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555 Montgomery Street, 15th Floor  
San Francisco, California 94111  
Attention: Bruce E. Prigoff, Esq.

0106/250 SW  
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**MORTGAGE, ASSIGNMENT OF RENTS,  
SECURITY AGREEMENT AND FIXTURE FILING**

BY

WOODLAND PARK ASSOCIATES LLC, Borrower

TO

CITYVIEW AMERICA FUND I LLC, Lender

NOTICE: THE OBLIGATIONS SECURED BY THIS MORTGAGE CONTAIN  
PROVISIONS ALLOWING FOR CHANGES IN THE INTEREST RATE

THIS DOCUMENT IS ALSO A FIXTURE FILING IN ACCORDANCE WITH SECTION  
9-502(c) OF THE ILLINOIS COMMERCIAL CODE AS AMENDED OR RECODIFIED  
FROM TIME TO TIME, COVERING ANY PROPERTY WHICH NOW IS OR LATER MAY  
BECOME FIXTURES ATTACHED TO THE REAL ESTATE.

Property of Cook County Clerk's Office

**Near North National Title**  
222 N. LaSalle  
Chicago, IL 60601

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Requested By  
And After Recording Return To:

COX, CASTLE & NICHOLSON LLP  
555 Montgomery Street, Suite 1500  
San Francisco, CA 94111-2585  
Attention: Bruce E. Prigoff, Esq.

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## MORTGAGE, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING

THIS MORTGAGE, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING ("**Mezzanine Mortgage**") is made as of October 12, 2006, by WOODLAND PARK ASSOCIATES LLC, an Illinois limited liability company ("**Borrower**"), whose address is 33 North Dearborn Street, Suite 1200, Chicago, Illinois 60602, to CITYVIEW AMERICA FUND I LLC, a Delaware limited liability company ("**Lender**"), whose address is 520 Broadway, Suite 250, Santa Monica, California 90401.

### RECITALS

A. LaSalle Bank National Association, a national banking association (the "**Senior Lender**"), made a loan to Borrower for the acquisition and development of condominiums in Chicago Illinois in the maximum principal amount of Thirty Million Nine Hundred Fifty-Two Thousand Nine Hundred Twenty-Five Dollars (\$30,952,925) (the "**Senior Loan**") in accordance with the terms of that certain Construction Loan Agreement dated as of June 9, 2006 by and between Borrower and Senior Lender (the "**Senior Loan Agreement**"). In connection with the Senior Loan, Borrower has executed that certain Mortgage, Assignment of Rents, Security Agreement and Fixture Filing (the "**Senior Mortgage**").

B. Lender has agreed to make a mezzanine loan (the "**Mezzanine Loan**") to Borrower for the development of condominiums in Chicago, Illinois. The Mezzanine Loan is to be disbursed in accordance with the terms of the Loan Agreement of even date herewith between Borrower and Lender (as modified, amended or supplemented from time to time, the "**Mezzanine Loan Agreement**"). The Mezzanine Loan will be evidenced by that certain Promissory Note of even date herewith in the maximum principal amount of Four Million Eight Hundred Thirty-Three Thousand Eight Hundred Eighty-Six Dollars (\$4,833,886) (which note, together with all notes issued in substitution or exchange therefor and all amendments thereof, is hereinafter referred to as the "**Mezzanine Note**"), providing for monthly payments as set forth in the Mezzanine Note. This Mezzanine Mortgage, the Mezzanine Loan Agreement, the Mezzanine Note, together with all modifications, renewals, extensions or replacements thereof, and any other Loan Documents (as defined in the Mezzanine Loan Agreement) may be referred to herein collectively as the "**Mezzanine Loan Documents**". Borrower has also given Lender in

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connection with the Mezzanine Loan an Assignment of Leases and Rents executed concurrently herewith (as modified, amended or supplemented from time to time, the “**Mezzanine Assignment of Leases**”) and a Pledge and Security Agreement (as modified, amended or supplemented from time to time, the “**Mezzanine Security Agreement**”), both of which are deemed to be included within the definition of “**Mezzanine Loan Documents**”. Borrower has also given Lender in connection with the Mezzanine Loan a separate unsecured Environmental Indemnity Agreement (as modified, amended or supplemented from time to time, the “**Mezzanine Indemnity Agreement**”), which is excluded from the definition of “**Mezzanine Loan Documents**”. Any capitalized terms not otherwise defined in this Mezzanine Mortgage shall have the meaning set forth in the Mezzanine Loan Agreement.

C. Lender wishes to secure (i) the prompt payment of the Mezzanine Note, together with all interest, premiums, and other amounts, if any, due in accordance with the terms of the Mezzanine Note, as well as the prompt payment of any additional indebtedness accruing to Lender on account of any future payments, advances or expenditures made by Lender pursuant to the Mezzanine Note, the Mezzanine Loan Agreement and any other Mezzanine Loan Documents, (ii) the prompt performance of each and every covenant, condition, and agreement of Borrower contained in the Mezzanine Loan Documents, and (iii) the payment of any and all other debts, claims, obligations, demands, monies, liabilities and/or indebtedness (of any and every kind or nature) now or hereafter owing, arising, due or payable from Borrower pursuant to any other notes, agreements, security agreements, financing statements, letters of credit, guaranties, instruments or documents now or hereafter executed and delivered by or for Borrower to Lender, provided any such documents or instruments specifically recite that the obligations contained therein are secured by this Mezzanine Mortgage. Liability for and payment of “Unsecured Environmental Costs,” as defined in Section 23 (F) below, shall not be secured by this Mezzanine Mortgage. All payment obligations of Borrower to Lender as evidenced by the Mezzanine Note and any and all sums due or to become due under the Mezzanine Loan Agreement and Mezzanine Loan Documents which are secured hereby are hereinafter sometimes collectively referred to as the “**Indebtedness**” and the performance of all the terms, covenants, conditions, agreements and obligations of Borrower under this Mezzanine Mortgage, the Mezzanine Loan Agreement and all other obligations of Borrower to Lender under the Mezzanine Loan Documents which are secured hereby are hereinafter sometimes collectively referred to as the “**Obligations**”.

D. This Mezzanine Mortgage is Mezzanine in lien and subordinate to the Senior Mortgage.

NOW, THEREFORE, TO SECURE the repayment of the Indebtedness and the performance of the Obligations, Borrower has executed this Mezzanine Mortgage and does hereby convey, assign, warrant, transfer, pledge and grant to Lender and its successors, substitutes and assigns forever, with power of sale and right of entry and possession all of the following described property and all proceeds thereof (which property is hereinafter sometimes collectively referred to as the “**Property**”):

A. All that certain real property located in the Bronzeville neighborhood in Chicago Illinois, at 35th Street and Cottage Grove; and more particularly described in Exhibit A attached hereto (the “**Land**”);



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- B. All of Borrower's right, title and interest in all of the following (collectively the "**Improvements**"): all buildings, improvements and fixtures of every kind or nature now or hereafter situated on the Land or appurtenant thereto and all machinery, equipment, fixtures, and other items of real property, and all accessories, parts, repossessions and returns thereto or therefor, affixed to, placed upon or used in connection with any of the foregoing; and all additions, substitutions and replacements to any of the foregoing;
- C. All tenements, hereditaments, easements, rights-of-way, water courses, water rights, air spaces, air rights and appurtenances in any way belonging, relating or appertaining to any of the Land or Improvements, or which hereafter shall in any way belong, relate or be appurtenant thereto including, without limitation, all right, title and interest of Borrower, now owned or hereafter acquired, in and to any land lying within the right-of-way of any street, open or proposed, adjoining the Land or Improvements, and any and all sidewalks, alleys and strips and gores of land adjacent to or used in connection with the Land or Improvements ("**Appurtenances**");
- D. All of Borrower's right, title and interest in all oil and gas or other mineral rights in or pertaining to the Land, and all royalty, leasehold and other rights of Borrower pertaining thereto;
- E. All agreements affecting the use, enjoyment or occupancy of the Land, Improvements or Appurtenances now or hereafter entered into by Borrower (the "**Leases**") and all rents, royalties, profits, issues and revenues from the Land, Improvements or Appurtenances from time to time accruing under the Leases (the "**Rents**");
- F. All of Borrower's rights, title and interest in all claims, demands, judgments, insurance proceeds, rights of action, awards of damages, compensation, and settlements hereafter made resulting from the taking of the Land, Improvements or Appurtenances or any part thereof under the power of eminent domain or condemnation, or for any damage (whether caused by such taking, by casualty or otherwise) to the Land, Improvements or Appurtenances or any part thereof;
- G. All tools, tooling, furniture, goods, inventory, equipment, supplies, materials, work in process, products, and other articles of personal property, now or hereafter owned by Borrower, and all accessories, parts, repossessions and returns thereto or therefor, and located at or on or used in connection with the Land or Improvements (whether or not such items are stored on the Land or Improvements or elsewhere);
- H. All of Borrower's rights, title and interest in all management contracts, plans, specifications, maps, surveys, reports, permits, certificates, licenses, approvals, contracts, entitlements and authorizations, however characterized, issued or in any way furnished for the acquisition, construction, development, operation and use of the Land, Improvements or Leases, including building permits, environmental certificates, licenses, certificates of operation, warranties and guaranties, and all deposits made with or other security given to utility companies by Borrower with respect to the Land or Improvements, and all of Borrower's funds held back or escrowed for completion of streets on or near the Land or Improvements;

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- I. All of Borrower's interest in any environmental, structural or soil test reports, or other reports of examination or analysis of the Land or the Improvements;
- J. All of Borrower's interest in any other instrument or document relating to the Property, including, without limitation, plans and specifications, surveys, architectural renderings or models, development agreements, construction contracts and subcontracts, performance and completion bonds, and all proceeds thereof;
- K. All accounts, contract rights, general intangibles, chattel paper, documents, instruments, rights to refunds (including, without limitation tax refunds), deposit accounts, impound accounts, operating, tax or insurance reserve accounts, money (including without limitation all funds in any loan account or disbursement account relating to the Mezzanine Loan), certificates of deposit or other accounts pledged as security for the Mezzanine Loan, reserves, deferred payments and cost savings relating to the Mezzanine Loan or Land or Improvements, and all books and records relating to the foregoing;
- L. Any and all after-acquired right, title or interest of Borrower in and to any property of the types described in the preceding granting clauses;
- M. All of Borrower's rights, title and interest in all refunds, rebates, reimbursements, reserves, deferred payments, deposits, cost savings, governmental subsidy payments, governmentally-registered credits (such as emissions reduction credits), other credits, waivers and payments, whether in cash or in kind, due from or payable by (i) any federal, state, municipal or other governmental or quasi-governmental agency, authority or district (a "**Governmental Agency**") or (ii) any insurance or utility company relating to any or all of the Property or arising out of the satisfaction of any conditions imposed upon or the obtaining of any approvals for the development or rehabilitation of the Property;
- N. All of Borrower's rights, title and interest in all refunds, rebates, reimbursements, credits and payments of any kind due from or payable by any Governmental Agency for any taxes, special taxes, assessments, or similar governmental or quasi-governmental charges or levies imposed upon Borrower with respect to the Property or upon any or all of the Property or arising out of the satisfaction of any conditions imposed upon or the obtaining of any approvals for the development or rehabilitation of the Property;
- O. All books and records pertaining to any of the foregoing; and
- P. Any and all Disposition Agreements (as defined in the Mezzanine Loan Agreement), including without limitation, all purchase agreements or contracts for the sale of any Unit, building or all or any portion of the Property, together with any deposits and choses-in-action relating thereto and any products and proceeds of all of the foregoing ("**Sales Proceeds**"); and
- Q. All proceeds, products, replacements, additions, substitutions, renewals and accessions of and to any of the foregoing.

TO HAVE AND TO HOLD the Property and all parts thereof, together with the rents, issues, profits and proceeds thereof, unto Lender, its successors, substitutes and assigns, forever,



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subject, however, to the terms, covenants, and conditions herein; and Borrower does hereby bind itself and its successors and assigns, to warrant and forever defend the Property unto such Lender, its successors, substitutes and assigns, against all persons whomsoever claiming, for the uses and purposes herein set forth.

Borrower makes the foregoing grant to Lender to hold the Property for the purposes and upon the terms and conditions hereinafter set forth.

Provided, however, that if Borrower shall pay or cause to be paid to the holder of the Mezzanine Note the principal and interest and prepayment premium, if any, to become due thereupon at the time and in the manner stipulated therein, and shall pay or cause to be paid all other sums payable hereunder and all Indebtedness hereby secured and fully perform all Obligations in accordance with the terms of the Mezzanine Loan Documents, then, in such case, the estate, right, title and interest of Lender in the Property shall cease, terminate and become void, and upon proof being given to the satisfaction of Lender that the Mezzanine Note, together with interest and prepayment premium, if any, thereon have been paid or satisfied in full, and upon payment of all fees, costs, charges, expenses and liabilities chargeable or incurred or to be incurred by Lender, and of any other sums as herein provided, this Mezzanine Mortgage shall be released (without warranty) in due form at the expense of Borrower; otherwise it shall remain in full force and effect.

Borrower covenants and agrees with Lender as follows:

1. **Payment of Indebtedness; Performance of Obligations.** Borrower shall promptly pay when due the Indebtedness and shall promptly perform all Obligations.
2. **Taxes and Other Obligations.** Borrower shall pay prior to delinquency, and before any interest, collection fees or penalties shall accrue, all real property taxes and assessments, general and special, and all other taxes and assessments of any kind or nature whatsoever, including, but not limited to, nongovernmental levies or assessments such as maintenance charges, levies, or charges resulting from covenants, conditions, and restrictions affecting the Property, which are assessed or imposed upon the Property, or become due and payable, and which create, may create, or appear to create a lien upon the Property, or any part thereof, or upon any person, property, equipment, or other facility used in the operation or maintenance thereof (all the above collectively hereinafter referred to as "**Taxes**"); provided, however, that if, by law any such Taxes are payable, or may at the option of the taxpayer be paid, in installments, Borrower may pay the same or cause it to be paid, together with any accrued interest on the unpaid balance of such Taxes, in installments as the same become due and before any fine, penalty, interest or cost may be added thereto for the nonpayment of any such installment and interest. If at any time after the date hereof there shall be assessed or imposed a tax or assessment on the Property in lieu of or in addition to the Taxes payable by Borrower pursuant to the preceding sentence, or a license fee, tax or assessment imposed on Lender and measured by or based in whole or in part upon the amount of the outstanding obligations secured hereby, then all such taxes, assessments, or fees shall be deemed to be included within the term "**Taxes**" as defined above and Borrower shall pay and discharge the same as herein provided with respect to the payment of Taxes. Except with respect to real property taxes which Borrower may contest after payment in full of amounts due and payable in accordance with customary procedure, Borrower shall have the right

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before any delinquency occurs to contest, in good faith by appropriate proceedings, the amount or validity of any such Taxes upon the posting of security reasonably satisfactory to Lender so long as Borrower has given prior written notice to Lender of Borrower's intent to so contest or object to any such Taxes and such contest stays the enforcement or collection of any lien or charge relating thereto. Lender hereby acknowledges that (i) the deposit with Lender by Borrower of a bond or other security satisfactory to Lender in the amount of one hundred ten percent (110%) of the amount of such tax or assessment or (ii) the delivery to Lender of an endorsement, in form and substance satisfactory Lender, to the loan policy of title insurance issued to Lender, insuring over such Taxes, shall be deemed adequate security.

Should Borrower fail to make any of such payments, Lender may, at its option and at the expense of Borrower, pay the amounts due for the account of Borrower. Upon the request of Lender, Borrower shall immediately furnish to Lender all notices of amounts due and receipts evidencing payment. Borrower shall promptly notify Lender of any lien on all or any part of the Property and shall promptly discharge any unpermitted lien or encumbrance.

3. **Reserves for Taxes.** Upon demand by Lender, after an Event of Default (as defined below) has occurred, Borrower shall deposit with Lender adequate funds which when added to the monthly payments described below shall be sufficient to pay all Taxes at least thirty (30) days prior to delinquency, provided that Borrower shall not be required to deposit such funds with Lender if and to the extent that Borrower has deposited such adequate funds for payment of such Taxes with Senior Lender under and pursuant to the terms of the Senior Loan Documents. Thereafter, at the time and in addition to each monthly installment due under the Mezzanine Note, Borrower shall pay to Lender a sum equal to one twelfth (1/12) of the amount estimated by Lender to be sufficient to pay all Taxes over the next calendar year prior to delinquency. These sums may be commingled with the general funds of Lender, and no interest shall be payable thereon nor shall these sums be deemed to be held in trust for the benefit of Borrower. If Lender at any time determines that such payments will be insufficient to fully pay all Taxes as the same become due or delinquent, Borrower shall, within ten (10) days following notice from Lender, deposit such additional sums as may be required by Lender. On the Maturity Date, the moneys then remaining on deposit with Lender or its agent shall, at Lender's option, be applied against the Indebtedness. The obligation of Borrower to pay the Taxes is not affected or modified by the provisions of this Section 3; provided, however, that if Borrower provides Lender with any unpaid bill for Taxes issued after the date deposits of monthly tax reserve installments commence but at least thirty (30) days prior to delinquency of such Taxes, Lender shall be obligated to use the funds held in deposit to pay, prior to delinquency, such Taxes on behalf of Borrower.

4. **Use of Property.** Unless required by applicable law, Borrower shall not without Lender's prior written consent permit changes in the use of any part of the Property from the use existing or the use contemplated within the Mezzanine Loan Documents (including the condominium conversion) at the time this Mezzanine Mortgage was executed or contemplated in the Mezzanine Loan Agreement. Borrower shall not initiate or acquiesce in a change in the zoning classification or conditions of use of the Property, except as contemplated in the Mezzanine Loan Documents, without Lender's prior written consent.

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## 5. Insurance and Condemnation.

### A. Insurance.

(i) Borrower shall keep the Improvements insured against loss or damage by fire, earthquakes, vandalism and such other further and additional hazards of whatever kind or nature as may be covered by standard extended coverage "all risk" endorsements in an amount not less than one hundred percent (100%) of the full replacement cost of such improvements, and shall maintain general liability coverage, business interruption coverage and such other coverages required by Lender, by carrier(s), in amounts and form with reasonable deductibles at all times satisfactory to Lender, which carrier(s), amounts, deductibles and form shall not be changed without the prior written consent of Lender. All insurance policies required to be maintained pursuant to this Section 5 ("**Insurance Policies**") shall contain a Non-Contributory Standard Lender Clause and a Lender's Loss Payable Endorsement (Form 438 BFU NS), or their equivalents (such endorsements shall entitle Lender to collect any and all proceeds payable under all such insurance, with the insurance company waiving any claim or defense against Lender for premium payment, deductible, self-insured retention or claims reporting provisions). All Insurance Policies shall provide that the coverage shall not be canceled, or materially modified or reduced, without thirty (30) days' advance written notice from the insurance company to Lender. If a blanket policy is issued, a certified copy of said policy shall be furnished, together with a certificate indicating that Lender is an additional insured (and, if applicable, loss payee) under such policy in the designated amount. By funding the Mezzanine Loan, Lender acknowledges (a) receipt of evidence satisfactory to Lender of the insurance maintained by Borrower as of the date of this Mezzanine Mortgage with respect to the Property, and (b) that notwithstanding anything to the contrary contained in this Instrument, continued maintenance of such insurance in full force and effect shall be sufficient to satisfy Borrower's obligations under the Mezzanine Loan Documents.

(ii) Borrower shall (a) pay as they become due all premiums for the insurance required hereunder, and (b) not later than thirty (30) days if available (but in no event less than ten (10) days) prior to the expiration of each such policy, deliver a certificate of insurance evidencing the insurance required to be provided hereunder for a period of not less than one year, marked "premium paid," or accompanied by such other evidence of payment as shall be reasonable satisfactory to Lender.

(iii) If Borrower shall be in default of its obligation to insure any Property in accordance with the provisions hereof, Lender, at its option and without notice, may (but shall have no obligation to) obtain such insurance from year to year (which insurance may, but need not, protect Borrower's interests), and pay the premium or premiums therefor, and, in such event, the amount of all such premiums paid by Lender (a) shall be deemed to be Obligations, (b) shall be secured by the Collateral prior to any right or title to, or interest in, or claim upon, the Collateral subordinate to the Lien of Lender on the Collateral, and (c) shall be immediately due and payable, on demand, together with interest thereon at the Default Interest Rate, from the date of any such payment by Lender to the date of repayment to Lender.

(iv) In case of loss or damage by fire or other casualty, Borrower shall give immediate written notice thereof to the insurance carrier(s) and to Lender. Subject to the

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provisions of the Senior Loan Documents, Lender is authorized and empowered, and Borrower hereby irrevocably appoints Lender as its attorney-in-fact (such appointment being coupled with an interest), at its option, to make or file proofs of loss or damage and to settle and adjust any claim under insurance policies which insure against such risks, or to direct Borrower, in writing, to agree with the insurance carrier(s) on the amount to be paid in regard to such loss.

(v) Provided no Event of Default shall have occurred and Borrower certifies as to same, in the event of damage or destruction to the Property or any portion thereof, subject to the provisions of the Senior Loan Documents, the net insurance proceeds (after deduction of Lender's reasonable costs and expenses, if any, in collecting the same) shall be made available for the restoration or repair of the Property if, in Lender's reasonable judgment, Borrower deposits with Lender from time-to-time an amount, in cash, which Lender, in its discretion, determines is necessary, in addition to the net insurance proceeds to pay in full the cost of the restoration or repair (Borrower's deposit shall be disbursed prior to any disbursement of insurance proceeds held by Lender). Any excess proceeds remaining after completion of such repair shall be, at Lender's option, subject to the provisions of the Senior Loan Documents, (i) held by Lender as Mezzanine for the Mezzanine Loan, or (ii) applied against the Indebtedness, whether or not due and payable, or (iii) distributed to Borrower. Notwithstanding the foregoing, it shall be a condition precedent to Borrower's commencement of work or any disbursement of insurance proceeds held by Lender hereunder that Lender shall have approved (x) all plans, specifications and permits, as required for any proposed repair or restoration, (y) the construction schedule and (z) the architect's and general contractor's contract for all restoration that exceeds Fifty Thousand Dollars (\$50,000) in the aggregate. Lender may establish other conditions as it deems reasonably necessary to assure the work is fully completed in a good and workmanlike manner free of all liens or claims by reason thereof, and in compliance with all applicable laws, rules and regulations. At Lender's option, the net insurance proceeds shall be disbursed pursuant to a construction escrow acceptable to Lender.

If an Event of Default shall have occurred, or any of the conditions set forth in clauses (a) or (b) of Section 5A(v) have not been met or satisfied, subject to the provisions of the Senior Loan Documents, the net insurance proceeds shall be applied to the Indebtedness in such order and manner as Lender may elect, whether or not due and payable, with any excess paid to Borrower.

**BORROWER HEREBY ACKNOWLEDGES AND AGREES THAT, IN THE EVENT OF A CASUALTY TO THE PROPERTY, IF BORROWER FAILS TO REPAIR OR RESTORE THE PROPERTY IN A MANNER CONSISTENT WITH SECTION 5(A) ABOVE, REGARDLESS OF WHETHER SUCH FAILURE IS THE RESULT OF ANY VOLUNTARY ACTION OR INACTION BY BORROWER, OR ANY ACT OR DETERMINATION OF ANY GOVERNMENTAL AUTHORITY (WHETHER PURSUANT TO ANY ZONING, LAND USE OR OTHER ORDINANCE, CODE, REGULATION OR REQUIREMENT OR OTHERWISE), SUCH FAILURE IS AND SHALL BE DEEMED A SUBSTANTIAL IMPAIRMENT OF THE PROPERTY ENTITLING LENDER (SUBJECT TO THE PROVISIONS OF THE SENIOR LOAN DOCUMENTS) TO APPLY THE NET INSURANCE PROCEEDS TO THE INDEBTEDNESS IN SUCH ORDER AND MANNER AS LENDER MAY ELECT, WHETHER OR NOT DUE AND PAYABLE, WITH ANY EXCESS PAID TO BORROWER. BY INITIALING THIS PROVISION IN THE SPACE PROVIDED BELOW, BORROWER**



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HEREBY ACKNOWLEDGES AND AGREES THAT THE TERMS OF THIS PROVISION HAVE BEEN SPECIFICALLY BARGAINED FOR AND ARE A MATERIAL INDUCEMENT FOR LENDER TO MAKE THE MEZZANINE LOAN AND WITHOUT WHICH LENDER WOULD NOT MAKE THE MEZZANINE LOAN.

BORROWER'S INITIALS MT

B. Condemnation. Subject to the provisions of the Senior Loan Documents:

(i) Borrower shall within three (3) business days of its receipt of notice thereof, notify Lender of any action or proceeding relating to any condemnation or other taking, whether direct or indirect, of the Property, or part thereof, and Borrower shall, after consultation with and subject to Lender's approval, appear in and prosecute any such action or proceeding. Upon Borrower's failure to act in accordance with Lender's prior approval, Borrower authorizes Lender, at Lender's option, as attorney-in-fact for Borrower (such appointment as attorney-in-fact being coupled with an interest), to commence, appear in and prosecute, in Lender's or Borrower's name, any action or proceeding relating to any condemnation or other taking of the Property, and to settle or compromise any claim in connection with such condemnation or other taking. The proceeds of any award, payment or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Property, or part thereof, or for conveyances in lieu of condemnation, are hereby assigned to and shall be paid to Lender subject to the provisions of the Senior Loan Documents and in accordance with the provisions of Section 5B(ii) below. Subject to the provisions of the Senior Loan Documents, Lender is authorized (but is under no obligation) to collect any such proceeds. Lender shall not be held responsible for any failure to collect any condemnation proceeds regardless of the cause of such failure or for any use by Borrower of such proceeds as Lender may pay over to Borrower.

(ii) Lender may, in its discretion, elect to (a) apply the net proceeds of any condemnation award (after deduction of Lender's reasonable costs and expenses, if any, in collecting the same) in reduction of the Indebtedness in such order and manner as Lender may elect, whether due or not or (b) make the proceeds available to Borrower for the restoration or repair of the Property. Any implied covenant in this Mezzanine Mortgage restricting the right of Lender to make such an election is waived by Borrower. In addition, Borrower hereby waives the provisions of any law prohibiting Lender from making such an election. If the net proceeds of the condemnation award are made available to Borrower for restoration or repair, the net proceeds of the condemnation award shall be disbursed upon satisfaction of and in accordance with the terms and conditions set forth in Section 5A(v) above. Lender is authorized (but is under no obligation) to collect any such proceeds.

6. Preservation and Maintenance of Property. Borrower shall: (a) not commit waste or permit impairment or deterioration of the Property; (b) not abandon the Property; (c) keep the Property in good repair and restore or repair promptly, in a good and workmanlike manner, all or any part of the Property to the equivalent of its original condition, or such other condition as Lender may approve in writing, upon any damage or loss thereto; (d) comply with all laws, ordinances, regulations and requirements of any governmental body applicable to the Property; (e) provide for management of the Property by a property manager reasonably satisfactory to Lender pursuant to a contract in form and substance reasonably satisfactory to Lender; and (f)

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give notice in writing to Lender of and, unless otherwise directed in writing by Lender, appear in and defend any action or proceeding purporting to affect the Property, the security granted by the Mezzanine Loan Documents or the rights or powers of Lender. Neither Borrower nor any tenant or other person shall remove, demolish or alter any Improvement on the Land except when incident to the replacement of fixtures, equipment, machinery and appliances with items of like kind.

7. **Protection of Lender's Security.** If (a) Borrower fails to pay the Indebtedness or to perform the Obligations, or (b) any action or proceeding is commenced which affects or could affect the Property or Lender's interest therein, including any loss, damage, cost, expense or liability incurred by Lender with respect to (i) any environmental matters relating to the Property or (ii) the preparation of the commencement or defense of any action or proceeding or any threatened action or proceeding affecting the Mezzanine Loan Documents or the Property, then Lender, at Lender's option subject to the provisions of the Senior Loan Documents, may make such appearances, disburse such sums and take such action as Lender deems necessary, in its discretion, to protect the Property or Lender's interest therein, including entry upon the Property to take such actions Lender determines appropriate to preserve, protect or restore the Property. Any amounts disbursed by Lender pursuant to this Section 7 (including reasonable attorneys' fees, costs and expenses), together with interest thereon at the "Default Interest Rate" from the date of disbursement, shall become additional Indebtedness of Borrower secured by the lien of this Mezzanine Mortgage and the other Mezzanine Loan Documents and shall be due and payable on demand. Nothing contained in this Section 7 shall require Lender to incur any expense or take any action hereunder, cure any Event of Default by Borrower hereunder, or waive any rights or remedies of Lender hereunder at law or in equity.

8. **Inspection.** Lender and its authorized agents may make or cause to be made reasonable entries upon and inspections of the Property at all reasonable times upon reasonable advance notice, which notice shall be given in writing.

9. **Books and Records.** Borrower shall keep and maintain at all times at Borrower's address stated above, or such other place as Lender may approve in writing, complete and accurate books of accounts and records adequate to reflect correctly the results of the operation of the Property and copies of all written contracts, correspondence, Leases and other documents affecting the Property. Lender and its designated agents shall have the right to inspect Borrower's books, records, contracts, correspondence, Leases and other documents affecting the Property at all reasonable times. In the event of a foreclosure of this Mezzanine Mortgage, all of Borrower's books, records, contracts, correspondence, Leases and other documents maintained in connection with the Property shall be made available to the successful bidder at the foreclosure sale for inspection and copying for a period of not less than three (3) years following said sale.

10. **Financial Reporting.**

A. **Financial Statements.** Borrower shall furnish to Lender, within forty-five (45) days after the end of each half of Borrower's fiscal year of the operation of the business of Borrower, a balance sheet, a statement of income and expenses of Borrower and a statement of cash flows, each in reasonable detail and certified as true and complete by Borrower. Borrower



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shall also furnish to Lender within one hundred twenty (120) days after the end of each calendar year of Borrower a balance sheet, a statement of income and expenses and a statement of cash flows for Borrower each in reasonable detail and certified as true and complete by the respective subject thereof, and if Lender shall require, by an independent certified public accountant. All financial statements shall be prepared in accordance with generally accepted accounting principles consistently applied and shall be in form and substance acceptable to Lender. Borrower shall furnish, together with the foregoing financial statements and at any other time upon Lender's written request, a schedule of sales, sales prices, list prices for unsold Units, and purchasers for the Property, certified as true and complete by Borrower. In addition, Borrower shall furnish to Lender, within fifteen (15) days of completion, a copy of Borrower's final annual federal tax return.

B. Audits. At Lender's request, but no more than once a year, Lender may audit Borrower's books and records, financial statements, and determination of revenue, expenses, operating cash flow, capital expenditures, net capital proceeds and all escrow or segregated accounts maintained by Borrower which audit may be conducted by Lender or its representatives. Borrower shall pay to Lender travel expenses, fees and reasonable out-of-pocket costs incurred by Lender in performing any single audit in any calendar year. The audit rights herein shall be in addition to any audit performed by Lender or its agent in connection with any advance under the Mezzanine Loan.

## 11. Environmental Matters.

### A. Representations and Warranties.

(i) Borrower represents and warrants that to the best of its knowledge after all appropriate inquiry, and covenant that, except as may otherwise be disclosed in any Phase I or other environmental or property condition report previously delivered to Lender, there are not now, nor will there be, for as long as any indebtedness or obligations remain outstanding under the Mezzanine Loan, any Hazardous Materials existing, generated, released, stored, buried or deposited over, beneath, in or upon the Property or on or beneath the surface of adjacent property, except as such Hazardous Materials (a) may be used, stored or transported in connection with the permitted uses of the Property and then only to the extent permitted by law after obtaining all necessary permits and licenses therefor and (b) are either (i) used in *de minimis* quantities incidental to the operation of the Property or (ii) fully disclosed to Lender by Borrower in writing and approved in advance by Lender. "**Hazardous Materials**" shall mean and include any pollutants; flammables; explosives; petroleum and petroleum products (including, without limitation, gasoline, diesel fuel and crude oil) or any fraction thereof; corrosive, infectious, carcinogenic, mutagenic materials; polychlorinated biphenyls and compounds containing them; lead and lead-based paint; asbestos or asbestos-containing materials in any form that is or could become friable; urea formaldehyde foam insulation; radon gas; mold or other microbial or fungus contamination (if such substance is of a type which poses a risk to human health or the environment or causes damage to the Property); radioactive materials; hazardous wastes; and any dangerous or toxic substances or related materials, including substances defined as or included in the definition of toxic or hazardous substances, wastes or materials under any federal, state or local laws, ordinances, regulations or guidance which relate to pollution, the environment or the protection of public health and safety, or limiting,

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prohibiting or otherwise regulating the presence, sale, recycling, generation, manufacture, use, transportation, disposal, release, storage, treatment of, or response or exposure to, toxic or hazardous substances, wastes or materials. Such laws, ordinances and regulations, now or hereafter in effect, and as the same may be amended from time to time, are hereinafter collectively referred to as the "**Hazardous Materials Laws**".

(ii) Borrower hereby represents and warrants to the best of its knowledge that, except as may otherwise be disclosed in any Phase I or other environmental report previously delivered to Lender, (i) there are no underground storage tanks located on, under or about the Property that are subject to the notification requirements under Section 9002 of the Solid Waste Disposal Act, as now or hereafter amended (42 U.S.C. § 6991); and (ii) there is no facility located on or about the Property that is subject to the reporting requirements of Section 312 of the Federal Emergency Planning and Community Right to Know Act of 1986 and the Federal regulations promulgated thereunder (42 U.S.C. § 11022), as "facility" is defined therein.

B. Compliance with Hazardous Materials Laws. Borrower shall, and Borrower shall require and take reasonable actions to cause all employees, agents, tenants, contractors and subcontractors of Borrower and any other persons from time to time present on or occupying the Property to, keep and maintain the Property in compliance with, and not cause or knowingly permit the Property to be in violation of any applicable Hazardous Materials Laws. Neither Borrower nor any employees, agents, tenants, contractors or subcontractors of Borrower or any other persons occupying or present on the Property shall use, generate, manufacture, store or dispose of on, under or about the Property or transport to or from the Property any Hazardous Materials, except as such Hazardous Materials (a) may be used, stored or transported in connection with the permitted uses of the Property and then only to the extent permitted by law after obtaining all necessary permits and licenses therefor and (b) are either (i) used in de minimis quantities incidental to the operation of the Property or (ii) fully disclosed to Lender by Borrower in writing and approved in advance by Lender.

C. Hazardous Materials Claims. Borrower shall immediately advise Lender in writing of: (i) any notices received by Borrower (whether such notices are from the Environmental Protection Agency, or any other federal, state or local governmental agency or regional office thereof) of the violation or potential violation of any applicable Hazardous Materials Laws occurring on or about the Property; (ii) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened pursuant to any Hazardous Materials Laws; (iii) all claims made or threatened by any third party against Borrower or the Property relating to damage, contribution, cost recovery compensation, loss or injury resulting from any Hazardous Materials (the matters set forth in clauses (i), (ii) and (iii) above are hereinafter referred to as "**Hazardous Materials Claims**"); (iv) Borrower's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Property that could cause the Property or any part thereof to be subject to any Hazardous Materials Claims; and (v) notices or complaints made by any third party to Borrower or of which Borrower is or becomes aware, relating to damage, loss or injury that may be related to or resulting from any Hazardous Materials on, under or about the Property. Borrower shall forward to Lender immediately any and all notices received that refer or relate to the matters set forth in this Section 11. Lender shall have the right but not the obligation to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any Hazardous

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Materials Claims and Borrower shall pay to Lender, upon demand, all attorneys' and consultants' fees incurred by Lender in connection therewith.

D. Indemnity. Borrower shall be responsible for, and shall indemnify, protect, defend and hold harmless Lender, its directors, officers, employees, agents, successors and assigns from and against, any loss, damage, cost, expense or liability directly or indirectly arising out of or attributable to the use, generation, storage, release, threatened release, discharge, migration, disposal or presence (whether prior to or during the term of the Mezzanine Loan or otherwise and regardless of by whom caused, whether by Borrower or any predecessor in title or any owner of land adjacent to the Property or any other third party, or any employee, agent, tenant, contractor or subcontractor of Borrower or any predecessor in title or any such adjacent land owner or any third person) of Hazardous Materials on, under or about the Property including, without limitation: (i) claims of third parties (including governmental agencies) for damages, penalties, losses, costs, fees, expenses, injunctive or other relief; (ii) response costs, clean-up costs, costs and expenses of removal and restoration, including reasonable fees of attorneys and experts, and costs of determining the existence of Hazardous Materials and reporting same to any governmental agency; and (iii) any and all expenses or obligations, including, without limitation, attorneys' fees, costs, and other expenses. The foregoing indemnity shall not be applicable to (a) matters arising solely as the result of Lender's gross negligence or willful misconduct, which shall not include any inaction by Lender with respect to, or election not to clean up or remediate, any Hazardous Materials other than those Hazardous Materials described in the succeeding subsection (b) hereof, and (b) any Hazardous Materials that Borrower proves first were released on or under the Property after Lender or its affiliate, successor or assignee has taken title to the Property as a result of foreclosure, deed in lieu of foreclosure or other transfer of Property and which Borrower proves did not arise in whole or in part from actions, events or conditions occurring or existing prior to such taking of such title.

E. Environmental Studies. Lender may, following an Event of Default or an event that which constitutes, or with notice or the passage of time, or both, would constitute an Event of Default under the Mezzanine Loan Documents or Lender's reasonable suspicion that a material change in the environmental condition of the Property has occurred, require Borrower, at its sole cost and expense, from time to time to perform or cause to be performed such studies or assessments of the Property, as Lender may deem necessary or appropriate or desirable, to determine the status of environmental conditions on and about the Property, which such studies and assessments shall be for the benefit of Lender and be prepared in accordance with the specifications established by Lender.

F. Lender's Inspection Rights. Borrower hereby confirms the right of Lender (or a receiver appointed by Lender) following an Event of Default under the Mezzanine Loan Documents or if an Environmental Inquiry Condition exists to enter upon and inspect all or any portion of the Property for the purpose of determining the existence, location, nature, and magnitude of any past or present release or threatened release of any Hazardous Materials into, onto, beneath, or from the Property in accordance with Section 2929.5 of the California Civil Code. The results of any such inspection and any tests and studies performed in connection therewith (collectively, the "Tests and Studies") shall be the property of Lender and Lender shall have no obligation whatsoever to disclose or otherwise make available to Borrower or any other party such Tests and Studies or any other information obtained by Lender in connection with

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such inspection. All costs and expenses incurred by Lender pursuant to this Section 11(F), including, without limitation, costs of consultants and contractors, costs of repair of any physical injury to the Property normal and customary to the Tests and Studies, court costs and reasonable attorneys' fees, whether incurred in litigation or not and whether before or after judgment, shall be payable by Borrower and, to the extent advanced or incurred by Lender, shall be reimbursed to Lender by Borrower upon demand. Any and all of such costs and expenses advanced by Lender, together with interest thereon at the rate then in effect under the Mezzanine Note, shall be secured by this Mezzanine Mortgage and shall enjoy the same priority as the original principal amount of the Mezzanine Note.

12. Intentionally Deleted.

13. Covenants. Borrower hereby covenants with Lender as follows:

A. Borrower shall neither take an affirmative action nor willfully engage in any non-action that impairs or impedes the validity and priority of this Mezzanine Mortgage;

B. Borrower shall provide Lender with notice of any litigation, arbitration, or other proceeding or governmental investigation pending or, to Borrower's knowledge, threatened against or relating to Borrower, any guarantor of the Mezzanine Loan or the Obligations, or the Property; and

C. Subject to transfers permitted under the Mezzanine Loan Documents, Borrower shall not alter, amend or modify Borrower's corporate, partnership or other business entity formation documents without Lender's consent.

For purposes of the Mezzanine Loan Documents, the phrases "to Borrower's knowledge", "to Trustor's knowledge", "to Assignor's knowledge" or similar words (such as "to the best of Borrower's knowledge") shall mean the knowledge of Michael Tobin after due inquiry.

14. Intentionally Deleted.

15. Intentionally Deleted.

16. Assignments.

A. Representations and Warranties. Borrower hereby represents and warrants to Lender that as of the date of each and every Advance (as defined in the Mezzanine Loan Agreement) (i) except for assignments executed in connection with the Senior Loan, Borrower has not executed any prior assignment of any of the Property, and Borrower is entitled to all deposits and other payments thereunder and to enjoy all other rights mentioned therein, and that Borrower has free right to transfer to Lender such rights, interests, powers and authorities as are herein granted or conferred; (ii) to Borrower's best knowledge after due inquiry, there is no material default by Borrower, Constituent Member or any Principal now existing under any agreement assigned as part of the Property on the part of any party thereto; (iii) Borrower has not executed or granted any modification or amendment whatever of any agreement assigned as part of the Property, either orally or in writing, except as disclosed to Lender in writing; and (iv)



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Borrower has not performed any act or executed any instrument which might prevent Lender from operating under any of the terms and conditions of this Mezzanine Mortgage, or which would limit the Lender in such operation.

B. Further Assignments. Subject to the assignments made by Borrower under the Senior Loan Documents, Borrower hereby assigns to Lender all of Borrower's interest (i) as seller under all Disposition Agreements now or hereafter entered into by Borrower, and (ii) to all sale proceeds. Concurrently herewith, pursuant to the Assignment of Leases, Borrower shall assign to Lender, in addition to the assignment of Rents provided herein and any other grant, transfer or assignment effected under this Mezzanine Mortgage subject to the provisions of the Senior Loan Documents, a specific assignment of Borrower's interest in any or all leases, subleases, contracts, licenses and permits affecting the Property or any portion thereof, such assignments to be made by instruments in form satisfactory to Lender; provided, however, that no such assignment shall be construed as imposing upon Lender any obligations with respect thereto. A default by Borrower in the performance of any covenant of any Disposition Agreement, lease or other instrument so assigned to Lender, by reason of which default the purchaser, lessee or other party thereunder has the right to cancel such Disposition Agreement, lease or other instrument or to claim in diminution or offset against future purchase price obligations, Sales Proceeds, rents, issues or profits, which default is not cured after expiration of any applicable notice and cure periods, shall, at the option of Lender, constitute a default hereunder and under the other Mezzanine Loan Documents, and Lender shall have all the rights and remedies herein as if such default had occurred under this Mezzanine Mortgage. Lender may, at its option, exercise its rights hereunder or under such specific assignment, and such exercise shall not constitute a waiver of any rights hereunder or under such specific assignment.

C. No Obligation to Perform Borrower's Obligations. Lender shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under any agreement or instrument assigned pursuant to this Mezzanine Mortgage, and Borrower specifically agrees at all times to fully perform and discharge all obligations, duties and liabilities of Borrower thereunder. Borrower shall and does hereby agree to indemnify and defend Lender against and hold Lender harmless from any and all liability, loss or damage which Lender may or might incur under any portion of the Property or under or by reason of any assignment or by reason of any claim or demand whatsoever which may be asserted against Lender by reason of any alleged obligation or undertaking on its part to perform or discharge any of the terms or covenants or agreements in any assigned agreement relating to the Property except as arising solely from Lender's gross negligence or willful misconduct. The foregoing indemnity shall not be applicable to any action, event, condition or circumstance that Borrower proves first occurred on the Property after Lender or its affiliate, successor or assignee has taken title to the Property as a result of foreclosure, deed in lieu of foreclosure or other transfer of Property which did not arise in whole or in part from actions, events or conditions occurring or existing prior to the taking of such title.

17. Estoppel Certificate. Borrower shall, within ten (10) days after Lender's request, execute such written statement, duly acknowledged, setting forth the sums secured by the Mezzanine Loan Documents and any right of set-off, counterclaim or other defense which exists against such sums or any of the Obligations.

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## 18. Transfers of the Property or Beneficial Interest in Borrower; Assumption; Partial Release of Lien.

A. Borrower acknowledges that: (i) the financial stability, development expertise and managerial and marketing ability of Borrower and Principal were and are a substantial and material consideration to Lender and, in reliance thereon, Lender has agreed to make the Mezzanine Loan to Borrower evidenced by the Mezzanine Loan Documents; and (ii) the transfer of possession of the Property or a change in the person or entity constructing and developing the Property or further encumbering of the Property (except as otherwise expressly permitted in the Mezzanine Loan Documents) may significantly and materially adversely affect Lender's security for the Mezzanine Loan. Accordingly, as a material inducement to Lender to enter into the transactions contemplated by the Mezzanine Loan Documents, Borrower shall not "Transfer" (as hereinafter defined), and shall not suffer or permit any transfer of, the Property or any portion thereof or interest therein, any other Collateral for the Loan, or any legal or beneficial, direct or indirect, proximate or remote interest in Borrower, without the prior written consent of Lender, except as may be specifically permitted elsewhere herein. Lender may grant or deny such consent in its discretion and, if consent should be given, any such Transfer shall be subject to this Mezzanine Mortgage, and any transferee shall assume all of Borrower's obligations hereunder and agree to be bound by all provisions and perform all obligations contained herein. In the event of any such Transfer without the written consent of Lender, Lender may, at its option, without demand or notice, declare all sums secured hereby immediately due and payable. Consent to one such Transfer shall not be deemed to be a waiver of the right to require consent to future or successive Transfers.

As used herein, "Transfer" shall mean (A) the sale, agreement to sell, transfer, conveyance (including, without limitation, conveyances pursuant to a foreclosure sale or deed in lieu thereof) or ground leases of the Property, or any portion thereof or interest therein, including, without limitation, air rights and development rights, whether voluntary, involuntary, by operation of law or otherwise, but shall not include sales and transfers otherwise permitted under the Mezzanine Loan Documents or the conveyance of easements or licenses reasonably necessary for the development of the Improvements or the repair or replacement of any personal property in the ordinary course of business; (B) any transfer by way of security including the placing or permitting the placing on the Property of any mortgage, assignment of rents or other security device; (C) if Borrower, or any person or entity owning directly or indirectly through one or more entities any interest in Borrower (individually and collectively an "Owner"), is a partnership, joint venture, trust, "Closely-Held Corporation" (as hereinafter defined) limited liability company or other entity, the issuance, sale, conveyance, transfer, disposition or encumbering any class of the currently issued and outstanding stock or other beneficial interest of Borrower or any Owner, or a change of any managing member, general partner or any joint venturer of Borrower or any Owner, either voluntarily, involuntarily, or otherwise; (D) any sale, conveyance, transfer, disposition or encumbering of any membership interest or other ownership interest in Borrower, whether legal, beneficial or economic; and (E) any sale, conveyance, transfer, disposition or encumbering of any direct or indirect legal or beneficial interest in Borrower that results in less than one hundred percent (100%) of all such interests being owned directly or indirectly by Principal. For purposes of this Section 18, "Closely-Held Corporation" shall mean any corporation not listed on a national or regional stock exchange.



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B. Release of Lien. Notwithstanding the provisions of Section 18(a) above, Borrower shall be permitted to make a transfer of Units, buildings or a portion of the Property pursuant to, and subject to satisfaction of, the terms and provisions of Section 10.18 of the Mezzanine Loan Agreement in connection with Disposition Agreements and, concurrently with any such Transfer as expressly permitted pursuant to such Sections, Lender shall release the portion of the Property that is the subject of such Transfer from the lien of this Mezzanine Mortgage, as specifically and respectively provided in such Section.

19. No Additional Liens, Encumbrances or Indebtedness. Except as provided for in the Mezzanine Loan Documents or the Senior Loan Documents and the Chicago Pledge (to the extent only of its existing terms and documents and provided such financing is and remains wholly subordinated to the Loan and the Loan Documents), Borrower covenants not to execute any mortgage, Security Agreement, assignment of leases and rents or other agreement granting a lien against or encumbrance on the Property or any of its properties or assets or take or fail to take any other action which would result in a lien against (i) the Property, the interest of Borrower in the Property or any of its properties or assets, or (ii) any direct or indirect ownership interests of an Owner in Borrower) without the prior written consent of Lender; provided, however, Borrower may in good faith, by appropriate proceeding, contest the validity or amount of any asserted lien and, pending such contest, and Borrower shall not be deemed to be in default hereunder if Borrower shall first obtain an endorsement, in form and substance satisfactory to Lender, to the loan policy of title insurance issued to Lender, insuring over such lien (provided, however, in no event shall such endorsement be issued in reliance upon an indemnity from the Borrower, the Constituent Member or any of the Pledgors), or if Borrower shall deposit with Lender a bond or other security satisfactory to Lender in the amount of one hundred ten percent (110%) of the amount of such lien to assure payment of the same as and when due. Borrower may contest, without posting of a bond or any security, any real property taxes after payment in full of amounts due and payable in accordance with customary procedure. Borrower shall not, without Lender's prior written consent, incur additional indebtedness other than as permitted in the Mezzanine Loan Agreement. Borrower shall not: (A) hold or acquire, directly or indirectly, any ownership interest (legal or equitable) in any real or personal property other than the Property; (B) become a shareholder or partner of any entity which acquires or holds any property other than the Property; or (C) conduct any business other than the ownership of the Property.

20. Borrower and Lien Not Released. From time to time, Lender may, at Lender's option, without giving notice to or obtaining the consent of Borrower, its successors or assigns or of any junior lienholder or guarantors, without liability on Lender's part, without regard to Borrower's breach of any covenant or agreement in any Mezzanine Loan Document: (i) extend or otherwise modify (but not in a manner adverse to Borrower) the terms or the time for payment of the Indebtedness or any part thereof, including the interest rate, amortization period, or payment amount; (ii) release anyone liable on any of said Indebtedness; (iii) accept replacement note or notes therefor; (iv) release from the lien of any Mezzanine Loan Document any part of the Property or take or release other Mezzanine; (v) consent to any map or plan of the Property; (vi) consent to the granting of any easement; (vii) join in any extension or subordination agreement; and/or (viii) waive, or modify, or perform any of the Obligations. Any actions taken by Lender pursuant to the terms of this Section 20 shall not affect the obligation of Borrower or Borrower's successors or assigns to pay the Indebtedness and to perform the Obligations, shall not affect the guaranty of any person, corporation, partnership or other entity for payment of the Indebtedness,

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shall not affect the lien or priority of this Mezzanine Mortgage, and shall not be deemed a waiver of any of the terms, covenants, conditions and provisions hereof. This Section 20 shall not serve to limit Lender's remedies under Section 22 hereof if there has occurred an Event of Default.

## 21. Commercial Code Security Agreement.

A. Security Agreement. This Mezzanine Mortgage shall constitute a security agreement pursuant to the Commercial Code of the State of Illinois (the "Code") for any portion of the Property which, under applicable law, may be subject to a security interest pursuant to the Code (such portion of the Property may be referred to hereinafter as the "Collateral"), and Borrower hereby grants Lender a security interest in said Collateral to secure payment and performance of the Indebtedness and the Obligations. Lender shall have all rights under the Code with respect to such Collateral. Any reproduction of this Mezzanine Mortgage or of any other security agreement or financing statement shall be sufficient as a financing statement. Notwithstanding the filing of a financing statement covering any of the Property in the records normally pertaining to personal property, all of the Property, for all purposes and in all proceedings, legal or equitable, shall be regarded, at Lender's option (to the extent permitted by law), as part of the Land whether or not any such item is physically attached to the Land or serial numbers are used for the better identification of certain items. The mention in any such financing statement of any of the Property shall never be construed in any way as derogating from or impairing this declaration and hereby stated intention of Borrower and Lender that such mention in the financing statement is hereby declared to be for the protection of Lender in the event any court shall at any time hold that notice of the priority of this Mezzanine Mortgage, to be effective against any third party, including the Federal government or any authority or agency thereof, must be filed in the UCC records. Borrower agrees to execute and deliver to Lender any financing statements, as well as extensions, renewals and amendments thereof, and reproductions of this Mezzanine Mortgage in such form as Lender may require to perfect a security interest with respect to said Collateral. Borrower hereby authorizes and empowers Lender and irrevocably appoints Lender its agent and attorney-in-fact to execute and file, on Borrower's behalf, all financing statements and refilings and continuations thereof as Lender deems necessary or advisable to create, preserve and protect such lien. Borrower shall pay all costs of filing such financing statements and any extensions, renewals, amendments and releases thereof, and shall pay all reasonable costs and expenses of any record searches for financing statements Lender may reasonably require. Without limitation of the foregoing, if an Event of Default occurs, Lender shall be entitled immediately to exercise all remedies available to it under the Code.

B. Reliance; No Obligation. Any party to any contract subject to the security interest granted herein shall be entitled to rely on the rights of Lender without the necessity of any further notice or action by Borrower. Lender shall not by reason of this Mezzanine Mortgage or the exercise of any right granted hereby be obligated to perform any obligation of Borrower with respect to any portion of the Collateral nor shall Lender be responsible for any act committed by Borrower, or any breach or failure to perform by Borrower with respect to any portion of the Collateral.

C. Disposition of Collateral. Borrower agrees that, without the prior written consent of Lender, Borrower will not voluntarily, involuntarily or by operation of law sell, assign,

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transfer, remove or permit to be removed from the Property any of the Collateral except that so long as no "Event of Default" (as defined below) exists hereunder, Borrower shall be permitted to sell or otherwise dispose of the Collateral (i) as necessary to convert the Property to condominiums or as otherwise contemplated in the Development Business Plan, or (ii) when the Collateral is obsolete, worn out, inadequate, unserviceable or unnecessary for use in the operation of the Property, but only upon replacing the same or substituting for the same other Collateral at least equal in value and utility to the initial value and utility of that disposed of and in such manner that said replacement or substituted Collateral shall be subject to the security interest created hereby and that the security interest of Lender shall be perfected and first in priority, it being expressly understood and agreed that all replacements, substitutions and additions to the Collateral shall be and become immediately subject to the security interest of this Mezzanine Mortgage and covered hereby.

D. Fixture Filing. To the extent permitted by law, Borrower and Lender agree that with respect to all of the goods described within the definition of the word "Property" herein which are or are to become fixtures on the Land, this Mezzanine Mortgage shall constitute a "fixture filing" within the meaning of Sections 9313 and 9402 of the Code, upon recording or registration in the real estate records of the proper office.

## 22. Events of Default; Remedies

A. Events of Default. The occurrence of any one or more of the following events shall constitute an "Event of Default" under this Mezzanine Mortgage:

(i) failure of Borrower to pay, within ten (10) days of the due date, any of the Indebtedness, including any payment due under the Mezzanine Note or to pay any amount required to be paid under the Mezzanine Loan Agreement or the Mezzanine Note by the Maturity Date (as defined in the Mezzanine Loan Agreement); or

(ii) failure of Borrower or Constituent Member to strictly comply with Sections 5A(i) (insurance), 8 (inspection), 18 (prohibition on transfers), and 19 (prevention of liens) of this Mezzanine Mortgage; or

(iii) a petition under any Chapter of Title 11 of the United States Code or any similar law or regulation is filed by or against Borrower, Constituent Member or any Principal (as defined in the Mezzanine Loan Agreement) or any guarantor of any of the Obligations (and in the case of an involuntary petition in bankruptcy that none of Borrower, Constituent Member, and Principal or any such Guarantor (A) cooperated with or conspired with, or (B) took any action reasonably calculated (or reasonably foreseeable by Borrower) to cause creditors or representatives of creditors to file, initiate or prosecute such petition, or (C) failed to use good faith efforts to dismiss, discharge or void; such petition is not discharged within ninety (90) days of its filing), or a custodian, receiver or trustee for any of the Property is appointed and remains undischarged for a period of ninety (90) days, or Borrower, Constituent Member or any Principal or any guarantor of any of the Obligations makes an assignment for the benefit of creditors, or any of them are adjudged insolvent by any state or federal court of competent jurisdiction, or any of them admit their insolvency or inability to pay their debts as they become due, or an attachment or execution is levied against any of the Property and remains undismissed or

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undischarged for a period of ninety (90) days after such levy; provided, however, that, notwithstanding the foregoing, no matter described in this Section 22A(iii) with respect to a Principal (an “**Affected Principal**”) shall constitute an Event of Default if (i) such matter does not involve more than one Principal and does not involve Michael Tobin, and (ii) within forty-five (45) days of the occurrence of the matter that would give rise to a Event of Default (without reference to any such ninety (90) day period or any other cure periods involving such Principal), a substitute Principal acceptable to Lender in its sole and absolute discretion has executed and delivered the Agreement of Principal, the Mezzanine Indemnity Agreement, the Mezzanine Carveout Guaranty, and the Mezzanine Payment Guaranty, and (iii) Borrower or the Principals deliver to Lender a legal opinion acceptable to Lender in its sole and absolute discretion addressing the same matters as addressed in the opinion letter provided upon closing of the Mezzanine Loan with respect to the substitute Principal and the documents executed by such Principal.

(iv) the occurrence of an “Event of Default” under and as defined in the Mezzanine Loan Agreement, any other Mezzanine Loan Document or any Senior Loan Document; or

(v) Borrower or any guarantor of any Obligation shall default in the payment of any indebtedness to Lender owed under the Mezzanine Loan Documents (other than the Indebtedness) and such default is declared and is not cured within the time, if any, specified therefor in any agreement governing the same or within ten (10) days if no time to cure is specified; or

(vi) final judgment or judgments after expiration of all appellate periods for the payment of money in excess of Two Hundred Thousand Dollars (\$200,000) in the aggregate shall be rendered against Borrower and the same shall (A) not be fully covered by insurance maintained by Borrower as required by the Mezzanine Loan Documents and (B) be reasonably likely to result in a lien on the Property.

B. Cure Periods Pending Foreclosure. The notice and cure periods described herein shall not be applicable to any event which, with the giving of notice and passage of time, would constitute an Event of Default, if such event has occurred as of the date on which Lender commences a judicial foreclosure proceeding with respect to another Event or Events of Default. Such event shall constitute an independent Event of Default hereunder.

C. Remedies. Upon the occurrence of any Event of Default hereunder, Lender may, without notice, demand (other than expressly provided in the Mezzanine Loan Documents), presentment or protest all of which are hereby expressly waived by Borrower, take such action as Lender deems advisable, in its sole discretion, to protect and enforce the rights of Lender in and to the Property, including, but without limiting the generality of the foregoing, the following actions, each of which may be pursued concurrently or otherwise, at such time or in such manner as Lender may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Lender hereunder, under the Mezzanine Loan Agreement or at law or in equity.

(i) Lender may declare the entire Indebtedness immediately due and payable.



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(ii) Lender may, without releasing Borrower from any Obligation under this Mezzanine Mortgage, or any other Mezzanine Loan Document, exercise any of its rights and remedies under Sections 7 and 22 hereof.

(iii) Lender may, either with or without entry or taking possession as herein provided or otherwise, proceed by suit or suits at law or in equity or by any other appropriate proceeding or remedy to: (a) enforce payment of the Indebtedness or the performance of any Obligation under any of the Mezzanine Loan Documents together with interest thereon at the Default Interest Rate, and all costs of any such action as set forth in Section 24 hereof; (b) foreclose the lien hereof for the Indebtedness or part thereof by power of sale, commencement of action or otherwise, and sell the Property as an entirety or otherwise, as Lender may determine; and/or (c) pursue any other right or remedy available to it under any of the Mezzanine Loan Documents or by the law and decisions of the State in which the Property is located. Notwithstanding any statute or rule of law to the contrary, the failure to join any tenant or tenants of the Property as party defendant or defendants in any foreclosure action or the failure of any such order or judgment to foreclose their rights shall not be asserted by Borrower as a defense in any civil action instituted to collect (y) the Indebtedness, or any part thereof or (z) any deficiency remaining unpaid after foreclosure and sale of the Property. Lender shall have all powers, rights and remedies under applicable law whether or not specifically or generally granted or described in this Mezzanine Mortgage.

## 23. Foreclosure; Expense of Litigation

(a) When all or any part of the Indebtedness shall become due, whether by acceleration or otherwise, the Lender shall have the right to foreclose the lien hereof for such Indebtedness or part thereof and/or exercise any right, power or remedy provided in this Mortgage or any of the other Mezzanine Loan Documents in accordance with the Illinois Mortgage Foreclosure Act (Chapter 735, Sections 5/15-1101 et seq., Illinois Compiled Statutes) (as may be amended from time to time, the "Act"). In the event of a foreclosure sale, the Lender is hereby authorized, without the consent of the Borrower, to assign any and all insurance policies to the purchaser at such sale or to take such other steps as the Lender may deem advisable to cause the interest of such purchaser to be protected by any of such insurance policies.

(b) In any suit to foreclose the lien hereof, there shall be allowed and included as additional indebtedness in the decree for sale all expenditures and expenses which may be paid or incurred by or on behalf of the Lender for reasonable attorneys' fees, appraisers' fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to the title as the Lender may deem reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or the value of the Premises. All expenditures and expenses of the nature mentioned in this section and such other expenses and fees as may be incurred in the enforcement of the Borrower's obligations hereunder, the protection of said Premises and the maintenance of the lien of this Mortgage, including the reasonable fees

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of any attorney employed by the Lender in any litigation or proceeding affecting this Mortgage, the Note, or the Premises, including probate and bankruptcy proceedings, or in preparations for the commencement or defense of any proceeding or threatened suit or proceeding shall be immediately due and payable by the Borrower, with interest thereon until paid at the Default Rate and shall be secured by this Mortgage.

**24. Application of Proceeds of Foreclosure Sale.** The proceeds of any foreclosure sale of the Premises shall be distributed and applied in accordance with the Act and, unless otherwise specified therein, applied in the order of priority set forth in the Mezzanine Note with the excess, if any, applied to any party entitled thereto as their rights may appear.

**25. Appointment of Receiver.** Upon or at any time after the filing of a complaint to foreclose this Mortgage, the court in which such complaint is filed shall, upon petition by the Lender, appoint a receiver for the Premises in accordance with the Act. Such appointment may be made either before or after sale, without notice, without regard to the solvency or insolvency of the Borrower at the time of application for such receiver and without regard to the value of the Premises or whether the same shall be then occupied as a homestead or not and the Lender hereunder or any other holder of the Note may be appointed as such receiver. Such receiver shall have power to collect the rents, issues and profits of the Premises (i) during the pendency of such foreclosure suit, (ii) in case of a sale and a deficiency, during the full statutory period of redemption, whether there be redemption or not, and (iii) during any further times when the Borrower, but for the intervention of such receiver, would be entitled to collect such rents, issues and profits. Such receiver also shall have all other powers and rights that may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Premises during said period, including, to the extent permitted by law, the right to lease all or any portion of the Premises for a term that extends beyond the time of such receiver's possession without obtaining prior court approval of such lease. The court from time to time may authorize the application of the net income received by the receiver when so appointed by the court in payment of (a) the Indebtedness, or by any decree foreclosing this Mortgage, or any tax, special assessment or other lien which may be or become superior to the lien hereof or of such decree, provided such application is made prior to foreclosure sale, and (b) any deficiency upon a sale and deficiency.

Borrower hereby gives and grants to such receiver all the rights or powers granted to Lender under this Mezzanine Mortgage, and the right, power and authority to make and enter into leases of the Property or the portions thereof for such rents and periods of occupancy and upon such conditions and provisions as such receiver may deem desirable. Borrower expressly acknowledges and agrees that the term of any such lease may extend beyond the date of any sale of the Property pursuant to a decree rendered in such proceedings; it being the intention of Borrower that while such receiver is in possession of the Property pursuant to an order or decree entered in such proceedings, such receiver shall be deemed to be and shall be the attorney-in-fact of Borrower for the purpose of making and entering into leases of parts or portions of the Property for the rents and upon the terms, conditions and provisions deemed desirable to such receiver and with like effect as if such leases had been made by Borrower. The power and authority hereby given and granted by Borrower shall be deemed to be coupled with an interest and shall not be revocable by Borrower.



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**26. Lender's Right of Possession in Case of Default.** At any time after an Event of Default has occurred, the Borrower shall, upon demand of the Lender, surrender to the Lender possession of the Premises. The Lender, in its discretion, may, with process of law, enter upon and take and maintain possession of all or any part of the Premises, together with all documents, books, records, papers and accounts relating thereto, and may exclude the Borrower and its employees, agents or servants therefrom, and the Lender may then hold, operate, manage and control the Premises, either personally or by its agents. The Lender shall have full power to use such measures, legal or equitable, as in its discretion may be deemed proper or necessary to enforce the payment or security of the avails, rents, issues, and profits of the Premises, including actions for the recovery of rent, actions in forcible detainer and actions in distress for rent. Without limiting the generality of the foregoing, the Lender shall have full power to:

(a) cancel or terminate any lease or sublease for any cause or on any ground which would entitle the Borrower to cancel the same;

(b) elect to disaffirm any lease or sublease which is then subordinate to the lien hereof;

(c) extend or modify any then existing leases and to enter into new leases, which extensions, modifications and leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the Maturity Date and beyond the date of the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon the Borrower and all persons whose interests in the Premises are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the Indebtedness, satisfaction of any foreclosure judgment, or issuance of any certificate of sale or deed to any purchaser;

(d) make any repairs, renewals, replacements, alterations, additions, betterments and improvements to the Premises as the Lender deems are necessary;

(e) insure and reinsure the Premises and all risks incidental to the Lender's possession, operation and management thereof; and

(f) receive all of such avails, rents, issues and profits.

**27. Application of Income Received by Lender.** The Lender, in the exercise of the rights and powers hereinabove conferred upon it, shall have full power to use and apply the avails, rents, issues and profits of the Premises to the payment of or on account of the following, in such order as the Lender may determine:

(a) to the payment of the operating expenses of the Premises, including cost of management and leasing thereof (which shall include compensation to the Lender and its agent or agents, if management be delegated to an agent or agents, and shall also include lease commissions and other compensation and expenses of seeking and procuring tenants and entering into leases), established claims for damages, if any, and premiums on insurance hereinabove authorized;

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(b) to the payment of taxes and special assessments now due or which may hereafter become due on the Premises; and

(c) to the payment of any Indebtedness, including any deficiency which may result from any foreclosure sale.

**28. Compliance with Illinois Mortgage Foreclosure Law.**

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

(b) If any provision of this Mortgage shall grant to the Lender (including the Lender acting as a mortgagee-in-possession) or a receiver appointed pursuant to the provisions of Section 25 of this Mortgage any powers, rights or remedies prior to, upon or following the occurrence of an Event of Default which are more limited than the powers, rights or remedies that would otherwise be vested in the Lender or in such receiver under the Act in the absence of said provision, the Lender and such receiver shall be vested with the powers, rights and remedies granted in the Act to the full extent permitted by law.

(c) Without limiting the generality of the foregoing, all expenses incurred by the Lender which are of the type referred to in Section 5/15-1510 or 5/15-1512 of the Act, whether incurred before or after any decree or judgment of foreclosure, and whether or not enumerated in Sections 22, 23 or 30 of this Mortgage, shall be added to the Indebtedness and/or by the judgment of foreclosure.

**29. Breach of Environmental Provisions.** Lender may seek a judgment that Borrower has breached its covenants, representations and/or warranties with respect to the environmental matters contained in Section 11 of this Mezzanine Mortgage (the “**Environmental Provisions**”), and may commence and maintain an action or actions in any court of competent jurisdiction for enforcement of the Environmental Provisions and/or recovery of any and all costs, damages, expenses, fees, penalties, fines, judgments, indemnification payments to third parties, and other out-of-pocket costs or expenses (including, without limitation, court costs, consultant fees and attorney fees, whether incurred in litigation or not and whether before or after judgment), incurred or advanced by Lender pursuant to the Environmental Provisions (collectively, the “**Environmental Costs**”). All Environmental Costs incurred by Lender shall bear interest at the Default Interest Rate. All Environmental Costs together with interest thereon at the rate then in effect under the Mezzanine Note shall be secured by this Mezzanine Mortgage and shall enjoy the same priority as the original principal amount of the Mezzanine Note. Borrower acknowledges and agrees that notwithstanding any term or provision contained in this Mezzanine Mortgage or in the other Mezzanine Loan Documents, Environmental Costs shall be exceptions to any nonrecourse or exculpatory provision, if any, and Borrower shall be fully and personally liable for Environmental Costs. Such liability shall not be limited to the original principal amount of the obligations secured by this Mezzanine Mortgage. Borrower’s obligations hereunder shall survive foreclosure, deed in lieu of foreclosure, release, reconveyance or any

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other transfer of the Property or this Mezzanine Mortgage. For the purposes of any action brought under this subparagraph, Borrower hereby waives the defense of laches and any applicable statute of limitations.

**30. Expenditures and Expenses.** In any action to foreclose the lien hereof or otherwise enforce Lender's rights and remedies hereunder, there shall be allowed and included as additional Indebtedness all expenditures and expenses which may be paid or incurred by or on behalf of Lender including repair costs; payments to remove or protect against liens; reasonable attorneys' fees, costs and expenses; receivers' fees, costs and expenses; fees, costs and expenses in connection with any Tests and Studies; fees, costs and expenses in connection with the appointment of a receiver (including without limitation receiver's fees and agent's compensation); appraisers' fees; engineers' fees; accountants' fees; outlays for documentary and expert evidence, stenographers' charges; stamp taxes; publication costs; and costs (which may be estimates as to items to be expended after entry of an order or judgment) for procuring all such abstracts of title, title searches and examination, title insurance policies, and similar data and assurances with respect to title as Lender may deem reasonably necessary either to prosecute any action or to evidence to bidders at any sale which may be had pursuant to an order or judgment the true condition of the title to, or the value of, the Property. All expenditures and expenses of the nature in this Section 30 mentioned and such costs, expenses and fees as may be incurred or as may be owing by Lender in the protection of the Property and the maintenance of the lien of this Mezzanine Mortgage, including the fees, costs and expenses of any attorneys employed by Lender in any litigation or proceeding affecting this Mezzanine Mortgage, the Mezzanine Note, the other Mezzanine Loan Documents or the Property, including probate, appellate and bankruptcy proceedings, or in preparations for the commencement or defense of any action or proceeding or threatened action or proceeding, including costs and expenses in connection with obtaining any court order or the appointment of a receiver to enforce Lender's rights, shall be immediately due and payable to Lender, with interest thereon at the default rate set forth in the Mezzanine Note, and shall be secured by this Mezzanine Mortgage. In addition to the foregoing award of attorneys' fees and costs, Lender shall be entitled to its reasonable attorneys' fees and costs incurred in any post-judgment proceedings to collect or enforce any judgment or order relating to this Mezzanine Mortgage, the Mezzanine Note secured hereby or the other Mezzanine Loan Documents. This provision is separate and several and shall survive the merger of this provision into any judgment.

**31. Power of Attorney.** Borrower hereby irrevocably constitutes and appoints Lender its true and lawful attorney-in-fact in its name and stead, with full power of substitution, upon or at any time after the occurrence of any Event of Default, without notice to or demand upon Borrower, in the sole discretion of Lender, and without regard to the adequacy of any security for the Indebtedness, to do any or all of the following: (a) to collect any and all deposits, payments or proceeds derived from the Property; (b) to use such measures, legal or equitable, as in its discretion may be deemed necessary or appropriate to enforce the making of such payments; (c) to secure and maintain the use and possession of the Property or any part thereof; (d) to demand, receive and enforce Borrower's rights with respect to the Property; (e) to make payments for the Property and give appropriate receipts, releases and satisfactions for and on behalf of and in the name of Borrower, with the same force and effect as Borrower could do; (f) to fill any and all vacancies and to sell, rent, lease and/or let the Property or any part thereof, and to close Unit sales pursuant to any applicable Disposition Agreement, hereby granting full power and

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authority to Lender to use and apply said rents and sales proceeds for the following in such order of priority as Lender may determine: (i) for the purposes of the payment of any taxes, assessments and charges of any nature whatsoever that may be levied or assessed in connection with the Property; (ii) to the payment of premiums on policies of insurance on or in connection with the whole or any part of the Property; (iii) to the costs of completion of any improvements in or for the Property as deemed necessary or advisable by Lender; (iv) to the payment of all expenses in the care and management of the Property, including such repairs, alterations, additions and/or improvements to the Property, or any part thereof, as may be deemed necessary or advisable by Lender; (v) to the payment of attorneys' fees, court costs, labor, charges and/or expenses incurred in connection with any and all things which Lender may do or cause to be done by virtue hereof; and (vi) to the payment of such interest and Owner on the Mezzanine Note as Lender may elect. This power is coupled with an interest and is irrevocable. Notwithstanding the foregoing, Lender agrees it shall exercise its power of attorney only upon the occurrence and continuance of an Event of Default.

In furtherance of these provisions, Borrower hereby grants to Lender full power and authority to make contracts for the care and management of the whole or any part of the Property in such form and providing for such compensation as may be deemed advisable by Lender. Borrower, for the performance or execution of any or all of its obligations hereunder, hereby further irrevocably grants to Lender the full power and authority as the attorney-in-fact of Borrower, with full power of substitution, to do, execute, perform and finish for Borrower and in its name all and singular those things which Lender or any such substitute attorney-in-fact shall in good faith deem necessary or advisable in and about, for, touching or concerning the Property or any of Borrower's obligations hereunder as thoroughly, amply and fully as Borrower could do concerning the same being personally present. Borrower hereby agrees that whatever its said attorney-in-fact or any substitute shall do or cause to be done in, about or concerning the Property or any of Borrower's obligations hereunder, is hereby ratified and confirmed.

**32. After-Acquired Property.** To the extent permitted by, and subject to, applicable law, the lien of this Mezzanine Mortgage, including without limitation the security interest created under the granting clauses of this Mezzanine Mortgage and Section 21, shall automatically attach, without further act, to all property hereafter acquired by Borrower located in or on, or attached to, or used or intended to be used in connection with, or with the operation of, the Property or any part thereof.

**33. Future Advances.** This Mezzanine Mortgage is given to secure not only the existing Indebtedness, but also future advances (whether such advances are obligatory or are made at the option of Lender, or otherwise) made by Lender under the Mezzanine Note or this Mezzanine Mortgage, to the same extent as if such future advances were made on the date of the execution of this Mezzanine Mortgage. The total amount of indebtedness that may be so secured may decrease or increase from time to time, but all Indebtedness secured hereby shall in no event exceed five (5) times the aggregate face amount of the Mezzanine Note.

**34. Additional Provisions.** Lender may, without affecting the personal liability of any person for payment of any indebtedness or performance of the obligations secured hereby, without liability therefor and without notice: reconvey all or any part of the Property; consent to the making of any map or plat thereof; join in granting any easement thereon; join in any



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declaration of covenants and restrictions; or join in any extension agreement or any agreement subordinating the lien or charge hereof. Lender may from time to time apply in any court of competent jurisdiction for aid and direction in the execution of the trusts hereunder and the enforcement of the rights and remedies available hereunder, and Lender may obtain orders or decrees directing or confirming or approving acts in the execution of such trusts and the enforcement of such remedies. Lender has no obligation to notify any party of any pending sale of any action or proceeding unless held or commenced and maintained by Lender under this Mezzanine Mortgage. Borrower shall indemnify Lender against all losses, costs, expenses, claims, demands and liabilities which Lender may incur, suffer or sustain (except those arising from Lender's gross negligence or willful misconduct) in the performance of any act required or permitted hereunder or by law.

35. **Partial Release.** Without affecting the liability of any other person for the payment of any indebtedness herein mentioned (including Borrower should it convey such Property) and without affecting the lien or priority hereof upon any property not released, Lender may, without notice, release any person so liable, extend the maturity or modify (but not in a manner adverse to Borrower) the terms of any such obligation, or grant other indulgences, release or reconvey to Borrower) the terms of any such obligation, or grant other indulgences, release or reconvey or cause to be released or reconveyed at any time all or any part of the Property described herein, take or release any other security or make compositions or other arrangements with debtors. Lender may also accept additional security either concurrently herewith or hereafter, and sell same or otherwise realize thereon either before, concurrently with, or after sale hereunder.

36. **Subrogation.** Lender shall be subrogated for further security to the lien, although released of record, of any and all encumbrances paid out of the proceeds of the loan secured by this Mezzanine Mortgage.

37. **Disclosure of Information.** Lender shall have the right to disclose information with respect to the Borrower, the Loan and the Property in accordance with Section 10.14 of the Mezzanine Loan Agreement.

38. **Forbearance by Lender Not a Waiver.** Any forbearance by Lender in exercising any right or remedy under any of the Mezzanine Loan Documents, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any right or remedy. Lender's acceptance of payment of any sum secured by any of the Mezzanine Loan Documents after the due date of such payment shall not be a waiver of Lender's right to either require prompt payment when due of all other sums so secured or to declare a default for failure to make prompt payment. The procurement of insurance or the payment of taxes or other liens or charges by Lender shall not be a waiver of Lender's right to accelerate the maturity of the Indebtedness, nor shall Lender's receipt of any awards, proceeds or damages under Section 5 hereof operate to cure or waive Borrower's default in payment or sums secured by any of the Mezzanine Loan Documents. With respect to all Mezzanine Loan Documents, only waivers made in writing by Lender shall be effective against Lender.

39. **Waiver of Statute of Limitations.** Borrower hereby waives the right to assert any statute of limitations as a bar to the enforcement of the lien created by any of the Mezzanine Loan Documents or to any action brought to enforce the Mezzanine Note or any other obligation secured by any of the Mezzanine Loan Documents.

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**40. Waiver of Redemption.** Borrower hereby waives all right of redemption on behalf of Borrower and on behalf of all other persons acquiring any interest or title in the Property subsequent to the date of this Mezzanine Mortgage, except decree or judgment creditors of Borrower.

**41. Intentionally Deleted.**

**42. ERISA.** Neither Borrower nor any Owner is a “party in interest” or a “Disqualified person” within the meanings of Section 406 of the Employee Retirement Income Security Act of 1974, as amended, and Section 4975(e) of the Internal Revenue Code of 1986, as amended, respectively, with respect to Lender (a “Party in Interest” or a “Disqualified Person”, respectively). Borrower and each Owner shall not become a Party in Interest or a Disqualified Person during the term of the Mezzanine Loan evidenced by the Mezzanine Note.

**43. Exculpation.** Notwithstanding anything to the contrary contained herein, neither Lender, nor any direct or indirect member, partner, shareholder, officer, director, trustee or employee of Lender (collectively, the “**Nonrecourse Parties**”) shall be personally liable in any manner or to any extent under or in connection with this Mezzanine Mortgage or any other Mezzanine Loan Document or the Mezzanine Indemnity Agreement, and no party shall have any recourse to any assets of a Nonrecourse Party other than such party’s interest in the Mezzanine Loan to satisfy any liability, judgment or claim that may be obtained or made against any such Nonrecourse Party under this Mezzanine Loan Agreement or any other Loan Document or otherwise in connection with the Project. If and to the extent that under the terms of this Agreement or any of the other Loan Documents, Lender has liability to Borrower, Constituent Member, or any Principal, such liability may be satisfied solely out of Lender’s then-existing right, title and interest in the Loan, the Mezzanine Loan Documents and the Collateral. The limitation of liability provided in this Section 43 is in addition to, and not in limitation of, any limitation on liability applicable to a Nonrecourse Party provided by law or by this Mezzanine Mortgage, any other Mezzanine Loan Document or any other contract, agreement or instrument.

In addition, Borrower acknowledges that the State of California Public Employees Retirement System (the “**System**”) is a member in Lender. Notwithstanding any other term or provision of this Mezzanine Mortgage, any other Mezzanine Loan Document or the Mezzanine Indemnity Agreement, System’s liability hereunder is solely that of a member of Lender and no personal or direct liability shall at any time be asserted or enforceable against System, its Board, any member thereof, or any employee or agent of System on account of or arising out of any obligations arising out of or related to this Mezzanine Mortgage, any other Mezzanine Loan Document or the Mezzanine Indemnity Agreement. Borrower further waives any claim against System, irrespective of the compliance or noncompliance now or in the future with any requirements relating to the limitation of liability of a limited liability company member. Borrower acknowledges that Lender is obligated to obtain this waiver from each party with whom Lender does business when the contract price exceeds One Hundred Thousand Dollars (\$100,000), and that this and each such contractual relationship would not be created except with the inclusion of this provision.

**44. Governing Law; Severability.** This Mezzanine Mortgage shall be governed by and construed in accordance with the internal laws of the State of Illinois. The invalidity, illegality



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or unenforceability of any provision of this Mezzanine Mortgage shall not affect or impair the validity, legality or enforceability of the remainder of this Mezzanine Mortgage, and to this end, the provisions of this Mezzanine Mortgage are declared to be severable.

45. **Notice.** Any notice or other communication required or permitted to be given shall be in writing addressed to the respective party as set forth in the Mezzanine Loan Agreement.

46. **Miscellaneous Provisions.**

A. **Successors and Assigns Bound; Agents; Captions.** The covenants and agreements contained in the Mezzanine Loan Documents shall bind, and the rights thereunder shall inure to, the respective successors and assigns of Lender and Borrower, subject to the provisions of Section 16 hereof. In exercising any rights under the Mezzanine Loan Documents or taking any actions provided for therein, Lender may act through its employees, agents or independent contractors as authorized by Lender. The captions and headings of the paragraphs of this Mezzanine Mortgage are for convenience only and are not to be used to interpret or define the provisions hereof.

B. **Releases.** In connection with the sale of Units in accordance with Section 10.18 of the Mezzanine Loan Agreement and upon payment of all sums secured by this Mezzanine Mortgage, Lender shall release this Mezzanine Mortgage. Borrower shall pay Lender's reasonable costs incurred in releasing this Mezzanine Mortgage and any financing statements related hereto.

C. **Loss of Mezzanine Note.** Upon notice from Lender of the loss, theft, or destruction of the Mezzanine Note and upon receipt of indemnity reasonably satisfactory to Borrower from Lender, or in the case of mutilation of the Mezzanine Note, upon surrender of the mutilated Mezzanine Note, Borrower shall make and deliver a replacement note in lieu of the then to be superseded Mezzanine Note.

D. **Exculpation.** This Mezzanine Mortgage and the other Mezzanine Loan Documents and all of Borrower's obligations hereunder and thereunder are subject to the provisions of the Mezzanine Note entitled Exculpation, which are incorporated herein by this reference.

E. **Covenants Run With Land.** All the covenants contained in this Mezzanine Mortgage will run with the Land.

F. **Time of Essence.** Time is of the essence of this Mezzanine Mortgage and all provisions herein relating thereto shall be strictly enforced.

G. **Mezzanine Loan Statement Fees.** Borrower shall pay the amount reasonably demanded by Lender or its authorized loan servicing agent for any statement regarding the obligations secured hereby; provided, however, that such amount may not exceed the maximum amount allowed by law at the time request for the statement is made.

H. **No Merger.** It being the desire and intention of the parties hereto that this Mezzanine Mortgage and the lien hereof do not merge in fee simple title with the Property, it is

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hereby understood and agreed that should Lender acquire any additional or other interest in or to the Property or the ownership thereof, then unless a contrary intent is manifested by Lender as evidenced by an express statement to that effect in an appropriate document duly recorded, this Mezzanine Mortgage and the lien hereof shall not merge in the fee simple title, toward the end that this Mezzanine Mortgage may be foreclosed as if owned by a stranger to the fee simple title.

I. Sales Commissions. Borrower covenants and agrees that all agreements of Borrower to pay sales commissions: (i) shall provide that the obligation to pay such commissions will not be enforceable against any party other than the party who entered into such agreement; (ii) shall be subordinate to the lien of this Mezzanine Mortgage; and (iii) shall not be enforceable against Lender. Borrower shall furnish Lender with evidence of the foregoing which is in all respects satisfactory to Lender.

J. Subordination to Disposition Agreements. At the option of Lender, this Mezzanine Mortgage shall become subject and subordinate, in whole or in part, to any one or more Disposition Agreements, upon the execution by Lender and recording thereof, at any time hereafter, in the office wherein this Mezzanine Mortgage was filed for record, of a unilateral declaration of subordination.

K. Subordination to Senior Loan. This Mezzanine Mortgage shall be subject and subordinate to the Senior Mortgage.

47. Affiliate Transactions. Except for those agreements previously approved in writing by Lender, Borrower shall not enter into any agreement (including, without limitation, Disposition Agreements) respecting the Property with any "Affiliate" (as defined below) unless Lender has approved of such transaction and agreement, which approval may be granted or withheld in Lender's discretion. Without limitation of the foregoing approval right, Borrower shall, at Lender's request, insert a provision in any such agreement permitting Lender (or its affiliate) or any other purchaser of the Property at a foreclosure sale to terminate same upon such party's acquisition of the Property through foreclosure, deed-in-lieu of foreclosure, or otherwise.

The term "Affiliate" as used herein with respect to Borrower shall mean (i) Principal, (ii) any person or entity which has a financial interest in Borrower, any guarantor of the Mezzanine Loan or Principal; (iii) any person or entity under common ownership with Borrower, any guarantor or Principal; (iv) any person or entity in which Borrower, any guarantor or Principal has a financial interest; (v) any spouse, ancestor or lineal descendant (natural or adopted) of Borrower, any guarantor or Principal (any person or entity described in clauses (i) through (v) being referred to as a "**Related Party**"); (vi) any person or entity which has a financial interest in any Related Party; (vii) any trust for the benefit of Borrower, any guarantor, Principal or any Related Party; or (viii) any person or entity in which any Related Party has a financial interest.

48. No Joint Interest. Borrower and Lender intend that the relationship created hereby is solely that of trustor and beneficiary or borrower and lender as the case may be. Nothing herein is intended to create a joint venture, partnership, tenancy in common, or joint tenancy relationship between Borrower and Lender, or grant Lender any interest in the Property other than that of secured creditor.

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**49. Waiver of Rights.** To the maximum extent permitted by law, the Borrower 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 Property, 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 marshalling thereof, upon foreclosure sale or other enforcement hereof; and without limiting the foregoing:

(a) The Borrower hereby expressly waives any and all rights of reinstatement and redemption, if any, under any order or decree of 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 Borrower and of all other persons are and shall be deemed to be hereby waived to the full extent permitted by the provisions of Illinois Compiled Statutes 735 ILCS 5/15-1601 or other applicable law or replacement statutes;

(b) The Borrower will not invoke or utilize any such law or laws or otherwise hinder, delay or impede the execution of any right, power remedy herein or otherwise granted or delegated to the Lender 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; and

(c) If the Borrower is a trustee, the Borrower represents that the provisions of this section (including the waiver of reinstatement and redemption rights) were made at the express direction of the Borrower's beneficiaries and the persons having the power of direction over the Borrower, and are made on behalf of the trust estate of the Borrower and all beneficiaries of the Borrower, as well as all other persons mentioned above.

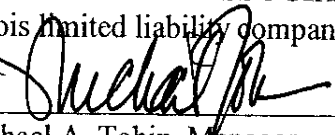
[SIGNATURES FOR EXECUTION ON NEXT PAGE]

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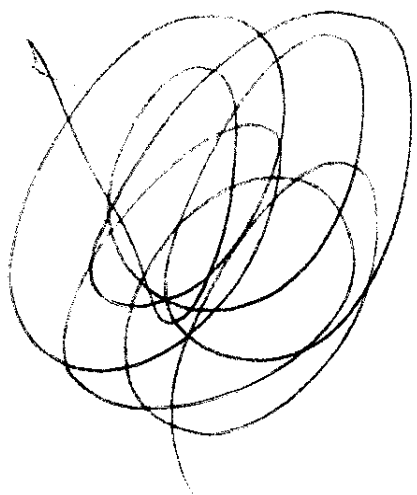
IN WITNESS WHEREOF, Borrower has executed this Mezzanine Mortgage or has caused the same to be executed by its representatives thereunto duly authorized.

**BORROWER:**

**WOODLAND PARK ASSOCIATES LLC,**  
an Illinois limited liability company

By:   
Michael A. Tobin, Manager

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STATE OF ILLINOIS        )  
  ) ss:  
COUNTY of COOK        )

On October 9, 2006 before me, Tiesha M. Vernon (here insert name of the officer), Notary Public, personally appeared Michael A. Tobin, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Tiesha M. Vernon  
Notary Public



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## EXHIBIT A

### LEGAL DESCRIPTION

#### PARCEL A:

Units 606-101 through 606-110, and 606-112, 606-201 through 606-205, and 606-207 through 606-209, 606-211 and 606-212, 606-302 through 606-307, and 606-310 through 606-312, 606-401, 606-402, 606-403 and 606-405, 606-408 and 606-409, and 606-412, 606-501 through 606-508, and 606-510, 606-601 through 606-609 and 606-612, and Parking Space Units P-1 through P-9, P-13 through P-68, P-140 through P-180, P-220, P-222 through P-249, P-251 through P-253 and P-255 through P-264, P-266 through P-268, P-315 through P-330 and P-337 through P-350 in The Woodlands of Bronzeville Condominium as delineated and defined on the Plat of Survey of the following described parcels of real estate:

#### Parcel 1

Lot 2, and the alley East of and adjoining Lot 2, Lots 3, 4, 5, 6, 7, 8 in South Tier of Oakenwald Subdivision of part of the South  $\frac{1}{2}$  of the Northeast fractional  $\frac{1}{4}$  of Section 34, Township 39 North, Range 14 East of the Third Principal Meridian, together with Lots 1 to 5 in R. S. Critchell's Subdivision of Lots 9 and 10 in the South Tier of Oakenwald Subdivision aforesaid, together with Lots 15 to 28 and the alleys East of and adjoining Lots 15, 16 and 25 in the Middle Tier of Oakenwald Subdivision aforesaid; excepting from above described land that part described as follows: Commencing at the intersection of the East line of said alley lying adjacent to the East line of Lot 2 in South Tier of said Oakenwald Subdivision and the South line of Lot 2 in said South Tier extended East, thence South  $90^{\circ}00'00''$  West along said extended South line and along the South line of Lot 2, 50.11 feet; Thence North  $00^{\circ}00'00''$  East, 50.00 feet to the point of beginning; thence North  $90^{\circ}00'00''$  West, 239.00 feet; thence North  $00^{\circ}00'00''$  East, 69.80 feet; thence North  $90^{\circ}00'00''$  East, 239.00 feet; thence South  $00^{\circ}00'00''$  East, 69.80 feet to the point of beginning; also excepting that part described as follows: Commencing at the Northeast corner of Lot 28 in the Middle Tier of said Oakenwald Subdivision, thence North  $90^{\circ}00'00''$  West along the North line of said Lot 28, 1.16 feet; thence South  $00^{\circ}00'00''$  East 48.22 feet to the point of beginning; thence South  $00^{\circ}00'00''$  East, 72.00 feet; thence North  $90^{\circ}00'00''$  West, 239.00 feet; thence North  $00^{\circ}00'00''$  East, 72.00 feet; thence North  $90^{\circ}00'00''$  East, 239.00 feet to the point of beginning; all in Cook County, Illinois, and

#### Parcel 2

Rights of owner(s) of and appurtenant to Parcel 1 to the use and enjoyment of Woodland Park, in Oakenwald Subdivision, being a subdivision of part of the

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Northeast fractional  $\frac{1}{4}$  of Section 34, Township 39 North, Range 14 East of the Third Principal Meridian, as provided in Plat of Oakenwald Subdivision aforesaid recorded July 9, 1855 as Document Number 61055, in Cook County, Illinois,

which Plat of Survey is attached as Exhibit A to the Declaration of Condominium Ownership and of Easements, Restrictions, Covenants and By Laws for The Woodlands of Bronzeville Condominium Association recorded in the Office of The Recorder of Deeds of Cook County, Illinois on June 30, 2006 as Document Number 0618117037, as amended from time to time, together with such units' undivided percentage interest in the common elements.

## PARCEL I:

Parcel 1:

That part of Lots 2, 3, 4, 5, 6 and 7 in South Tier of Oakenwald Subdivision of part of the South  $\frac{1}{2}$  of the Northeast fractional  $\frac{1}{4}$  of Section 34, Township 39 North, Range 14 East of the Third Principal Meridian, Commencing at the intersection of the East line of a 12 foot wide alley lying adjacent to the East line of Lot 2 in South Tier of said Oakenwald Subdivision and the South line of Lot 2 in said South Tier extended East, thence South  $90^{\circ}00'00''$  West along said extended South line and along the South line of Lot 2, 50.11 feet; Thence North  $00^{\circ}00'00''$  East, 50.00 feet to the point of beginning; thence North  $90^{\circ}00'00''$  West, 239.00 feet; thence North  $00^{\circ}00'00''$  East, 69.80 feet; thence North  $90^{\circ}00'00''$  East, 239.00 feet; thence South  $00^{\circ}00'00''$  East, 69.80 feet to the point of beginning; also that part of Lots 23, 24, 25, 26, 27 and 28 in the Middle Tier of said Oakenwald Subdivision, described as follows: Commencing at the Northeast corner of Lot 28 in the Middle Tier of said Oakenwald Subdivision, thence North  $90^{\circ}00'00''$  West along the North line of said Lot 28, 1.16 feet; thence South  $00^{\circ}00'00''$  East 48.22 feet to the point of beginning; thence South  $00^{\circ}00'00''$  East, 72.00 feet; thence North  $90^{\circ}00'00''$  West, 239.00 feet; thence North  $00^{\circ}00'00''$  East, 72.00 feet; thence North  $90^{\circ}00'00''$  East, 239.00 feet to the point of beginning; all in Cook County, Illinois.

Parcel 2:

Rights of owner(s) of and appurtenant to Parcel 1 to the use and enjoyment of Woodland Park, in Oakenwald Subdivision, being a subdivision of part of the Northeast fractional  $\frac{1}{4}$  of Section 34, Township 39 North, Range 14 East of the Third Principal Meridian, as provided in Plat of Oakenwald Subdivision aforesaid recorded July 9, 1855 as Document Number 61055, in Cook County, Illinois.

## ADDRESSES:

606 East Woodland Park, 626 East Woodland Park and  
637 East Woodland Park, All in Chicago, Illinois 60616

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## PERMANENT REAL ESTATE INDEX NUMBERS:

17-34-219-049,	17-34-219-050,	17-34-219-051,	17-34-219-052,
17-34-219-053,	17-34-219-054,	17-34-219-055,	17-34-219-056,
17-34-219-057,	17-34-219-058,	17-34-219-059,	17-34-219-060,
17-34-219-061,	17-34-219-062,	17-34-219-063,	17-34-219-064,
17-34-219-066,	17-34-219-067,	17-34-219-068,	17-34-219-069,
17-34-219-070,	17-34-219-073,	17-34-219-074,	17-34-219-075,
17-34-219-076,	17-34-219-077,	and 17-34-219-097.	

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