceeds of any fire or hazard insurance policy, or (2) any award in eminent domain proceedings for a taking or for loss of value, or (3) Borrower's interest as lessor in any present or future lease or rights to income growing out of the use or occupancy of the Mortgaged Property whether pursuant to lease or otherwise, shall never be construed as in any way altering any of the rights of Lender under this Mortgage or impugning the priority of the Lender's lien granted hereby or by any other recorded document, but such mention in the Financing Statement is declared to be for the protection of the Lender in the event any court or judge shall at any time hold with respect to (1), (2) and (3) that notice of Lender's priority of interest to be effective against a particular class of persons, including, but not limited to, the Federal Government and any subdivisions or entity of the Federal Government, must be filed in the Illinois Uniform Commercial Code records.

(b) Borrower shall execute, acknowledge and deliver to Lender, within ten (10) days after request by Lender, any and all security agreements, financing statements and any other similar security instruments reasonably required by Lender in form and of content reasonably satisfactory to Lender, covering all property, of any kind whatsoever owned by Borrower that, in the reasonable opinion of Lender, is essential to the operation of the Mortgaged Property and concerning which there may be any doubt whether title thereto has been conveyed, or a security interest therein perfected, by this Mortgage under the laws of the state in which the Land are located. Borrower shall further execute, acknowledge and deliver any financing statement, affidavit, continuation statement, certificate or other document as Lender may request in order to perfect, preserve, maintain, continue and extend such security instruments. Borrower further agrees to pay to Lender all fees, costs and expenses (including, without limitation, all reasonable attorneys' fees and expenses and court costs) incurred by Lender in connection with the preparation, recording, filing and re-filing of any such document.

3.10. Fixture Financing Statement. From the date of its recording, this Mortgage shall be effective as a fixture financing statement with respect to all goods constituting part of the Mortgaged Property which are or are to become fixtures related to the real estate described herein. For this purpose, the following information is set forth:

UNOFFICIAL COPY

(a) Names and Addresses of Debtors:

LaSalle Bank National Association, as Trustee under Trust Agreement
dated June 6, 2001 and known as Trust No. 127726
c/o Rezmar Corporation
853 North Elston Avenue
Chicago, Illinois 60627

and

Roosevelt/Clark Development, L.P.
c/o Rezmar Corporation
853 North Elston Avenue
Chicago, Illinois 60627

(b) Name and Address of Secured Party:

Lehman Brothers Holdings, Inc.
399 Park Avenue, 8th Floor
New York, New York 10022

(c) This document covers goods which are or are to become fixtures.

ARTICLE IV

DEFAULTS AND REMEDIES

4.01. Events of Default. As used herein, the term "Event of Default" shall have the meaning set forth in the Loan Agreement.

4.02. Acceleration of Maturity. Upon the occurrence of any Event of Default, at the election of Lender, the entire principal balance then outstanding under the Note, together with all unpaid interest accrued thereon and all other sums due from Borrower thereunder under this Mortgage or any other Loan Document shall become immediately due and payable with interest thereon at the Default Rate.

4.03. Foreclosure of Mortgage. Upon the occurrence of any Event of Default, or at any time thereafter, Lender may, at its option, proceed to foreclose the lien of this Mortgage by judicial proceedings in accordance with the laws of the state in which the Land are located and to exercise any other remedies of Lender provided herein or in the other Loan Documents, or which Lender may have at law or in equity. Any failure by Lender to exercise such option shall not constitute a waiver of its right to exercise the same at any other time.

4.04. Lender's Continuing Options. The failure of Lender to declare an Event of Default or exercise any one or more of its options to accelerate the maturity of the indebtedness secured hereby and to foreclose the lien hereof following any Event of Default as aforesaid, or to

UNOFFICIAL COPY

exercise any other option granted to Lender hereunder in any one or more instances, or the acceptance by Lender of partial payments of such indebtedness, shall neither constitute a waiver of any such Event of Default or of Lender's options hereunder nor establish, extend or affect any grace period for payments due under this Mortgage, but such options shall remain continuously in force. Acceleration of maturity, once claimed hereunder by Lender, may, at Lender's option, be rescinded by written acknowledgment to that effect by Lender and shall not affect Lender's right to accelerate maturity upon or after any future Event of Default.

4.05. Litigation Expenses. In any proceeding to foreclose the lien of this Mortgage or enforce any other remedy of Lender under the Note, this Mortgage, the other Loan Documents or in any other proceeding whatsoever in connection with the Mortgaged Property in which Lender is named as a party ("**Proceeding**"), there shall be allowed and included, as additional indebtedness secured hereby in the judgment or decree resulting therefrom, all expenses paid or incurred in connection with such proceeding by or on behalf of Lender, including, without limitation, reasonable attorney's fees and expenses and court costs, appraiser's fees, outlays for documentary evidence and expert advice, stenographers' charges, publication costs, survey costs, and costs (which may be estimated as to items to be expended after entry of such judgment or decree) of procuring all abstracts of title, title searches and examinations, title insurance policies and any similar data and assurances with respect to title to the Land as Lender may deem reasonably necessary, and any other expenses and expenditures which may be paid or incurred by or on behalf of Lender and permitted by the IMF Law (as such term is hereinafter defined in Paragraph 4.09) to be included in the decree of sale, either to prosecute or defend in such proceeding or to evidence to bidders at any sale pursuant to any such decree the true condition of the title to or value of the Land or the Mortgaged Property. All expenses of the foregoing nature, and such expenses as may be incurred in the protection of any of the Mortgaged Property and the maintenance of the lien of this Mortgage thereon, including, without limitation, the reasonable fees and expenses of, and court costs incurred by, any attorney employed by Lender in any litigation affecting the Note, this Mortgage or any of the other Loan Documents or any of the Mortgaged Property, or in preparation for the commencement or defense of any proceeding or threatened suit or proceeding in connection therewith, shall be immediately due and payable by Borrower with interest thereon at the Default Rate and shall constitute additional indebtedness secured hereby. In any Proceeding in which Borrower and Lender are opponents, the party prevailing over the other by a verdict after the expiration of all appeals shall be entitled to reimbursement from the other for its reasonable attorney's fees and expenses.

4.06. Performance by Lender. Upon the occurrence of an Event of Default, or in the event any action or proceeding is instituted which materially affects, or threatens to materially affect, Lender's interest in the Mortgaged Property, Lender may, but need not, make any payment or perform any act on Borrower's behalf in any form and manner deemed expedient by Lender, and Lender may, but need not, make full or partial payments of principal or interest on prior encumbrances, if any; purchase, discharge, compromise or settle any tax lien or other prior or junior lien or title or claim thereof; redeem from any tax sale or forfeiture affecting the Mortgaged Property; or contest any tax or assessment thereon. All monies paid for any of the purposes authorized herein and all expenses paid or incurred in connection therewith, including without limitation reasonable attorneys' fees and court costs, and any other monies advanced by Lender to protect the Mortgaged Property and the lien of this Mortgage, shall be so much additional indebtedness secured hereby, and shall become immediately due and payable by

UNOFFICIAL COPY

Borrower to Lender without notice and with interest thereon at the Default Rate from the date an advance is made to and including the date the same is paid. The action or inaction of Lender shall never be construed to be waiver of any right accruing to Lender by reason of any default by Borrower. Lender shall not incur any personal liability because of anything it may do or omit to do hereunder, nor shall any acts of Lender act as a waiver of Lender's right to accelerate the maturity of the indebtedness secured by this Mortgage or to proceed to foreclose this Mortgage.

4.07. Right of Possession. In any case in which, under the provisions of this Mortgage, Lender has a right to institute foreclosure proceedings, whether or not the entire principal sum secured hereby becomes immediately due and payable as aforesaid, or whether before or after the institution of proceedings to foreclose the lien hereof or before or after sale thereunder, Borrower shall, forthwith upon demand of Lender, provided that a court has so ordered, surrender to Lender, and Lender shall be entitled to take actual possession of, the Mortgaged Property or any part thereof, personally or by its agent or attorneys, and Lender, in its discretion, may enter upon and take and maintain possession of all or any part of the Mortgaged Property, together with all documents, books, records, papers and accounts of Borrower or the then owner of the Mortgaged Property relating thereto, and may exclude Borrower, such owner and any agents and servants thereof wholly therefrom and may, as attorney-in-fact or agent of Borrower or such owner, or in its own name as Lender and under the powers herein granted:

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

(b) cancel or terminate any lease or sublease of all or any part of the Mortgaged Property for any cause or on any ground that would entitle Borrower to cancel the same;

(c) elect to disaffirm any lease or sublease of all or any part of the Mortgaged Property made subsequent to this Mortgage or subordinated to the lien hereof;

(d) extend or modify any then existing leases and make new leases of all or any-part of the Mortgaged Property, which extensions, modifications and new leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire beyond the maturity date of the Note, and the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon Borrower, all persons whose interests in the Mortgaged Property are subject to the lien hereof and the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the indebtedness secured hereby, satisfaction of any foreclosure decree or issuance of any certificate of sale or deed to any such purchaser; and

(e) make all necessary or proper repairs, decoration, renewals, replacements, alterations, additions, betterments and improvements in connection with the Mortgaged Property

UNOFFICIAL COPY

as may seem judicious to Lender, to insure and reinsure the Mortgaged Property and all risks incidental to Lender's possession, operation and management thereof, and to receive all rents, issues, deposits, profits and avails therefrom.

Without limiting the generality of the foregoing, Lender shall have all right, power, authority and duties as provided in the IMF Law. Nothing herein contained shall be construed as constituting Lender as mortgagee in possession in the absence of the actual taking of possession of the Land.

4.08. Priority of Payments. Any rents, issues, deposits, profits and avails of the Property received by Lender after taking possession of all or any part of the Mortgaged Property, or pursuant to any assignment thereof to Lender under the provisions of this Mortgage shall be applied in payment of or on account of the following, in such order as Lender or, in case of a receivership, as the court, may in its sole and absolute discretion determine:

- (a) operating expenses of the Mortgaged Property (including, without limitation, reasonable compensation to Lender, any receiver of the Mortgaged Property, any agent or agents to whom management of the Mortgaged Property has been delegated, and also including lease commissions and other compensation for and expenses of seeking and procuring tenants and entering into leases establishing claims for damages, if any, and paying premiums on insurance hereinabove authorized);
- (b) taxes, special assessments, water and sewer charges now due or that may hereafter become due on the Mortgaged Property, or that may become a lien thereon prior to the lien of this Mortgage;
- (c) any and all repairs, decorating, renewals, replacements, alterations, additions, betterments and improvements of the Mortgaged Property (including, without limitation, the cost, from time to time, of installing or replacing any personal property therein, and of placing the Mortgaged Property in such condition as will, in the judgment of Lender or any receiver thereof, make it readily rentable or salable);
- (d) any indebtedness secured by this Mortgage or any deficiency that may result from any foreclosure sale pursuant hereto; and
- (e) any remaining funds to Borrower or its successors or assigns, as their interests and rights may appear.

4.09. Appointment of Receiver. Upon or at any time after the filing of any complaint to foreclose the lien of this Mortgage, the court may appoint upon petition of Lender, and at Lender's sole option, a receiver of the Mortgaged Property pursuant to the Illinois Mortgage Foreclosure Law, as amended (Illinois Compiled Statutes 735 ILCS 5/15-1001, et. seq.) (the "**IMF Law**"). Such appointment may be made either before or after sale, without notice; without regard to the solvency or insolvency, at the time of application for such receiver, of the person or persons, if any, liable for the payment of the indebtedness secured hereby; without regard to the value of the Mortgaged Property at such time and whether or not the same is then occupied as a homestead; without bond being required of the applicant; and Lender hereunder or any employee or agent thereof may be appointed as such receiver. Such receiver shall have all powers and duties prescribed by the IMF Law, including the power to take possession, control

UNOFFICIAL COPY

and care of the Mortgaged Property and to collect all rents, issues, deposits, profits and avails thereof during the pendency of such foreclosure suit and apply all funds received toward the indebtedness secured by this Mortgage, and in the event of a sale and a deficiency where Borrower has not waived its statutory rights of redemption, during the full statutory period of redemption, as well as during any further times when Borrower or its devisees, legatees, administrators, legal representatives, successors or assigns, except for the intervention of such receiver, would be entitled to collect such rents, issues, deposits, profits and avails, and shall have all other powers that may be necessary or useful in such cases for the protection, possession, control, management and operation of the Mortgaged Property during the whole of any such period. To the extent permitted by law, such receiver may extend or modify any then existing leases and make new leases of the Mortgaged Property or any part thereof, which extensions, modifications and new leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the Note, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon Borrower and all persons whose interests in the Mortgaged Property are subject to the lien hereof, and upon the purchaser or purchasers at any such foreclosure sale, notwithstanding any redemption from sale, discharge of indebtedness, satisfaction of foreclosure decree or issuance of certificate of sale or deed to any purchaser.

4.10. Foreclosure Sale. In the event of any foreclosure sale of the Mortgaged Property, the same may be sold in one or more parcels. Lender may be the purchaser at any foreclosure sale of the Mortgaged Property or any part thereof.

4.11. Application of Proceeds. The proceeds of any foreclosure sale of the Mortgaged Property, or any part thereof, shall be distributed and applied in the following order of priority: on account of all costs and expenses incident to the foreclosure proceedings, including all such items as are mentioned in Paragraphs 4.05 and 4.06 hereof; (b) all other items that, under the terms of this Mortgage, constitute secured indebtedness additional to that evidenced by the Note, with interest thereon at the Default Rate; (c) all principal and interest, together with any prepayment charge, remaining unpaid under the Note, in the order of priority specified by Lender in its sole and absolute discretion; and (d) the balance, if any, to Borrower or its successors or assigns, as their interests and rights may appear.

4.12. Application of Deposits. Upon the occurrence of an Event of Default, Lender may, at its option, without being required to do so, apply any monies or securities that constitute deposits made to or held by Lender or any depository pursuant to any of the provisions of this Mortgage toward payment of any of Borrower's obligations under the Note, this Mortgage or any of the other Loan Documents in such order and manner as Lender may elect in its sole and absolute discretion. When the indebtedness secured hereby has been fully paid, any remaining deposits shall be paid to Borrower or to the then owner or owners of the Mortgaged Property. Such deposits are hereby pledged as additional security for the prompt payment of the indebtedness evidenced by the Note and any other indebtedness secured hereby and shall be held to be applied irrevocably by such depository for the purposes for which made hereunder and shall not be subject to the direction or control of Borrower.

4.13. Indemnification. Borrower will indemnify and hold Lender harmless from and against any and all liabilities, obligations, claims, damages, penalties, causes of action, costs and

UNOFFICIAL COPY

expenses (including, without limitation, reasonable attorneys' fees, expenses and court costs) incurred by or asserted against Lender, as lender, and not as prior owner, for any incident or occurrence first arising from and after the date hereof with the exception of any such incident or occurrence, if any, after the date Lender takes possession and control of the Mortgaged Property, by reason of (a) the ownership of the Mortgaged Property or any interest therein or receipt of any rents, issues, proceeds or profits therefrom; (b) any accident, injury to or death of persons, or loss of or damage to property occurring in, on or about the Land or any part thereof or on the adjoining sidewalks, curbs, adjacent parking areas or streets; (c) any use, nonuse or condition in, on or about the Land or any part thereof or on the adjoining sidewalks, curbs, adjacent parking areas or streets; (d) any failure on the part of Borrower to perform or comply with any of the terms of this Mortgage; or (e) performance of any labor or services or the furnishing of any materials or other property in respect of the Land or any part thereof. Any amounts owed to Lender by reason of this Paragraph 4.13 shall constitute additional indebtedness which is secured by this Mortgage and shall become immediately due and payable upon demand therefor, and shall bear interest at the Default Rate from the date such loss or damage is sustained by Lender until paid. The obligations of Borrower under this Paragraph 4.13 shall survive any termination or satisfaction of this Mortgage.

4.14. Waiver of Right of Redemption and Other Rights. To the full extent permitted by law, Borrower agrees that it will not at any time or in any manner whatsoever take any advantage of any stay, exemption or extension law or any so-called "Moratorium Law" now or at any time hereafter in force, nor take any advantage of any law now or hereafter in force providing for the valuation or appraisal of the Mortgaged Property, or any part thereof, prior to any sale thereof to be made pursuant to any provisions herein contained, or to any decree, judgment or order of any court of competent jurisdiction; or after such sale claim or exercise any rights under any statute now or hereafter in force to redeem the property so sold, or any part thereof, or relating to the marshalling thereof, upon foreclosure sale or other enforcement hereof. To the full extent permitted by law, Borrower hereby expressly waives any and all rights it may have to require that the Land be sold as separate tracts or units in the event of foreclosure. To the full extent permitted by law, Borrower hereby expressly waives any and all rights of redemption under the IMF Law, on its own behalf, on behalf of all persons claiming or having an interest (direct or indirect) by, through or under Borrower and on behalf of each and every person acquiring any interest in or title to the Land subsequent to the date hereof, it being the intent hereof that any and all such rights of redemption of Borrower and such other persons, are and shall be deemed to be hereby waived to the full extent permitted by applicable law. To the full extent permitted by law, Borrower agrees that it will not, by invoking or utilizing any applicable law or laws or otherwise, hinder, delay or impede the exercise of any right, power or remedy herein or otherwise granted or delegated to Lender, but will permit the exercise of every such right, power and remedy as though no such law or laws have been or will have been made or enacted. To the full extent permitted by law, Borrower hereby agrees that no action for the enforcement of the lien or any provision hereof shall be subject to any defense which would not be good and valid in an action at law upon the Note. Borrower acknowledges that the Land do not constitute agricultural real estate as defined in Section 5/15-1201 of the IMF Law or residential real estate as defined in Section 5/15-1219 of the IMF Law.

UNOFFICIAL COPY

ARTICLE V

RECOURSE

5.01. Limitation of Liability. This Mortgage is subject to the provisions set forth in Article X of the Loan Agreement entitled “Exculpation and Recourse Obligations,” and such provisions are hereby made part of this Mortgage to the same extent and with the same force as if they were fully set forth herein.

ARTICLE VI

MISCELLANEOUS

6.01. Notices. Any notice that Lender or Borrower may desire or be required to give to the other hereunder shall be given in accordance with the Loan Agreement. Except as otherwise specifically required herein, notice of the exercise of any right or option granted to Lender by this Mortgage is not required to be given.

6.02. Time of Essence It is specifically agreed that time is of the essence of this Mortgage.

6.03. Covenants Run With Land. All of the covenants of this Mortgage shall run with the land constituting the Land.

6.04. GOVERNING LAW; LITIGATION. THIS MORTGAGE SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES. NOTWITHSTANDING THE FOREGOING, THE CREATION, PERFECTION, AND ENFORCEMENT OF THE LIENS ARISING HEREUNDER SHALL BE GOVERNED BY THE LAWS OF THE STATE OF ILLINOIS, PROVIDED THAT THE OBLIGATIONS SECURED HEREBY AND THE ENFORCEMENT OF SUCH OBLIGATIONS SHALL IN ALL EVENTS BE GOVERNED BY THE LAWS OF THE STATE OF NEW YORK. TO THE MAXIMUM EXTENT PERMITTED BY LAW, BORROWER HEREBY AGREES THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS MORTGAGE SHALL BE TRIED AND DETERMINED ONLY IN THE STATE OR FEDERAL COURT LOCATED IN THE COUNTY OF NEW YORK, STATE OF NEW YORK, OR AT THE SOLE OPTION OF LENDER, IN ANY OTHER COURT IN WHICH LENDER SHALL INITIATE LEGAL OR EQUITABLE PROCEEDINGS AND WHICH HAS SUBJECT MATTER JURISDICTION OVER THE MATTER IN CONTROVERSY. TO THE MAXIMUM EXTENT PERMITTED BY LAW, BORROWER HEREBY EXPRESSLY WAIVES ANY RIGHT IT MAY HAVE TO ASSERT THE DOCTRINE OF FORUM NON CONVENIENS OR TO OBJECT TO VENUE TO THE EXTENT ANY PROCEEDING IS BROUGHT IN ACCORDANCE WITH THIS PARAGRAPH 6.04.

6.05. Rights and Remedies Cumulative. All rights and remedies set forth in this Mortgage are cumulative, and the holder of the Note and of every other obligation secured

UNOFFICIAL COPY

hereby may recover judgment hereon, issue execution therefor, and resort to every other right or remedy available at law or in equity, without first exhausting and without affecting or impairing the security of any right or remedy afforded hereby.

6.06. Severability. If any provision of this Mortgage or any paragraph, sentence, clause, phrase or word, or the application thereof, is held invalid in any circumstance, the validity of the remainder of this Mortgage shall be construed as if such invalid part were never included herein.

6.07. Non-Waiver. Unless expressly provided in this Mortgage to the contrary, no consent or waiver, whether express or implied, by any interested party referred to herein to or of any breach or default by any other interested party referred to herein regarding the performance by such party of any obligations contained herein shall be deemed a consent to or waiver of the party of any obligations contained herein or shall be deemed a consent to or waiver of the performance by such party of any other obligations hereunder or the performance by any other interested party referred to herein of the same, or of any other, obligations hereunder.

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

6.09. Grammar. As used in this Mortgage, the singular shall include the plural, and masculine, feminine and neuter pronouns shall be fully interchangeable, where the context so requires. Whenever the words "including", "include" or "includes" are used in this Mortgage, they should be interpreted in a non-exclusive manner as though the words ", without limitation," immediately followed the same.

6.10. Successors and Assigns. This Mortgage and all provisions hereof shall be binding upon Borrower, its successors, assigns, legal representatives and all other persons or entities claiming under or through Borrower, and the word "Borrower," when used herein, shall include all such persons and entities and any others liable for the payment of the indebtedness secured hereby or any part thereof, whether or not they have executed the Note or this Mortgage. The word "Lender," when used herein, shall include Lender's successors, assigns and legal representatives, including all other holders, from time to time, of the Note.

6.11. No Joint Waiver. Borrower and Lender acknowledge and agree that under no circumstances shall Lender be deemed to be a partner or joint venturer with Borrower or any beneficiary of Borrower, including, without limitation, by virtue of its becoming a mortgagee in possession or exercising any of its rights pursuant to this Mortgage or pursuant to any of the other Loan Documents, or otherwise.

6.12. Compliance with Illinois Mortgage Foreclosure Law.

(a) In the event that any provision in this Mortgage shall be inconsistent with any provisions of the IMF Law, the provision of the IMF Law shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the IMF Law.

UNOFFICIAL COPY

(b) Borrower and Lender shall have the benefit of all of the provisions of the IMF Law, including all amendments thereto which may become effective from time to time after the date hereof; provided, however, that in the event any provision of the IMF Law which is specifically referred to herein may be repealed, Lender shall have the benefit of such provision as most recently existing prior to such repeal, as though the same were incorporated herein by express reference.

(c) If any provision of this Mortgage shall grant to Lender any rights or remedies upon default of Borrower which are more limited than the rights that would otherwise be vested in Lender under the IMF Law in the absence of said provision, Lender shall be vested with the rights granted in the IMF Law to the full extent permitted by law.

(d) Without limiting the generality of the foregoing, all expenses incurred by Lender to the extent reimbursable under any provisions of the IMF Law, whether incurred before or after any decree or judgment of foreclosure shall be added to the indebtedness hereby secured or by the judgment of foreclosure.

6.13. Recapture. To the extent Lender receives any payment by or on behalf of Borrower, which payment or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to Borrower or its respective estate, trustee, receiver, custodian or any other party under any bankruptcy law, state or federal law, common law or equitable cause, then to the extent of such payment or repayment, the obligation or part thereof which has been paid, reduced or satisfied by the amount so repaid shall be reinstated by the amount so repaid and shall be included within the indebtedness hereby secured as of the date such initial payment, reduction or satisfaction occurred.

6.14. No Lien Management Agreements. Borrower shall include a "no lien" provision in any property management agreement hereafter entered into by Borrower with a property manager for the Mortgaged Property, whereby the property manager waives and releases any and all mechanics' lien rights that the property manager, or anyone claiming through or under the property manager, may have pursuant to 770 ILCS 60/1. Such property management agreement containing such "no lien" provision or a short form thereof shall, at Lender's request, be recorded with the Recorder of Deeds of Cook County, Illinois, as appropriate.

6.15. Deed in Trust. If title to the Mortgaged Property or any part thereof is now or hereafter becomes vested in a trustee, any prohibition or restriction contained herein against the creation of any lien on the Mortgaged Property shall be construed as a similar prohibition or restriction against the creation of any lien on or security interest in the beneficial interest of such trust.

6.16. JURY WAIVER. TO THE MAXIMUM EXTENT PERMITTED BY LAW, EACH OF BORROWER AND LENDER HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY ACTION, CAUSE OF ACTION, CLAIM, DEMAND, OR PROCEEDING ARISING UNDER OR WITH RESPECT TO THIS MORTGAGE, OR IN ANY WAY CONNECTED WITH, RELATED TO, OR INCIDENTAL TO THE DEALINGS OF BORROWER AND LENDER WITH RESPECT TO THIS MORTGAGE, OR THE

UNOFFICIAL COPY

TRANSACTIONS RELATED HERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE. TO THE MAXIMUM EXTENT PERMITTED BY LAW, EACH OF BORROWER AND LENDER HEREBY AGREES THAT ANY 'SUCH ACTION, CAUSE OF ACTION, CLAIM, DEMAND OR PROCEEDING SHALL BE DECIDED BY A COURT TRIAL WITHOUT A JURY AND THAT BORROWER OR LENDER MAY FILE A COPY OF THIS MORTGAGE WITH ANY COURT OR OTHER TRIBUNAL AS WRITTEN EVIDENCE OF THE CONSENT OF EACH OF BORROWER AND LENDER TO THE WAIVER OF ITS RIGHT TO TRIAL BY JURY.

6.17. Subordination of this Mortgage. This Mortgage, and all of the covenants, terms, conditions and provisions set forth herein, are expressly junior and subordinate to the following:

(a) all of the covenants, terms, conditions and provisions set forth in the First Mortgage Loan Documents, provided the principal balance of, and accrued and unpaid interest on, the loan secured thereby does not exceed Sixty Million and No/100 Dollars (\$60,000,000.00), reduced by any and all payments made to First Mortgage Lender; and

(b) all of the covenants, terms, conditions and provisions set forth in the Second Mortgage Loan Documents, provided that the indebtedness secured by the Second Mortgage Loan Documents shall be limited to the sum of the following:

(i) the outstanding principal amount of the Second Mortgage Loan on the date hereof, plus interest accrued thereon, plus a consent fee in the amount of \$500,000, reduced by any and all payments made to Second Mortgage Lender;

(ii) all (A) costs, expenses, fees and charges (including, without limitation, attorneys' fees, costs, disbursements and expenses) relating to the exercise of any right or remedy of Second Mortgage Lender under the Second Mortgage Loan Documents, including, without limitation, the obtaining, taking possession of, holding, preparing for sale, disposing of and/or realizing on the Property, and (B) protective advances made with respect to the Second Mortgage Instruments; and

(iii) advances made to cure any default under the First Mortgage Loan.

6.18. Uniform Commercial Code Provision. Notwithstanding any of the foregoing provisions of this Mortgage to the contrary:

(a) Borrower acknowledges that, as used hereinabove, the term "Illinois Uniform Commercial Code" shall be deemed to mean the Illinois Uniform Commercial Code as in effect from time to time;

(b) Borrower represents and warrants that Project Owner is the record owner of the Land, and that Beneficial Owner's chief executive office is located in the State of Illinois, its state of formation is the State of Delaware, its exact legal name is as set forth in the first paragraph of this Mortgage and its organizational identification number is 36-4402431; and

UNOFFICIAL COPY

(c) Borrower agrees that: Lender is authorized to file any Financing Statement referred to in Paragraph 3.09 above without Borrower's consent thereto or signature(s) thereon; where any of the Loan collateral is in possession of a third party, Borrower will join Lender in notifying such third party of Lender's interest and obtaining an acknowledgement from the third party that it is holding the collateral for the benefit of Lender; Borrower will cooperate with Lender in obtaining control with respect to such collateral that consists of deposit accounts, investment property, letter of credit rights and electronic chattel paper; and until the loan is paid in full, Beneficial Owner will not change the state where it is located or change its company name without giving Lender at least 30 days' prior written notice in each instance.

[SIGNATURES FOLLOW ON NEXT PAGE]

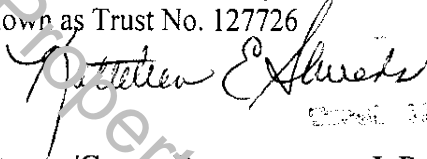
UNOFFICIAL COPY

IN WITNESS WHEREOF, Borrower has executed this Mortgage as of the date and year first above written.

BORROWER:

~~Trustee's Execution under attached mortgage and make a part thereof.~~

LASALLE BANK NATIONAL ASSOCIATION not personally, but as Trustee under Trust Agreement dated June 6, 2001 and known as Trust No. 127726



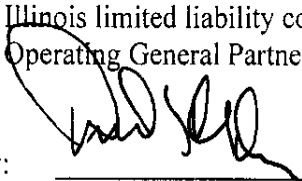
ROOSEVELT/CLARK DEVELOPMENT, L.P.,
a Delaware limited partnership


By: LB RIVERSIDE PARK LLC,
a Delaware limited liability company,
its Managing General Partner

By: PAMI LLC,
a Delaware limited liability company,
its Sole Member

By: _____
Yon K. Cho
Authorized Signatory

By: ROOSEVELT/CLARK DEVELOPERS, L.L.C.,
an Illinois limited liability company,
its Operating General Partner

By:  _____
Daniel S. Mahru
Managing Director

By:  _____
Antoin S. Rezko
Managing Director

UNOFFICIAL COPY

IN WITNESS WHEREOF, Borrower has executed this Mortgage as of the date and year first above written.

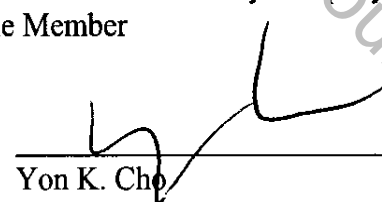
BORROWER:

LASALLE BANK NATIONAL ASSOCIATION not personally,
but as Trustee under Trust Agreement dated June 6, 2001
and known as Trust No. 127726

ROOSEVELT/CLARK DEVELOPMENT, L.P.,
a Delaware limited partnership

By: **LB RIVERSIDE PARK LLC**,
a Delaware limited liability company,
its Managing General Partner

By: **PAMI LLC**,
a Delaware limited liability company,
its Sole Member

By: 

Yon K. Cho
Authorized Signatory

By: **ROOSEVELT/CLARK DEVELOPERS, L.L.C.**,
an Illinois limited liability company,
its Operating General Partner

By: _____
Daniel S. Mahru
Managing Director

By: _____
Antoin S. Rezko
Managing Director

UNOFFICIAL COPY

LASALLE BANK NATIONAL ASSOCIATION
LAND TRUST DEPARTMENT
RIDER – TRUST DEED OR MORTGAGE

**RIDER ATTACHED TO AND MADE A PART OF THE TRUST DEED OR
MORTGAGE DATED 10/06/04 UNDER TRUST NUMBER 127724**

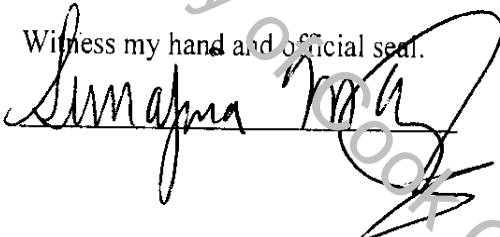
This Mortgage or Trust Deed in the nature of a mortgage is executed by LaSalle Bank National Association, not personally, but as Trustee, in the exercise of the power and authority conferred upon and vested in it as such Trustee (and said LaSalle Bank National Association hereby warrants that it possesses full power and authority to execute the instrument) and it is expressly understood and agreed that nothing contained herein or in the Note, or in any other instrument given to evidence the indebtedness secured hereby shall be construed as creating any liability on the part of said mortgagor or grantor, or on said LaSalle Bank National Association, personally to pay said Note or any interest that may accrue thereon, or any indebtedness accruing hereunder, or to perform any covenant, either expressed or implied, herein contained, all such liability, if any, being hereby expressly waived by the mortgagee or Trustee under said Trust Deed, the legal owners or holders of the Note, and by every person now or hereafter claiming any right or security hereunder, and that so far as the mortgagor or grantor and said LaSalle Bank National Association personally are concerned, the legal holders of the Note and the owner or owners of any indebtedness accruing hereunder shall look solely to the premises hereby mortgaged or conveyed for the payment thereof by the enforcement of the lien created in the manner herein and in said Note provided or by action to enforce the personal liability of the guarantor or guarantors, if any. Trustee does not warrant, indemnify, defend title nor is it responsible for any environmental damage. No personal liability shall be asserted or be enforceable against LaSalle Bank National Association by reason of any of the terms, provisions, stipulations, covenants, indemnifications, warranties and/or statements contained in this instrument.

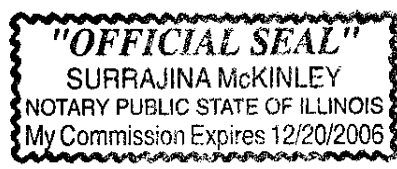
UNOFFICIAL COPY

ACKNOWLEDGMENTS

STATE OF IL)
) ss.
COUNTY OF Cook)

On ~~September 6~~ ^{Oct} 2004, before me, KATHLEEN E. SHIELDS, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(~~ies~~), and that by his/her/their signature(~~s~~) on the instrument the person(s), or the entity(~~ies~~) upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.




STATE OF _____)
) ss.
COUNTY OF _____)

On September __, 2004, before me, _____, personally appeared **YON K. CHO**, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

Witness my hand and official seal.

UNOFFICIAL COPY

ACKNOWLEDGMENTS

STATE OF _____)
) ss.
 COUNTY OF _____)

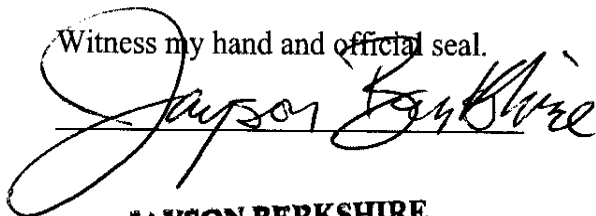
On September __, 2004, before me, _____, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity(ies) upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.

STATE OF New York)
) ss.
 COUNTY OF New York)

On September 22, 2004, before me, Jayson Berkshire, personally appeared YON K. CHO, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

Witness my hand and official seal.



JAYSON BERKSHIRE
 Notary Public, State of New York
 No. 01BE6086709
 Qualified in New York County
 Commission Expires January 27, 2007

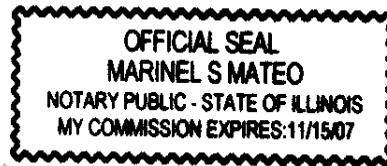
UNOFFICIAL COPY

STATE OF Illinois)
) ss.
COUNTY OF Cook)

On September 28, 2004, before me, Marinel S Mateo, personally appeared DANIEL S. MAHRU, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

Witness my hand and official seal.

Marinel S Mateo

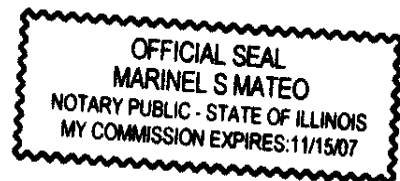


STATE OF Illinois)
) ss.
COUNTY OF Cook)

On September 28, 2004, before me, Marinel S. Mateo, personally appeared ANTOIN S. REZKO, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

Witness my hand and official seal.

Marinel S Mateo



UNOFFICIAL COPY

EXHIBIT A

Legal Description

PARCEL 1:

THAT PART OF THE EAST FRACTION AND THE WEST FRACTION OF THE NORTHEAST $\frac{1}{4}$ AND THE SOUTH EAST $\frac{1}{4}$ OF SECTION 21, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, TOGETHER WITH THE SOUTH BRANCH OF THE CHICAGO RIVER (NOW FILLED AND ABANDONED) AS IT EXISTED ON OR PRIOR TO JULY 8, 1926, ALL TAKEN AS A TRACT, BOUNDED AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE POINT OF INTERSECTION OF THE ORIGINAL SOUTH LINE OF WEST ROOSEVELT ROAD (SAID ORIGINAL SOUTH LINE BEING PARALLEL WITH AND 33.00 FEET SOUTH OF THE NORTH LINE OF THE EAST FRACTION OF THE NORTHEAST $\frac{1}{4}$ OF THE AFORESAID SECTION 21) WITH A STRAIGHT LINE HEREIN REFERRED TO AS "LINE A" (SAID "LINE A" BEING DESCRIBED AS FOLLOWS: BEGINNING AT A POINT 45 FEET, MEASURED AT RIGHT ANGLES, NORTH OF THE NORTH LINE AND 447.89 FEET, MEASURED PARALLEL WITH THE NORTH LINE OF WEST ROOSEVELT ROAD, EAST OF THE CENTER LINE OF DODGE STREET NOW VACATED PRODUCED NORTHERLY; THENCE SOUTHEASTERLY TO A POINT 760 FEET EAST OF THE CENTER LINE OF DODGE STREET NOW VACATED AND 860 FEET SOUTH OF THE SOUTH LINE OF WEST ROOSEVELT ROAD AS WIDENED, SAID SOUTH LINE AS WIDENED, BEING 85 FEET SOUTH OF AND PARALLEL WITH THE NORTH LINE OF THE EAST FRACTION OF THE NORTHEAST $\frac{1}{4}$ OF THE AFORESAID SECTION 21); THENCE SOUTH 17 DEGREES 04 MINUTES 50 SECONDS EAST ALONG SAID "LINE A" 92.37 FEET TO THE POINT OF BEGINNING, SAID POINT OF BEGINNING BEING 36.27 FEET SOUTH OF SAID SOUTH LINE OF WEST ROOSEVELT ROAD AS WIDENED; THENCE NORTHERLY 89.81 FEET ALONG THE ARC OF A CIRCLE, CONVEX TO THE SOUTHWEST HAVING A RADIUS OF 1910.08 FEET AND WHOSE CHORD BEARS NORTH 10 DEGREES 27 MINUTES 24 SECONDS WEST TO A POINT ON THE AFORESAID ORIGINAL SOUTH LINE OF WEST ROOSEVELT ROAD, SAID POINT BEING 723.93 FEET WEST OF THE WEST LINE OF SOUTH CLARK STREET AS WIDENED PER ORDER OF THE CITY COUNCIL PASSED MAY 15, 1846, BEING A LINE 20.00 FEET WEST OF AND PARALLEL WITH THE EAST LINE OF LOTS 1 TO 5, BOTH INCLUSIVE, IN THE ASSESSOR'S SECOND DIVISION OF THE EAST FRACTION OF THE NORTHEAST $\frac{1}{4}$ OF THE AFORESAID SECTION 21; THENCE NORTHERLY 7.09 FEET ALONG THE NORTHERLY EXTENSION OF THE AFORESAID ARC, CONVEX TO THE SOUTHWEST HAVING A RADIUS OF 1910.08 FEET AND WHOSE CHORD BEARS NORTH 9 DEGREES 00 MINUTES 13 SECONDS WEST TO A POINT ON A LINE DRAWN 26.00 FEET SOUTH AND PARALLEL WITH THE NORTH LINE OF THE EAST FRACTION OF THE NORTHEAST $\frac{1}{4}$ OF THE AFORESAID SECTION 21; THENCE SOUTH 89 DEGREES 57 MINUTES 15 SECONDS EAST ALONG SAID PARALLEL LINE 328.85 FEET; THENCE SOUTH 6 DEGREES 43 MINUTES 03 SECONDS EAST 46.61 FEET; THENCE NORTH 83 DEGREES 16 MINUTES 58 SECONDS EAST 2.50 FEET; THENCE NORTH 6 DEGREES 43 MINUTES 03 SECONDS

UNOFFICIAL COPY

WEST 10.62 FEET TO A POINT ON THE SOUTH LINE OF LOT 9 IN BLANCHARD'S SUBDIVISION OF PART OF THE EAST FRACTION OF THE NORTHEAST $\frac{1}{4}$ OF THE AFORESAID SECTION 21; THENCE SOUTH 89 DEGREES 57 MINUTES 15 SECONDS EAST ALONG SAID SOUTH LINE OF LOT 9, A DISTANCE OF 29.50 FEET TO THE SOUTHEAST CORNER OF SAID LOT 9; THENCE NORTH 0 DEGREES 01 MINUTES 02 SECONDS WEST 35.44 FEET ALONG THE EAST LINE OF SAID LOT 9 TO A POINT ON A LINE DRAWN 26.00 FEET SOUTH OF AND PARALLEL WITH THE EAST FRACTION OF THE NORTHEAST $\frac{1}{4}$ OF THE AFORESAID SECTION 21; THENCE SOUTH 89 DEGREES 57 MINUTES 15 SECONDS EAST ALONG SAID PARALLEL LINE 360.05 FEET TO THE POINT OF INTERSECTION WITH A LINE DRAWN FROM A POINT IN THE NORTH LINE OF WEST ROOSEVELT ROAD, SAID POINT BEING 20.00 FEET WEST OF THE EAST LINE OF BLOCK 107 IN SCHOOL SECTION ADDITION TO CHICAGO IN THE SOUTH EAST $\frac{1}{4}$ OF SECTION 16, TOWNSHIP AND RANGE AFORESAID TO A POINT IN THE SOUTH LINE OF WEST ROOSEVELT ROAD AS WIDENED, SAID POINT BEING 20.00 FEET WEST OF THE EAST LINE OF LOTS 1 TO 5, BOTH INCLUSIVE, IN BLOCK 2 IN THE AFORESAID ASSESSOR'S SECOND DIVISION; THENCE SOUTH 0 DEGREES 01 MINUTES 52 SECONDS WEST ALONG THE LAST DESCRIBED LINE 59.00 FEET TO THE SOUTH LINE OF WEST ROOSEVELT ROAD AS WIDENED; THENCE SOUTH 0 DEGREES 01 MINUTES 02 SECONDS EAST ALONG THE WEST LINE OF SOUTH CLARK STREET (AND ITS SOUTHERLY EXTENSION) BEING THE EAST LINE OF BLOCKS 2, 3, 13, 14, 15, AND 17 IN THE AFORESAID ASSESSOR'S SECOND DIVISION, AND ALONG THE EAST LINE OF LOTS 49 TO 56, BOTH INCLUSIVE, IN WALKER GREER AND OTHER'S SUBDIVISION OF THE UHLICH TRACT IN THE EAST FRACTION OF THE NORTHEAST $\frac{1}{4}$ OF THE AFORESAID SECTION 21 AND ALONG THE EAST LINE OF BLOCKS 27, 27-1/2, 28, 29, 34, AND 35, A DISTANCE OF 2608.68 FEET TO THE POINT OF INTERSECTION WITH THE SOUTH LINE OF 16TH STREET, SAID SOUTH LINE BEING 33.00 FEET SOUTH OF AND PARALLEL WITH THE SOUTH LINE OF THE EAST FRACTION OF THE NORTHEAST $\frac{1}{4}$ OF THE AFORESAID SECTION 21; THENCE NORTH 89 DEGREES 56 MINUTES 32 SECONDS WEST 77.70 FEET ALONG SAID LINE 33.00 FEET SOUTH OF AND PARALLEL WITH THE SOUTH LINE OF THE EAST FRACTION OF THE FRACTIONAL NORTHEAST $\frac{1}{4}$ OF SECTION 21 TO THE EAST LINE OF THE WEST $\frac{1}{2}$ OF BLOCK 4 IN CANAL TRUSTEES' NEW SUBDIVISION OF BLOCKS IN THE EAST FRACTION OF THE SOUTHEAST $\frac{1}{4}$ OF SECTION 21; THENCE NORTH 00 DEGREES 01 MINUTES 02 SECONDS WEST ALONG THE NORTHERLY EXTENSION OF THE EAST LINE OF THE WEST $\frac{1}{2}$ OF BLOCK 4 AFORESAID 33.0 FEET TO THE SOUTH LINE OF THE EAST FRACTION OF THE FRACTIONAL NORTHEAST $\frac{1}{4}$ OF SECTION 21; THENCE NORTH 89 DEGREES 56 MINUTES 32 SECONDS WEST ALONG SAID SOUTH LINE OF THE EAST FRACTION OF FRACTIONAL NORTHEAST $\frac{1}{4}$ AFORESAID 843.42 FEET TO THE CENTER THREAD OF THE SOUTH BRANCH OF THE CHICAGO RIVER AS IT EXISTED ON OR PRIOR TO JULY 8, 1926; THENCE NORTH 31 DEGREES 15 MINUTES 32 SECONDS EAST 6.01 FEET ALONG SAID CENTER THREAD TO THE POINT OF INTERSECTION WITH THE SOUTH LINE OF THE WEST FRACTION OF SAID NORTHEAST $\frac{1}{4}$ OF SECTION 21; THENCE SOUTH 89 DEGREES 59 MINUTES 58 SECONDS WEST 90.03 FEET ALONG SAID LINE TO THE INTERSECTION WITH THE EAST LINE OF THE NEW CHANNEL OF THE SOUTH BRANCH OF THE CHICAGO

UNOFFICIAL COPY

RIVER AS ESTABLISHED IN ORDINANCE PASSED BY THE CITY COUNCIL OF THE CITY OF CHICAGO ON JULY 8, 1926; THENCE NORTH 0 DEGREES 17 MINUTES 30 SECONDS WEST ALONG SAID EAST LINE 315.00 FEET; THENCE NORTH 89 DEGREES 59 MINUTES 58 SECONDS EAST ALONG A LINE PARALLEL WITH THE SOUTH LINE OF THE WEST FRACTION OF THE NORTHEAST ¼ OF THE AFORESAID SECTION 21, A DISTANCE OF 230.02 FEET TO THE INTERSECTION WITH THE EASTERLY FACE OF THE WESTERLY DOCK LINE OF THE SOUTH BRANCH OF THE CHICAGO RIVER AS IT EXISTED ON JULY 8, 1926; THENCE NORTH 20 DEGREES 26 MINUTES 28 SECONDS EAST ALONG THE EASTERLY FACE OF SAID WESTERLY DOCK LINE WHICH FORMS AN ANGLE OF 69 DEGREES 33 MINUTES 30 SECONDS TO THE LEFT OF THE EASTERLY EXTENSION OF THE LAST DESCRIBED COURSE 21.47 FEET; THENCE NORTH 54 DEGREES 58 MINUTES 58 SECONDS EAST ALONG A LINE WHICH FORMS AN ANGLE OF 34 DEGREES 32 MINUTES 30 SECONDS TO THE RIGHT OF THE LAST DESCRIBED COURSE EXTENDED NORTHEASTERLY 141.64 FEET TO A POINT ON THE EASTERLY FACE OF THE WESTERLY DOCK LINE OF THE SOUTH BRANCH OF THE CHICAGO RIVER AS IT EXISTED ON JULY 8, 1926; THENCE NORTH 44 DEGREES 50 MINUTES 10 SECONDS EAST ALONG THE EASTERLY FACE OF SAID WESTERLY DOCK LINE 92.48 FEET TO A POINT WHICH IS 619.10 FEET EAST OF THE WEST LINE OF THE AFORESAID NEW CHANNEL AND 2088.56 FEET SOUTH OF THE SOUTH LINE OF WEST ROOSEVELT ROAD AS WIDENED (SAID SOUTH LINE BEING 85.00 FEET SOUTH OF AND PARALLEL WITH THE NORTH LINE OF THE AFORESAID NORTHEAST ¼ OF SECTION 21); THENCE NORTHEASTERLY 373.88 FEET ALONG A CURVED LINE, CONVEX TO THE SOUTHEAST HAVING A RADIUS OF 478.34 FEET TO A POINT WHICH IS 760.00 FEET EAST OF THE CENTER LINE OF DODGE STREET, NOW VACATED, PRODUCED SOUTH AND 1751.17 FEET SOUTH OF THE AFORESAID SOUTH LINE OF WEST ROOSEVELT ROAD AS WIDENED; THENCE NORTH 0 DEGREES 07 MINUTES 44 SECONDS WEST 428.22 FEET ALONG A LINE 760.00 FEET EAST OF AND PARALLEL WITH THE SOUTHERLY EXTENSION OF THE CENTER LINE OF VACATED DODGE STREET TO A POINT 1322.95 FEET SOUTH OF THE SOUTH LINE OF WEST ROOSEVELT ROAD AS WIDENED, SAID POINT BEING ALSO 453.99 FEET WEST OF THE WEST LINE OF SOUTH CLARK STREET; THENCE NORTHWESTERLY 274.21 FEET ALONG THE ARC OF A CIRCLE CONVEX TO THE NORTHEAST, HAVING A RADIUS OF 1273.57 FEET AND WHOSE CHORD BEARS NORTH 6 DEGREES 18 MINUTES 54 SECONDS WEST TO A POINT 1050.95 FEET SOUTH OF THE SOUTH LINE OF WEST ROOSEVELT ROAD AS WIDENED AND 483.86 FEET WEST OF THE WEST LINE OF SAID SOUTH CLARK STREET; THENCE NORTH 12 DEGREES 27 MINUTES 09 SECONDS WEST 1020.09 FEET TO A POINT WHICH IS 55.04 FEET SOUTH OF THE SOUTH LINE OF WEST ROOSEVELT ROAD AS WIDENED AND 703.52 FEET WEST OF THE WEST LINE OF THE AFORESAID SOUTH CLARK STREET AS WIDENED PER ORDER OF THE CITY COUNCIL PASSED MAY 15, 1846; THENCE NORTHWESTERLY 19.22 FEET ALONG THE ARC OF A CIRCLE CONVEX TO THE WEST, HAVING A RADIUS OF 1910.08 FEET AND WHOSE CHORD BEARS NORTH 12 DEGREES 27 MINUTES 42 SECONDS WEST TO THE HEREINABOVE DESIGNATED POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

EXCEPTING FROM PARCEL 1 THE PROPERTY DESCRIBED AS FOLLOWS:
(EXCEPTION PARCEL 1)

UNOFFICIAL COPY

ALL THAT PART OF LOT 3, IN BLOCK 34, IN THE ASSESSOR'S SECOND DIVISION OF THE EAST FRACTIONAL NORTH EAST $\frac{1}{4}$ OF SECTION 21, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT ON THE SOUTH LINE OF LOT 3, DISTANT 335.00 FEET WEST OF THE WEST LINE OF CLARK STREET, MEASURED ALONG THE SOUTH LINE OF SAID LOT 3; THENCE NORTHWESTERLY AT AN ANGLE OF 6 DEGREES 18 MINUTES WITH THE SOUTH LINE OF SAID LOT 3 A DISTANCE OF 164.45 FEET TO A POINT 18.07 FEET NORTH FROM THE SOUTH LINE OF SAID LOT 3 MEASURED AT RIGHT ANGLES THERETO; THENCE NORTHWESTERLY A DISTANCE OF 25.16 FEET TO A POINT 26.8 FEET NORTH OF THE SOUTH LINE OF SAID LOT 3 MEASURED AT RIGHT ANGLES THERETO; THENCE NORTHWESTERLY AT AN ANGLE OF 26 DEGREES 36 MINUTES WITH THE LAST DESCRIBED COURSE A DISTANCE OF 31.91 FEET TO A POINT ON THE EASTERLY DOCK LINE OF THE SOUTH BRANCH OF THE CHICAGO RIVER; THENCE SOUTHWESTERLY ALONG SAID DOCK LINE, A DISTANCE OF 73.00 FEET TO A POINT ON THE SOUTH LINE OF SAID LOT 3; THENCE EAST ALONG THE SOUTH LINE OF SAID LOT 3; A DISTANCE OF 262.35 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

ALSO EXCEPTING FROM PARCEL 1:
(EXCEPTION PARCEL 2)

THAT PART OF BLOCK 35 IN ASSESSOR'S SECOND DIVISION DESCRIBED AS FOLLOWS:

BEGINNING IN THE WEST LINE OF CLARK STREET 81 FEET NORTH OF THE NORTH LINE OF 16TH STREET; THENCE NORTH ALONG THE WEST LINE OF CLARK STREET 35 FEET; THENCE NORTHWESTERLY ON A CURVED LINE DEFLECTING TO THE RIGHT HAVING A RADIUS OF 375 FEET A DISTANCE OF 135.2 FEET; THENCE NORTHWESTERLY ON A STRAIGHT LINE TANGENT FROM SAID CURVED LINE 101 FEET TO A POINT 30 FEET SOUTH AT RIGHT ANGLES FROM THE NORTH LINE OF SAID BLOCK 35 AND 227.6 FEET WEST OF THE WEST LINE OF CLARK STREET; THENCE WEST PARALLEL WITH THE NORTH LINE OF SAID LOT 35 AND 30 FEET SOUTH AT RIGHT ANGLES THEREFROM 141.6 FEET; THENCE SOUTHEASTERLY ON A CURVED LINE DEFLECTING TO THE RIGHT WITH A RADIUS OF 375 FEET A DISTANCE OF 108.2 FEET TO A POINT DISTANT 52 FEET SOUTH AT RIGHT ANGLES FROM THE LINE OF SAID LOT 35; THENCE SOUTHEASTERLY ON A STRAIGHT LINE PARALLEL WITH THE THIRD ABOVE DESCRIBED LINE AND 32.4 FEET DISTANT SOUTHWESTERLY AT RIGHT ANGLES THEREFROM 136.9 FEET; THENCE SOUTHEASTERLY ON A CURVED LINE WITH A RADIUS OF 391 FEET A DISTANCE OF 138 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

ALSO EXCEPTING FROM PARCEL 1:
(EXCEPTION PARCEL 3)

UNOFFICIAL COPY

THE NORTH 30 FEET OF BLOCK 35 IN ASSESSOR'S SECOND DIVISION AFORESAID, EXCEPTING THEREFROM THAT PART THEREOF DESCRIBED AS FOLLOWS:

BEGINNING ON THE WEST LINE OF CLARK STREET 205.3 FEET NORTH OF THE NORTH LINE OF 16TH STREET AND IN THE NORTH LINE OF BLOCK 35 AFORESAID; THENCE WEST ALONG THE NORTH LINE OF SAID BLOCK 335 FEET; THENCE SOUTHEASTERLY ON A CURVED LINE DEFLECTING TO THE RIGHT WITH A RADIUS OF 407.8 FEET A DISTANCE OF 86 FEET TO A POINT 21 FEET SOUTH AT RIGHT ANGLES FROM THE NORTH LINE OF SAID LOT 35; THENCE SOUTHEASTERLY 26 FEET TO A POINT DISTANT 30 FEET SOUTH AT RIGHT ANGLES FROM THE NORTH LINE OF SAID LOT 35; THENCE EAST ON A LINE PARALLEL WITH SAID NORTH LINE AND 30 FEET SOUTH AT RIGHT ANGLES THEREFROM 227.6 FEET TO THE WEST LINE OF CLARK STREET; THENCE NORTH ON THE WEST LINE OF CLARK STREET 30 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

A TRACT OF LAND, LYING EASTERLY OF AND ADJOINING THE EASTERLY BOUNDARY LINE OF THE NEW CHANNEL OF THE SOUTH BRANCH OF THE CHICAGO RIVER, SAID TRACT OF LAND COMPRISED OF PART OF THE ORIGINAL BED OF SAID SOUTH BRANCH OF THE CHICAGO RIVER (ABANDONED), TOGETHER WITH SUNDRY LOTS, BLOCKS AND VACATED STREETS AND ALLEYS ADJOINING SAID LOTS AND BLOCKS, IN CANAL ADDITION, A SUBDIVISION OF THE WEST FRACTION OF THE NORTHEAST QUARTER OF SECTION 21, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING ON THE NORTH LINE OF THE NORTHEAST $\frac{1}{4}$ OF SAID SECTION 21 AT A POINT OF INTERSECTION OF SAID LINE WITH EASTERLY BOUNDARY LINE OF THE NEW CHANNEL OF THE SOUTH BRANCH OF THE CHICAGO RIVER, SAID POINT BEING 1016.47 FEET WEST OF THE NORTHWARD EXTENSION OF THE WEST LINE OF SOUTH CLARK STREET, AND RUNNING; THENCE NORTH 89 DEGREES 55 MINUTES 29 SECONDS EAST ALONG SAID NORTH LINE A DISTANCE OF 287.476 FEET TO AN INTERSECTION WITH ARC OF A CIRCLE, CONVEX TO THE SOUTHWEST WITH A RADIUS OF 1910.08 FEET, THE SOUTHERLY TERMINUS OF SAID ARC BEING A POINT WHICH IS 55.04 FEET SOUTH OF THE SOUTH LINE OF WEST ROOSEVELT ROAD, AS WIDENED, AND 703.52 FEET WEST OF THE WEST LINE OF SAID SOUTH CLARK STREET; THENCE SOUTHEASTWARDLY ALONG SAID ARC, A DISTANCE OF 142.415 FEET TO THE AFOREMENTIONED SOUTHERLY TERMINUS OF SAID ARC; THENCE SOUTH 12 DEGREES 35 MINUTES 58 SECONDS EAST ALONG A STRAIGHT LINE, TANGENT TO THE LAST DESCRIBED ARC OF A CIRCLE, (THE SOUTHERLY TERMINUS OF SAID STRAIGHT LINE BEING A POINT WHICH IS 1185.34 FEET SOUTH OF SAID SOUTH LINE OF WEST ROOSEVELT ROAD, AS WIDENED, AND 560 FEET EAST OF SAID EASTERLY BOUNDARY LINE OF THE NEW CHANNEL OF THE SOUTH BRANCH OF THE CHICAGO RIVER), A DISTANCE OF 1020.25 FEET, TO A POINT OF CURVE; THENCE SOUTHWARDLY ALONG THE

UNOFFICIAL COPY

ARC OF A CIRCLE CONVEX TO THE EAST, TANGENT TO THE LAST DESCRIBED STRAIGHT LINE AND HAVING A RADIUS OF 1273.57 FEET, A DISTANCE OF 274.145 FEET TO A POINT WHICH IS 1322.95 FEET SOUTH OF SAID SOUTH LINE OF WEST ROOSEVELT ROAD, AS WIDENED, AND 560.00 FEET EAST OF SAID EASTERLY BOUNDARY LINE OF THE NEW CHANNEL OF THE SOUTH BRANCH OF THE CHICAGO RIVER; THENCE SOUTH 00 DEGREES 15 MINUTES 58 SECONDS EAST ALONG A STRAIGHT LINE WHICH IS PARALLEL WITH THE AFORESAID EASTERLY BOUNDARY LINE OF THE NEW CHANNEL OF THE SOUTH BRANCH OF THE CHICAGO RIVER, A DISTANCE OF 428.214 FEET, TO A POINT OF CURVE; THENCE SOUTHWESTWARDLY ALONG THE ARC OF A CIRCLE, CONVEX TO THE SOUTHEAST, TANGENT TO LAST DESCRIBED STRAIGHT LINE AND HAVING A RADIUS OF 178.34 FEET, A DISTANCE OF 373.878 FEET TO A POINT WHICH IS 2088.58 FEET SOUTH OF SAID SOUTH LINE OF WEST ROOSEVELT ROAD, AS WIDENED, AND 419.08 FEET EAST OF THE EASTERLY BOUNDARY LINE OF THE NEW CHANNEL OF THE SOUTH BRANCH OF THE CHICAGO RIVER; THENCE SOUTH 44 DEGREES 31 MINUTES 02 SECONDS WEST ALONG A STRAIGHT LINE, TANGENT TO LAST DESCRIBED ARC OF A CIRCLE, A DISTANCE OF 92.474 FEET; THENCE SOUTH 54 DEGREES 49 MINUTES 32 SECONDS WEST ALONG A STRAIGHT LINE, A DISTANCE OF 141.64 FEET; THENCE SOUTH 20 DEGREES 17 MINUTES 02 SECONDS WEST ALONG A STRAIGHT LINE, A DISTANCE OF 21.393 FEET TO AN INTERSECTION WITH A LINE WHICH IS 315 FEET NORTH FROM AND PARALLEL WITH THE EASTERLY EXTENSION OF THE CENTERLINE OF WEST 16TH STREET; THENCE SOUTH 89 DEGREES 50 MINUTES 55 SECONDS WEST ALONG SAID PARALLEL LINE, A DISTANCE OF 229.778 FEET TO AN INTERSECTION WITH THE AFORESAID EASTERLY BOUNDARY LINE OF THE NEW CHANNEL OF THE SOUTH BRANCH OF THE CHICAGO RIVER; THENCE NORTH 00 DEGREES 26 MINUTES 02 SECONDS WEST ALONG SAID EASTERLY BOUNDARY LINE, A DISTANCE OF 883.948 FEET TO AN ANGLE POINT IN SAID LINE, AND THENCE NORTH 00 DEGREES 15 MINUTES 58 SECONDS WEST CONTINUING ALONG SAID EASTERLY BOUNDARY LINE, A DISTANCE OF 1457.308 FEET, TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

PARCEL 3:

A NON-EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS FOR THE BENEFIT OF PARCELS 1 AND 2 AS CREATED BY MEMORANDUM OF DECLARATION OF EASEMENT DATED NOVEMBER 24, 1999, AND RECORDED DECEMBER 2, 1999 AS DOCUMENT NUMBER 09127751, AND MODIFIED BY FIRST AMENDMENT TO DECLARATION OF EASEMENT DATED FEBRUARY 28, 2001 AND RECORDED MARCH 14, 2001 AS DOCUMENT NUMBER 0010200264 AND RERECORDED MARCH 21, 2001 AS DOCUMENT NUMBER 0010224736, DESCRIBED AS FOLLOWS:

THE EAST 35 FEET OF THE FOLLOWING DESCRIBED PROPERTY:

A TRACT OF LAND LYING EASTERLY OF AND ADJOINING THE EASTERLY BOUNDARY LINE OF THE NEW CHANNEL OF THE SOUTH BRANCH OF THE CHICAGO RIVER, SAID TRACT OF LAND COMPRISED OF PART OF THE ORIGINAL

UNOFFICIAL COPY

BED OF SAID SOUTH BRANCH OF THE CHICAGO RIVER (ABANDONED), TOGETHER WITH SUNDRY LOTS AND BLOCKS IN SCHOOL SECTION ADDITION TO CHICAGO, BEING A SUBDIVISION OF SECTION 16, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING ON THE SOUTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 16, AT THE POINT OF INTERSECTION OF SAID LINE WITH THE EASTERLY BOUNDARY LINE OF THE NEW CHANNEL OF THE SOUTH BRANCH OF THE CHICAGO RIVER, SAID POINT BEING 1,016.47 FEET WEST OF THE NORTHWARD EXTENSION OF THE WEST LINE OF SOUTH CLARK STREET, AND RUNNING THENCE NORTH 89 DEGREES 55 MINUTES 29 SECONDS EAST ALONG SAID SOUTH LINE, A DISTANCE OF 287.476 FEET TO AN INTERSECTION WITH AN ARC OF A CIRCLE, CONVEX TO THE SOUTHWEST, WITH A RADIUS OF 1,910.08 FEET, THE SOUTHERLY TERMINUS OF SAID ARC BEING A POINT WHICH IS 55.04 FEET SOUTH OF THE SOUTH LINE OF WEST ROOSEVELT ROAD, AS WIDENED, AND 703.52 FEET WEST OF THE WEST LINE OF SAID SOUTH CLARK STREET, THENCE NORTHWESTWARDLY ALONG SAID ARC, A DISTANCE OF 90.946 FEET TO A POINT WHICH IS 57.28 FEET NORTH OF THE NORTH LINE OF SAID WEST ROOSEVELT ROAD, AND 739.73 FEET WEST OF SAID WEST LINE OF SOUTH CLARK STREET; THENCE NORTH 5 DEGREES 37 MINUTES 54 SECONDS WEST ALONG A STRAIGHT LINE A DISTANCE OF 508.47 FEET TO A POINT WHICH IS 280.80 FEET SOUTH OF THE SOUTH LINE OF WEST TAYLOR STREET AND 787.91 FEET WEST OF SAID WEST LINE OF SOUTH CLARK STREET; THENCE NORTHWARDLY ALONG THE ARC OF A CIRCLE, CONVEX TO THE WEST WITH A RADIUS OF 1,910.08 FEET, A DISTANCE OF 180.16 FEET TO A POINT WHICH IS 100.90 FEET SOUTH OF SAID SOUTH LINE OF WEST TAYLOR STREET AND 796.52 FEET WEST OF SAID WEST LINE OF SOUTH CLARK STREET; THENCE NORTH 00 DEGREES, 11 MINUTES 05 SECONDS, WEST ALONG A STRAIGHT LINE, SAID DISTANCE OF 100.90 FEET TO SAID SOUTH LINE OF WEST TAYLOR STREET; THENCE SOUTH 89 DEGREES 68 MINUTES 30 SECONDS WEST ALONG SAID SOUTH LINE OF WEST TAYLOR STREET, A DISTANCE OF 299.47 FEET TO AN INTERSECTION WITH THE AFORESAID EASTERLY BOUNDARY LINE OF THE NEW CHANNEL OF THE SOUTH BRANCH OF THE CHICAGO RIVER; THENCE SOUTH 05 DEGREES 35 MINUTES 30 SECONDS EAST ALONG SAID EASTERLY BOUNDARY LINE A DISTANCE OF 837.84 FEET TO A POINT WHICH IS 9.96 FEET NORTH OF THE NORTH LINE OF SAID WEST ROOSEVELT ROAD AND THENCE SOUTH 00 DEGREES 15 MINUTES 58 SECONDS EAST, CONTINUING ALONG SAID EASTERLY BOUNDARY LINE A DISTANCE OF 42.96 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

PARCEL 4:

A NON-EXCLUSIVE, IRREVOCABLE, TEMPORARY EASEMENT FOR THE BENEFIT OF PARCELS 1 AND 2 AS CREATED BY EASEMENT AGREEMENT DATED MARCH 20, 2001 AND RECORDED APRIL 17, 2001 AS DOCUMENT 0010311632 FOR THE PURPOSE OF STAGING, STORAGE AND CONSTRUCTION OF THE WELLS STREET EXTENSION OVER THE FOLLOWING DESCRIBED LAND:

UNOFFICIAL COPY

A PARCEL OF LAND 10 FEET WIDE, RUNNING THE FULL LENGTH, NORTH TO SOUTH, OF THE FOLLOWING DESCRIBED PROPERTY AND ADJOINING THE WESTERN BOUNDARY OF THE FOLLOWING DESCRIBED PROPERTY;

A PARCEL OF LAND COMPRISED OF A PART OF BLOCKS 105 AND 106 IN SCHOOL SECTION ADDITION TO CHICAGO, IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS AND ALSO A PART OF LOTS 12 AND 13 IN STOWELL'S SUBDIVISION OF BLOCKS 106 AND 107 IN SAID SCHOOL SECTION ADDITION TO CHICAGO, WHICH PARCEL OF LAND IS BOUNDED AND DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT ON THE NORTH LINE OF SAID BLOCK 105 (SAID NORTH LINE BEING ALSO THE SOUTH LINE OF W. TAYLOR STREET) SAID POINT BEING 5.00 FEET, AS MEASURED ALONG SAID NORTH LINE, EAST OF THE INTERSECTION OF SAID NORTH LINE WITH THE SOUTHWARD EXTENSION OF THE WEST LINE OF BLOCK 104 IN SAID SCHOOL SECTION ADDITION (SAID WEST LINE BEING ALSO THE EAST LINE OF S. WELLS STREET, 60 FEET WIDE) AND RUNNING THENCE WESTWARDLY ALONG SAID NORTH LINE OF BLOCK 105, A DISTANCE OF 65.0 FEET TO THE POINT OF BEGINNING, OF THE HEREINAFTER DESCRIBED PARCEL; THENCE SOUTHWARDLY ALONG A LINE PARALLEL WITH SAID WEST LINE OF BLOCK 104, A DISTANCE OF 100.90 FEET; THENCE SOUTHWARDLY ALONG A CURVED LINE TANGENTIAL TO THE LAST DESCRIBED COURSE, CONVEX TO THE WEST AND HAVING A RADIUS OF 1910.08 FEET, AN ARC DISTANCE OF 180.16 FEET TO THE POINT OF TANGENCY, SAID POINT BEING 280.98 FEET SOUTH FROM SAID SOUTH LINE OF TAYLOR STREET, PRODUCED EAST, MEASURED PARALLEL WITH THE WEST LINE OF SOUTH CLARK STREET, AND 787.91 FEET WEST OF THE WEST LINE OF SOUTH CLARK STREET, AS NOW ESTABLISHED, MEASURED PARALLEL WITH THE SOUTH LINE OF TAYLOR STREET; THENCE SOUTHWARDLY ALONG A STRAIGHT LINE, A DISTANCE OF 508.47 FEET TO A POINT OF CURVE, SAID POINT OF CURVE BEING 57.28 FEET NORTH FROM THE NORTH LINE OF WEST ROOSEVELT ROAD, AS NOW WIDENED, MEASURED PARALLEL TO THE WEST LINE OF CLARK STREET AND 739.73 FEET WEST FROM THE WEST LINE OF CLARK STREET, AS NOW ESTABLISHED, MEASURED PARALLEL WITH THE NORTH LINE OF WEST ROOSEVELT ROAD; THENCE SOUTHWARDLY ALONG A CURVED LINE TANGENTIAL TO THE LAST DESCRIBED COURSE, CONVEX TO THE WEST AND HAVING A RADIUS OF 1910.08 FEET, A DISTANCE OF 57.64 FEET TO A POINT ON THE NORTH LINE OF WEST ROOSEVELT ROAD, AS NOW WIDENED, SAID POINT BEING 733.41 FEET WEST OF THE WEST LINE OF SOUTH CLARK STREET, AS NOW ESTABLISHED, AS MEASURED ALONG THE NORTH LINE OF WEST ROOSEVELT ROAD AS NOW WIDENED; THENCE WESTWARDLY ALONG SAID NORTH LINE OF WEST ROOSEVELT ROAD, AS WIDENED, A DISTANCE OF 67.59 FEET TO AN INTERSECTION WITH A LINE WHICH IS 65.00 FEET WESTERLY OF AND PARALLEL WITH THE SOUTHWARD EXTENSION OF THE WEST LINE OF BLOCK 104 IN SAID SCHOOL SECTION ADDITION; THENCE NORTHWARDLY ALONG SAID PARALLEL LINE A DISTANCE OF 843.83 FEET TO AN INTERSECTION WITH SAID NORTH LINE

UNOFFICIAL COPY

OF BLOCK 105; THENCE EAST ALONG SAID NORTH LINE OF BLOCK 105, A DISTANCE OF 5.00 FEET TO THE POINT OF BEGINNING.

AND;

A PARCEL WITHIN THE SOUTHERLY EXTENDED EAST AND WEST LINES OF CACCIATORE WELLS STREET PARCEL FROM THE NORTH LINE OF WEST ROOSEVELT ROAD, AS WIDENED, TO THE NORTHERLY LINE OF THE VENTURE PROPERTY.

PARCEL 5:

THAT PART OF VACATED WEST 16TH STREET IN THE EAST FRACTION OF THE SOUTHEAST $\frac{1}{4}$ OF SECTION 21, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF THE WEST $\frac{1}{2}$ OF LOT 1 IN BLOCK 4 IN CANAL TRUSTEES NEW SUBDIVISION OF BLOCKS IN THE EAST FRACTION OF THE SOUTHEAST $\frac{1}{4}$ OF SECTION 21, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN; THENCE NORTH 89 DEGREES 56 MINUTES 32 SECONDS WEST ALONG THE NORTH LINE OF LOT 1 BEING THE SOUTH LINE OF VACATED 16TH STREET FOR A DISTANCE OF 110.70 FEET TO THE CENTER LINE OF VACATED SOUTH LASALLE STREET; THENCE NORTH 00 DEGREES 01 MINUTES 02 SECONDS WEST ALONG THE NORTHERLY EXTENSION THEREOF 33.0 FEET TO THE SOUTH LINE OF EAST FRACTIONAL NORTHEAST $\frac{1}{4}$ OF SECTION 21 AFORESAID; THENCE NORTH 89 DEGREES 56 MINUTES 32 SECONDS EAST ALONG THE LAST DESCRIBED 110.70 FEET TO THE NORTHERLY EXTENSION OF THE EAST LINE OF THE WEST $\frac{1}{2}$ OF BLOCK 4 AFORESAID; THENCE SOUTH 00 DEGREES 01 MINUTES 02 SECONDS EAST ALONG THE LAST DESCRIBED LINE 33.0 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

UNOFFICIAL COPYPINS:

17-21-202-001-0000	1 OF 27	17-21-210-005-0000	16 OF 27
17-21-203-004-0000	2 OF 27	17-21-210-006-0000	17 OF 27
17-21-203-005-0000	3 OF 27	17-21-210-007-0000	18 OF 27
17-21-203-006-0000	4 OF 27	17-21-210-062-0000	19 OF 27
17-21-203-007-0000	5 OF 27	17-21-210-064-0000	20 OF 27
17-21-204-001-0000	6 OF 27	17-21-210-086-0000	21 OF 27
17-21-206-001-0000	7 OF 27	17-21-210-090-0000	22 OF 27
17-21-207-001-0000	8 OF 27	17-21-210-092-0000	23 OF 27
17-21-208-004-0000	9 OF 27	17-21-210-095-0000	24 OF 27
17-21-208-005-0000	10 OF 27	17-21-210-098-0000	25 OF 27
17-21-209-006-0000	11 OF 27	17-21-502-001-0000	26 OF 27
17-21-209-007-0000	12 OF 27	17-21-503-003-0000	27 OF 27
17-21-210-002-0000	13 OF 27		
17-21-210-003-0000	14 OF 27		
17-21-210-004-0000	15 OF 27		

COMMONLY KNOWN AS:

Property located south of Roosevelt Road; west of Clark Street; east of the Chicago River; north of 16th Street; Chicago, Illinois.

UNOFFICIAL COPY

EXHIBIT B

Appraisal Process

The appraisal process hereinafter set forth shall be used to determine the appraised value of a Release Parcel for which Borrower is seeking the release of the First Mortgage Loan Documents, the Second Mortgage Loan Documents and this Mortgage pursuant to **Paragraph 3.07** of this Mortgage. The appraised value of such Release Parcel shall be determined by an MAI appraisal made by a board of three reputable real estate appraisers, each of whom shall be a member of the local chapter of the American Institute of Real Estate Appraisers, or of a successor body hereafter constituted and exercising similar functions (either referred to as "**AIREA**"), and each of whom shall have no "disqualifying interest" as that term is hereinafter defined. A "disqualifying interest" means that a person has a direct or indirect financial or other business interest in First Mortgage Lender, Second Mortgage Lender, Lender and Borrower or any affiliate of any such entities. One appraiser shall be appointed by Borrower. A second appraiser shall be appointed by the First Mortgage Lender. A third appraiser shall be appointed by Second Mortgage Lender. The three appraisers shall be appointed within thirty (30) days after a date which is thirty (30) days after the Borrower's request for such release. Within thirty (30) days after the selection of the last appraiser, the appraisers shall report their determination of the appraised value of the Mortgaged Property in writing to Borrower, First Mortgage Lender, Second Mortgage Lender and Lender. Borrower, First Mortgage Lender and Second Mortgage Lender shall use all reasonable good faith efforts to cause the respective appraisers selected by each of them to deliver the appraisals required hereunder on or before the dates required herein. All appraisers shall share with each other all documents, research and other information acquired by them with respect to the subject of the appraisals. The fees and expenses of all appraisers shall be borne by the party selecting or obligated to select the same. If the determinations of any two or all three of the appraisers shall be identical in amount, such amount shall be deemed to be the appraised value of such Release Parcel. If the determination of all three appraisers shall be different in amount, the highest appraised value shall be averaged with the middle value (such average being hereinafter referred to as "**Sum A**"), the lowest appraised value shall be averaged with the middle value (such average being hereinafter referred to as "**Sum B**"), and the appraised value of such Release Parcel shall be determined as follows:

If neither Sum A or Sum B differs from the middle appraised value by more than five percent (5%) of such middle appraised value, then the appraised value of such Release Parcel shall be deemed to be the average of the three appraisals.

If either Sum A or Sum B (but not both of such sums) differs from the middle appraised value by more than five percent (5%) of such middle appraised value, then the appraised value of such Release Parcel shall be deemed to be the average of the middle appraised value and the appraised value closest in amount to such middle value; and

If both Sum A and Sum B differ from the middle appraised value by more than five percent (5%) of such middle appraised value, the average of the two appraisals that are closest to each other shall be deemed to be the appraised value of such Release Parcel.

UNOFFICIAL COPY

With respect to an appraisal performed pursuant to **Paragraph 3.07** of this Mortgage, the appraised value shall be determined based on the highest and best use consistent with the Declaration and the Development Plan, and which does not violate the Declaration.

Property of Cook County Clerk's Office