

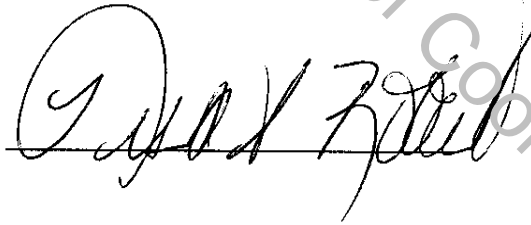
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Doc#: 0501902164  
Eugene "Gene" Moore Fee: \$72.00  
Cook County Recorder of Deeds  
Date: 01/19/2005 08:38 AM Pg: 1 of 25

File No. 8249971 1 of 9

I, Lisa A. Roberts of Chicago Title Insurance Company certifies that the Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing dated December 31, 2004 made by and between FX Chicago Funding Company, Inc. and ING Real Estate Finance (USA) is a true and correct copy of the original document.



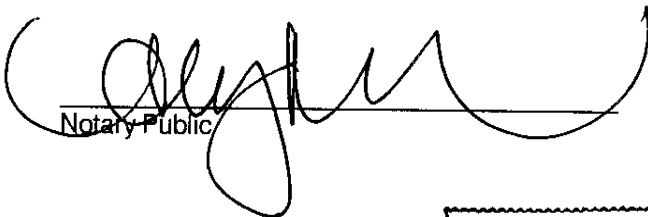
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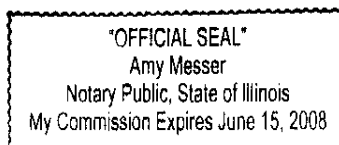
COUNTY OF COOK

STATE OF ILLINOIS

I, the undersigned, a notary public in and for said county, in the state aforesaid, certify that Lisa A. Roberts of Chicago Title Insurance Company, personally known to me to be the same person whose name is subscribed to in the foregoing instrument, appeared before me this date in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act, for the user and purposes therein.

Given under my hand and notarial seal this 11th day of January, 2005.

  
Notary Public



BOX 333-CTI

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**PREPARED BY AND RECORDING  
REQUESTED BY AND WHEN  
RECORDED MAIL TO:**

Sidley Austin Brown & Wood LLP  
1501 K Street, NW  
Washington, D.C. 20005  
Attn: William E. Sudow, Esq.

**PIN:**

15-32-308-013

03-06-100-020

zc 8249771 10/19

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**MORTGAGE, ASSIGNMENT OF LEASES AND RENTS,  
SECURITY AGREEMENT AND FIXTURE FILING**

THIS MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (as the same may be amended, restated, extended, supplemented or otherwise modified from time to time, this "instrument"), is made as of the 31st day of December, 2004, by FX CHICAGO FUNDING COMPANY, INC., a Delaware corporation, having an address at c/o Global Securitization Services, LLC, 445 Broad Hollow Road, Suite 239, Melville, NY 11747 ("Borrower"), to and for the benefit of ING REAL ESTATE FINANCE (USA) LLC, a Delaware limited liability company ("ING"), as Administrative Agent of the Lenders now or hereafter a party to the Loan Agreement (as defined below) having an address at 230 Park Avenue, 12th Floor, New York, New York 10169 (together with its successors and assigns, "Administrative Agent"). Capitalized terms used herein but not otherwise defined shall have the respective meanings assigned to such terms in the Loan Agreement (hereinafter defined).

**WITNESSETH:**

To secure the payment of a loan (the "Loan") in the original principal sum of \$233,512,000, lawful money of the United States of America, being made from Lender to Borrower on the date hereof pursuant to the terms and conditions of a certain Loan and Security Agreement, dated as of the date hereof (as amended, modified or restated, the "Loan Agreement"), among Borrower, Administrative Agent, ING, as initial lender, and the other borrowers party thereto (each a "Related Borrower" and, collectively, the "Related Borrowers"), which Loan is evidenced by a Promissory Note in the maximum principal amount of \$233,512,000 made by Borrower and each Related Borrower to the order of Lender dated as of the date hereof (as amended, modified, renewed or

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restated and together with any substitutes or replacements therefor, the “Note”), which Note has a scheduled maturity date, if not sooner paid or extended pursuant to the terms of the Loan Agreement, of December 31, 2007, and all other sums now or hereafter due hereunder, or otherwise due under the Loan Documents (as defined in the Loan Agreement) (the principal amount of the Loan, together with interest thereon and all sums due hereunder and under the Loan Agreement, the Note and the other Loan Documents being collectively called the “Debt”), and all of the agreements, covenants, conditions, warranties, representations and other obligations (other than to repay the Debt) made or undertaken by Borrower to Lender or others as set forth in the Loan Documents (collectively, the “Obligations”), Borrower has mortgaged, warranted, given, granted a security interest in, bargained, sold, conveyed, confirmed, pledged and assigned, and does hereby mortgage, warrant, give, grant a security interest in, bargain, sell, convey, confirm, pledge and assign unto Lender, Borrower’s interest in and to the real property described in Exhibit A attached hereto (the “Premises”) and the buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter located thereon (the “Improvements”):

TOGETHER WITH: all right, title, interest and estate of Borrower now owned, or hereafter acquired, in and to the following property, rights, interests and estates (the Premises and the Improvements, together with the following property, rights, interests and estates being hereinafter described, are collectively referred to herein as the “Property”):

(a) all easements, rights-of-way, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, air rights and development rights, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances of any nature whatsoever, in any way belonging, relating or pertaining to the Premises and the Improvements and the reversion and reversions, remainder and remainders, and all land lying in the bed of any street, road or avenue, opened or proposed in front of or adjoining the Premises, to the center line thereof and all the estates, rights, titles, interests, dower and rights of dower, curtesy and rights of curtesy, property, possession, claim and demand whatsoever, both at law and in equity, of Borrower of, in and to the Property, and every part and parcel thereof, with the appurtenances thereto;

(b) all machinery, equipment, fixtures (including, but not limited to, all heating, air conditioning, plumbing, lighting, communications and elevator fixtures) and other property of every kind and nature, whether tangible or intangible, whatsoever owned by Borrower, or in which Borrower has or shall have an interest, now or hereafter located upon the Premises and the Improvements, or appurtenant thereto, and usable in connection with the present or future operation and occupancy of the Premises and the Improvements, and all building equipment, materials and supplies of any nature whatsoever owned by Borrower, or in which Borrower has or shall have an interest, now or hereafter located upon the Premises or the Improvements, or appurtenant thereto, and usable in connection with the present or future operation, enjoyment and occupancy of the Premises and the Improvements (hereinafter collectively called the “Equipment”), including the proceeds of any sale or transfer of the foregoing, and the right, title and interest of Borrower in and to any of the Equipment which may be subject to any security interests, as defined in the Uniform Commercial Code, as adopted and enacted by the state or states where any of the Property is located (the “Uniform Commercial Code”) superior in lien to the lien of this Instrument;

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(c) all leases, tenancies, licenses, subleases, assignments and/or other rental or occupancy agreements (including, without limitation, any and all guarantees and supporting obligations of and security deposit and letter of credit rights relating to any of the foregoing) heretofore or hereafter entered into affecting the use, enjoyment or occupancy of the Premises and the Improvements, including any extensions, renewals, modifications or amendments thereof (collectively, the "Leases"), together with all rights, powers, privileges, options and other benefits of lessor under the Leases, including, without limitation, the immediate and continuing right to receive and collect all rents, income, revenues, issues, profits, condemnation awards, insurance proceeds, moneys and security payable or receivable under the Leases or pursuant to any of the provisions thereof, whether as rent or otherwise, the right of the lessor to perform all other necessary or appropriate acts with respect to such Leases as agent and attorney in fact for Borrower, and the right to make all waivers and agreements, to give and receive notices, consents and releases, to take such action upon the happening of an event of default under any Lease, including the commencement, conduct and consummation of proceedings at law or in equity as shall be permitted under any provision of any Lease or by any law, and to do any and all other things whatsoever which Borrower is or may become entitled to do under any such Lease together with all accounts receivable, contract rights, franchises, interests, estates or other claims, both at law or in equity, relating to the Property, to the extent not included in rent earnings and income under any of the Leases, including the right to receive and collect any sums payable to Borrower thereunder and all deposits or other security or advance payments made by Borrower with respect to any of the services related to the Property or the operation thereof, and together with all rents, rent equivalents (including room revenues, if applicable), moneys payable as damages or in lieu of rent or rent equivalents, royalties (including, without limitation, all oil and gas or other mineral royalties and bonuses), income, receivables, receipts, revenues, deposits (including, without limitation, security, utility and other deposits), accounts, cash, issues, profits, charges for services rendered, and other consideration of whatever form or nature and from any and all sources arising from or attributable to the Premises and the Improvements (the "Rents"), and together with all proceeds from the sale or other disposition of the Leases and the right to receive and apply the Rents to the payment of the Debt;

(d) all of Borrower's right, title and interest in, to and under any and all reserve, deposit or escrow accounts (the "Accounts") made pursuant to any of the Loan Documents, together with all income, profits, benefits, investment property and advantages arising therefrom, and together with all rights, powers, privileges, options and other benefits of Borrower under the Accounts, and together with the right to do any and all other things whatsoever which Borrower is or may become entitled to do under the Accounts;

(e) all trade names, software, trademarks, trademark applications, trademark licenses, servicemarks, logos, copyrights, copyright applications, goodwill, books and records and all other general intangibles relating to or used in connection with the operation of the Property;

(f) any and all awards, payments or insurance proceeds, including interest thereon, and the right to receive the same, which may be paid or payable with respect to the Property as a result of: (1) the exercise of the right of eminent domain or action in lieu thereof; (2) the alteration of the grade of any street; or (3) any fire, casualty, accident, damage or other injury to or decrease in the value of the Property, to the extent of all amounts which may be secured by this Instrument at the date of receipt of any such award or payment by Borrower or Lender, and of the

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reasonable counsel fees, costs and disbursements incurred by Borrower or Lender in connection with the collection of such award or payment;

(g) the right, following and during the continuance of an Event of Default, in the name and on behalf of Borrower, to appear in and defend any action or proceeding brought with respect to the Property and to commence any action or proceeding to protect the interest of the Lender in the Property or any part thereof, other than any action or proceeding between Borrower and Lender as adverse parties;

(h) all accounts, sub-accounts, escrows, reserves, documents, instruments, chattel paper, monetary obligations, claims, deposits, investment property and general intangibles, as the foregoing terms are defined in the Uniform Commercial Code, and all books, records, plans, specifications, designs, drawings, permits, consents, licenses, franchises, management agreements, contracts, contract rights (including, without limitation, any contract with any architect or engineer or with any other provider of goods or services for or in connection with any construction, repair, or other work upon the Property); approvals, actions, refunds or real estate taxes and assessments (and any other governmental impositions related to the Property), and causes of action that now or hereafter relate to, are derived from or are used in connection with the Property, or the use, operation, management, improvement, alteration, repair, maintenance, occupancy or enjoyment thereof or the conduct of any business or activities thereon;

(i) all accounts receivable, contract rights, interests, estate or other claims, both in law and in equity, which Borrower now has or may hereafter acquire in the Property or any part thereof including, without limitation, all of Borrower's right, title and interest in and to the Related Project Company Lease, the Basic Rent Note (as defined in the Related Project Company Lease), the Understanding to Sell (as defined in the Related Project Company Lease) and the Understanding to Purchase (as defined in the Related Project Company Lease);

(j) certain rights which Borrower now has or may hereafter acquire, to be indemnified and/or held harmless from any liability, loss, damage, cost or expense (including, without limitation, attorneys' fees and disbursements) relating to the Property or any part thereof;

(k) all personal property of Borrower and all other Collateral (as defined in the Loan Agreement);

(l) all interest rate swaps, caps, collars or other hedging transactions which are entered into by the Borrower and all payments and proceeds derived by Borrower therefrom; and

(m) any and all proceeds, substitutions, accessories and products of any of the foregoing.

TO HAVE AND TO HOLD the above granted and described Property and all parts, rights, members and appurtenances thereof, unto and to the use and benefit of Lender, and the successors and assigns of Lender, in fee simple forever, to secure the indebtedness recited herein;

THIS INSTRUMENT is intended to constitute a security agreement under the Uniform Commercial Code and is given to secure the obligations of Borrower pursuant to the Loan

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Agreement, the Note and the other Loan Documents. This Instrument shall secure any and all renewals, extensions, modifications and amendments of the Debt secured hereby and any other and further indebtedness of any amount which may hereafter be owed by Borrower to Lender;

PROVIDED, HOWEVER, these presents are upon the express condition that, if Borrower shall well and truly pay to Lender the Debt and shall pay all other sums due under the Loan Agreement or any other Loan Document, these presents and the mortgage and other security hereby granted shall cease, terminate and be void. The maximum amount secured by this Instrument is limited to \$233,512,000 plus accrued interest and fees and expenses.

The following provisions shall also constitute an integral part of this Instrument:

1. Warranty of Title. Borrower hereby covenants, represents and warrants that it has good, marketable and insurable title to the Property and possesses a fee simple estate in Parcel 1 of the Premises and the improvements and that it owns the Property free and clear of all liens, encumbrances and charges whatsoever except for the Permitted Encumbrances. Borrower shall forever warrant, defend and preserve such title and the validity and priority of the lien of this Instrument and shall forever warrant and defend the same to Lender against the claims of all persons whomsoever.

2. Payment of Debt and Incorporation of Covenants, Conditions and Agreements. Borrower shall pay the Debt at the time and in the manner provided in the Note and the Loan Agreement. Borrower will duly and punctually perform all of the covenants, conditions and agreements relating to Borrower contained in the Note, the Loan Agreement, this Instrument and the other Loan Documents in accordance with the provisions thereof.

3. Insurance.

(a) Borrower, at its sole cost and expense, shall maintain or cause to be maintained insurance with respect to the Property for the mutual benefit of Borrower, the Related Project Company and Lender as required by Section 5.4 of the Loan Agreement.

(b) If the Property shall be materially damaged or destroyed, in whole or in part, by fire or other casualty (an "Insured Casualty"), Borrower shall give immediate notice thereof to Lender as provided in the Loan Agreement. Subject to the terms of Section 5.5 of the Loan Agreement, Borrower shall promptly repair, replace or rebuild the Property in accordance with the terms of the Loan Agreement, and all amounts paid with respect to such Insured Casualty under all insurance policies maintained by Borrower shall be governed by, the terms and conditions of Section 5.5 of the Loan Agreement. The expenses incurred by Lender in the adjustment and collection of insurance proceeds shall become part of the Debt and shall be secured hereby and shall be reimbursed by Borrower to Lender upon demand.

4. Payment of Impositions and Other Charges. Subject to Permitted Contests, the provisions of Section 5 below and the provisions of the Loan Agreement, Borrower shall pay, or cause to be paid, all Impositions now or hereafter levied or assessed or imposed against the Property

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or any part thereof as the same become due and payable. Borrower shall promptly pay for, or cause payment of, all utility services provided to the Property.

5. Impositions and Insurance Reserve. Borrower shall make monthly deposits into its Impositions Reserve Account and Insurance Reserve Account in accordance with the terms of Sections 6.3 and 6.4 of the Loan Agreement.

6. Condemnation. Upon Borrower obtaining knowledge thereof, Borrower shall promptly give Lender written notice of the actual or threatened commencement of any condemnation or eminent domain proceeding affecting the Property or any portion thereof in accordance with Section 5.5 of the Loan Agreement. Subject to the terms of the Loan Agreement, Lender is hereby irrevocably appointed as Borrower's attorney-in-fact, coupled with an interest, with exclusive power to collect, receive and retain any award or payment for said condemnation or eminent domain and to make any compromise or settlement in connection with such proceeding. Subject to the terms of the Loan Agreement, Borrower shall cause the award or payment made in any condemnation or eminent domain proceeding which is payable to Borrower to be paid directly to Lender. The application of any such award or payment shall be governed by the applicable provisions of the Loan Agreement.

7. Maintenance of Property. Borrower shall cause the Property to be operated and maintained in accordance with Section 5.5(A) of the Loan Agreement.

8. Use of Property. Borrower shall not initiate, join in, acquiesce in, or consent to any change in any private restrictive covenant, zoning law or other public or private restriction, limiting or defining the uses which may be made of the Property or any part thereof, nor shall Borrower initiate, join in, acquiesce in, or consent to any zoning change or zoning matter affecting the Property, which in any of the foregoing cases could reasonably be expected to result in a Material Adverse Effect. If under applicable zoning provisions the use of all or any portion of the Property is or shall become a nonconforming use, Borrower will not cause or permit such nonconforming use to be discontinued or abandoned without the express written consent of Lender, which consent shall not be unreasonably withheld. Borrower shall not permit or suffer to occur any non-passive physical waste on or to the Property or to any portion thereof (ordinary wear and tear excepted) and shall not take any steps whatsoever to convert the Property, or any portion thereof, to a condominium or cooperative form of management. Borrower will not install or permit to be installed on the Premises any underground storage tank or above-ground storage tank in violation of applicable Environmental Laws.

9. Transfer or Encumbrance of the Property.

(a) Except for Permitted Transfers or as otherwise expressly permitted under Article XI of the Loan Agreement, Borrower shall not cause or suffer to occur or exist, any Transfer without the prior written consent of Lender which consent may be withheld in Lender's sole, but reasonable discretion.

(b) The occurrence of any Transfer in violation of the Loan Agreement shall constitute an Event of Default hereunder, whereupon Lender, at its option, without being required to

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demonstrate any actual impairment of its security or any increased risk of default hereunder, may declare the Debt immediately due and payable.

(c) Lender's consent to any Transfer of the Property or any interest in Borrower shall not be deemed to be a waiver of Lender's right to require such consent to any future occurrence of same. Any attempted or purported Transfer of the Property or of any direct or indirect interest in Borrower, if made in contravention of this Section 9 or Article XI of the Loan Agreement, shall be null and void and of no force and effect.

## 10. Taxes on Security; Documentary Stamps; Intangibles Tax.

(a) Subject to Permitted Contests, if at any time the United States of America, any State thereof or any subdivision of any such State shall require revenue or other stamps to be affixed to the Note or this Instrument, or impose any other tax or charge on the same, Borrower will pay for the same, with interest and penalties thereon, if any. Borrower hereby agrees that, in the event that it is determined that additional documentary stamp tax or intangible tax is due hereon or any mortgage or promissory note executed in connection herewith (including, without limitation, the Note), Borrower shall indemnify and hold harmless Lender for all such documentary stamp tax and/or intangible tax, including all penalties and interest assessed or charged in connection therewith. Borrower shall pay same within ten (10) days after demand of payment from Lender and the payment of such sums shall be secured by this Instrument.

(b) Borrower shall hold harmless and indemnify Lender, its successors and assigns, against any liability incurred by reason of the imposition of any tax on the making and recording of this Instrument.

11. No Credits on Account of the Debt. Borrower will not claim or demand or be entitled to any credit or credits on account of the Debt for any part of the Impositions assessed against the Property, or any part thereof, and no deduction shall otherwise be made or claimed from the assessed value of the Property, or any part thereof, for real estate tax purposes by reason of this Instrument or the Debt.

12. Performance of Other Agreements. Borrower shall duly and punctually observe and perform, or cause to be observed and performed, each and every material term, provision, condition, and covenant to be observed or performed by Borrower pursuant to the terms of any agreement or recorded instrument (including all instruments comprising the Permitted Encumbrances) affecting or pertaining to the Property, and will not suffer or permit any event of default (after giving effect to any applicable notice requirements and cure periods) to exist under any of the foregoing.

13. Reporting Requirements. Borrower agrees to give prompt notice to Lender of the insolvency or bankruptcy filing of Borrower.

14. Recording of Instrument, Etc. Upon the execution and delivery of this Instrument and thereafter, from time to time, Borrower will cause this Instrument, and any security instrument creating a lien, security title or security interest or evidencing the lien and security interest hereof upon the Property and each instrument of further assurance to be filed, registered or recorded in such



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manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect the lien, security title or security interest hereof upon, and the interest of Lender in, the Property; provided, however, that the filing, registration or recording of each such instrument is in accordance with the framework of the approved *Shari'ah*-compliant structure of the *Shari'ah* Supervisory Board of HSBC Amanah.

15. Defaults and Events of Default. Any Event of Default (as defined in the Loan Agreement) shall constitute an "Event of Default" for purposes of the provisions of this Instrument.

16. Remedies. Upon the occurrence and during the continuance of any Event of Default, Lender may, at Lender's option, by Lender itself, or otherwise, do any one or more of the following:

(a) Right to Perform Borrower's Covenants. Without limiting Lender's other rights hereunder or under the other Loan Documents, if Borrower has failed to keep or perform any covenant whatsoever contained in this Instrument, Lender may, but shall not be obligated to do so, perform or attempt to perform said covenant; and any payment made or expense incurred in the performance or attempted performance of any such covenant, together with any sum expended by Lender that is chargeable to Borrower or subject to reimbursement by Borrower under the Loan Documents, shall be and become a part of the Debt.

(b) Right of Entry. Lender may, by lawful means, prior or subsequent to the institution of any foreclosure proceedings, enter upon the Property, or any part thereof, and take exclusive possession of the Property and of all books, records, and accounts relating thereto and to exercise without interference from Borrower any and all rights which Borrower has with respect to the management, possession, operation, protection, or preservation of the Property, including, without limitation, the right to rent the same for the account of Borrower and to deduct from such Rents all costs, expenses, and liabilities of every character incurred by the Lender in collecting such Rents and in managing, operating, maintaining, protecting, or preserving the Property and to apply the remainder of such Rents on the Debt in such manner as Lender may elect. All such costs, expenses, and liabilities incurred by Lender in collecting such Rents and in managing, operating, maintaining, protecting, or preserving the Property, if not paid out of Rents as hereinabove provided, shall constitute a demand obligation owing by Borrower and shall bear interest from the date of expenditure until paid at the Default Rate as specified in, and in accordance with, the Loan Agreement, all of which shall constitute a portion of the Debt. If Lender elects to enter the Property as provided for herein, Lender may invoke any and all legal remedies to dispossess Borrower, including specifically one or more actions for forcible entry and detainer, trespass to try title, and restitution. In connection with any action taken by the Lender pursuant to this subsection, Lender shall not be liable for any loss sustained by Borrower resulting from any failure to let the Property, or any part thereof, or from any other act or omission of Lender in managing the Property unless such loss is caused by the fraud, willful misconduct or gross negligence of Lender, its agents, employees or officers, nor shall Lender be obligated to perform or discharge any obligation, duty, or liability under any Lease or under or by reason hereof or the exercise of rights or remedies hereunder unless Lender has foreclosed on the Property, accepted a deed in lieu of foreclosure or otherwise acquired title to the Property. Nothing in this subsection shall impose any duty, obligation, or responsibility upon any Indemnitee for the control, care, management, leasing, or repair of the Property, nor for the carrying out of any of the terms and conditions of any such Lease prior to the transfer of title to the

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Property to any Indemnitee by foreclosure, deed-in-lieu thereof, exercise of power of sale or otherwise. Borrower hereby assents to, ratifies, and confirms any and all actions of the Lender with respect to the Property taken under this subsection.

(c) Right to Accelerate. Lender may, without notice or demand, declare the entire unpaid balance of the Debt immediately due and payable.

(d) Lender's Judicial Remedies. Lender may proceed by suit or suits, at law or in equity, to enforce the payment of the Debt and the performance and discharge of the Obligations to foreclose the liens and security interests and security titles of this Instrument as against all or any part of the Property, and to have all or any part of the Property sold under the judgment or decree of a court of competent jurisdiction. This remedy shall be cumulative of any other nonjudicial remedies available to Lender under this Instrument or the other Loan Documents. Proceeding with a request or receiving a judgment for legal relief shall not be or be deemed to be an election of remedies or bar any available nonjudicial remedy of Lender.

(e) Lender's Right to Appointment of Receiver. Lender, as a matter of right and (i) without regard to the sufficiency of the security for repayment of the Debt and without notice to Borrower, (ii) without any showing of insolvency, fraud, or mismanagement on the part of Borrower, (iii) without the necessity of filing any judicial or other proceeding other than the proceeding for appointment of a receiver, and (iv) without regard to the then value of the Property, shall be entitled to the appointment of a receiver or receivers for the protection, possession, control, management and operation of the Property, including (without limitation), the power to collect the Rents, enforce this Instrument and, in case of a sale and deficiency, during the full statutory period of redemption (if any), whether there be a redemption or not, as well as during any further times when Borrower, except for the intervention of such receiver, would be entitled to collection of such Rents. Borrower hereby irrevocably consents to the appointment of a receiver or receivers upon the occurrence and during the continuance of an Event of Default. Any receiver appointed pursuant to the provisions of this subsection shall have the usual powers and duties of receivers in such matters.

(f) Discontinuance of Remedies. If Lender shall have proceeded to invoke any right, remedy, or recourse permitted under the Loan Documents and shall thereafter elect to discontinue or abandon same for any reason, Lender shall have the unqualified right so to do and, in such event, Borrower and Lender shall be restored to their former positions with respect to the Debt, the Loan Documents, the Property or otherwise, and the rights, remedies, recourses and powers of Lender shall continue as if same had never been invoked.

(g) Remedies Cumulative. All rights, remedies, and recourses of Lender granted in the Note, this Instrument, the Loan Agreement and the other Loan Documents, any other pledge of collateral, or otherwise available at law or equity: (i) shall be cumulative; (ii) may be pursued separately, successively, or concurrently against Borrower or any other person or entity, the Property, or any one or more of them, at such time and in such order as Lender may determine in its sole discretion; (iii) may be exercised as often as occasion therefor shall arise, it being agreed by Borrower that the exercise or failure to exercise any of same shall in no event be construed as a waiver or release thereof or of any other right, remedy, or recourse; (iv) shall be nonexclusive of any other right, power or remedy which Lender may have against Borrower pursuant to this Instrument,

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the Loan Agreement or the other Loan Documents, or otherwise available at law or in equity; (v) shall not be conditioned upon Lender exercising or pursuing any remedy in relation to the Property prior to Lender bringing suit to recover the Debt; and (vi) in the event Lender elects to bring suit on the Debt and obtains a judgment against Borrower prior to exercising any remedies in relation to the Property, all liens and security interests, including the lien of this Instrument, shall remain in full force and effect and may be exercised thereafter at Lender's option.

(h) Election of Remedies. Lender may release, regardless of consideration, any part of the Property without, as to the remainder, in any way impairing, affecting, subordinating, or releasing the lien or security interests evidenced by this Instrument or the other Loan Documents or affecting the obligations of Borrower or any other party to pay the Debt. For payment of the Debt, Lender may resort to any collateral securing the payment of the Debt in such order and manner as Lender may elect. No collateral taken by Lender shall in any manner impair or affect the lien or security interests given pursuant to the Loan Documents, and all collateral shall be taken, considered, and held as cumulative.

(i) Bankruptcy Acknowledgment. If the Property or any portion thereof or any interest therein becomes property of any bankruptcy estate or subject to any state or federal insolvency proceeding, or in the event of the filing of any voluntary or involuntary petition under the Bankruptcy Code by or against Borrower then Lender shall immediately become entitled, in addition to all other relief to which Lender may be entitled under this Instrument, to obtain (i) an order from any bankruptcy court or other appropriate court granting immediate relief from the automatic stay pursuant to § 362 of the Bankruptcy Code so as to permit Lender to pursue its rights and remedies against Borrower as provided under this Instrument and all other rights and remedies of Lender at law and in equity under applicable state law, and (ii) an order from the Bankruptcy Court prohibiting Borrower's use of all "cash collateral" as defined under § 363 of the Bankruptcy Code. Borrower shall not assert or request any other party to assert that the automatic stay under § 362 of the Bankruptcy Code operate or be interpreted to stay, interdict, condition, reduce or inhibit the ability of Lender to enforce any rights it has by virtue of this Instrument, or any other rights that Lender has, whether now or hereafter acquired, against any guarantor of the Debt. Borrower shall not seek a supplemental stay or any other relief, whether injunctive or otherwise, pursuant to § 105 of the Bankruptcy Code or any other provision therein to stay, interdict, condition, reduce or inhibit the ability of Lender to enforce any rights it has by virtue of this Instrument against any guarantor of the Debt. Any bankruptcy petition or other action taken by Borrower to stay, condition, or inhibit Lender from exercising its remedies are hereby admitted by Borrower to be in bad faith and Borrower further admits that Lender would have just cause for relief from the automatic stay in order to take such actions authorized under state law.

(j) Application of Proceeds. While any Event of Default exists, the proceeds from any sale, lease, or other disposition of all or any portion of the Property, or the proceeds from the surrender of any insurance policies pursuant hereto, or any Rents collected by Lender from the Property or amounts from the Imposition Reserve and Insurance Reserve or other Reserves under the Loan Agreement or sums received pursuant to Section 6 hereof, or proceeds from insurance which Lender elects to apply to the Debt pursuant to Section 3 hereof, may be applied by Lender to the Debt in such order, priority and proportions as Lender in its sole discretion shall determine.

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17. Security Agreement. This Instrument is both a real property mortgage and a "security agreement" within the meaning of the Uniform Commercial Code. The Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Borrower in the Property. Borrower, by executing and delivering this Instrument, has granted and hereby grants to Lender, as security for the Debt, a security interest in the Property to the full extent that the Property may be subject to the Uniform Commercial Code (said portion of the Property so subject to the Uniform Commercial Code being called in this Section 17 the "Collateral"). Borrower and Lender agree, to the extent permitted by law, that: (i) all of the goods described within the definition of the word "Improvements" herein are, or are to become, fixtures on the Premises; (ii) this Instrument, upon recording in the real estate records of the proper office, shall constitute a "fixture filing" within the meaning of Sections 9-334 and 9-502 of the UCC; (iii) the addresses of the Borrower and Lender, as "Debtor" and "Secured Party", respectively, are as set forth in the Preamble of this Instrument; and (iv) a carbon, photographic, or other reproduction of this Instrument, or of any financing statement relating thereto, shall be sufficient for filing purposes. Borrower hereby authorizes and agrees to execute (if applicable) and deliver to Lender, in form and substance reasonably satisfactory to Lender, such financing statements, such fixture filings and such further assurances as Lender may from time to time reasonably consider necessary to create, perfect, and preserve Lender's security interest herein granted, so long as the execution and delivery of such financing statements, fixture filings and such further assurances are in accordance with the framework of the approved *Shari'ah*-compliant structure of the *Shari'ah* Supervisory Board of HSBC Amanah, and any such costs or expenses shall be paid by Borrower. Information concerning the security interest herein granted may be obtained from the parties at the addresses of the parties set forth in the first paragraph of this Instrument. Borrower hereby approves and authorizes the filing or recording of all of the financing statements and fixture filings to be recorded in favor of Lender on or about the date hereof in connection with the closing of the Loan. Upon the occurrence and during the continuance of an Event of Default, Lender, in addition to any other rights and remedies which it may have, shall have and may exercise immediately and without demand, any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing, the right to take possession of the Collateral or any part thereof, and to take such other measures as Lender may deem necessary for the care, protection and preservation of the Collateral. Borrower shall pay to Lender on demand any and all expenses, including reasonable legal expenses and reasonable attorneys' fees, incurred or paid by Lender in protecting the interest in the Collateral and in enforcing the rights hereunder with respect to the Collateral. Any notice of sale, disposition or other intended action by Lender with respect to the Collateral sent to Borrower in accordance with the provisions hereof at least ten (10) days prior to such action, shall constitute commercially reasonable notice to Borrower. While any Event of Default exists, the proceeds of any disposition of the Collateral, or any part thereof, pursuant to the terms hereof, may be applied by Lender to the payment of the Debt in such priority and proportions as Lender in its discretion shall deem proper. In the event of any change in name, identity or structure of Borrower, Borrower shall notify Lender thereof and promptly after Lender's request shall file and record such Uniform Commercial Code forms as are necessary to maintain the priority of Lender's lien upon and security interest in the Collateral, and shall pay all expenses and fees in connection with the filing and recording thereof. Notwithstanding the foregoing, Borrower shall appear and defend in any action or proceeding which affects or purports to affect the Property and any interest or right therein, whether such proceeding affects title or any other rights in the Property

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(and in conjunction therewith, Borrower shall fully cooperate with Lender in the event Lender is a party to such action or proceeding unless Borrower and Lender are adverse parties).

18. Actions and Proceedings. Upon the occurrence and during the continuance of an Event of Default, Lender has the right to appear in and defend any action or proceeding brought with respect to the Property and to bring any action or proceeding, in the name and on behalf of Borrower, which Lender, in its discretion, decides should be brought to protect its interest in the Property. Lender shall, at its option, be subrogated to the lien of any mortgage or other security instrument discharged in whole or in part by the Debt, and any such subrogation rights shall constitute additional security for the payment of the Debt.

19. Waiver of Setoff and Counterclaim, Marshalling, Automatic or Supplemental Stay, Etc.

(a) All amounts due under this Instrument, the Note and the other Loan Documents shall be payable without setoff, counterclaim or any deduction whatsoever. Borrower hereby waives the right to assert a setoff, counterclaim or deduction in any action or proceeding in which Lender is a participant, or arising out of or in any way connected with this Instrument, the Note, any of the other Loan Documents, or the Debt.

(b) Borrower hereby expressly, irrevocably, and unconditionally waives and releases, to the extent permitted by law (i) the benefit of all appraisal, valuation, stay, extension, reinstatement and redemption laws now or hereafter in force and all rights of marshalling, sale in the inverse order of alienation, or any other right to direct in any manner the order or sale of any of the Property in the event of any sale hereunder of the Property or any part thereof or any interest therein; (ii) any and all rights of redemption from sale under any order or decree of foreclosure of this Instrument on behalf of Borrower and on behalf of each and every person acquiring any interest in or title to the Property subsequent to the date of this Instrument and on behalf of all persons to the extent permitted by applicable law; and (iii) all benefits that might accrue to Borrower by virtue of any present or future law exempting the Property from attachment, levy or sale on execution or providing for any appraisal, valuation, stay of execution, exemption from civil process, redemption, or extension of time for payment. Lender shall not be under any obligation to marshal any assets in favor of any Person or against or in payment of any or all of the Obligations.

20. Illinois Mortgage Foreclosure Law. In the event that any provision in this Instrument shall be inconsistent with any provision of the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1101 et seq.) (herein called the "Act"), the provision of the Act shall take precedence over the provision of this Instrument, but shall not invalidate or render unenforceable any other provision of this Instrument that can be construed in a manner consistent with the Act.

21. Recovery of Sums Required to Be Paid. Lender shall have the right from time to time upon the occurrence and during the continuance of an Event of Default to take action to recover any sum or sums which constitute a part of the Debt as the same become due and payable, without regard to whether or not the balance of the Debt shall be due, and without prejudice to the right of Lender thereafter to bring an action of foreclosure, or any other action, for a default or defaults by Borrower existing at the time such earlier action was commenced.

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## 22. Handicapped Access.

(a) Borrower agrees that the Property shall at all times comply in all material respects with applicable requirements of the Americans with Disabilities Act of 1990, the Fair Housing Amendments Act of 1988, all state and local laws and ordinances related to handicapped access applicable to the Property and all rules, regulations, and lawful orders issued pursuant thereto including, without limitation, the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities, as the same may be amended, modified or supplemented from time to time (collectively, "Access Laws").

(b) Borrower agrees to give prompt notice to Lender of the receipt by Borrower of any complaints related to violation of any Access Laws and of the commencement of any proceedings or investigations which relate to compliance with applicable Access Laws but only to the extent that such complaints, proceedings or investigations, if adversely determined, could have a Material Adverse Effect.

23. Indemnification Section 13.2 of the Loan Agreement by this reference is hereby incorporated herein with the same force and effect as if set forth herein.

24. Notices. Any notice, demand, statement, request or consent made hereunder shall be in writing, addressed to the intended recipient at its address set forth in the Loan Agreement, and shall be made and deemed given in accordance with the terms of Section 13.5 of the Loan Agreement.

25. Authority. (a) Borrower (and the undersigned representative of Borrower, if any) has full power, authority and right to execute, deliver and perform its obligations pursuant to this Instrument, and to mortgage, give, grant, bargain, sell, alien, encumber, convey, confirm, warrant, pledge, hypothecate and assign the Property pursuant to the terms hereof and to keep and observe all of the terms of this Instrument on Borrower's part to be performed; and (b) Borrower represents and warrants that Borrower is not a "foreign person" within the meaning of Section 1445(f)(3) of the Internal Revenue Code of 1986, as amended and the related Treasury Department regulations.

26. Waiver of Notice. Borrower shall not be entitled to any notices of any nature whatsoever from Lender except with respect to matters for which this Instrument or any other Loan Document specifically and expressly provides for the giving of notice by Lender to Borrower and except with respect to matters for which (i) Lender is required by applicable law to give notice, or (ii) Borrower is not, pursuant to applicable law, permitted to waive the giving of notice.

27. Reasonableness of Lender; Discretion of Lender. In any instance where any consent, approval, determination or other action by Lender is, pursuant to the Loan Documents or applicable law, required to be done reasonably or required not to be unreasonably withheld, Borrower shall bear the burden of proof of showing that the same was not reasonable. In all cases Lender shall conclusively be deemed to be acting reasonably when implementing any standard or requirement of any applicable Rating Agency, or in refusing or delaying any consent due to the existence of any Event of Default. In no event shall references herein or in the other Loan Documents to the "existence" or "continuance" of an Event of Default imply that any Event of Default, or any Default,

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once maturing into an Event of Default due to the expiration of any applicable cure period or by operation of the Loan Agreement in the event no cure period is provided hereunder, shall cease to be an Event of Default in the absence of a written waiver of such Event of Default by the Lender.

28. Remedies of Borrower. In the event that a claim or adjudication is made that Lender or its agents have acted unreasonably or unreasonably delayed acting in any case where, by law or under the Loan Agreement or the other Loan Documents, Lender or such agent, as the case may be, has an obligation to act reasonably or promptly, neither Lender nor its agents shall be liable for any monetary damages, and Borrower's sole remedy shall be limited to commencing an action seeking injunctive relief or declaratory judgment. Any action or proceeding to determine whether Lender has acted reasonably shall be determined by an action seeking declaratory judgment.

29. Non-Waiver. The failure of Lender to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Instrument. Borrower shall not be relieved of Borrower's obligations hereunder by reason of (a) the failure of Lender to comply with any request of Borrower to take any action to foreclose this Instrument or otherwise enforce any of the provisions hereof or of the Note or other Loan Documents, (b) the release, regardless of consideration, of the whole or any part of the Property, or of any person liable for the Debt or any portion thereof, other than a release due to payment in full of the Debt, or (c) except to the extent of the written amendment, modification or supplement of or to the Loan Documents, any agreement or stipulation by Lender extending the time of payment or otherwise modifying or supplementing the terms of the Note, this Instrument, or the other Loan Documents. While any Event of Default exists, Lender may resort for the payment of the Debt to any other security held by Lender in such order and manner as Lender, in its discretion, may elect and Lender may take action to recover the Debt, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Lender thereafter to foreclose this Instrument. The rights and remedies of Lender under this Instrument shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Lender shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision. Lender shall not be limited exclusively to the rights and remedies herein stated but shall be entitled to every right and remedy now or hereafter afforded at law or in equity.

30. Liability. If Borrower and/or Lender consists of more than one person, the obligations and liabilities of each such person hereunder shall be joint and several. Subject to the provisions hereof requiring Lender's consent to any transfer of the Property, this Instrument shall be binding upon and inure to the benefit of Borrower and Lender and their respective successors and assigns forever.

31. Inapplicable Provisions. If any term, covenant or condition of this Instrument is held to be invalid, illegal or unenforceable in any respect, this Instrument shall be construed without such provision.

32. Headings, Etc. The headings and captions of various Sections of this Instrument are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

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33. Counterparts. This Instrument may be executed in any number of counterparts each of which shall be deemed to be an original but all of which when taken together shall constitute one agreement.

34. Definitions. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Instrument may be used interchangeably in singular or plural form and the word "Borrower" shall mean "each Borrower and any subsequent owner or owners of the Property or any part thereof or any interest therein until such time as the Property is released from the lien of this Instrument in accordance with Sections 52 and 56 of this Instrument," the word "Lender" shall mean "Lender and any subsequent holder of the Note," the word "Debt" shall mean "the Note and any other evidence of indebtedness secured by this Instrument," the word "person" shall include an individual, corporation, partnership, trust, unincorporated association, government, governmental authority, and any other entity, and the words "Property" shall include any portion of the Property and any interest therein and the words "attorneys' fees" shall include any and all reasonable attorneys' fees, paralegal and law clerk fees, including, but not limited to, reasonable fees at the pre-trial, trial and appellate levels incurred or paid by Lender in protecting its interest in the Property and Collateral and enforcing its rights hereunder. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

35. Homestead. Borrower hereby waives and renounces all homestead and exemption rights provided by the constitution and the laws of the United States and of any state, in and to the Property as against the collection of the Debt, or any part hereof.

36. Assignments. Lender shall have the right to assign or transfer its rights under this Instrument and the other Loan Documents in accordance with the terms of the Loan Agreement. Any assignee or transferee shall be entitled to all the benefits afforded Lender under this Instrument and the other Loan Documents.

37. Survival of Obligations; Survival of Warranties and Representations. Each and all of the covenants, obligations, representations and warranties of Borrower shall survive the execution and delivery of the Loan Documents and the transfer or assignment of this Instrument (including, without limitation, any transfer of the Instrument by Lender of any of its rights, title and interest in and to the Property to any party, whether or not affiliated with Lender).

38. Covenants Running with the Land. All covenants, conditions, warranties, representations and other obligations contained in this Instrument and the other Loan Documents are intended by Borrower and Lender to be, and shall be construed as, covenants running with the Property until the lien of this Instrument has been fully released by Lender, pursuant to the terms hereof.

39. Governing Law. **THIS INSTRUMENT AND THE OBLIGATIONS ARISING HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND PERFORMED IN THE STATE OF NEW YORK AND ANY APPLICABLE LAWS OF THE UNITED STATES OF AMERICA EXCEPT THAT AT ALL TIMES THE**



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**PROVISIONS FOR THE CREATION, PERFECTION AND ENFORCEMENT OF THE LIENS AND SECURITY INTERESTS CREATED PURSUANT TO THIS INSTRUMENT AND THE ASSIGNMENT OF LEASES SHALL BE GOVERNED BY THE LAWS OF THE STATE WHERE THE PROPERTY IS LOCATED, EXCEPT THAT THE SECURITY INTERESTS IN ACCOUNT COLLATERAL SHALL BE GOVERNED BY THE LAWS OF THE STATE OF NEW YORK OR THE STATE WHERE THE SAME IS HELD, AT THE OPTION OF LENDER.**

40. Time of Essence. Time is of the essence as to all of the terms, covenants and condition of this Instrument and the other Loan Documents.

41. No Third-Party Beneficiaries. The provisions of this Instrument and the other Loan Documents are for the benefit of Borrower and Lender and shall not inure to the benefit of any third party (other than any successor or assignee of Lender or permitted assignee of Borrower). This Instrument and the other Loan Documents shall not be construed as creating any rights, claims or causes of action against Lender or any of its officers, directors, agents or employees in favor of any party other than Borrower including but not limited to any claims to any sums held in the Impositions Reserve and Insurance Reserve or any other Reserves.

42. Relationship of Parties. The relationship of Lender and Borrower is solely that of debtor and creditor, and Lender has no fiduciary or other special relationship with the Borrower, and no term or condition of any of the Loan Documents shall be construed to be other than that of debtor and creditor. Borrower represents and acknowledges that neither the Loan Documents nor any course of dealing between the parties creates any partnership or joint venture between Borrower and Lender or any other person, nor does it provide for any shared appreciation rights or other equity participation interest.

43. Successors and Assigns. This Instrument shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

44. Investigations. Any and all representations, warranties, covenants and agreements made in this Instrument (and/or in other Loan Documents) shall survive any investigation or inspection made by or on behalf of Lender.

45. Assignment of Leases.

(a) Borrower acknowledges and confirms that it has executed and delivered to Lender the Assignment of Leases and Rents: Project Company (the "Assignment of Leases") intending that such instrument create a present, absolute assignment to Lender of the Leases and Rents subject to the license granted therein, which license is revocable upon the occurrence and during the continuation of an Event of Default. While any Event of Default exists, Lender shall be entitled to exercise any or all of the remedies provided in the Assignment of Leases and in Section 16 hereof, including, without limitation, the right to have a receiver appointed.

(b) So long as any part of the Debt and the Obligations secured hereby remain unpaid and undischarged, the fee and leasehold estates to the Property shall not merge, but shall

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remain separate and distinct, notwithstanding the union of such estates either in Borrower, Lender, any lessee or any third party by purchase or otherwise.

46. Waiver of Right to Trial by Jury. EACH OF BORROWER AND LENDER HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THIS INSTRUMENT OR THE OTHER LOAN DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY EACH OF BORROWER AND LENDER, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. EACH OF LENDER AND BORROWER ARE HEREBY AUTHORIZED TO FILE A COPY OF THIS SECTION IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY LENDER AND BORROWER.

47. Reasonable Expenses and Attorneys' Fees. Borrower agrees promptly to pay all reasonable fees, costs and expenses incurred by Lender as provided in and subject to Section 13.1 of the Loan Agreement.

48. Amendments and Waivers. Except as otherwise provided herein, no amendment, modification, termination or waiver of any provision of this Instrument, the Note or any other Loan Document, or consent to any departure therefrom, shall in any event be effective unless the same shall be in writing and signed by Lender and any other party to be charged. Each amendment, modification, termination or waiver shall be effective only in the specific instance and for the specific purpose for which it was given. No notice to or demand on Borrower in any case shall entitle Borrower to any other or further notice or demand in similar or other circumstances, unless such notice is required by the terms of the Loan Agreement or by applicable law.

49. Servicer. Lender shall have the right at any time throughout the term of the Loan to designate or appoint a Servicer (as defined in the Loan Agreement) to administer this Instrument and the other Loan Documents, and to change or replace any Servicer. All of Lender's rights under this Instrument and the other Loan Documents may be exercised by any such Servicer designated by Lender. Any such Servicer shall be entitled to the benefit of all obligations of Borrower in favor of Lender.

50. Copy of Instrument. BORROWER REPRESENTS AND WARRANTS THAT IT HAS RECEIVED A TRUE COPY OF THIS INSTRUMENT WITHOUT CHARGE.

51. Limitation on Recourse. The obligations of Borrower hereunder are subject to limitations on recourse as provided in Article 12 of the Loan Agreement.

52. Satisfaction of Instrument. Upon payment of the Debt in full or as otherwise provided in Section 56 below, Lender, at Borrower's sole cost and upon Borrower's request, shall execute and deliver to Borrower a satisfaction or reconveyance of Instrument, duly acknowledged and in recordable form, financing statement amendments terminating any financing statements filed by

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Lender relating to the Property, and such other documents or instruments as may be required to release the lien of the Loan Documents from the Property.

53. Commercial Loan. Borrower hereby certifies that the Loan is for business and commercial use and is not for personal, family or household purposes. Substantially all of the proceeds of the Loan are being used to acquire or improve or protect or refinance an interest in real property (as that term is defined in United States Treasury Regulations §1.860G-2(a)(4)). Borrower shall use the proceeds of the Loan only for the purposes set forth in the Loan Documents and consistent with all applicable laws, statutes, rules and regulations. No portion of the proceeds of the Loan shall be used by Borrower in any manner that might cause the borrowing or the application of such proceeds to violate Regulation G, Regulation U, Regulation T or Regulation X or any other regulation of the Board of Governors of the Federal Reserve System.

54. No Residential Units. There are no residential units in the Property. To Borrower's knowledge, no person occupies any part of the Property for dwelling purposes.

55. Cross-Default and Cross-Collateralization. Borrower acknowledges that Lender has made the Loan to Borrower and the Related Borrowers upon the security of the collective interests of Borrower and Related Borrowers in the Property and the Related Properties (the Property and all Related Properties are sometimes hereir collectively referred to as the "Properties" or the "Portfolio Properties", and each individually, an "Individual Property" or a "Portfolio Property"), and in reliance upon the aggregate value of the Properties taken together being of greater value as collateral security than the sum of each Individual Property taken separately. Borrower agrees that the Loan and the Loan Documents are and shall all be cross-collateralized and cross-defaulted with each other so that (i) a Default or Event of Default, respectively, under this Instrument, any Related Mortgage or any of the other Loan Documents shall constitute a Default or Event of Default, respectively, under all of the Loan Documents and (ii) each of this Instrument and each other Mortgage (as defined in the Loan Agreement) given by the Related Borrowers for the benefit of Lender (such other Mortgages, the "Related Mortgages" and together with this Instrument, collectively, the "Mortgages") shall constitute security for the Note as if a single blanket lien were placed on all of the Properties as security for the Note. Whenever Lender has a power, right, or remedy hereunder or under the Loan Agreement or applicable law or equity, Lender may exercise such power, right or remedy in order to effectively enforce the cross-collateralization created hereby for the benefit of Lender.

To the fullest extent permitted by law, Borrower, for itself and its successors and assigns, waives all rights to a marshalling of the assets of Borrower, and of the Related Borrowers and the Related Properties, or to a sale in inverse order of alienation in the event of foreclosure of all or any of this Instrument or the Related Mortgages, and agrees not to assert any right under any laws pertaining to the marshalling of assets, the sale in inverse order of alienation, homestead exemption, the administration of estates of decedents, or any other matters whatsoever to defeat, reduce or affect the right of Lender under the Loan Documents to a sale of the Properties for the collection of the secured indebtedness without any prior or different resort for collection or of the right of Lender to the payment of the secured indebtedness out of the net proceeds of the Properties in preference to every other claimant whatsoever. In addition, Borrower, for itself and its successors and assigns, waives in the event of foreclosure of all or any of this Instrument or the Related Mortgages, any equitable right otherwise available to Borrower which would require the separate sale of the

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Properties or require Lender to exhaust its remedies against any Individual Property or combination of Properties; and further in the event of such foreclosure, Borrower does hereby expressly consent to and authorize, at the option of Lender, the foreclosure and sale either separately or together of any combination of the Properties.

At Lender's option, Lender may cause or agree to the release of any one or more of the Related Properties as collateral for the Loan and, in such event, the Loan shall no longer be cross-collateralized and cross-defaulted with any Related Loan so released, and, upon such release, this Instrument shall no longer secure such Related Loan. Upon notice from Lender, Borrower shall execute such documentation as Lender may request in its sole discretion evidencing such release, waiver and modification.

56. Release From Cross-Collateralization. Other than as set forth in Section 52, no repayment or prepayment of all or any portion of the Note shall cause, give rise to a right to require, or otherwise result in, the release of this Instrument as security for the Note, the Loan Agreement or any other Loan Document, provided, however, that Borrower shall have the right and option to obtain the release of the Property from the lien of this Instrument and the other Loan Documents if the conditions set forth in Sections 11.3 or 11.4 of the Loan Agreement are satisfied in full in connection with an Approved Release or an Approved Substitution (as such terms are defined in the Loan Agreement) of this Property.

57. Supremacy of Loan Agreement. If any term, condition or provision of this Instrument shall be inconsistent with any term, condition or provision of the Loan Agreement, then the Loan Agreement shall control.

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IN WITNESS WHEREOF, Borrower has executed this Instrument or has caused the same to be executed, under seal, by its representatives thereunto duly authorized.

**BORROWER:**

FX CHICAGO FUNDING COMPANY, INC.,  
a Delaware corporation

By: 

Name: Michelle Moezzi

Title: Vice President

Property of Cook County Clerk's Office

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## ACKNOWLEDGMENT

STATE OF NEW YORK        )  
  )  
COUNTY OF WESTCHESTER)

I, Catherine A. Sassano, a Notary Public in and for the said State, DO HEREBY CERTIFY that Michelle Moezzi, as Vice President of FX Chicago Funding Company, Inc., a Delaware corporation, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Vice President of said corporation, appeared before me this day in person and acknowledged that she signed and delivered the said instrument as her free and voluntary act and as the free and voluntary act of said corporation for uses and purposes set forth therein.

Given under my hand and notarial seal this 29th day of December, 2004.

*Catherine A. Sassano*  
Notary Public – Signature

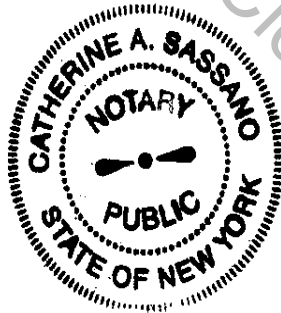
Catherine A. Sassano  
Notary Public – Printed

My Commission Expires:

My County of Residence is:

Westchester

**CATHERINE A. SASSANO**  
**NOTARY PUBLIC, State of New York**  
**No. 01SA6105838**  
**Qualified in Westchester County**  
**Certificate filed in New York County**  
**Commission Expires February 23rd 2008**



Property of Cook County Clerk's Office

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## EXHIBIT A

### Legal Description

#### PARCEL 1:

ALL OF LOT 1 IN BUFFALO GROVE BUSINESS PARK FEDERAL EXPRESS RESUBDIVISION OF PART OF THE NORTHWEST 1/4 OF SECTION 5, TOWNSHIP 42 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED ON MARCH 3, 1988 AS DOCUMENT 88115532, IN COOK COUNTY, ILLINOIS, AND RE RECORDED ON SEPTEMBER 30, 1988 AS DOCUMENT 88450205, IN COOK COUNTY, ILLINOIS, AND PART OF THE SOUTHWEST 1/4 OF SECTION 32, TOWNSHIP 43 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN LAKE COUNTY, ILLINOIS, ACCORDING TO THE PLAT THEREOF RECORDED MARCH 3, 1988, AS DOCUMENT 2661881, IN LAKE COUNTY, ILLINOIS.

#### PARCEL 2:

NON EXCLUSIVE EASEMENTS FOR INGRESS, EGRESS AND PARKING FOR THE BENEFIT OF PARCEL 1, OVER, ACROSS AND THROUGH THAT PART OF LOT 1 IN BUFFALO GROVE BUSINESS PARK UNIT 7, BEING A SUBDIVISION IN THE NORTHWEST 1/4 OF SECTION 5, TOWNSHIP 42 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, AND IN THE SOUTHWEST 1/4 OF SECTION 32, TOWNSHIP 43 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN LAKE COUNTY, ILLINOIS, ACCORDING TO THE PLAT THEREOF RECORDED IN LAKE COUNTY, ILLINOIS ON SEPTEMBER 10, 1986, AS DOCUMENT 2481053 DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHEAST CORNER OF SAID LOT 1; THENCE SOUTH 89 DEGREES, 48 MINUTES 35 SECONDS WEST ALONG THE NORTH LINE OF SAID LOT 1; 368.28 FEET TO AN ANGLE POINT IN SAID NORTH LINE; THENCE SOUTH 44 DEGREES 48 MINUTES 35 SECONDS WEST ALONG A NORTHWESTERLY LINE OF SAID LOT 1 AND ALONG SAID NORTHWESTERLY LINE EXTENDED SOUTHWESTERLY, 125.87 FEET TO A CORNER OF LOT 1 IN BUFFALO GROVE BUSINESS PARK FEDERAL EXPRESS RESUBDIVISION, ACCORDING TO THE PLAT THEREOF RECORDED IN LAKE COUNTY, ILLINOIS ON MARCH 3, 1988, AS DOCUMENT 2661881; THENCE SOUTH 00 DEGREES 11 MINUTES 25 SECONDS EAST ALONG AN EAST LINE OF LOT 1 IN SAID BUFFALO GROVE BUSINESS PARK FEDERAL EXPRESS RESUBDIVISION, 62.00 FEET TO A CORNER OF SAID LOT 1, BEING THE POINT OF BEGINNING; THENCE CONTINUING SOUTH 00 DEGREES 11 MINUTES 25 SECONDS EAST 45.00 FEET; THENCE SOUTH 89 DEGREES 48 MINUTES 35 SECONDS WEST, 117.00 FEET TO THE WEST LINE OF LOT 1 IN SAID BUFFALO GROVE BUSINESS PARK UNIT 7; THENCE NORTH 00 DEGREES 11 MINUTES 25 SECONDS WEST ALONG SAID WEST LINE, 45 FEET TO A SOUTH LINE OF LOT 1 IN SAID BUFFALO GROVE BUSINESS PARK FEDERAL EXPRESS RESUBDIVISION; THENCE NORTH 89 DEGREES 48 MINUTES 35 SECONDS EAST ALONG SAID SOUTH LINE, 117.00 FEET TO THE POINT OF BEGINNING, IN LAKE COUNTY, ILLINOIS; AND ALSO THAT PART OF SAID LOT 1 IN BUFFALO GROVE BUSINESS PARK UNIT 7,

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DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHEAST CORNER OF SAID LOT 1; THENCE SOUTH 12 DEGREES 44 MINUTES 01 SECONDS EAST ALONG THE EASTERLY LINE OF SAID LOT 1; 20.71 FEET TO A POINT OF CURVATURE IN SAID EASTERLY LINE; THENCE SOUTHEASTERLY ALONG THE EASTERLY LINE OF SAID LOT 1, BEING A CURVED LINE CONVEX SOUTHWESTERLY, HAVING A RADIUS OF 219.19 FEET AND BEING TANGENT TO SAID LAST DESCRIBED LINE AT SAID LAST DESCRIBED POINT, AN ARC DISTANCE OF 48.49 FEET TO AN INTERSECTION WITH A LINE 66.00 FEET, AS MEASURED AT RIGHT ANGLES, SOUTH OF AND PARALLEL WITH THE NORTH LINE OF SAID LOT 1 (THE CHORD OF SAID ARC BEARS SOUTH 19 DEGREES 04 MINUTES 16 SECONDS EAST, 48.39 FEET); THENCE SOUTH 89 DEGREES 48 MINUTES 35 SECONDS WEST ALONG SAID LAST DESCRIBED PARALLEL LINE, 398.03 FEET; THENCE SOUTH 49 DEGREES 08 MINUTES 35 SECONDS WEST 70.00 FEET; THENCE SOUTH 23 DEGREES 30 MINUTES 44 SECONDS WEST 15.71 FEET; THENCE SOUTH 00 DEGREES 11 MINUTES 25 SECONDS EAST, 70.00 FEET; THENCE SOUTH 89 DEGREES 48 MINUTES 35 SECONDS WEST 20.00 FEET TO AN INTERSECTION WITH A LINE 117.00 FEET, AS MEASURED AT RIGHT ANGLES, EAST OF AND PARALLEL WITH THE WEST LINE OF SAID LOT 1; THENCE NORTH 00 DEGREES 11 MINUTES 25 SECONDS WEST ALONG SAID LAST DESCRIBED PARALLEL LINE, 45.00 FEET TO A SOUTHEAST CORNER OF LOT 1 IN BUFFALO GROVE BUSINESS PARK FEDERAL EXPRESS RESUBDIVISION, ACCORDING TO THE PLAT THEREOF RECORDED IN LAKE COUNTY, ILLINOIS, ON MARCH 3, 1988, AS DOCUMENT 2661881; THENCE NORTH 00 DEGREES 11 MINUTES 25 SECONDS WEST ALONG THE EAST LINE OF LOT 1 IN SAID BUFFALO GROVE BUSINESS PARK FEDERAL EXPRESS RESUBDIVISION, 62.00 FEET TO AN ANGLE POINT IN SAID LINE; THENCE NORTH 44 DEGREES 48 MINUTES 35 SECONDS EAST ALONG THE SOUTHEASTERLY LINE OF LOT 1 IN SAID BUFFALO GROVE BUSINESS PARK FEDERAL EXPRESS RESUBDIVISION, 125.87 FEET TO AN ANGLE POINT IN SAID LINE; THENCE NORTH 89 DEGREES 48 MINUTES 35 SECONDS EAST ALONG THE NORTH LINE OF SAID LOT 1, 368.28 FEET TO THE POINT OF BEGINNING, IN LAKE COUNTY, ILLINOIS, AS CREATED BY PARKING AND ACCESS CROSS EASEMENT AGREEMENT RECORDED DECEMBER 4, 1989, AS DOCUMENT 89576281, IN COOK COUNTY, ILLINOIS, AND RECORDED DECEMBER 4, 1989, AS DOCUMENT 2856801, IN LAKE COUNTY, ILLINOIS.

## PARCEL 3:

EASEMENTS FOR INGRESS, EGRESS, ACCESS AND OTHER PURPOSES AS CREATED BY AND MORE FULLY SET FORTH IN THE DECLARATION OF EASEMENTS COVENANTS AND RESTRICTIONS FOR THE BUFFALO GROVE BUSINESS PARK RECORDED NOVEMBER 17, 1983, AS DOCUMENT 2251413, IN LAKE COUNTY, ILLINOIS, AND RECORDED DECEMBER 4, 1989, AS PART OF DOCUMENT NUMBER 89576282, IN COOK COUNTY, ILLINOIS, AS AMENDED BY FIRST AMENDMENT TO DECLARATION OF EASEMENTS, COVENANTS AND RESTRICTIONS FOR THE BUFFALO GROVE BUSINESS PARK DATED DECEMBER 12, 1983 AND RECORDED ON FEBRUARY 24, 1984 IN LAKE COUNTY, ILLINOIS, AS DOCUMENT 2268766 AND AS FURTHER AMENDED BY SECOND AMENDMENT TO DECLARATION OF EASEMENTS COVENANTS AND RESTRICTIONS FOR THE BUFFALO GROVE BUSINESS PARK DATED DECEMBER 15, 1983 AND



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RECORDED ON MAY 30, 1984 IN LAKE COUNTY, ILLINOIS, AS DOCUMENT 2286521 AND AS FURTHER AMENDED BY THIRD AMENDMENT TO DECLARATION OF EASEMENTS, COVENANTS AND RESTRICTIONS FOR THE BUFFALO GROVE BUSINESS PARK DATED NOVEMBER 17, 1989 AND RECORDED ON DECEMBER 4, 1989 AS DOCUMENT 2856803 IN LAKE COUNTY, ILLINOIS.

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