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After recording, return to: *prepared by*
John F. Slade
Geneva Leasing Associates, Inc.
1525 Kautz Road
Suite 100
West Chicago, Illinois 60185



Doc#: 0431418065
Eugene "Gene" Moore Fee: \$86.00
Cook County Recorder of Deeds
Date: 11/09/2004 10:43 AM Pg: 1 of 32

204-3848

Permanent Real Estate Tax Index No.:
See **Exhibit A** attached

**MORTGAGE, ASSIGNMENT OF RENTS,
SECURITY AGREEMENT AND FINANCING STATEMENT**

THIS MORTGAGE, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FINANCING STATEMENT ("Mortgage") made this **21st day of September, 2004**, between:

Estates at Brookmere, LLC
an Illinois limited liability company
1135 Mitchell Road
Aurora, Illinois 60504

("Mortgagor" sometimes referred to as "Borrower") and Geneva Leasing Associates, Inc., an Illinois corporation, 1525 Kautz Road, Suite 100, West Chicago, Illinois 60185, its participants, successors and assigns ("Mortgagee" or "Lender").

WITNESSETH:

The Mortgage is given to secure the payment of that certain Note ("Note") issued by Mortgagor to the order of Mortgagee in the maximum principal amount of:

Twelve Million Seven Hundred Fifty Thousand and 00/100
(\$12,750,000.00)

with interest, due on or before **21st day of September, 2006**, and to secure the payment and performance of the Liabilities as defined herein and including the other indebtedness and the covenants herein contained.

1. **Liabilities.** For the purposes of this Mortgage, the Financing Agreement entered into

Box 64

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between Borrower and Lender of even date herewith ("Agreement"), the Note made by Borrower, the Guaranty and any security agreement given by guarantor or other person, and the other Loan Documents (as defined in the Agreement), "Liabilities" shall mean and include all of the following:

- A. any payment due under the Note and any future modifications, extensions or renewals of the Note;
- B. all indebtedness of any kind arising under, and all amounts of any kind which at any time become due or owing under or with respect to the Agreement, the Mortgage, or the other Loan Documents;
- C. all of the covenants, obligations and agreements (and the truth of all representations and warranties whether contained in any Loan Documents or in any related statement, certificate, document, affidavit or other related writing) in, under or pursuant to the Loan Documents;
- D. all Advances, including future advances, modifications, extensions, renewals, costs or expenses including, but not limited to, such advances, costs or expenses paid or incurred to protect any or all of the Collateral (as defined herein) or the collateral security defined or described in any of the Loan Documents, perform any obligation of the Mortgagor or collect any amount owing under the Loan Documents;
- E. any and all other liabilities, obligations, and indebtedness and damages, howsoever created, arising or evidenced, direct or indirect, absolute or contingent, matured or unmatured, whether Mortgagor is liable primarily or secondarily, jointly or severally, recourse or nonrecourse, now or hereafter existing or due or to become due, owing by the Mortgagor; and
- F. all costs of enforcement and collection of this Mortgage, the Agreement, the Note, any Guaranty, or any other Loan Documents incurred in connection with any of the Liabilities.

"Liabilities" shall also mean and include all future advances, modifications, extensions, renewals, and obligations made by Lender to Borrower, however made, (it being understood that Lender has no obligation to make any such further advances to Borrower pursuant to the Loan Documents except as otherwise provided in the Agreement), and shall be secured by this Mortgage, up to a maximum amount of two hundred percent (200%) of the original principal amount of the Note, and such future obligations shall be secured by this Mortgage to the same extent as if made on the date of execution of this Mortgage.

2. **Collateral.** To secure the timely payment and performance of the Liabilities, Mortgagor hereby mortgages and warrants, grants, assigns, remises, releases, transfers, and conveys to Lender its interest in the following property (collectively referred to herein as the "Collateral"):

- A. **Mortgage.** To secure the prompt performance and repayment of principal and payment of interest on the Note and all other Liabilities including any other

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indebtedness, obligations and covenants herein contained, Mortgagor hereby mortgages and warrants to Mortgagee that certain tract of land lying in the **County of Cook, State of Illinois**, legally described on Exhibit A hereto and made a part hereof and all of its estate, right, title and interest therein situate (the "Land") together with (all of the following, together with the Land, referred to herein as the "Mortgaged Premises"):

- (1) all of the buildings, structures and other improvements now standing or at any time thereafter constructed or placed upon the Land including, but not limited to, the Project;
- (2) all building supplies and materials of any kind now or hereafter located on the Land suitable for incorporation into the improvements located on the Land or intended to be incorporated in such improvements;
- (3) all heating, plumbing and lighting apparatus, motors, engines and machinery, electrical equipment, incinerator apparatus, air conditioning equipment, water and gas apparatus, pipes, faucets, and all other fixtures of every description which are now or may hereafter be installed or placed in any building or improvement now or hereafter located on the Land;
- (4) all carpeting, draperies, furniture, furnishings, maintenance equipment and all other items of personal property of any kind whatsoever that may now or hereafter be located in or used in connection with the use, operation, and maintenance of any buildings or improvements now or hereafter located on the Land;
- (5) all additions, accessions, increases, parts, fittings, accessories, replacements, substitutions, betterments, repairs and proceeds to any and all of the foregoing; and
- (6) all privileges, hereditaments, easements, appurtenances, estates, rents, issues, profits, condemnation awards, insurance proceeds and other rights and interests now or hereafter belonging or in any way pertaining to the Land or to any building or improvement now or hereafter located thereon.

To have and to hold the Mortgaged Premises unto the Mortgagee, its participants, successors and assigns forever. Provided, nevertheless, that this Mortgage is upon the express condition that if the principal of and interest on the Note and all other indebtedness including the Liabilities, shall be paid in full as and when due, and the Mortgagor shall also keep and perform all and singular the covenants herein contained on the part of the Mortgagor to be kept and performed, and the Mortgagee has no obligations to make any "Advances" under the Agreement, then this Mortgage and the estate hereby granted shall be released of record at the expense of the Mortgagor; otherwise this Mortgage shall remain in full force and effect.

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The Mortgagor represents, warrants and covenants to and with the Mortgagee that it is lawfully seized of the Mortgaged Premises in fee simple and has good right and full power and authority under all applicable provisions of law to execute this Mortgage and to mortgage the Mortgaged Premises; that the Mortgaged Premises are free from all liens and encumbrances, except those acceptable to Mortgagee as identified in Exhibit B attached hereto (the "Permitted Encumbrances"); that the Mortgagee shall quietly enjoy and possess the Mortgaged Premises; that the Mortgagor will warrant and defend the title to the Mortgaged Premises against all claims, whether now existing or hereafter arising, not hereinbefore expressly excepted; and that all buildings and improvements now or hereafter located on the Land are, or will be, located entirely within the boundaries of the Land. The covenants of this paragraph shall run with the land, survive foreclosure of this Mortgage and be valid against Mortgagor or those claiming by, under or through Mortgagor, from the date of recording this Mortgage.

B. Assignment of Leases and Rents. Mortgagor hereby sells, assigns, transfers and sets over to Mortgagee all leases now or hereafter affecting the Mortgaged Premises and all rents, profits or other income or payments due or to become due (the "Rent Assignment") with respect to the Mortgaged Premises, whether before or after foreclosure or during any redemption period, including the period of deficiency in repayment, during any receivership created hereunder as additional security for the repayment of the Note and all other Liabilities including any other indebtedness and covenants herein contained, and Mortgagor hereby further agrees that Mortgagee shall have the power, pursuant to this Mortgage, irrevocably to manage, control and lease the Mortgaged Premises to the fullest extent permitted by law. Upon the occurrence of an Event of Default, Mortgagee shall have the remedies set forth in this Mortgage and the other Loan Documents. The covenants of this paragraph shall run with the land, and be valid against Mortgagor or those claiming by, under or through Mortgagor, from the date of recording this Mortgage.

This Rent Assignment shall continue to be operative during the period of any foreclosure or other action to enforce this Mortgage, during any receivership created hereunder and during the period of redemption including the period of deficiency in the repayment of the amounts secured hereby. Mortgagor acknowledges that this Rent Assignment is given as collateral security only and shall not be construed as obligating Mortgagee to perform any of the covenants or undertakings required to be performed by Mortgagor that are contained in any such assigned leases. Upon the occurrence of an Event of Default, Mortgagee may collect the rents and income therefrom, rent or lease the Mortgaged Premises or any portion thereof or pursue its remedies set forth in this Mortgage or the other Loan Documents and apply all proceeds derived therefrom as provided herein including, but not limited to, the payment of Taxes, insurance premiums, repairs and preservation costs and expenses.

C. Approved Sale Contracts. Mortgagor hereby sells, assigns, transfers and sets over to Mortgagee all rights of Mortgagor under the Approved Sale Contracts (or other contracts acceptable to Mortgagee) in connection with the sale of Units, and including any and all contracts for the purchase or option to purchase all or any

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interest in Units or other property adjacent to or relating to the operation thereof, including appurtenant rights, with regard to the Mortgaged Premises.

D. **Other Property.** To secure the prompt performance and repayment of principal and payment of interest on the Note and all other Liabilities including any other indebtedness and the covenants herein contained, Mortgagor hereby pledges, sells, assigns, transfers and grants to Mortgagee a first priority security interest in the Collateral including, but not limited to, the following items of property:

- (1) all building supplies and materials, equipment, fixtures and furnishings (including, but not limited to, all motors, engines, boilers, elevators, machinery, heating, plumbing, incinerator and lighting apparatus, electrical equipment, heating and air conditioning equipment, water and gas apparatus, pipes, faucets, and all other fixtures of every description, plumbing, communication devices, stoves, refrigerators, carpeting, shades, awnings, screens, storm sashes, blinds and equipment, drapes, furniture, furnishings, maintenance equipment, goods and other items of personal property) now or hereafter located or intended to be located on the Mortgaged Premises of whatsoever type or nature whether now owned or hereafter acquired by Mortgagor, including all additions, accessions, increases, parts, fittings, accessories, replacements, repairs, betterments and substitutions thereto and proceeds thereof;
- (2) construction contracts, subcontracts, architectural contracts, engineering contracts, service contracts, maintenance contracts, management contracts, construction and other governmental consents, permits and licenses, surveys, plans, specifications, warranties, guaranties, rights of any developer of the Mortgaged Premises under any declaration recorded against the Mortgaged Premises, the right to use any names and all amendments, modifications, supplements, and addenda thereto, which Mortgagor has, may have, or may subsequently directly or indirectly enter into, obtain or acquire in connection with the improvement, ownership, operation or maintenance of the Mortgaged Premises;
- (3) all inventory, accounts, letter of credit rights, performance bonds, payment bonds, contract rights, instruments, documents, general intangibles, chattel paper and products and proceeds (including insurance proceeds) thereof arising from or in any way related to the use, occupation or operation of Borrower's business regarding the Mortgaged Premises or sale or lease of inventory or space contained in the Mortgaged Premises or the conduct of Borrower's business related thereto, in all of Borrower's related books, records (whether in binders, computer disc or tape or otherwise) and general intangibles (including, but not limited to, any license, permit, contract, approval, certificate of occupancy or operation that may be issued to or for the benefit of Borrower or with respect to the Mortgaged Premises), and

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products or proceeds thereof whether cash or non-cash (including insurance proceeds); and

- (4) all of Mortgagor's accounts now owned or hereafter created or acquired as relate to the Mortgaged Premises, including, but not limited to, all of the following now owned or hereafter created or acquired by Mortgagor: (a) accounts receivable, contract rights, book debts, notes, drafts, and other obligations or indebtedness owing to Mortgagor arising from the sale, lease or exchange of space within the Mortgaged Premises, goods or other property and/or the performance of services; (b) the Mortgagor's rights in, to and under all purchase orders for goods, services or other property; (c) the Mortgagor's rights to any goods, services or other property represented by any of the foregoing; (d) monies due to become due to the Mortgagor under all contracts for the sale, lease or exchange of space within the Mortgaged Premises, goods or other property and/or the performance of services including the right to payment of any interest or finance charges in respect thereto (whether or not yet earned by performance on the part of the Mortgagor); (e) uncertificated securities, and (f) proceeds of any of the foregoing and all collateral security and guaranties of any kind given by any person or entity with respect to any of the foregoing; and all warranties, guarantees, permits and licenses in favor of Mortgagor with respect to the Mortgaged Premises; together with any and all depository accounts established by Mortgagor relating to the operation, management, sale or leasing of the Mortgaged Premises or any part thereof;
- (5) all sums at any time on deposit for the benefit of Mortgagor or held by the Mortgagee (whether deposited by or on behalf of Mortgagor or anyone else) pursuant to any of the provisions of this Mortgage or the other Loan Documents, and with respect to any personal property described in this Section, which personal property may not be deemed to be affixed to the Mortgaged Premises or may not constitute a fixture and the supporting obligations;
- (6) all other items of Collateral described or referred to in this Mortgage, the Agreement or the other Loan Documents; and
- (7) in the case of each of the foregoing, including items whether now owned or hereafter acquired by Mortgagor including, but not limited to, all additions, accessions, replacements, repairs, and substitutions thereto and proceeds thereof (including insurance and tort claims).

Mortgagor hereby covenants and agrees that upon the occurrence of an Event of Default hereunder, Mortgagee may, in addition to any rights and remedies available to it at law or equity, exercise all rights granted to it under the applicable version of the Uniform Commercial Code, or other applicable law. A carbon, photograph or other reproduction of this Mortgage may be filed as a financing statement.

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Unless otherwise defined herein or in the Agreement, terms and phrases used in this Mortgage shall have the meaning assigned to them in the applicable version of the Uniform Commercial Code (as in effect from time to time, the "Code").

3. **Security Agreement.** Mortgagor and Mortgagee agree that (i) this Mortgage shall constitute a Security Agreement within the meaning of the Code and (ii) that a security interest in and to the Collateral is hereby granted to Mortgagee; and (iii) that all of Mortgagor's right, title and interest therein are hereby assigned to Mortgagee; all to secure payment of the Liabilities and to secure performance by Mortgagor of the terms, covenants and provisions hereof, and the following provisions of this Section shall not limit the applicability of any other provision of this Mortgage but shall be in addition thereto:

- A. **Mortgagor's (Debtor's) Collateral.** Mortgagor (being the Debtor as such term is used in the Code) is and will be the true and lawful owner of the Collateral and has rights in and the power to transfer, collaterally assign and grant a security interest in the Collateral, subject to no liens, charges or encumbrances other than the lien hereof, other liens and encumbrances benefitting Mortgagee and no other party, and the Permitted Encumbrances.
- B. **Fixtures.** This Mortgage covers goods which are or are to become fixtures and such goods may be affixed to the Mortgaged Premises but will not be affixed to any other real estate.
- C. **No Other Security Interest.** No financing statement (other than financing statements showing Mortgagee as the sole secured party, or with respect to security interests, liens or encumbrances, if any, expressly permitted hereby) covering any of the items of personal property that are part of the Collateral or any proceeds thereof is on file in any public office except pursuant hereto; and Mortgagor, at its own cost and expense, upon demand, will furnish to Mortgagee such further information and will execute and deliver to Mortgagee such financing statements and other documents in form satisfactory to Mortgagee and will do all such acts as Mortgagee may request at any time or from time to time or as may be necessary or appropriate to establish and maintain a perfected security interest in the items of personal property that are part of the Collateral, subject to no other liens or encumbrances, other than liens or encumbrances benefitting Mortgagee and no other party and liens and encumbrances (if any) expressly permitted hereby.
- D. **Certain Expenses.** Mortgagor will pay the cost of filing or recording such financing statements or other documents, and this instrument, in all public offices wherever filing or recording is deemed by Mortgagee to be desirable. Mortgagor hereby irrevocably authorizes Mortgagee at any time, and from time to time, to file in any jurisdiction any initial financing statements and amendments thereto that (i) indicate the Collateral as all property of Mortgagor (or words of similar effect), regardless of whether any particular item of personal property that is part of the Collateral falls within the scope of the Code of the jurisdiction wherein such

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financing statement or amendment is filed, or as being of an equal or lesser scope or within greater detail, and (ii) contain any other information required by the Code of the jurisdiction wherein such financing statement or amendment is filed regarding the sufficiency or filing office acceptance of any financing statement or amendment, including whether Mortgagor is an organization, the type of organization and any organization identification number issued to Mortgagor, and in the case of a financing statement filed as a fixture filing or indicating that the item of personal property that is part of the Collateral as as-extracted collateral or timber to be cut, a sufficient description of real property to which the Collateral relates. Mortgagor agrees to furnish any such information to Mortgagee promptly upon request. Mortgagor further ratifies and affirms its authorization for any financing statements and/or amendments thereto, executed and filed by Mortgagee in any jurisdiction prior to the date of this Mortgage.

- E. **Mortgagee's Rights upon Default.** Upon an Event of Default hereunder, Mortgagee shall have the rights and remedies of a secured party under the Code, including, but not limited to, the right to take immediate and exclusive possession of the items of personal property that are part of the Collateral, or any part thereof, and for that purpose, so far as Mortgagor can give authority therefor, with or without judicial process, may enter (if entry can be done without breach of the peace) upon any place which the items or personal property that are part of the Collateral may be situated and remove the same therefrom (provided that if such item of personal property is affixed to real estate, such removal shall be subject to the conditions stated in the Code); and Mortgagee shall be entitled to hold, maintain, preserve and prepare such items of personal property for sale, until disposed of, or may propose to retain such items of personal property subject to Mortgagor's right of redemption in satisfaction of Mortgagor's obligations, as provided in the Code. Mortgagee may render such items of personal property that are part of the Collateral unusable without removal and may dispose of such items of personal property on the Mortgaged Premises. Mortgagee may require Mortgagor to assemble such items of personal property that are part of the Collateral and make it available to Mortgagee for its possession at a place to be designated by Mortgagee which is reasonably convenient to both parties. Mortgagee will give Mortgagor at least ten (10) days' notice of the time and place of any public sale of such items of personal property that are part of the Collateral or of the time after which any private sale or any other intended disposition thereof is made. The requirements of reasonable notice shall be met if such notice is mailed, by certified United States mail or equivalent, postage prepaid, to the address of Mortgagor as indicated on the first page of this Mortgage at least ten (10) days before the time of the sale or disposition. Mortgagee may buy at any public sale. Mortgagee may buy at private sale if the Collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations. Any such sale may be held in conjunction with any foreclosure sale of the Mortgaged Premises. If Mortgagee so elects, the Mortgaged Premises and the Collateral may be sold as one lot. The net proceeds realized upon

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any such disposition, after deduction for the expenses of retaking, holding, preparing for sale, selling and the reasonable attorneys' fees and legal expenses incurred by Mortgagee, shall be applied against the Liabilities in such order or manner as Mortgagee shall select.

- F. **Financing Statement.** This Mortgage is intended to be a financing statement within the purview of the Code with respect to the goods and such other items of personal property described herein as part of the Collateral, which goods are or may become fixtures relating to the Mortgaged Premises. The addresses of Mortgagor ("Debtor") and Mortgagee ("Secured Party") are as set forth in the first page of this Mortgage. This Mortgage is to be filed for recording with the recorder of deeds of the county or counties where the Mortgaged Premises are located.
- G. **Approved Sale Contracts and Leases Covered.** To the extent permitted by applicable law, the security interest created hereby is specifically intended to cover all Approved Sale Contracts entered into between a prospective purchaser of the Unit and Mortgagor as the seller of the Unit ("Unit Seller"), and all leases entered into between Mortgagor or its agents as lessor, and various tenants named therein, as lessee, including with regard to the such contracts and leases, respectively, all extended terms and all extensions and renewals of the terms thereof, as well as any amendments to or replacement of such contracts and leases, together with all of the right, title and interest of Mortgagor as Unit Seller or as lessor.
- H. **Construction Mortgage.** To the fullest extent possible, this Mortgage shall constitute a "construction mortgage" within the meaning of, and shall be effective as a fixture filing in accordance with, the applicable Code.
- I. **Mortgagor Representations.** Mortgagor represents and warrants that (1) Mortgagor is the record owner of the Mortgaged Premises; (2) Mortgagor's chief executive office and jurisdiction of organization or formation are stated on the first page of this Mortgage; and (3) Mortgagor's exact legal name is as stated on the first page of this Mortgage.
- J. **Agreements Regarding Collateral.** Mortgagor agrees that:
- (1) Where Collateral is in possession of a third party, Mortgagor will join with the Mortgagee in notifying the third party of the Mortgagee's interest and obtaining an acknowledgment from the third party that it is holding the Collateral for the benefit of Mortgagee;
 - (2) Mortgagor will cooperate with the Mortgagee in obtaining control with respect to Collateral consisting of: deposit accounts, investment property, letter of credit rights and electronic chattel paper; and
 - (3) Until the Liabilities is paid in full, Mortgagor will not change the state

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where it is located or the jurisdiction of its organization or formation, or change its name without giving the Mortgagee at least 30 days' prior written notice in each instance.

4. **Covenants.** Mortgagor makes and includes in this Mortgage any covenants or other provisions set forth in Illinois law, or in any future Illinois law providing for a statutory form of real estate mortgage, and Mortgagor covenants with Mortgagee the following covenants:

- A. **Ownership; Clear Title.** To warrant the title to the Mortgaged Premises and that Mortgagor is lawfully seized of the Mortgaged Premises and other Collateral in fee simple and has good right to convey the same, and the Mortgaged Premises and other Collateral are free from all encumbrances except Permitted Encumbrances.
- B. **Mortgagor's Obligations.** To pay when due the Liabilities in accordance with the terms of the Note and the other Loan Documents and duly perform and observe all of the terms, covenants and conditions to be observed and performed by Mortgagor under the Note, this Mortgage and the other Loan Documents;
- C. **Taxes Timely Paid; Contest.** To pay when due and before any penalty attaches, all general and special taxes, assessments, water charges, sewer charges, and other fees, taxes, charges and assessments of every kind and nature whatsoever (all herein generally called "Taxes"), whether or not assessed against Mortgagor, if applicable to the Mortgaged Premises or any interest therein, or the Liabilities, or any obligation or agreement secured hereby, subject to Mortgagor's right to contest the same, as provided by the provisions of the Agreement; and Mortgagor will, upon written request, furnish to the Mortgagee duplicate receipts therefor within ten (10) days after Mortgagee's request.
- D. **Good Repair; No Waste; Legal Compliance.** To keep the Collateral in good repair and not to commit waste and to comply with the requirements of all applicable laws, ordinances and regulations and private restrictions.
- E. **Mortgaged Premises Damaged.** To promptly repair, restore or rebuild any Improvements now or hereafter on the Mortgaged Premises which may become damaged or be destroyed to a condition substantially similar to the condition immediately prior to such damage or destruction, whether or not proceeds of insurance are available or sufficient for the purpose.
- F. **No Liens.** To keep the Mortgaged Premises free from mechanics', materialmen's or like liens or claims or other liens or claims for lien (subject to Mortgagor's right to contest liens as permitted by the provisions of the Agreement).
- G. **Improvements Timely Completed.** To complete within a reasonable time any Improvements now or at any time in the process of erection upon the Mortgaged Premises as required under the Agreement.

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- H. **Loan Documents Compliance.** To perform and observe the terms, conditions, agreements, or covenants set forth in the Agreement and the other Loan Documents.
 - I. **Business Purposes.** To use the Collateral solely for business purposes.
 - J. **No Removal.** To keep the items of personal property that constitute part of the Collateral at the Mortgaged Premises and not remove such items from the Mortgaged Premises without the consent of Mortgagee; and
 - K. **No Undisclosed Interest.** The only persons having any interest in the Mortgaged Premises are Mortgagor, Mortgagee and holders of interests, if any, expressly identified in the schedule of Permitted Encumbrances.
5. **Additional Covenants and Agreements of Mortgagor.** Mortgagor makes the following additional covenants and agreements with Mortgagee:
- A. **Condemnation.** If all or any part of the Mortgaged Premises are damaged, taken or acquired, either temporarily or permanently, in any condemnation proceeding, or by exercise of the right of eminent domain, the amount of any award or other payment for such taking or damages made in consideration thereof, to the extent of the full amount of the remaining unpaid indebtedness secured by this instrument, is hereby assigned to Mortgagee, who is empowered to collect and receive such payments and to give proper receipts therefor in the name of Mortgagor and such payments shall be paid forthwith to Mortgagee, who shall release any such award or monies so received or apply the same in whole or in part, after the payment of all of its expenses, including costs and attorneys' fees, to the restoration or repair of the property damaged as provided herein, if in the reasonable judgment of Mortgagee the property can be restored or repaired to the condition existing immediately prior to the taking. If in the reasonable judgment of Mortgagee the Mortgaged Premises cannot be restored or repaired to the condition existing immediately prior to the taking, then such award or monies received after the payment of expenses of Mortgagee as stated above shall be applied on account of the unpaid principal balance of the Note and unpaid Liabilities, irrespective of whether such principal balance is then due and payable and, at any time from and after the taking, upon thirty (30) days prior written notice to Mortgagor, Mortgagee may declare the whole of the indebtedness hereby secured to be due and payable. Furthermore, in the event such award or monies so received shall exceed the cost of restoration or repair of the property and expenses of Mortgagee, then such excess monies shall be applied on account of the unpaid principal balance of the Note, irrespective of whether such principal balance is then due and payable. Any application to the unpaid principal balance of the Note pursuant to this Section shall not extend the due date of the principal and interest installments required to be paid under the Note.
 - B. **Insurance.** Mortgagor shall at all times keep all buildings, improvements, fixtures

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and items of personal property that are part of the Collateral now or hereafter situated on the Mortgaged Premises insured against loss or damage by fire and such other hazards as may reasonably be required by Lender, in accordance with the terms, coverages and provisions described in the Agreement, and such other insurance as Mortgagee may from time to time reasonably require. Unless Mortgagor provides Mortgagee evidence of the insurance coverages required hereunder, Mortgagee may purchase insurance at Mortgagor's expense to cover Mortgagee's interest in the Mortgaged Premises and add the cost of such insurance to the Liabilities. The insurance may, but need not, protect Mortgagor's interest. The coverages that Mortgagee purchases may not pay any claim that Mortgagor makes or any claim that is made against Mortgagor in connection with the Mortgaged Premises. Mortgagor may later cancel any insurance purchased by Mortgagee, but only after providing Mortgagee with evidence that Mortgagor has obtained insurance as required by the Agreement and the Mortgage. The cost of the insurance purchased by Mortgagee may be more than the cost of insurance Mortgagor may be able to obtain on its own. Mortgagor shall not take out separate insurance concurrent in form or contributing in the event of loss with that required to be maintained hereunder unless Mortgagee is included thereon as the loss payee or an additional insured as applicable, under a standard mortgage clause acceptable to Mortgagee and such separate insurance is otherwise acceptable to Mortgagee. Without limiting the generality of the foregoing, the following provisions shall govern losses.

- (1) In the event of loss, Mortgagor shall give prompt notice thereof to Mortgagee. If Mortgagee, after consultation with Mortgagor, determines that such loss exceeds the lesser of ten percent (10%) of the Liabilities or One Hundred Thousand Dollars (\$100,000.00) ("Threshold"), Mortgagee shall have the sole and absolute right to make proof of loss. If such loss exceeds the Threshold, Mortgagee, directly and solely in its name, shall receive such payment for loss from each insurance company. Likewise, in the event such loss exceeds the Threshold, Mortgagee shall have the right, at its option and in its sole discretion, to apply any insurance proceeds received by Mortgagee pursuant to the terms of this paragraph, after the payment of all of Mortgagee's expenses, either (a) against the Liabilities, irrespective of whether such principal balance is then due and payable, and Mortgagee may declare the whole of the balance of Liabilities to be due and payable, or (b) towards the restoration or repair of the damaged property as provided below. Notwithstanding anything to the contrary appearing in this paragraph, Mortgagee agrees to permit the application of such insurance proceeds towards the restoration or repair of the damaged property if Mortgagee has received satisfactory evidence that such restoration or repair shall be completed no later than the date that is six (6) months prior to the Maturity Date and no Default or Event of Default then exists.

- (2) If such loss is equal to or less than the Threshold, if no Default or Event of

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Default has occurred and is continuing and Mortgagee determines that the work required to complete the restoration or repair of the Mortgaged Premises can be completed no later than six (6) months prior to the Maturity Date, then Mortgagee shall endorse to Mortgagor any such payment and Mortgagor may collect such payment directly. With regard to losses less than or equal to the Threshold, upon the occurrence of an Event of Default, all such insurance payments shall be sent directly to Mortgagee for application, as Mortgagee in its sole discretion shall determine, against the Liabilities or towards the restoration and repair of the Mortgaged Premises.

- (3) If on account of such loss, insurance proceeds are made available to Mortgagor as herein provided, Mortgagor shall promptly restore and repair the damaged property so that the condition and value of the Mortgaged Premises are substantially the same as the condition and value of the Mortgaged Premises prior to such loss.
 - (4) With regard to disbursement of proceeds of insurance, if insurance proceeds are made available by Mortgagee to Mortgagor, then, in connection with the disbursement of such proceeds, Mortgagor shall comply with the provisions of the Agreement governing disbursements of the Loan and such other conditions related to construction draws as Mortgagee may require.
 - (5) If Mortgagor shall fail to restore or repair the damaged property within a time deemed satisfactory by Mortgagee, then Mortgagee, at its option, may (i) commence and perform all necessary acts to restore, repair or rebuild such damaged property for or on behalf of Mortgagor, or (ii) declare an Event of Default. If insurance proceeds shall exceed the amount necessary to complete the restoration or repair of the damaged property, such excess shall be applied on account of the Liabilities irrespective of whether such Liabilities is then due and payable without payment of any premium or penalty.
- C. **Mortgage Priority; Mechanic's Lien Indemnification.** Mortgagor will hold Mortgagee harmless from all costs and expenses incurred in connection with establishing the priority of this Mortgage, and if Mortgagee becomes a party to any mechanic's lien suit or other proceeding relating to the Collateral or to this Mortgage, Mortgagor will reimburse Mortgagee for Mortgagee's reasonable attorneys' fees, costs and expenses in connection with said suit or proceeding.
- D. **Certain Transfers Not Permitted.** For the purposes of (1) protecting Mortgagee's security, both of repayment and of value of the Mortgaged Premises; (2) giving Mortgagee the full benefit of its bargain and contract with Mortgagor; (3) allowing Mortgagee to raise the interest rate and collect assumption fees; and (4) keeping the Mortgaged Premises free of subordinate financing liens, Mortgagor agrees that if this paragraph be deemed a restraint on alienation, that it is a reasonable one, and

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that, any sale, conveyance, assignment, pledge, further encumbrance or other transfer of title to the Mortgaged Premises or the other Collateral (whether voluntary or by operation of law), including, but not limited to, the entering into of an installment agreement for the sale of the Mortgaged Premises, the placement or granting of liens on all or any part of the Mortgaged Premises or the placement or granting of chattel mortgages, conditional sales contracts, financing or security agreements which would be or create a lien on the items of personal property that are part of the Collateral and utilized in the operation of the Mortgaged Premises or the placement or granting of a mortgage commonly known as a "wrap around" mortgage or an improvement loan, without Mortgagee's prior written consent, are not permitted and shall be an Event of Default hereunder. This limitation and restriction on transfer of title shall not apply to 1) the sale and conveyance of any Unit pursuant to Approved Sale Contracts, 2) the incorporation of building materials into the Project, or 3) the sale or trade-in of obsolete equipment and replacement with new equipment of comparable quality or sale of inventory in the ordinary course of business.

For the purpose of, and without limiting the generality of, the provisions of the immediately preceding paragraph, the occurrence at any time of any of the following events shall be deemed to be an unpermitted transfer of title to the Mortgaged Premises and Collateral and an Event of Default:

- (1) except for sale or lease of Units in the ordinary course of business, pursuant to the provisions of an Approved Sale Contract (or other contract acceptable to Mortgagee), any sale, conveyance, assignment or other transfer of, or the grant of a security interest in all or any part of the title to the Mortgaged Premises, except as permitted under the terms of the Agreement; and
- (2) any transfer or the occurrence of any other event which results in a breach under the terms of the Agreement or this Mortgage.

- E. **Mortgagor – Landlord/Unit Seller Obligations.** Mortgagor will hold and apply tenants' security deposits, a purchaser of Unit's earnest money deposit, or other earnest money deposits, if any, as required by applicable law. Mortgagor will keep and perform the covenants of landlord or lessor under any leases and covenants of the Unit Seller under any Approved Sale Contract with regard to the Mortgaged Premises, and the covenants of a landlord, lessor, licensor or Unit Seller pursuant to applicable law.
- G. **Unencumbered Ownership.** Except for the Permitted Encumbrances, Mortgagor has good title, free from all security interests, liens and other encumbrances, to all fixtures and equipment and other Collateral mortgaged and secured hereby. No other financing statements or mortgages covering the Collateral is on file or recorded in any office.

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- H. **Exclusive Assignment.** Mortgagor has made and will make no assignment, except the Rent Assignment and/or collateral assignment of Approved Sale Contracts made solely and exclusively to Mortgagee, of any leases or rentals from the Collateral or any rights of Mortgagor under any of the Approved Sale Contracts.
- I. **Utilities; Other Services – Prompt Payment.** Mortgagor will promptly pay when due all charges, except for those charges which are solely and exclusively the obligation of any tenant or of the owner of any Unit (“Unit Owner”), for utilities or other services to the Mortgaged Premises and the other Collateral including, but not limited to, electricity, water, gas, telephone, sanitary sewer and trash and garbage removal, and upon request of Mortgagee, provide evidence of such payment.
- Mortgagee Payments Secured.** If Mortgagor fails to pay Taxes or assessments, charges, prior liens or encumbrances, expense or attorneys’ fees as specified herein, the Mortgagee, for itself or its assigns, may pay such Taxes, assessments, prior liens, expenses, attorneys’ fees, and all interest thereon, or effect such insurance, and sums so paid shall bear interest at the Default Rate (as defined in the Note) from the date of such payment until paid by Mortgagor, shall be an additional lien on the Collateral, and shall be immediately due and payable from the Mortgagor, and repayment thereof shall be secured by this Mortgage.
- K. **Inspection.** Subject to the rights of any tenants, Mortgagee shall be entitled to inspect the Collateral at reasonable times during normal business hours and at any time during any emergency.
- L. **Compliance with Law.** The Mortgaged Premises as improved on the date hereof, and shall so long as this Mortgage is in effect, comply with all requirements of laws, requirements of any federal, state, county, city or other governmental authority having jurisdiction over the Mortgagor, the Mortgaged Premises and other Collateral including, but not limited to, any applicable zoning, occupational, safety and health, energy and environmental laws, ordinances and regulations; and the Mortgagor has obtained and will obtain all necessary consents, easements, permits and licenses to construct, occupy and operate the Collateral, for its intended purposes.

6. **Events of Default/Acceleration of Maturity.** Mortgagor agrees that at the option of Mortgagee and in addition to Mortgagee’s right to accelerate the maturity of the indebtedness secured hereby, the entire remaining principal balance plus accrued interest and all other sums due and payable pursuant to the Loan Documents shall become immediately due and payable in full upon the occurrence of any of the following (each of which is hereby referred to as an “Event of Default”):

- A. **Failure to Pay.** Failure by Mortgagor to pay within five (5) days of the due date any installment of principal and/or interest under the Note or failure to pay any other amount payable, pursuant to the Note, this Mortgage, the Agreement or any of the other Loan Documents; or

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- B. Failure to Perform; Cure Periods.** Failure by Mortgagor to promptly perform any of the other Liabilities or failure or neglect in the observance or performance of any term, condition, agreement or covenant of Mortgageor contained in the Mortgage or the other Loan Documents, or such failure or breach exists under any of the Loan Documents and/or any other agreement connected herewith which is not cured within a period of thirty (30) days after written notice from Mortgagee to Mortgageor, however, if during such thirty (30) day period Mortgageor notifies Mortgagee in writing that such failure cannot be cured within such period and in such notice represents that Mortgageor shall diligently and in good faith undertake appropriate curative actions then Mortgageor shall have a period not to exceed sixty (60) days after Mortgagee's original written notice to cure the same unless the continued operation or safety of the Collateral, or the priority, validity or enforceability of the lien created by this Mortgage or any of the other Loan Documents or the value of the Mortgaged Premises or the other Collateral is impaired, threatened or jeopardized; or
- C. Breach of Representation or Warranty; Certain Defaults.** Breach by Mortgageor or any Guarantor of any warranty, representation, certification, or statement in any material respect; or if any warranty, representation, certification or statement is untrue in any material respect, or default under any other agreement between Mortgageor or any Guarantor and Mortgagee or the existence of a default by Mortgageor or any Guarantor under any agreement in connection with the Project, or the existence of a default by Mortgageor or any Guarantor under any agreement for money borrowed or property leased; or
- D. Regulatory Compliance.** If Mortgageor fails to comply with any requirement of any governmental authority having jurisdiction within thirty (30) days after notice of such requirement shall have been given to Mortgageor (unless the default involves a hazardous condition, which shall be cured immediately) or if such condition is of such a character as reasonably to require more than thirty (30) days to cure, Mortgageor shall have such reasonable additional time to cure the default provided Mortgageor has commenced to cure the same within said thirty (30) day period and is diligently and continuously pursuing said cure, which default shall in any event be corrected within sixty (60) days after delivery of the above-required written notice specifying such default or if Mortgageor fails to furnish to Mortgagee, when requested, such assurances as Mortgagee may reasonably request that all such governmental approvals as necessary for the construction and operation of the Project have been properly obtained and are in current force and effect; or
- E. Business Cessation; Voluntary Bankruptcy; Receivership, Etc.** Mortgageor or any Guarantor ceases to conduct its business as is now conducted, or fails generally to pay its debts as they become due, or at any time, the foregoing persons or any member of Mortgageor, any joint venturer of Mortgageor, or any co-maker of the Note (a) files a voluntary petition in bankruptcy or (b) is adjudicated a bankrupt or insolvent; (c) makes an assignment for the benefit of creditors or (d) files any

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petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future federal, state, or other statute or law, or (e) seeks or consents to or acquiesces in the appointment of any trustee, receiver or similar officer, of Mortgagor, any member of Mortgagor (if such member is also the Mortgagor's Manager, Managing Member or Guarantor of Mortgagor), any joint venturer of Mortgagor, or any Guarantor or co-maker of the Note, or of all or substantial part of the property of Mortgagor, any member of Mortgagor (if such member is also the Mortgagor's Manager, Managing Member or Guarantor of Mortgagor), any joint venturer of Mortgagor, or co-maker of the Note or Guarantor of Mortgagor, or of any of the Mortgaged Premises; or

- F. Involuntary Bankruptcy; Composition; Other Insolvency Actions.** The commencement of any involuntary petition in bankruptcy against Mortgagor, Mortgagor's Manager or Guarantor, or any guarantor or co-maker of the Note, or the institution against Mortgagor or Guarantor or any member of Mortgagor (if such member is also the Manager, Managing Member or Guarantor of Mortgagor), any joint venturer of Mortgagor, or any guarantor or co-maker of the Note of any reorganization, arrangement, composition, readjustment, dissolution, liquidation or similar proceedings under any present or future federal, state or other statute or law, or the appointment of a receiver, trustee or similar officer for all or any substantial part of the property of Mortgagor, any joint venturer of Mortgagor or Guarantor, or any guarantor or co-maker of the Note, which shall remain undismissed or undischarged for a period of sixty (60) days; or
- G. Dissolution, Termination, Merger** The dissolution, termination or merger of Mortgagor; or
- H. Death, Incompetency.** The occurrence of the death or declaration of legal incompetence of any Guarantor; provided, however, that if no other Event of Default has occurred and is continuing, then in the case of the death of any Guarantor, if Mortgagee is notified within thirty (30) days of such death, and Mortgagee determines in its sole discretion that satisfactory provisions and arrangements have been made for the payment of the Liabilities by the decedent's estate, so long as such provisions and arrangements have been completed within ninety (90) days of such death, no Event of Default shall be deemed to have occurred; or
- I. Unpermitted Transfer or Encumbrance.** Except as provided herein or in the Agreement with regard to the sale of Units or as mutually agreed in writing, the occurrence of any sale, conveyance, mortgage, pledge, transfer, encumbrance or grant of a security interest that is not permitted under this Mortgage or the Agreement; or
- J. Failure of Priority – Certain Liens.** A mechanic's lien or materialmen's lien,

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artisan's or supplier's lien is filed against any part or all of the Mortgaged Premises and is not released withing thirty (30) days of the date of such filing; or

- K. **Failure of Priority – Generally.** This Mortgage, subject to the Permitted Encumbrances, shall not be and remain at all times a first mortgage lien on and security interest in the Mortgaged Premises and other Collateral; or
- M. **Uninsured Loss or Damage.** The Mortgaged Premises or any material part thereof is damaged or destroyed by any cause whatsoever and the loss is not adequately covered by insurance actually collected or in the process of collection, and Mortgagor fails to deposit or to cause to be deposited with Mortgagee the deficiency within thirty (30) days of Mortgagee's written request therefor; or
- N. **No Further Title Retention or Security Instruments; Exceptions.** If Mortgagor executes any security agreement, except to Mortgagee, covering any materials, fixtures or articles used in the construction of the Improvements or covering the items of personal property that are part of the Collateral and placed in the Improvements or otherwise grants any security interest in the Mortgaged Property and the Collateral of Mortgagee under the Loan Documents, except to Mortgagee, or if any such materials, fixtures or items of personal property that are part of the Collateral are not purchased so that the ownership thereof will vest unconditionally in the Mortgagor, free from lien, security interest or encumbrance, on delivery at the Land, however, Mortgagor's purchase of equipment financed through the reservation or granting of a purchase money security interest shall not constitute an Event of Default so long as the aggregate purchase price of such equipment does not exceed Ten Thousand Dollars (\$10,000.00) during any consecutive twelve month period.
- M. **Default; Acceleration; Application of Certain Proceeds.** If an Event of Default occurs, Mortgagee may, at its option, declare the whole of the indebtedness hereby secured to be immediately due and payable without notice to Mortgagor, with interest thereon from the date of such Event of Default at the Default Rate. If while any insurance proceeds or condemnation awards are being held by Mortgagee to reimburse Mortgagor for the cost of restoration or repair of buildings or improvements on the Mortgaged Premises, Mortgagee shall be or become entitled to, and shall accelerate the indebtedness secured hereby, then and in such event, Mortgagee shall be entitled to apply all such insurance proceeds and condemnation awards then held by it in reduction of the indebtedness hereby secured and any excess held by it over the amount of indebtedness then due hereunder shall be returned to Mortgagor or any party entitled thereto without interest.

7. **Remedies.** Upon the occurrence of any Event of Default and without regard to waste, adequacy of the security or solvency of Mortgagor, Mortgagee may at its option have and exercise the following remedies:

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- A. Appointment of Receiver; Application of Rents, Profits and Proceeds.** Apply to the Circuit Court of the county in which the Mortgaged Premises (or a part thereof) is located for the appointment of a receiver under Illinois law, it being understood and agreed by Mortgagor that Mortgagee shall be entitled to the appointment of a receiver upon a showing that an Event of Default has occurred and is continuing under the terms of this Mortgage. A receiver so appointed shall apply all rents, profits, sales proceeds and other income collected from the Rent Assignment and/or proceeds from the sale of Units pursuant to Approved Sale Contracts (or pursuant to other contracts acceptable to Mortgagee), first, to the operation of the Mortgaged Premises, then, as provided in accordance with the provisions of the Mortgage and applicable law, and thereafter shall apply the rents, profits, income and proceeds to the payment of the following items in the order indicated unless otherwise provided in the order, judgment or decree of any such court or as required by law: first, to any expenses related to the collection of such rents, profits, income and proceeds, second, to the payment of any other Liabilities then due and payable; third, to the payment of principal and interest on any prior liens or encumbrances; and fourth, to the payment of interest and then principal on the Note;
- B. Mortgagee's Collection Rights.** Collect all rents, profits and income from or on account of the tenants and other occupants of the Mortgaged Premises and collect all proceeds of sale under contracts for the conveyance of Units in the Mortgaged Premises including, but not limited to, the Approved Sale Contracts, and apply all rents, profits, income and proceeds so collected in the same manner as is provided in subparagraph A above (describing rents, proceeds and other amounts collected pursuant to the appointment of a receiver). In the event Mortgagee exercises its rights under this subparagraph B, Mortgagee shall not, solely by reason thereof, be deemed to be a mortgagee-in-possession of the Mortgaged Premises;
- C. Acceleration of Indebtedness; Default Rate.** Upon the occurrence of any Event of Default, at the option of the Mortgagee, the entire indebtedness evidenced by the Note and all other Liabilities, together with interest thereon at the applicable rate provided in the Note shall, notwithstanding any provision hereof to the contrary and without demand or prior notice of any kind to the Mortgagor or to any other person, become immediately due and payable. After the occurrence of an Event of Default, or when any of the Liabilities is past due, any or all outstanding unpaid amounts, costs, and expenses shall, at the option of Mortgagee, accrue interest at the Default Rate from the due date or the date of any advance made by Mortgagee to any third party on behalf of Mortgagor until paid.
- D. Mortgagee's Rights Regarding the Collateral.** The Mortgagor hereby waives all right to the possession of, and income, rents profits with regard to, the Collateral from and after the occurrence of any Event of Default, and the Mortgagee is hereby expressly authorized and empowered, at and following any such occurrence, in its sole discretion, to enter into and upon and take possession of the Collateral or any

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part thereof, to complete any construction in progress thereon at the expense of the Mortgagor, to sell Units within the Project either pursuant to Approved Sale Contracts or otherwise, to lease the same, to collect and receive all rents, profits, income and proceeds and to apply the same, less the necessary or appropriate expenses of collection thereof, either for the care, operation and preservation of the Collateral or, at the election of the Mortgagee in its sole discretion, to a reduction of such of the Liabilities in such order as the Mortgagee may elect. The Mortgagee, in addition to the rights provided under the Agreement, the Note, and the Loan Documents is also hereby granted full and complete authority to enter upon the Mortgaged Premises, to continue any and all outstanding contracts for the erection and completion of improvements to the Mortgaged Premises and other Collateral, to make and enter into any contracts and obligations wherever necessary in its own name, and to pay and discharge all debts, obligations and liabilities incurred thereby, all at the expense of the Mortgagor. All such expenditures by the Mortgagee shall be Liabilities. Upon the occurrence of any Event of Default, the Mortgagee may also exercise any or all rights or remedies under the Agreement, the Note and the other Loan Documents; or

- E. **Foreclosure.** Upon the occurrence of any Event of Default, the Mortgagee shall also have the right immediately to foreclose this Mortgage. Upon the filing of any complaint for such purpose, the Mortgagor agrees that the court in which such complaint is filed shall, upon application of the Mortgagee or at any time thereafter, either before or after foreclosure sale, and without notice to the Mortgagor, or to any party claiming under the Mortgagor and without regard to the solvency or insolvency at the time of such application of any person then liable for the payment of any of the Liabilities, without regard to the then value of the Mortgaged Premises or other Collateral or whether the same shall be occupied, in whole or in part, as a homestead, by the owner of the equity of redemption, and without requiring any bond from the complainant in such proceedings, appoint a receiver for the benefit of the Mortgagee, with power to take possession, charge, custody and control of the Collateral, to lease such Collateral, to sell Units, to realize on the Collateral, to keep the buildings thereon insured and in good repair, and to collect all rents, profits, income and proceeds during the pendency of such foreclosure suit, and, in case of foreclosure sale and a deficiency, during any period of redemption. The court may, from time to time, authorize such receiver to apply the net amounts remaining in the hands of the receiver, after deducting reasonable compensation for the receiver and its counsel as allowed by the court, in payment (in whole or in part) of any or all of the Liabilities including, but not limited to, the following, in such order of application as the Mortgagee may elect:
- (1) amounts due under the Note, this Mortgage, the Agreement, or the other Loan Documents;
 - (2) amounts due upon any decree entered in any suit foreclosing this Mortgage;

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- (3) costs and expenses of litigation and foreclosure upon the Collateral;
- (4) insurance premiums, repairs, Taxes, special assessments, water charges and interest, penalties and costs, in connection with the Collateral;
- (5) any other lien or charge upon the Collateral that may be or become superior to the lien of this Mortgage, or of any decree foreclosing the same; and
- (6) all monies advanced by the Mortgagee to cure or attempt to cure any default by the Mortgagor in the performance of any obligation or condition contained in this Mortgage, the Agreement, the other Loan Documents, the Note or otherwise, to protect the security hereof provided herein, or in the Agreement or the other Loan Documents, with interest on such advances at the Default Rate.

F. Additional Foreclosure Provisions. The surplus proceeds of sale or other disposition, if any, shall then be paid to the Mortgagor or upon reasonable request to any other person entitled thereto. This Mortgage may be foreclosed once against all, or successively against any portion or portions of the Mortgaged Premises or other Collateral, as the Mortgagee may elect, until all of the items of Collateral have been foreclosed against and sold or otherwise disposed. As part of the foreclosure, Mortgagee in its discretion may, with or without entry, personally or by the attorney, sell or otherwise dispose of to the highest bidder all or any part of the Collateral, and all right, title, interest, claim and demand therein, and the right of redemption thereof, as an entirety, or in separate lots, as Mortgagee may elect, and in one sale or disposition or in any number of separate sales or dispositions held at one time or at any number of times, all in any manner upon such notice as provided by applicable law. Upon the completion of any such sale or sales or other disposition, Mortgagee shall transfer and deliver or cause to be transferred and delivered, to the purchaser or purchasers the property so sold or otherwise disposed of, in the manner and form as provided by applicable law, and Mortgagee is hereby irrevocably appointed the true and lawful attorney-in-fact of Mortgagor, in its name and stead, to make all necessary transfers of property thus sold or otherwise disposed of, and for that purpose Mortgagee may execute and deliver, for and in the name of Mortgagor, all necessary instruments of assignment and transfer, Mortgagor hereby ratifying and confirming all that said attorney-in-fact shall lawfully do by virtue hereof.

G. Mortgagee's Right to Purchase; Note Crediting. In the case of any sale or other disposition of the Mortgaged Premises or other Collateral pursuant to any order, judgment or decree of any court at public auction or otherwise, Mortgagee may become the purchaser, and for the purposes of making settlement for or payment of the purchase or acquisition price, shall be entitled to deliver over and use the Note and any obligations thereunder in order that there may be credited as paid on the purchase or acquisition price the amount of those liabilities and obligations.

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- H. Enforcement and Collateral Protection; Sale Expenditures.** In case of any foreclosure of this Mortgage (or the commencement of or preparation therefor) in any court, all expenses of every kind paid or incurred by the Mortgagee for the enforcement, protection or collection of this security including, but not limited to, repossessing, insuring, holding, repair and subsequent sale, lease or other disposition, court costs, attorneys' fees, stenographers' fees, costs of advertising, and costs of abstracts of title, tax histories or title insurance policies and any other documentary evidence of title, shall be paid by the Mortgagor and may be reimbursed or satisfied from the proceeds derived from the disposition of the Collateral. In the event of foreclosure the abstracts of title and/or title insurance shall become the property of Mortgagee.
- I. Certain Collateral Disposition Procedures.** Mortgagor further understands that upon the occurrence of an Event of Default the Mortgagee may take possession of the Collateral including, but not limited to, Collateral located on the Mortgaged Premises and dispose of such Collateral by sale or otherwise in one or more parcels provided that at least ten (10) days' prior notice of the time and place of a public sale or the time after which any private sale or other intended disposition is to be made is given to the Mortgagor and Guarantor, all as provided for by the Code, as the same may hereafter be amended, or by any law or statute hereafter enacted in substitution thereof. Mortgagee may by notice require Mortgagor to assemble the Collateral and make it available to Mortgagee at a place to be designated by the Mortgagee which is reasonably convenient to Mortgagor and Mortgagee. Mortgagor agrees that for such purposes the Mortgaged Premises is such a place.
- J. Foreclosure – Mortgagor Waiver; Remedies Non-Exclusive.** Except as expressly stated herein, Mortgagor hereby relinquishes, waives and gives up its rights, if any, to notice before sale of the personal property included in the Collateral, and expressly consents and agrees that such Collateral may be disposed of pursuant to the Code. Each right, power or remedy herein conferred upon the Mortgagee is cumulative, non-exclusive and in addition to every other right, power or remedy, express or implied, now or hereafter arising, available to Mortgagee, at law or in equity, or under any other agreement, and each and every right, power and remedy herein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient by the Mortgagee and shall not be a waiver of the right to exercise at any time thereafter any other right, power or remedy. No delay or omission by the Mortgagee in the exercise of any right, power or remedy arising hereunder or arising otherwise shall impair any such right, power or remedy or the right of the Mortgagee to resort thereto at a later date or be construed to be a waiver of any Default or Event of Default under this Mortgage, the Agreement or the Note. The Mortgagor waives to the fullest extent lawfully allowed the benefit of any homestead, appraisalment, evaluation, stay and extension laws now or herein in force. Mortgagor waives any rights available with respect to marshaling of assets so as to require the separate sales of any portion of the Collateral, or as to require the Mortgagee to exhaust its remedies against a specific

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portion of the Collateral before proceeding against the other and does hereby expressly consent to and authorize the sale or other disposition of the Collateral or any part thereof as a single unit or parcel or as separate parcels. Mortgagee shall have the right to dispose of all or any of the Collateral at public or private sale, including a public auction on the Land or where the Collateral is kept pursuant to the terms of this Mortgage.

IN THE EVENT OF THE SALE OF ANY PART OF THE MORTGAGED PREMISES OR OTHER COLLATERAL UNDER THE PROCEDURE FOR FORECLOSURE OF A MORTGAGE BY ADVERTISEMENT, AS PROVIDED BY APPLICABLE LAW, OR IN THE EVENT THE MORTGAGEE EXERCISES ITS RIGHTS UNDER THE RENT ASSIGNMENT OR HOLDER OF THE APPROVED SALE CONTRACTS, THE MORTGAGOR HEREBY WAIVES ANY RIGHT TO ANY NOTICE OTHER THAN THAT PROVIDED FOR SPECIFICALLY BY STATUTE, OR TO ANY JUDICIAL HEARING PRIOR TO SUCH SALE OR OTHER EXERCISE OF RIGHTS OR REMEDIES.

8. **Hazardous Materials.** Mortgagor covenants, represents and warrants to Mortgagee, its participants, successors and assigns, that, except as disclosed in the environmental reports furnished to Mortgagee in connection with, and prior to, the execution of the Loan Documents, the Mortgaged Premises, the other Collateral, its existing and prior use, to Mortgagor's knowledge have at all times complied with, and, to the best of Mortgagor's knowledge, Mortgagor is not in violation of, has not violated and will not violate, in connection with the ownership, use, maintenance or operation of the Mortgaged Premises and the other Collateral and the conduct of the business related thereto, any applicable federal, state, county or local statutes, laws, regulations, rules, ordinances, codes, standards, orders, licenses and permits of any governmental authorities relating to environmental matters (being herein collectively referred to as the "Environmental Laws"), and to the best of Mortgagor's knowledge further covenants, represents and warrants that:

- A. **Environmental Laws – Specific Statutes.** The Mortgaged Premises and other Collateral are in full compliance with the Clean Air Act, the Federal Water Pollution Control Act of 1972, the Resource Conservation and Recovery Act of 1976, and the Comprehensive Environmental Response, Compensation and Liability Act of 1980, and the Toxic Substances Control Act (including any amendments or extensions thereof and any rules, regulations, standards or guidelines issued pursuant to any of said Environmental Laws);
- B. **Hazardous Materials.** Each of Mortgagor, its agents, employees and independent contractors, (i) has and will operate the Mortgaged Premises and the other Collateral and has and at all times will receive, handle, use, store, treat, transport and dispose of all petroleum products and all other toxic, dangerous or hazardous chemicals, materials, substances, pollutants and wastes, and any chemical, material or substance exposure to which is prohibited, limited or regulated by any federal, state, county, regional or local authority or which even if not so prohibited, limited or regulated, may or could pose a hazard to the health and safety of the occupants of the Mortgaged Premises or the occupants and/or owners of property near the Mortgaged Premises (all the foregoing being herein collectively referred to as

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“Hazardous Materials”) in strict compliance with all applicable environmental, health or safety statutes, ordinances, orders, rules, standards, regulations or requirements and other Environmental Laws and (ii) subject to the provisions of the preceding clause (i), has removed, and will remove, from the Mortgaged Premises all Hazardous Materials in the manner prescribed by the applicable Environmental Laws;

- C. **No Remediation; No Notice.** There are no existing or pending statutes, orders, standards, rules or regulations relating to environmental matters requiring any remedial actions or other work, repairs, construction or capital expenditures with respect to the Mortgaged Premises or other Collateral, nor has Mortgagor received any notice of any of the same;
- D. **No Release of Hazardous Materials; Disposal Site; Landfill.** No Hazardous Materials have been or will be released into the environment, or have been or will be deposited, spilled, discharged, placed or disposed of at, on or near the Mortgaged Premises, nor has or will the Mortgaged Premises or other Collateral be used at any time by any person as a landfill or a disposal site for Hazardous Materials or for garbage, waste or refuse of any kind;
- E. **No Polychlorinated Biphenyls; Friable Asbestos.** There are no electrical transformers or other equipment containing dielectric fluid containing polychlorinated biphenyls located in, on or under the Mortgaged Premises, nor is there any friable asbestos contained in, on or under the Mortgaged Premises, nor will Mortgagor permit the installation of same;
- F. **Location of Generated Hazardous Materials.** There are no locations off the Mortgaged Premises where Hazardous Materials generated by or on the Mortgaged Premises have been treated, stored, deposited or disposed of;
- G. **Full Disclosure.** There is no fact pertaining to the physical condition of either the Mortgaged Premises or other Collateral or the area surrounding the Mortgaged Premises (i) which Mortgagor has not disclosed to Mortgagee in writing prior to the date of this Mortgage, and (ii) which materially adversely affects or will materially adversely affect the Mortgaged Premises or other Collateral or the use or enjoyment or the value thereof, or Mortgagor's ability to perform the transactions contemplated by this Mortgage;
- H. **No Prior Government Approvals.** The mortgaging of the Mortgaged Premises or transfer of a security interest in the other Collateral by Mortgagor to Mortgagee does not require notice to or the prior approval, consent or permission of any federal, state or local governmental agency, body, board or official;
- I. **No Violations; No Proceedings.** No notices of any violation of any of the matters referred to in the foregoing sections relating to the Mortgaged Premises or other

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Collateral or its use have been received by Mortgagor and there are no writs, injunctions, decrees, orders or judgments outstanding, no lawsuits, claims, proceedings or investigations pending or threatened, relating to the ownership, use, maintenance or operation of the Mortgaged Premises or other Collateral, nor is there any basis for any such lawsuit, claim, proceeding or investigation being instituted or filed;

- J. **No Hazardous Materials Site.** The Mortgaged Premises is not listed in the United States Environmental Protection Agency's National Priorities List of Hazardous Waste Sites nor any other log, list, schedule, inventory or record of Hazardous Materials or Hazardous Waste sites whether maintained by the United States, any state or local governmental unit; and
- K. **Compliance with Environmental Standards.** The Collateral is in full compliance with all other applicable environmental standards or requirements.

The Mortgagor agrees to indemnify and reimburse the Mortgagee, its participants, successors and assigns, for any breach of these representations and warranties, and from any loss, damage, expense or cost arising out of or incurred by Mortgagee which is the result of a breach of, misstatement of or misrepresentation of the above covenants, representations and warranties, or for any loss, damage, expense or cost sustained as a result of there being located on, in or under on the Mortgaged Premises or other Collateral any Hazardous Materials or dangerous, toxic or hazardous pollutants, chemicals, wastes or substances, together with all attorneys' fees incurred in connection with the defense of any action against the Mortgagee arising out of the above. These covenants, representations, warranties and indemnities shall be deemed continuing covenants, representations, warranties and indemnities running with the land for, and inuring to, the benefit of the Mortgagee, and any participants, successors and assigns of the Mortgagee including any purchaser at a mortgage foreclosure sale, and transfer of the title of the Mortgagee or any subsequent purchase at a foreclosure sale or other disposition, and any subsequent owner of the Mortgaged Premises or other Collateral claiming through or under the title of Mortgagee and shall survive any foreclosure of this Mortgage and any acquisition of title of Mortgagee. The amount of all such indemnified loss, damage, expense or cost, shall bear interest thereon at the Default Rate and shall become additional indebtedness secured hereby and shall become immediately due and payable in full on demand of the Mortgagee, its participants, successors and assigns.

9. **Waiver of Rights.** The Mortgagor hereby covenants and agrees that it will not at any time insist upon or plead, or in any manner claim or take any advantage of, any stay, exemption or extension law or any so-called "Moratorium Law" now or at any time hereafter in force providing for the valuation or appraisal of the Mortgaged Premises, or any part thereof, prior to any sale or sales thereof to be made pursuant to any provisions herein contained, or to decree, judgment or order of any court of competent jurisdiction; or, after such sale or sales, claim or exercise any rights under any statute now or hereafter in force to redeem the property so sold, or any part thereof, or relating to the marshaling thereof, upon foreclosure sale or other enforcement hereof, and without limiting the foregoing:

- A. **No Reinstatement and Redemption.** The Mortgagor hereby expressly waives any and all rights of reinstatement and redemption, if any, under any order or decree of

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foreclosure of this Mortgage, on its own behalf and on behalf of each and every person, it being the intent hereof that any and all such rights of reinstatement and redemption of the Mortgagor and of all other persons are and shall be deemed to be hereby waived to the full extent permitted by the provisions of any applicable statute or other applicable law; and

- B. **No Invocation of Certain Laws.** The Mortgagor will not invoke or utilize any such law or laws or otherwise hinder, delay or impede the execution of any right, power or remedy herein or otherwise granted or delegated to the Mortgagee but will suffer and permit the execution of every such right, power and remedy as though no such law or laws had been made or enacted.

10. **Indemnity.** Mortgagor hereby covenants and agrees that no liability shall be asserted or enforced against Mortgagee in the exercise of the rights and powers granted to Mortgagee in this Mortgage, and Mortgagor hereby expressly waives and releases any such liability except liability on account of fraud, willful misconduct or gross negligence. Mortgagor shall indemnify and save Mortgagee harmless from and against any and all liabilities, obligations, losses, damages, claims, costs and expenses (including reasonable attorneys' fees and court costs) (collectively, "Claims") of whatever kind or nature which may be imposed on, incurred by or asserted against Mortgagee at any time by any third party which relate to or arise from: (a) any suit or proceeding (including probate and bankruptcy proceedings), or the threat thereof, in or to which Mortgagee may or does become a party, either as plaintiff or as a defendant, by reason of this Mortgage or for the purpose of protecting the lien of this Mortgage; (b) the offer for sale or sale of all or any portion of the Mortgaged Premises; and (c) the ownership, leasing, use, operation or maintenance of the Mortgaged Premises, if such Claims relate to or arise from actions taken prior to the surrender of possession of the Mortgaged Premises to Mortgagee in accordance with the terms of this Mortgage; provided, however, that Mortgagor shall not be obligated to indemnify or hold Mortgagee harmless from and against any Claims directly arising from the gross negligence or willful misconduct of Mortgagee. All costs provided for herein and paid for by Mortgagee shall be additional Liabilities and shall become immediately due and payable upon demand by Mortgagee together with interest thereon from the date incurred by Mortgagee until paid at the Default Rate.

11. **Notices.** All notices, requests, demands and other communications provided for in this Mortgage shall be in writing and will be deemed given (a) upon personal delivery or upon transmission by telecopier or similar facsimile transmission device, (b) on the first business day after delivery to a courier service which guarantees next-business-day delivery, or (c) on the fifth business day after mailing, by registered or certified United States mail, postage prepaid, in any case to the appropriate party at its address first indicated above.

12. **Miscellaneous.**

- A. **Successors and Assigns.** This Mortgage and all provisions hereof shall be binding upon and enforceable against Mortgagor and its assigns and other successors. This Mortgage and all provisions hereof shall inure to the benefit of Mortgagee, its successors and assigns and any holder or holders, from time to time, of the Note.

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- B. Invalidity of Provisions; Governing Law.** This Mortgage shall be governed by and construed in accordance with the laws of the state where the Mortgaged Premises is located including, but not limited to, the version of the Code as in effect from time to time in such state. Whenever possible, each provision of this Mortgage shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Mortgage shall be prohibited by or unenforceable or invalid under applicable law, such provision shall be ineffective but only to the extent of such prohibition, unenforceability or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Mortgage.
- C. Rights of Tenants and Unit Owners.** Mortgagee shall have the right and option to commence a civil action to foreclose this Mortgage and to obtain a decree of foreclosure and sale subject to the rights of any tenant or tenants of the Mortgaged Premises having an interest in the Mortgaged Premises prior to that of Mortgagee and subject to the rights of any Unit Owners. The failure to join any such tenant or Unit Owner as party defendant or defendants in any such civil action or the failure of any decree of foreclosure and sale to foreclose their rights shall not be asserted by Mortgagor as a defense in any civil action instituted to collect the Liabilities, or any part thereof or any deficiency remaining unpaid after foreclosure and sale of the Mortgaged Premises, any statute or rule of law at any time existing to the contrary notwithstanding.
- D. Mortgagee in Possession.** Nothing herein contained shall be construed as constituting Mortgagee a mortgagee in possession in the absence of the actual taking of possession of the Mortgaged Premises by Mortgagee pursuant to this Mortgage.
- E. Relationship of Mortgagee and Mortgagor.** Mortgagee shall in no event be construed for any purpose to be a partner, joint venturer, agent or associate of Mortgagor or of any lessee, operator, concessionaire or licensee of Mortgagor in the conduct of their respective businesses, and, without limiting the foregoing, Mortgagee shall not be deemed to be such partner, joint venturer, agent or associate on account of Mortgagee becoming a mortgagee in possession or exercising any rights pursuant to this Mortgage, any of the other Loan Documents, or otherwise. The relationship of Mortgagor and Mortgagee hereunder is solely that of debtor/creditor.
- F. Time of the Essence.** Time is of the essence of the payment by Mortgagor of all amounts due and owing to Mortgagee under the Note and the other Loan Documents and the performance and observance by Mortgagor of all terms, conditions, obligations and agreements contained in this Mortgage and the other Loan Documents.
- G. No Merger.** The parties hereto intend that the Mortgage and the lien hereof shall

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not merge in fee simple title to the Mortgaged Premises, and if Mortgagee acquires any additional or other interest in or to the Mortgaged Premises or the ownership thereof, then, unless a contrary intent is manifested by Mortgagee as evidenced by an express statement to that effect in an appropriate document duly recorded, this Mortgage and the lien hereof shall not merge in the fee simple title and this Mortgage may be foreclosed as if owned by a stranger to the fee simple title.

- H. **Maximum Amount Secured.** Notwithstanding anything contained herein to the contrary, in no event shall the amount secured by this Mortgage exceed of two hundred percent (200%) of the original principal amount of the Note; provided, however, in no event shall Mortgagee be obligated to advance funds that would cause the outstanding principal balance of the Note to exceed the face amount of the Note.
- I. **Construction Loan.** The Note, which is secured by this Mortgage, evidences a debt created by one or more disbursements made by Mortgagee to Mortgagor to finance the cost of the Project in accordance with the provisions of the Agreement.
- J. **Complete Agreement.** This Mortgage, the Note, the Agreement and the other Loan Documents constitute the complete agreement between the parties with respect to the subject matter hereof and the Loan Documents may not be modified, altered or amended except by an agreement in writing signed by both Mortgagor and Mortgagee.
- K. **Headings.** The headings or captions used in the text of this Agreement are inserted for reference and convenience only and shall not affect its interpretation.
- L. **Liability Joint and Several.** If more than one party is named as Borrower hereunder, as Mortgagor under the Mortgage, Maker under the Note, or named under any guaranty, document, certificate, instrument, or agreement, the liability of each such person shall be joint and several.
- M. **Municipal Requirements.** Mortgagor shall not by act or omission permit any building or other improvement on premises not subject to the lien of this Mortgage to rely on the Mortgaged Premises or any part thereof or any interest therein to fulfill any municipal or governmental requirement, and Mortgagor hereby assigns to Mortgagee any and all rights to give consent for all or any portion of the Mortgaged Premises or any interest therein to be so used. Similarly, no building or other improvement on the Mortgaged Premises shall rely on any premises not subject to the lien of this Mortgage or any interest therein to fulfill any governmental or municipal requirement. Any act or omission by Mortgagor which would result in a violation of any of the provisions of this subparagraph shall be void.

13. **Certain Defined Terms; Controlling Instrument.** Unless defined herein, capitalized

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terms used herein shall have the meanings ascribed to them in the Agreement and all terms defined herein in the singular shall have the same meanings when used in the plural and vice versa and the masculine, feminine and neuter shall be freely interchangeable. The provisions of the Loan Documents shall supplement the provisions of this Mortgage. In the event of a conflict between the terms of the Agreement and this Mortgage, the provisions of the Agreement shall apply and take precedence over this Mortgage.

14. **Consent to Jurisdiction.** IN ACCORDANCE WITH THE PROVISIONS OF THE AGREEMENT GOVERNING CONSENT TO JURISDICTION WHICH ARE FULLY INCORPORATED HEREIN BY THIS REFERENCE, MORTGAGOR HEREBY CONSENTS AND SUBMITS TO THE JURISDICTION OF ANY COURT LOCATED WITHIN THE STATE WHERE THE MORTGAGED PREMISES IS LOCATED.

15. **Waiver of Jury Trial.** IN ACCORDANCE WITH THE PROVISIONS OF THE AGREEMENT GOVERNING WAIVER OF JURY TRIAL WHICH ARE FULLY INCORPORATED HEREIN BY THIS REFERENCE, MORTGAGOR HEREBY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS UNDER THIS MORTGAGE, THE NOTE OR OTHER LOAN DOCUMENT AND AGREES THAT ANY SUCH ACTION OR PROCEEDING WILL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.

IN WITNESS WHEREOF, the Mortgagor, or its authorized representative, has executed this Mortgage as of the date first appearing above.

"Mortgagor"

Estates at Brookmere, LLC
an Illinois limited liability company

By: 

John J. Popp, Jr.

Its: Manager and Member

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STATE OF ILLINOIS)
) ss:
 COUNTY OF COOK)

I, the undersigned, a Notary Public do hereby certify that **John J. Popp, Jr.** personally known to me as the **Manager and Member**, of **Estates at Brookmere, LLC**, an Illinois limited liability company, appeared before me this day in person, and for and on behalf of **Estates at Brookmere, LLC**, acknowledged that he signed and delivered the said instrument as his free and voluntary act, and the free and voluntary act of **Estates at Brookmere, LLC**, for the uses and purposes therein set forth.

Given under my hand and official seal, this **21st day of September, 2004**.

My commission expires 4/12/08

Frances Ayala
 Notary Public

My county of residence: HADE

FRANCES AYALA
 Printed Name



This instrument was prepared by:
 James H. Porter
 for:
 Geneva Leasing Associates, Inc.
 1525 Kautz Road, Suite 100
 West Chicago, Illinois 60185

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Exhibit A
to
Mortgage, Assignment of Rents, Security Agreement
and Financing Statement
Between
Estates at Brookmere, LLC ("Mortgagor")
and
Geneva Leasing Associates, Inc. ("Mortgagee")

Legal Description

PIN # 31-16-203-005-0000

Lot 1 to 146 in the First Resubdivision of Lot 4 in Brookmere, being a Subdivision of Lot 4 in Brookmere Subdivision in the East Half of Section 16, Township 35 North, Range 13 East of the Third Principal Meridian in the Village of Matteson, as per the Plat recorded August 4, 2004 as Document No. 0421744046 Cook County, Illinois.

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Exhibit B
to
Mortgage, Assignment of Rents, Security Agreement
and Financing Statement
Between
Estates at Brookmere, LLC ("Mortgagor")
and
Geneva Leasing Associates, Inc. ("Mortgagee")
("Permitted Encumbrances")

1. Real estate taxes assessed for the year 2003 due and payable, taxes for the year 2004 are a lien but not yet due and payable and subsequent years, which are not a lien.
2. Rights of the public, the State of Illinois, and the municipality, in and to that part of the land, if any, taken or used for roadways, including utility rights of way.
3. Right of way for drains, tiles, feeders and lateral.
4. Easements, conditions, reservations and restrictions of record.