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Doc#: 0630442189 Fee: \$96.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 10/31/2006 01:21 PM Pg: 1 of 37

4371065 (16)

This instrument prepared by  
and when recorded return to:  
Crystal Maher, Esq.  
City of Chicago  
Office of Corporation Counsel  
Room 600  
121 North LaSalle Street  
Chicago, Illinois 60602

**JUNIOR LEASEHOLD MORTGAGE, SECURITY AGREEMENT AND FINANCING  
STATEMENT**

THIS JUNIOR LEASEHOLD MORTGAGE, SECURITY AGREEMENT AND FINANCING STATEMENT ("Mortgage") is made as of this 1st day of October, 2006, by WHP-IIB, LLC, an Illinois limited liability company ("Mortgagor"), to the City of Chicago, Illinois together with its successors and assigns, having its principal office at 121 North LaSalle Street, Chicago, Illinois 60602 ("Mortgagee").

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All capitalized terms, unless defined herein, shall have the same meanings as are set forth in that certain Housing Loan Agreement dated of even date herewith between Mortgagor and Mortgagee (herein as the same may be amended, supplemented or restated from time to time called the "Loan Agreement").

## W I T N E S S E T H:

**WHEREAS**, Mortgagor has concurrently herewith executed and delivered a promissory note bearing even date herewith, in the principal sum as described on Exhibit B attached hereto and hereby made a part hereof, and made payable to Mortgagee (herein such note together with all amendments or supplements thereto, extensions thereof and notes which may be taken in whole or partial renewal, substitution or extension thereof shall be called the "Note") in which Mortgagor promises to pay said principal sum, plus interest, if any, thereon at the rate specified on Exhibit B hereto, and the maturity of which note is described on Exhibit B hereto; and

**WHEREAS**, Mortgagee desires to secure repayment of the indebtedness evidenced by the Note, together with interest, if any, thereon, in accordance with the terms of the Loan Documents and any additional indebtedness or obligations incurred by Mortgagor on account of any future payments, advances or expenditures made by Mortgagee pursuant to the Loan Documents;

**WHEREAS**, the CHA will also provide financial assistance for the Project provided by HUD under the U.S. Housing Act of 1937 (42 U.S.C. 1437, et seq.) (the "1937 Act") with respect to the 70 PHA-Assisted Units and, in exchange for such assistance, the Mortgagor will agree to develop, operate and maintain such PHA-Assisted Units in accordance with all requirements applicable to public housing, including the 1937 Act, HUD regulations thereunder (and, to the extent applicable, any HUD-approved waivers of regulatory requirements), the Annual Contributions Contract executed between the CHA and HUD ("ACC"), the Mixed Finance Amendment adding the PHA-Assisted Units to the ACC, the HOPE VI grant agreement, the CHA Declaration and all pertinent federal statutory, executive order and regulatory requirements, as those requirements may be amended from time to time (all such requirements hereafter collectively referred to as the "Applicable Public Housing Requirements");

**NOW, THEREFORE**, in order to secure payment of principal and interest, if any, under the Note and of all other payments due to Mortgagee by Mortgagor under any of the Loan Documents and performance of the covenants and agreements contained in this Mortgage, including any substitutions, extensions or modifications hereto, Mortgagor does grant, assign, warrant, convey and mortgage to Mortgagee, its successors and assigns, and grants to Mortgagee, its successors and assigns forever a continuing security interest in and to, all of the following rights, interests, claims and property:

(A) all of the Mortgagor's interest and rights as tenant under that certain Ground Lease Agreement dated as of even date herewith by and between the Mortgagor, as tenant, and

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the CHA, as landlord, as the same may be amended, modified and supplemented from time to time in accordance with its terms (the "Ground Lease") in real estate, as more particularly described on Exhibit A attached hereto and hereby made a part hereof, together with all of the Mortgagor's interest in all easements, water rights, hereditaments, mineral rights and other rights and interests appurtenant thereto (the "Real Property");

**(B)** all buildings, structures and other improvements of every kind and description now or hereafter erected, situated or placed upon the Real Property, together with any fixtures or attachments now or hereafter owned by Mortgagor and located in or on, forming part of, attached to, used or intended to be used in connection with or incorporated in the Real Property, including all extensions, additions, betterments, renewals, substitutions and replacements of any of the foregoing (the "Improvements");

**(C)** any interests, estates or other claims of every name, kind or nature, both at law and in equity, which Mortgagor now has or may acquire in the Real Property, the Improvements, the Equipment (as hereinafter defined) or any of the property described in clauses (D), (F), (G), (H) or (I) hereof;

**(D)** all of Mortgagor's interest and rights as lessor in and to all leases, subleases and agreements, written or oral, now or hereafter entered into, affecting the Real Property, the Improvements, the Equipment or any part thereof, and all income, rents, issues, proceeds and profits accruing therefrom (provided that the assignment hereby made shall not diminish or impair the obligations of Mortgagor under the provisions of such leases, subleases or agreements, nor shall such obligations be imposed on Mortgagee), and provided, further, that notwithstanding anything else to the contrary in this Mortgage, the Operating Subsidy (as defined in the CHA R&O Agreement) is assigned only to the extent permitted by the CHA R&O Agreement, and the Tenant Housing Payments (as defined in the CHA R&O Agreement) are excluded from the assignment, to the extent that such Tenant Housing Payments constitute the property of the CHA pursuant to the CHA R&O Agreement;

**(E)** all right, title and interest of Mortgagor in and to all fixtures, personal property of any kind or character now or hereafter attached to, contained in and used or useful in connection with the Real Property or the Improvements, together with all furniture, furnishings, apparatus, goods, systems, fixtures and other items of personal property of every kind and nature, now or hereafter located in, upon or affixed to the Real Property or the Improvements, or used or useful in connection with any present or future operation of the Real Property or the Improvements, including, but not limited to, all apparatus and equipment used to supply heat, gas, air conditioning, water, light, power, refrigeration, electricity, plumbing and ventilation, including all renewals, additions and accessories to and replacements of and substitutions for each and all of the foregoing, and all proceeds therefrom (the "Equipment");

**(F)** all of the estate, interest, right, title or other claim or demand which Mortgagor now has or may acquire with respect to (i) proceeds of insurance in effect with respect to the Real

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Property, the Improvements or the Equipment, and (ii) any and all awards, claims for damages, judgments, settlements and other compensation made for or consequent upon the taking by condemnation, eminent domain or any like proceeding of all or any portion of the Real Property, the Improvements or the Equipment;

(G) all intangible personal property, accounts, licenses, permits, instruments, contract rights, and chattel paper of Mortgagor, including, but not limited to cash, accounts receivable, bank accounts, certificates of deposit, rights (if any) to amounts held in escrow, deposits, judgments, liens and causes of action, warranties and guarantees, relating to the Real Property, the Equipment or the Improvements or as otherwise required under the Loan Documents;

(H) all other property rights of Mortgagor of any kind or character related to all or any portion of the Real Property, the Improvements or the Equipment; and

(I) the proceeds from the sale, transfer, pledge or other disposition of any or all of the property described in the preceding clauses.

All of the property referred to in the preceding clauses (A) through (I) shall be called, collectively, the "Premises."

**IT IS FURTHER** agreed, intended and declared that all the aforesaid property rights and interests shall, so far as permitted by law and as permitted by Applicable Public Housing Requirements, be deemed to form a part and parcel of the Premises and be covered by this Mortgage.

**TO HAVE AND TO HOLD** the Premises unto Mortgagee and its successors and assigns, forever, for the purposes and uses herein set forth.

If Mortgagor hereunder is described as a trustee under a trust agreement, said trust arrangement constitutes a "land trust" as said term is defined in Section 5/15-1205 of the Illinois Mortgage Foreclosure Law, 735 ILCS 5/15-1101 et seq., as amended, supplemented and restated from time to time (the "Act").

To protect the security of this Mortgage, Mortgagor further covenants and agrees as follows:

(1) Principal and Interest. Mortgagor shall pay promptly when due the principal of and interest, if any, on the Note and any other sums required to be paid on the Note or under the other Loan Documents at the times and in the manner provided therein and shall pay any other indebtedness secured hereby as the same becomes due and shall perform and observe all of the covenants, agreements and provisions contained herein and in the other Loan Documents.

Mortgagor shall pay promptly when due any sums due, and promptly and fully perform

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any acts required, under the, Senior Loan Documents, the Junior Loan Documents, the CHA Loan Documents, and the Ground Lease. Mortgagor will not, without prior written consent of Mortgagee, modify, extend or amend the, Senior Loan Documents, the Junior Loan Documents, CHA Loan Documents, or the Ground Lease to increase the amount of the indebtedness secured thereby or change the repayment terms of such indebtedness so as to accelerate the repayment of such indebtedness or any rent. Mortgagor shall promptly give Mortgagee a copy of any notice received by Mortgagor from the Senior Lender, the Junior Lender, the CHA, as a lender or as landlord under the Ground Lease, or given by Mortgagor to any such lender or landlord pursuant to any applicable loan documents or pursuant to the Ground Lease.

(2) Preservation, Restoration and Use of Premises. Mortgagor shall:

(a) promptly repair, restore, replace or rebuild any portion of the Premises which may become damaged, destroyed, altered, removed, severed or demolished, whether or not insurance proceeds are available or sufficient for the purpose, with replacements at least equal in quality and condition as existed prior thereto, free from any security interest in, encumbrances on or reservation of title thereto except Permitted Encumbrances (including but not limited to those listed on Exhibit C hereto);

(b) keep and maintain the Premises in good condition and repair, without waste, and free from mechanics' liens, materialmen's liens or other liens and claims except Permitted Encumbrances given Mortgagor's right to contest, insure and bond over such occurrences;

(c) complete, within a reasonable time, any construction of improvements now or hereafter constructed upon the Premises;

(d) comply with all statutes, rules, regulations, orders, decrees and other requirements of any federal, state or local governmental body having jurisdiction over the Premises and the use thereof, including all Applicable Public Housing Requirements, and observe and comply with any conditions and requirements necessary to preserve and extend any and all rights, licenses, permits (including without limitation zoning variances, special exceptions and non-conforming uses), privileges, franchises and concessions that are applicable to the ownership, renovation, use and occupancy of the Premises;

(e) upon completion of the Project, make no material alterations in the Premises (except those required by law or in connection with ordinary repair replacement and maintenance) without Mortgagee's prior written consent;

(f) upon completion of the Project, suffer or permit no change in the general nature of the occupancy or use of the Premises without Mortgagee's prior written consent;

(g) pay all operating costs of the Premises when due, including all utility charges and all other assessments or charges of a similar nature;



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- (h) not initiate or acquiesce in any zoning reclassification with respect to the Premises, without Mortgagee's prior written consent;
- (i) not abandon the Premises, nor do anything whatsoever to depreciate or impair the value of the Premises or the security of this Mortgage;
- (j) refrain from any action and correct any condition which would increase the risk of fire or other hazard to all or any portion of the Premises;
- (k) not permit any unlawful use or nuisance to exist upon the Premises; and
- (l) comply with all instruments and documents of record or otherwise affecting the use or occupancy of all or any portion of the Premises.

(3) Taxes and Charges. Mortgagor agrees to pay or cause to be paid, prior to delinquency, all Charges (as hereinafter defined) which are assessed or imposed upon the Premises or upon any of the Loan Documents, the CHA Loan Documents, the Junior Loan Documents, or the Senior Loan Documents or become due and payable, and which create, may create or appear to create a lien upon the Premises or any part thereof or upon any of the Loan Documents, the CHA Loan Documents, the Junior Loan Documents, or the Senior Loan Documents; provided, however, that if by law any such Charge is payable or, at the option of Mortgagor, may be paid in installments, Mortgagor may pay the same together with any accrued interest on the unpaid balance of such Charge 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. ("Charge" shall mean and include all federal, state, county, city, municipal or other governmental (or any instrumentality, division, agency, body or department thereof) taxes, levies, assessments, charges, liens, claims or encumbrances related to the Premises, Borrower's Liabilities, Mortgagor and/or Manager, or any of the Loan Documents, the CHA Loan Documents, the Junior Loan Documents, or the Senior Loan Documents.)

Mortgagor shall furnish Mortgagee within 30 days after the date upon which any Charge is due and payable by Mortgagor, official receipts of the appropriate authority, or other proof satisfactory to Mortgagee, evidencing the payment thereof. Mortgagor shall have the right before any delinquency occurs to contest or object to the amount or validity of any Charge by appropriate legal proceedings properly instituted and prosecuted in such manner as shall stay collection of the contested Charge and prevent the imposition of a lien or the sale or forfeiture of the Premises to collect the same; provided that no such contest or objection shall be deemed or construed in any way as relieving, modifying or extending Mortgagor's covenant to pay any such Charge at the time and in the manner provided in this Mortgage unless Mortgagor has given prior written notice to Mortgagee of Mortgagor's intent to contest or object to a Charge and, unless at Mortgagee's sole option, (i) Mortgagor shall demonstrate to Mortgagee's satisfaction that legal proceedings instituted by Mortgagor contesting or objecting to such Charge shall conclusively operate to prevent a lien against or the sale or forfeiture of the Premises or any part thereof as

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satisfaction of such Charge prior to final determination of such proceedings, and (ii) Mortgagor shall furnish to Mortgagee or Senior Lender, if any, (and if to Senior Lender, notice thereof to Mortgagee) a good and sufficient bond or surety, or a good and sufficient undertaking as may be required or permitted by law to accomplish a stay of any such sale or forfeiture of the Premises during the pendency of such contest, in an amount (x) not less than 125% of such Charge and (y) adequate fully to pay all such contested Charges and all interest and penalties upon the adverse determination of such contest.

Mortgagor shall cooperate with the CHA in seeking exemptions or abatements with respect to any general real estate taxes relating to the 70 units that constitute "public housing" units subject to statutory abatement under 35 ILCS 200/18-177 or other applicable law. The CHA's failure to obtain or maintain such exemption or abatement shall not constitute a default by Mortgagor under this Mortgage so long as Mortgagor pays such unanticipated taxes prior to the time such taxes are sold in a tax sale. This provision shall control over anything above in this Section 3 with respect to such general real estate taxes.

(4) Insurance. Mortgagor shall procure and maintain, or cause to be maintained, at all times, at Mortgagor's own expense, until final repayment of the indebtedness secured hereby, the types of insurance specified below, with insurance companies authorized to do business in the State of Illinois covering all operations contemplated in connection with the Project, whether performed by Mortgagor, the General Contractor, any Subcontractor or others.

The kinds and amounts of insurance required are as follows:

(a) Workers Compensation and Occupational Disease Insurance

Workers compensation and occupational disease insurance, in accordance with the laws of the State of Illinois, or any other applicable jurisdiction, covering all employees who are to provide a service in connection with the Project and employer's liability coverage with limits of not less than \$100,000 per each accident or illness.

(b) Commercial Liability Insurance (Primary and Umbrella)

Commercial liability insurance or equivalent with limits of not less than \$1,000,000 per occurrence, combined single limit, for bodily injury, personal injury and/or property damage liability. Coverage extensions shall include the following: all premises and operations, products/completed operation, independent contractors, cross liability and contractual liability coverages (with no limitation endorsement). Mortgagee, its employees, elected officials, agents and representatives shall be named as an additional insured on a primary, non-contributory basis for any liability arising directly or indirectly from the Project.

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(c) Automobile Liability Insurance (Primary and Umbrella)

When any motor vehicles (owned, non-owned and hired) are used in connection with the Project, Mortgagor shall provide comprehensive automobile liability insurance with limits of not less than \$1,000,000 per occurrence, combined single limit, for bodily injury and property damage. Mortgagee shall be named as an additional insured on a primary, non-contributory basis.

(d) All Risk Property Damage

Mortgagor shall obtain an all risk property policy in the amount of full replacement value, including improvements and betterments, covering damage to or loss of the Premises. The insurance shall include the following extensions: business interruption/loss of rents, and boiler and machinery, if applicable. The policy shall list Mortgagee as loss payee as their interest may appear.

(e) All Risk Builders Risk Insurance

When Mortgagor, the General Contractor or any Subcontractor undertakes any construction, including improvements, betterments and/or repairs, to the Premises, all risk builder's risk insurance shall be procured and maintained to cover materials, supplies, equipment, machinery and fixtures that are or will be part of the Premises. Mortgagee shall be named as loss payee as their interest may appear.

(f) Railroad Protective Liability Insurance

When, in connection with the Project, any work is to be done adjacent to or on property owned by a railroad or public transit entity, Mortgagor shall procure and maintain, or cause to be procured and maintained, with respect to the operations that Mortgagor, the General Contractor or any Subcontractor shall perform, railroad protective liability insurance in the name of such railroad or public transit entity. The policy shall have limits of not less than \$2,000,000 per occurrence, combined single limit, and \$6,000,000 in the aggregate for losses arising out of injuries to or death of all persons, and for damage to or destruction of property, including the loss of use thereof.

(g) Contractors' Pollution Liability Insurance

When any environmental remediation work is undertaken by Mortgagor, the General Contractor or any Subcontractor in connection with the Project, contractors' pollution liability insurance shall be procured with limits of not less than \$1,000,000 covering all construction and related work undertaken in



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connection with the Project. Mortgagee is to be named as an additional insured on a primary, non-contributory basis. Mortgagor, the General Contractor and any Subcontractor shall comply with any additional insurance requirements that are stipulated by the Interstate Commerce Commission's regulations, Title 49 of the Code of Federal Regulations, Department of Transportation; Title 40 of the Code of Federal Regulations, Protection of the Environment and any other federal, state or local regulations concerning the removal and transportation of Hazardous Materials.

Mortgagor shall furnish the City of Chicago, Department of Housing, 33 North LaSalle Street, 2<sup>nd</sup> Floor, Chicago, Illinois 60602, original certificates of insurance evidencing the required coverages to be in force on the date hereof, and renewal certificates of insurance, or such similar evidence, if the coverages have an expiration or renewal date occurring during the term hereof.

The receipt of any certificate does not constitute agreement by Mortgagee that the insurance requirements of this Section have been fully met or that the insurance policies indicated on the certificate are in compliance with all requirements. The failure of Mortgagee to obtain certificates or other insurance evidence from Mortgagor shall not be deemed to be a waiver by Mortgagee. Mortgagor shall advise all insurers of the provisions of this Section regarding insurance. Non-conforming insurance shall not relieve Mortgagor of its obligation to provide insurance as specified herein. Nonfulfillment of the insurance conditions of this Section may constitute an Event of Default, and Mortgagee retains the right to suspend disbursement of Loan proceeds until proper evidence of insurance is provided.

All insurance policies shall provide that Mortgagee shall be given 30 days' prior written notice of any modification, nonrenewal or cancellation.

If Mortgagor fails to obtain or maintain any of the insurance policies required under this Mortgage or to pay any premium in whole or in part when due, Mortgagee may (without waiving or releasing any obligation or Event of Default by Mortgagor hereunder) obtain and maintain such insurance policies and take any other action which Mortgagee deems advisable to protect its interest in the Premises, including acceleration of the Note. All sums so disbursed by Mortgagee, including attorneys' fees, court costs and expenses, shall be reimbursed by Mortgagor upon demand by Mortgagee.

Mortgagor shall require the General Contractor and all Subcontractors to carry the insurance required herein, or Mortgagor may provide the coverage for any or all of the General Contractor and Subcontractors, and, if so, the evidence of insurance submitted shall so stipulate.

Any and all deductibles or self-insured retention on the insurance coverages required herein shall be borne by Mortgagor, the General Contractor or the appropriate Subcontractor, as applicable.

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Mortgagor expressly understands and agrees that any insurance coverages and limits furnished by Mortgagor shall in no way limit Mortgagor's liabilities and responsibilities specified under any of the Loan Documents or by law.

Mortgagor agrees and shall cause the General Contractor to agree that all insurers shall waive their rights of subrogation against Mortgagee, its employees, elected officials, agents or representatives.

Mortgagor expressly understands and agrees that any insurance or self-insurance programs maintained with respect to the Premises by Mortgagee shall apply in excess of and not contribute with insurance provided by Mortgagor, the General Contractor or any Subcontractor under this Section.

The insurance required hereunder to be carried shall not be limited by any limitations expressed in the indemnification language herein or any limitation placed on the indemnity therein given as a matter of law.

If Mortgagor, the General Contractor or any Subcontractor desires additional coverage, higher limits of liability, or other modifications for its own protection, Mortgagor, the General Contractor or such Subcontractor, as appropriate, shall be responsible for the acquisition and cost of such additional protection.

Mortgagee maintains the right to modify, delete, alter or change these requirements.

(5) Inspection of Premises and of Books and Records. Mortgagor shall permit Mortgagee, the United States Department of Housing and Urban Development and/or their agents to inspect the Premises at all reasonable times, and access thereto shall be permitted for that purpose. Mortgagor shall keep and maintain full and correct records at Mortgagor's office showing in detail the income and expenses of the Premises and shall make such books, records and all supporting vouchers, data and other documents available for inspection, copying (including excerpts and transcriptions), audit and examination upon request by Mortgagee, HUD and their respective agents, successors and assigns until the fifth anniversary of the date of repayment of the Loan in full.

(6) Insurance Proceeds. In the event of any damage to, or destruction of the Premises, Mortgagor will give written notice to Mortgagee of such damage or destruction within five Business Days thereafter and, subject to the rights granted to Senior Lender under the Senior Mortgage, and subject further to any applicable terms and conditions of the Ground Lease and the ACC Amendment (defined below) authorize Mortgagee to proceed as follows:

(a) In the event of any loss covered by insurance policies, Mortgagee is hereby authorized at its option to either (i) settle and adjust any claim under such policies without the

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consent of Mortgagor, or (ii) allow Mortgagor to agree with the insurance company or companies on the amount to be paid upon the loss. Mortgagee shall, and is hereby authorized to, collect any such insurance proceeds, and the expenses incurred by Mortgagee in the adjustment and collection of insurance proceeds shall be deemed additional indebtedness secured by this Mortgage and shall be reimbursed to Mortgagee by Mortgagor upon demand.

(b) In the event of any insured damage to, or destruction of, the Premises or any part thereof, Mortgagee shall apply the proceeds of insurance to reimburse or, at the option of Mortgagee, pay directly Mortgagor for the cost of restoring, repairing, replacing or rebuilding the Premises if (i) an Event of Default hereunder or an event of default under any of the other Loan Documents, the CHA Loan Documents, the Junior Loan Documents, or the Senior Loan Documents shall not have occurred and be continuing; (ii) such insurance proceeds shall be in an amount sufficient to restore the Premises to at least the same value and substantially the same character as the Premises had immediately prior to such damage or destruction (and subject to no liens or encumbrances other than Permitted Encumbrances), or if such proceeds are not so sufficient, Mortgagor shall promptly deposit with Mortgagee funds equal to the amount of such deficiency; (iii) Mortgagor shall obtain all required governmental approvals with respect to such restoration, repair, replacement or rebuilding; (iv) prior to such restoration, repair, replacement or rebuilding, Mortgagee shall receive and approve plans and specifications and a detailed budget and cost breakdown with respect to such work; and (v) such restoration, repair, replacement or rebuilding is reasonably susceptible to completion not less than six months prior to the Maturity Date.

(c) In the event that proceeds of insurance, if any, shall be made available to Mortgagor for the restoration, repair, replacement or rebuilding of the Premises, Mortgagor hereby covenants to restore, repair, replace or rebuild the same, to at least equal value, and substantially the same character as prior to such damage or destruction, all to be effected in accordance with plans and specifications submitted to and approved by Mortgagee, and to expend all such proceeds and any funds deposited by Mortgagor pursuant to Section 6(b)(ii) hereof prior to the further disbursement of any Loan proceeds. If the amount of such insurance proceeds shall be in excess of \$50,000, such proceeds shall be disbursed through an escrow pursuant to an escrow agreement approved by Mortgagee.

(d) If all of the conditions described in paragraph (b) of this Section with respect to the application of proceeds of insurance shall not be met, Mortgagee may, in its sole discretion, apply such proceeds to the indebtedness secured hereby in such order or manner as Mortgagee may elect.

(e) To the extent that any amount of proceeds of insurance remain unexpended after completion of the restoration, repair, replacement or rebuilding of the Premises, such amount shall be applied to the indebtedness secured hereby.

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(f) Notwithstanding the foregoing, if any provision of this Section 6 conflicts with that certain Mixed-Finance Amendment to Consolidated Annual Contributions Contract by and between CHA, the Receiver and HUD (the "ACC Amendment"), dated the Closing Date, the provisions of Section 11 of the ACC Amendment shall control.

(7) Condemnation/Eminent Domain. Mortgagor shall give Mortgagee prompt notice of any proceedings, pending or threatened, seeking condemnation or taking by eminent domain or any like process ("Taking"), of all or any portion of the Premises or affecting any easement thereon or appurtenance thereto and shall deliver to Mortgagee copies of any and all papers served in connection with any such proceedings, and Mortgagor hereby assigns and transfers to Mortgagee, subject to the rights granted to Senior Lender under the Senior Mortgage, and subject further to any applicable terms and conditions of the Ground Lease and the Mixed Finance Amendment, the entire proceeds of all awards resulting from any Taking. Mortgagee is hereby authorized to collect and receive from the condemnation authorities said awards and is further authorized to give appropriate receipts therefor. In the event of any such Taking, but subject to any rights granted to Senior Lender, if any, under the Senior Mortgage, if any, Mortgagee may, in its sole discretion, (i) apply the proceeds of all awards resulting from such Taking to the indebtedness secured hereby in such order or manner as Mortgagee may elect, or (ii) apply such proceeds to reimburse or, at the option of Mortgagee, pay directly Mortgagor for the cost of restoring, repairing, replacing or rebuilding the Premises. In the event that such proceeds, if any, shall be made available to Mortgagor for the restoration, repair, replacement or rebuilding of the Premises, Mortgagor hereby covenants to restore, repair, replace or rebuild the same, to at least equal value and substantially the same character as prior to such Taking, all to be effected in accordance with plans and specifications submitted to and approved by Mortgagee. If the amount of such proceeds shall be in excess of \$50,000, such proceeds shall be disbursed through an escrow pursuant to an escrow agreement approved by Mortgagee.

Notwithstanding the foregoing, if any provision of this Section 7 conflicts with the ACC Amendment, the provisions of Section 11 of the ACC Amendment shall control.

(8) Transfer and Encumbrance of Premises. Mortgagor shall not create, effect, contract for, commit to, consent to, suffer or permit any conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation (or any agreement to do any of the foregoing, other than a contract for sale or financing to pay in full the Note and all other amounts due and owing by Mortgagor to Mortgagee under the Loan Documents, provided that any such contract shall be expressly contingent upon the receipt of prior written consent to such sale or financing by Mortgagee, which consent shall not be unreasonably withheld by Mortgagee with respect to any contract providing for payment in full of the Note and all other amounts due and owing by Mortgagor to Mortgagee under the Loan Documents), directly or indirectly, by willful act, by operation of law or otherwise, of all or any portion of the Premises or any interest therein, other than Permitted Encumbrances, or any interest in Mortgagor or any member thereof (each of the foregoing being referred to herein as a "Prohibited Transfer"), without Mortgagee's prior written consent. If Mortgagor shall do or allow any of the foregoing



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Prohibited Transfers without Mortgagee's prior written consent, Mortgagee at its option, has the right to accelerate the maturity of the Note causing the full principal balance thereof and accrued interest, if any, thereon to be immediately due and payable without notice to Mortgagor. Any waiver by Mortgagee of the provisions of this paragraph shall not be deemed to be a waiver of the right of Mortgagee to insist upon strict compliance with the provisions of this paragraph in the future.

Notwithstanding the foregoing, Mortgagee shall not unreasonably withhold its consent to the replacement and/or addition of a manager of Mortgagor pursuant to the terms of Mortgagor's Operating Agreement and to the extent Mortgagee so consents, it shall not be considered a Prohibited Transfer hereunder. Further, no consent by Mortgagee shall be required for the withdrawal, replacement and/or addition of any of Mortgagor's members (other than the Manager) or of any such member's members (or any other ownership interests in and to said members), and the same shall not constitute a Prohibited Transfer hereunder.

(9) Mortgagee's Options; Subrogation. (a) In case of an Event of Default hereunder by Mortgagor, Mortgagee may (but is not obligated to) make any payment or perform any act herein required of Mortgagor in any form and manner deemed expedient, and may (but is not obligated to) make full or partial payments of principal or interest on prior encumbrances, if any, and purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof, or redeem the Premises from any tax sale or forfeiture affecting the Premises or contest any tax or assessment thereon. All monies paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including attorneys' fees, and any other monies advanced by Mortgagee to protect the Premises and the lien hereof, shall be deemed additional indebtedness secured hereby, and shall become immediately due and payable, with interest thereon at a rate of the lesser of 15% per annum or the maximum amount permitted by law. Inaction of Mortgagee shall never be considered as a waiver of any right accruing to it on account of any default on the part of Mortgagor.

(b) To the extent that Mortgagee, on or after the date hereof, pays any sum under any provision of law or any instrument or document creating any lien or other interest prior or superior to the lien of this Mortgage, or Mortgagor or any other person or entity pays any such sum with the proceeds of the indebtedness secured hereby, Mortgagee shall have and be entitled to a lien or other interest on the Premises equal in priority to the lien or other interest discharged and Mortgagee shall be subrogated to, and receive and enjoy all rights and liens possessed, held or enjoyed by, the holder of such lien, which shall remain in existence and benefit Mortgagee in securing the indebtedness secured hereby.

(10) Events of Default. The following shall constitute an "Event of Default" under this Mortgage:

- (i) Mortgagor's failure to pay, when due, any installment of principal of or interest, if any, on the Note, or to pay when due (including



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any applicable notice and/or cure periods) any other sums required to be paid by Mortgagor under the Loan Documents;

- (ii) subject to Section 33 hereof, default by Mortgagor in the performance or observance of any condition, warranty, representation, covenant, provision or term (other than as referred to in the other paragraphs of this Section 10) contained herein or in the other Loan Documents, which remains unremedied for 30 days after notice thereof from Mortgagee to Mortgagor, provided, however, that if any such default cannot reasonably be remedied within said 30-day period and if Mortgagor shall have commenced to remedy such default within said 30-day period and shall thereafter continue diligently to effect such remedy, then said 30-day period shall be extended to 60 days upon written request from Mortgagor to Mortgagee delivered during such 30-day period, and upon further written request from Mortgagor to Mortgagee delivered during said 60-day period, said 60-day period shall be extended to 90 days (provided, however, that Mortgagee shall not be precluded during any such periods from exercising any remedies available under any of the Loan Documents if its security becomes or is about to become materially jeopardized by any failure to cure a default within such period);
- (iii) the occurrence of a default or an event of default under any of the Senior Loan Documents, the Junior Loan Documents, the CHA Loan Documents or the Ground Lease which default or event of default is not timely cured pursuant to any applicable cure period as set forth in the Senior Loan Documents, the Junior Loan Documents, the CHA Loan Documents or the Ground Lease whichever is applicable;
- (iv) a writ of execution, attachment or any similar process shall be issued or levied against all or any portion of the Premises or any interest therein, or any judgment involving monetary damages shall be entered against Mortgagor which shall become a lien on all or any portion of the Premises or any interest therein and such execution, attachment or similar process or judgment is not released, bonded, satisfied, vacated or stayed within 30 days after its entry or levy;
- (v) any warranty, representation or statement made or furnished to Mortgagee by or on behalf of Mortgagor proving to have been false in any material respect when made or furnished;

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- (vi) prepayment of principal of the Senior Loan, if any, the Junior Loan, if any, or the CHA Loan, if any, without a pro rata concurrent prepayment of principal of the Note unless the City, in its sole discretion gives its prior written consent to such prepayment, other than a Permitted Refinancing;
- (vii) the abandonment by Mortgagor of all or any portion of the Premises;
- (viii) the occurrence of any event of default with respect to the payment of any monies due and payable to Mortgagee by Mortgagor other than in connection with the Loan, or the occurrence of a default in the performance or observance of any material obligation, provision or condition by Mortgagor under any agreement or other instrument other than in connection with the Loan, the CHA Loan, the Junior Loan, or the Senior Loan to which Mortgagor is now or hereafter a party, or the occurrence of any other event under any such agreement or instrument upon which any holder of indebtedness outstanding thereunder may declare the same due and payable, and in each such case the continuation of such default beyond any applicable cure periods;
- (ix) Mortgagor's failure to discharge any Charge in accordance with the terms hereof or a failure to procure or maintain any insurance required hereunder;
- (x) the dissolution of Mortgagor or the entry of a decree or order for relief by a court having jurisdiction with respect to Mortgagor in an involuntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or other similar law, or appointing a receiver, liquidator, assignee, custodian, trustee or sequestrator (or other similar official) of Mortgagor or for the Premises or for any substantial part of the property of Mortgagor or ordering the winding-up or liquidation of the affairs of Mortgagor and the continuance of any such decree or order unstayed and in effect for a period of 30 consecutive days;
- (xi) the commencement by Mortgagor of a voluntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or other similar law, or the consent by Mortgagor to the appointment of or taking possession by a receiver, liquidator, assignee, trustee,

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custodian or sequestrator (or other similar official) of Mortgagor or the Premises or of any substantial part of the property of Mortgagor or of any royalties, revenues, rents, issues or profits therefrom, or the making by Mortgagor of any assignment for the benefit of creditors or the failure of Mortgagor generally to pay its debts as such debts become due or the taking of action by Mortgagor in furtherance of any of the foregoing;

- (xii) a final judgment for the payment of money in excess of \$100,000 shall be rendered by a court of record against Mortgagor and Mortgagor shall not discharge the same or provide for its discharge in accordance with its terms, or procure a stay of execution thereof, within 60 days from the date of entry thereof, or such longer period during which execution of such judgment shall have been stayed;
- (xiii) Mortgagor's sale, partial sale, transfer, refinancing, conveyance, mortgage, pledge, grant of security interest, assignment, syndication or other disposition of all or any portion of the Premises or any interest therein without the prior written consent of Mortgagee, whether by operation of law, voluntarily or otherwise or if Mortgagor shall enter into a contract to do any of the foregoing without the prior written consent of Mortgagee or any other violation of Section 8 hereof (except as may be expressly permitted in Section 8 hereof or except a contract for sale or financing to pay in full the Note and all other amounts when due and owing by Mortgagor to Mortgagee under the Loan Documents, provided that any such contract shall be expressly contingent upon the receipt of prior written consent to such sale or financing by Mortgagee, which consent shall not be unreasonably withheld by Mortgagee with respect to any contract providing for payment in full of the Note and all other amounts due and owing by Mortgagor to Mortgagee under the Loan Documents);
- (xiv) the sale or other transfer by Owner, if any, of all or a controlling interest in the ownership of Manager without the prior written consent of Mortgagee;
- (xv) any event of default under any of the other Loan Documents which has not been cured within any applicable grace period;
- (xvi) failure by Mortgagor to submit or cause to be submitted, on a timely basis, documentation required under Section 11.01 of the Loan Agreement, or a determination by Mortgagee, upon analysis

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of the documentation submitted by or on behalf of Mortgagor pursuant to said Section 11.01, that Mortgagor is not complying with its obligations under said Section 11.01, and the delivery by Mortgagee to Mortgagor of notice of such failure or such determination;

- (xvii) any transfer of funds from the Escrow Account without the prior written consent of Mortgagee;
- (xviii) the execution of any amendment or modification to or restatement of the Construction Contract except for any change orders not exceeding \$25,000 without the prior written consent of Mortgagee;
- (xix) commencement of the Project without the prior written consent of Mortgagee; or
- (xx) the occurrence of a violation of Section 2-156-030(b) of the Municipal Code of Chicago by any elected official, or any person acting at the direction of such official, with respect to the Loan Documents or the transactions contemplated thereby.
- (xxi) the execution of any amendment, modification or restatement of the Ground Lease without the prior written consent of Mortgagee.

(11) Acceleration, Etc. Upon the occurrence of an Event of Default hereunder, Mortgagee may elect to accelerate the maturity of the Note causing the full principal balance of and accrued interest, if any, on the Note, together with all other amounts then due and owing by Mortgagor to Mortgagee under any of the Loan Documents, to become immediately due and payable at the place of payment as aforesaid, and Mortgagee may proceed to foreclose this Mortgage and to exercise any rights and remedies available to Mortgagee under this Mortgage, the Assignment of Rents or any of the other Loan Documents and to exercise any other rights and remedies against Mortgagor, or with respect to the Note, which Mortgagee may have at law, in equity or otherwise; provided, however, that upon the occurrence of an Event of Default under Section 10(x) or (xi) hereof, the entire unpaid principal of and interest, if any, on the Note shall, without any declaration, notice or other action on the part of Mortgagee, be immediately due and payable, anything herein or in the other Loan Documents to the contrary notwithstanding. Mortgagee may also elect to commence an action to enforce specifically any of the provisions contained in any of the Loan Documents.

Upon the occurrence of an event of default under any of the Senior Loan Documents, the Junior Loan Documents, or the CHA Loan Documents Mortgagee may at its option proceed to cure, if possible, such event of default; subject to Section 9(b) hereof, all amounts so expended by Mortgagee in the course of such action shall be reimbursed by Mortgagor to Mortgagee upon

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demand and shall be additional indebtedness of Mortgagor secured by this Mortgage, the Assignment of Rents and the other Loan Documents.

(12) Remedies. Mortgagee's remedies as provided in this Mortgage or the other Loan Documents shall be cumulative and concurrent and may be pursued singularly, successively or together, at the sole discretion of Mortgagee and may be exercised as often as occasion therefor shall arise, and shall not be exclusive but shall be in addition to every other remedy now or hereafter existing at law, in equity or by statute. Failure of Mortgagee, for any period of time or on more than one occasion, to exercise any such remedy shall not constitute a waiver of the right to exercise the same at any time thereafter or in the event of any subsequent Event of Default. No act of omission or commission of Mortgagee, including specifically any failure to exercise any right or remedy, shall be deemed to be a waiver or release of the same; any such waiver or release is to be effected only through a written document executed by Mortgagee and then only to the extent specifically recited therein. A waiver or release with reference to any one event shall not be construed as a waiver or release of any subsequent event or as a bar to any subsequent exercise of Mortgagee's rights or remedies hereunder. Except as otherwise specifically required herein, notice of the exercise of any right or remedy granted to Mortgagee by the Loan Documents is not required to be given.

(13) Additional Indebtedness. In the event that: (a) the Note is placed in the hands of an attorney for collection or enforcement or is collected or enforced through any legal proceeding; (b) an attorney is retained to represent Mortgagee in any bankruptcy, reorganization, receivership or other proceedings affecting creditors' rights and involving a claim under any of the Loan Documents; (c) an attorney is retained to protect or enforce the lien of this Mortgage, or the liens or security interests of any of the other Loan Documents; or (d) an attorney is retained to represent Mortgagee in any other proceedings whatsoever in connection with the Loan Documents, or any property subject thereto, then Mortgagor shall pay to Mortgagee all reasonable attorneys' fees, and all costs and expenses incurred in connection therewith.

(14) Waiver. Mortgagee's failure to require strict performance by Mortgagor of any provision of this Mortgage shall not waive, affect or diminish any right of Mortgagee thereafter to demand strict compliance and performance therewith, nor shall any waiver by Mortgagee of an Event of Default waive, suspend or affect any other Event of Default under this Mortgage, whether the same is prior or subsequent thereto, or of the same or a different type. Mortgagee's delay in instituting or prosecuting any action or proceeding or otherwise asserting its rights hereunder or under any of the other Loan Documents, shall not operate as a waiver of such rights or limit them in any way so long as an Event of Default shall be continuing.

(15) Right of Possession. To the extent permitted by law, in any case in which, under the provisions of this Mortgage, Mortgagee has a right to institute foreclosure proceedings, whether before or after the institution of such proceedings or before or after sale thereunder, Mortgagor shall, at the option of Mortgagee, surrender to Mortgagee, and Mortgagee shall be entitled to take, actual possession of all or any portion of the Premises personally or by its agents or



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attorneys, and Mortgagee, in its sole discretion, may enter upon, take and maintain possession of all or any portion of the Premises.

Upon taking possession of the Premises, Mortgagee may make all necessary or proper repairs, decoration, renewals, replacements, alterations, additions, betterments and improvements in connection with the Premises as it may deem judicious to insure, protect and maintain the Premises against all risks incidental to Mortgagee's possession, operation and management thereof, and may receive all rents, issues and profits therefrom. Mortgagee shall have, in addition to any other power provided herein, all powers and duties as provided for in Sections 5/15-1701, 5/15-1702 and 5/15-1703 of the Act.

**(16) Appointment of Receiver.** Upon or at any time after the filing of any complaint to foreclose the lien of this Mortgage, the court may, upon application, appoint a receiver of the Premises. Such appointment may be made either before or after foreclosure sale, without notice, without regard to the solvency or insolvency, at the time of application for such receiver, of the person or persons, if any, liable for the payment of the indebtedness hereby secured, without regard to the value of the Premises at such time and whether or not the same is then occupied as a homestead, and without bond being required of the applicant. Mortgagee or any employee or agent thereof may be appointed as such receiver. The receiver shall have the power to take possession, control and care of the Premises and to collect all rents and profits thereof during the pendency of such foreclosure suit, and all powers and duties provided for in Section 5/15-1704 of the Act, and such other powers as the court may direct.

**(17) Foreclosure Sale.** The Premises or any interest or estate therein sold pursuant to any court order or decree obtained under this Mortgage shall be sold in one parcel, as an entirety, or in such parcels and in such manner or order as Mortgagee, in its sole discretion, may elect, to the maximum extent permitted by Illinois law. At any such sale, Mortgagee may bid for and acquire, as purchaser, all or any portion of the Premises and, in lieu of paying cash therefor, may make settlement for the purchase price by crediting upon the indebtedness due the amount of Mortgagee's bid.

**(18) Application of Proceeds from Foreclosure Sale.** Proceeds of any foreclosure sale of the Premises shall be distributed and applied in the following order of priority: (i) on account of all costs and expenses incident to the foreclosure proceedings, (ii) all other items which, under the terms hereof, constitute secured indebtedness additional to that evidenced by the Note, with interest thereon, (iii) all principal and interest, if any, remaining unpaid on the Note, and (iv) any surplus or remaining funds to Mortgagor, its successors or assigns, as their rights may appear.

**(19) Insurance Upon Foreclosure.** Wherever provision is made in this Mortgage for insurance policies to bear mortgage clauses or other loss payable clauses or endorsements in favor of Mortgagee, or to confer authority upon Mortgagee to settle or participate in the settlement of losses under policies of insurance or to hold and disburse or otherwise control use of insurance proceeds, from and after the entry of judgment of foreclosure all such rights and

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powers of Mortgagee shall continue in Mortgagee as judgment creditor or mortgagee until confirmation of sale. Upon confirmation of sale, Mortgagee shall be empowered to assign all policies of insurance to the purchaser at the sale. In case of an insured loss after foreclosure proceedings have been instituted, the proceeds of any insurance policy or policies, if not applied in restoring the Premises, shall be used to pay the amount due in accordance with any foreclosure decree that may be entered in any such proceedings, and the balance, if any, shall be paid as the court may direct.

**(20) Waiver of Statutory Rights.** To the extent permitted by law, Mortgagor shall not apply for or avail itself of any appraisement, valuation, redemption, reinstatement, stay, extension or exemption laws or any so-called "Moratorium Laws" now existing or hereafter enacted, in order to prevent or hinder the enforcement of foreclosure of this Mortgage and hereby waives the benefit of such laws. Mortgagor, for itself and all who may claim through or under it, waives any and all right to have the property and estates comprising the Premises marshalled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Premises sold as an entirety. To the extent permitted by law, Mortgagor hereby expressly waives any and all rights of redemption and rein-statement, on its own behalf and on behalf of each and every person having a beneficial interest in Mortgagor, it being the intent hereof that any and all such rights of redemption or rein-statement of Mortgagor and of all other persons are and shall be deemed to be hereby waived. Mortgagor acknowledges that the Premises do not constitute agricultural real estate, as said term is defined in Section 5/15-1201 of the Act or residential real estate as defined in Section 5/15-1219 of the Act.

**(21) Partial Payments.** Acceptance by Mortgagee of any payment which is less than payment in full of all amounts due and payable at the time of such payment shall not constitute a waiver of Mortgagee's right to exercise its option to declare the whole of the principal sum then remaining unpaid, together with all accrued interest, if any, the sum, immediately due and payable without notice, or any other rights of Mortgagee at that time or any subsequent time, without its express written consent, except and to the extent otherwise provided by law.

**(22) Rescission of Election.** Acceleration of maturity, once made by Mortgagee, may at the option of Mortgagee be rescinded, and any proceedings brought to enforce any rights or remedies hereunder may, at Mortgagee's option, be discontinued or dismissed. In either of such events, Mortgagor and Mortgagee shall be restored to their former positions, and the rights, remedies and powers of Mortgagee shall continue as if such acceleration had not been made or such proceedings had not been commenced, as the case may be.

**(23) Notice.** Unless otherwise specified, any notice, demand or request required hereunder shall be given in writing at the addresses set forth below, by any of the following means: (a) personal service; (b) overnight courier, receipt requested; or (c) registered or certified mail, return receipt requested.

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IF TO MORTGAGEE: Department of Housing  
City of Chicago  
33 North LaSalle Street, 11<sup>th</sup> Floor  
Chicago, Illinois 60602  
Attention: Commissioner

WITH COPIES TO: Office of the Corporation Counsel  
City of Chicago  
City Hall  
121 North LaSalle Street, Room 600  
Chicago, Illinois 60602  
Attention: Finance & Economic  
Development Division

Department of Finance  
City of Chicago  
33 North LaSalle Street, Suite 600  
Chicago, Illinois 60602  
Attention: Comptroller

IF TO MORTGAGOR: As specified on Exhibit B.

Such addresses may be changed by notice to the other parties given in the same manner provided above. Any notice, demand or request sent pursuant to clause (a) above shall be deemed received upon such personal service. Any notice, demand or request sent pursuant to clause (b) above shall be deemed received on the Business Day immediately following deposit with the overnight courier, and any notice, demand or request sent pursuant to clause (c) above shall be deemed received two Business Days following deposit in the mail.

(24) Time. Time is of the essence with respect to the Loan Documents.

(25) Modifications. This Mortgage may not be altered, amended, modified, cancelled, changed or discharged except by written instrument signed by Mortgagor and Mortgagee or their respective successors and assigns.

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

(27) Construction of Mortgage. This Mortgage shall be construed and enforced according to the internal laws of the State of Illinois without regard to its conflict of laws principles.

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(28) Severability. If any provision of this Mortgage, or any paragraph, sentence, clause, phrase or word, or the application thereof, in any circumstance, is held invalid, the remainder of this Mortgage shall be construed as if such invalid part were never included herein and this Mortgage shall be and remain valid and enforceable to the fullest extent permitted by law.

(29) Grammar. As used in this Mortgage, the singular shall include the plural, and masculine, feminine and neuter pronouns shall be fully interchangeable, where the context so requires.

(30) Successors and Assigns. This Mortgage and each and every covenant, agreement and other provision hereof shall be binding upon Mortgagor and its successors and assigns (including, without limitation, each and every record owner of the Premises or any other person having an interest therein), and shall inure to the benefit of Mortgagee and its successors and assigns. Whenever Mortgagee is referred to herein, such reference shall also include the Holder of the Note, whether so expressed or not.

(31) Further Assurances. Mortgagor will perform, execute, acknowledge and deliver every act, deed, conveyance, transfer and assurance necessary or proper, in the sole judgment of Mortgagee, for assuring, conveying, mortgaging, assigning and confirming to Mortgagee all property mortgaged hereby or property intended so to be, whether now owned or hereafter acquired by Mortgagor, and for creating, maintaining and preserving the lien and security interest created hereby on the Premises. Upon any failure by Mortgagor to do so, Mortgagee may make, execute and record any and all such documents for and in the name of Mortgagor, and Mortgagor hereby irrevocably appoints Mortgagee and its agents as attorney-in-fact for that purpose. Mortgagor will reimburse Mortgagee for any sums expended by Mortgagee in making, executing and recording such documents including attorneys' fees and court costs.

(32) Indemnification. In addition to all other indemnities in favor of Mortgagee specifically provided in this Mortgage, Mortgagor shall indemnify Mortgagee and save Mortgagee harmless from and against any and all Losses incurred by Mortgagee in any Claim brought by reason of any such Loss, excluding, however, any Loss arising out of Mortgagee's gross negligence or willful misconduct following Mortgagee's acquisition of title to or control of the Premises, unless such act is taken in response to (i) any willful misconduct or negligent act or omission of Mortgagor, Manager or Owner, if any, or (ii) any breach (other than failure to repay the Loan) by Mortgagor, Manager or Owner, if any, of any provisions of the instruments executed by Mortgagor, Manager or Owner, if any, in connection with the Loan.

(33) Junior Mortgage. This is a junior mortgage on the Premises and is subject and subordinate in each and every respect to any and all rights of any kind created by collectively, jointly and severally:

(i) that certain Mortgage from the Mortgagor to JPMorgan Chase Bank, N.A. (the "Senior Lender") dated as of the date hereof (the "Senior Mortgage") granted by the Borrower to the

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Senior Lender and recorded prior to the recording of this Mortgage in the Office of the Cook County Recorder of Deeds (the "Recorder's Office"), securing that certain Mortgage Note from the Borrower in favor of Senior Lender dated as of the date hereof in the principal amount of up to \$9,520,000;

(ii) that certain Subordinate Mortgage, Security Agreement and Financing Statement dated as of the date hereof (the "CHA Mortgage") granted by the Borrower to the Chicago Housing Authority and recorded prior to the recording of this Assignment in the Recorder's Office which will secure a note of even date therewith in the principle amount of \$10,236,201 in favor of the CHA; and

(iii) any future mortgage made by the Mortgagor in favor of the Senior Lender pursuant to any Permitted Refinancing (as defined in the Loan Agreement).

So long as the Senior Mortgage and CHA Mortgage are in effect, in the event of any conflict between the provisions of this Mortgage and the Senior Mortgage or the CHA Mortgage, the provisions of the Senior Mortgage and CHA Mortgage shall prevail. Any waiver or forbearance by the Senior Lender or the CHA under the Senior Loan Documents or the CHA Loan Documents, respectively, shall not impair the priority of the lien under the Senior Loan Documents or the CHA Loan Documents, respectively. Notwithstanding any other provision herein to the contrary, the failure by Mortgagor to provide to Mortgagee any dollar amounts or any documents as may be required herein because such amounts or documents are required to be deposited with Senior Lender or the CHA pursuant to the provisions of the Senior Mortgage or the CHA Mortgage shall not be deemed an "Event of Default" hereunder; provided, however, that Mortgagor shall promptly provide to Mortgagee written notice of the deposit of such amounts or documents with Senior Lender or the CHA (together with copies of such documents). Notwithstanding any other provision herein to the contrary, the failure by Mortgagor to comply with any provision hereof (other than the payment of amounts or the provision of documents to Mortgagee) due to conflict between the provisions of the Senior Mortgage or the CHA Mortgage and the provisions hereof shall not be deemed an "Event of Default" hereunder; provided, however, that Mortgagor shall promptly provide to Mortgagee written notice of such conflict and of the actions taken by Mortgagor pursuant to the Senior Mortgage or the CHA Mortgage.

In the event of a Permitted Refinancing, the documents evidencing and securing such Permitted Refinancing shall be deemed the Senior Loan Documents hereunder, the mortgage securing such Permitted Refinancing shall be deemed to be the Senior Mortgage hereunder, and each of the provisions of this Section 33 shall apply with respect to such mortgage with the same force and effect as if such mortgage were the Senior Mortgage explicitly described above.

**(34) Security Agreement.** This Mortgage shall be construed as a "security agreement" within the meaning of and shall create a security interest under the Uniform Commercial Code as adopted by the State of Illinois with respect to any part of the Premises which constitutes fixtures



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or personal property. Mortgagee shall have all the rights with respect to such fixtures or personal property afforded to it by said Uniform Commercial Code in addition to, but not in limitation of, the other rights afforded Mortgagee by this Mortgage or any other agreement. Upon the recording hereof, this Mortgage shall constitute a financing statement under the Uniform Commercial Code. This Mortgage is a "construction mortgage" as that term is defined in Section 9-334 (h) of said Uniform Commercial Code.

(35) No Merger. It being the desire and intention of the parties hereto that this Mortgage and the lien thereof do not merge in fee simple title, it is hereby understood and agreed that should Mortgagee acquire any additional or other interests in or to the Premises or the ownership thereof, then, unless a contrary interest is manifested by Mortgagee, as evidenced by an appropriate document duly recorded, this Mortgage and the lien thereof shall not merge in the fee simple title, toward the end that this Mortgage may be foreclosed as if owned by a stranger to the fee simple title.

(36) Protective Advances; Maximum Amount of Indebtedness. All advances, disbursements and expenditures made by Mortgagee before and during a foreclosure, and before and after judgment of foreclosure, and at any time prior to sale, and, where applicable, after sale, and during the pendency of any related proceedings, for the following purposes, in addition to those otherwise authorized by this Mortgage or by the Act (collectively "Protective Advances"), shall have the benefit of all applicable provisions of the Act, including those provisions of the Act hereinbelow referred to:

(a) all advances by Mortgagee in accordance with the terms of this Mortgage to: (i) preserve or maintain, repair, restore or rebuild the improvements upon the Premises; (ii) preserve the lien of this Mortgage or the priority thereof; or (iii) enforce this Mortgage, as referred to in Subsection (b)(5) of Section 5/15-1302 of the Act;

(b) payments by Mortgagee of: (i) when due, installments of principal, interest or other obligations in accordance with the terms of the Senior Mortgage, if any, or other prior lien or encumbrance; (ii) when due, installments of real estate taxes and assessments, general and special and all other taxes and assessments of any kind or nature whatsoever which are assessed or imposed upon the Premises or any part thereof; (iii) other obligations authorized by this Mortgage; or (iv) with court approval, any other amounts in connection with other liens, encumbrances or interests reasonably necessary to preserve the status of title, as referred to in Section 5/15-1505 of the Act;

(c) advances by Mortgagee in settlement or compromise of any claims asserted by claimants under senior mortgages or any other prior liens;

(d) attorneys' fees and other costs incurred: (i) in connection with the foreclosure of this Mortgage as referred to in Sections 5/15-1504(d)(2) and 5/15-1510 of the Act; (ii) in connection with any action, suit or proceeding brought by or against Mortgagee for the

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enforcement of this Mortgage or arising from the interest of Mortgagee hereunder; or (iii) in the preparation for the commencement or defense of any such foreclosure or other action;

(e) Mortgagee's fees and costs, including attorneys' fees, arising between the entry of judgment of foreclosure and the confirmation hearing as referred to in Subsection (b)(1) of Section 5/15-1508 of the Act;

(f) advances of any amount required to make up a deficiency in deposits for installments of taxes and assessments and insurance premiums as may be authorized by this Mortgage;

(g) expenses deductible from proceeds of sale as referred to in Subsections (a) and (b) of Section 5/15-1512 of the Act;

(h) expenses incurred and expenditures made by Mortgagee for any one or more of the following: (i) if the Premises or any portion thereof constitutes one or more units under a condominium declaration, assessments imposed upon the unit owner thereof; (ii) if any interest in the Premises is a leasehold estate under a lease or sublease, rentals or other payments required to be made by the lessee under the terms of the lease or sublease; (iii) premiums for casualty and liability insurance paid by Mortgagee whether or not Mortgagee or a receiver is in possession, if reasonably required, in reasonable amounts, and all renewals thereof, without regard to the limitation to maintaining of existing insurance in effect at the time any receiver or mortgagee takes possession of the Premises imposed by Subsection (c)(1) of Section 5/15-1704 of the Act; (iv) repair or restoration of damage or destruction in excess of available insurance proceeds or condemnation awards; (v) payments required or deemed by Mortgagee to be for the benefit of the Premises or required to be made by the owner of the Premises under any grant or declaration of easement, easement agreement, agreement with any adjoining land owners or instruments creating covenants or restrictions for the benefit of or affecting the Premises; (vi) shared or common expense assessments payable to any association or corporation in which the owner of the Premises is a member in any way affecting the Premises; (vii) if the loan secured hereby is a construction loan, costs incurred by Mortgagee for demolition, preparation for and completion of construction, as may be authorized by the applicable commitment or loan agreement; (viii) pursuant to any lease or other agreement for occupancy of the Premises; and (ix) if this Mortgage is insured, payments of FHA or private mortgage insurance.

All Protective Advances shall be so much additional indebtedness secured by this Mortgage, and shall become immediately due and payable without notice and with interest thereon from the date of the advance until paid at the rate of interest payable after default under the terms of the Note.

This Mortgage shall be a lien for all Protective Advances as to subsequent purchasers and judgment creditors from the time this Mortgage is recorded pursuant to Subsection (b)(1) of Section 5/15-1302 of the Act.

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All Protective Advances shall, except to the extent, if any, that any of the same is clearly contrary to or inconsistent with the provisions of the Act, apply to and be included in:

- (1) the determination of the amount of indebtedness secured by this Mortgage at any time;
- (2) the indebtedness found due and owing to Mortgagee in the judgment of foreclosure and any subsequent supplemental judgments, orders, adjudications or findings by the court of any additional indebtedness becoming due after such entry of judgment, it being agreed that in any foreclosure judgment, the court may reserve jurisdiction for such purpose;
- (3) if the right of redemption has not been waived by this Mortgage, computation of amount required to redeem, pursuant to Subsections (d)(2) and (e) of Section 5/15-1603 of the Act;
- (4) the determination of amounts deductible from sale proceeds pursuant to Section 5/15-1512 of the Act;
- (5) the application of income in the hands of any receiver or mortgagee in possession; and
- (6) the computation of any deficiency judgment pursuant to Subsections (b)(2) and (e) of Sections 5/15-1508 and Section 5/15-1511 of the Act.

The maximum amount of indebtedness secured by this Mortgage shall be \$14,500,000 plus interest, plus any disbursements for the payment of taxes and insurance on the Premises, plus interest thereon, and any other sums advanced in accordance with the terms hereof or any of the other Loan Documents to protect the security of this Mortgage or any of the other Loan Documents plus interest thereon.

**(37) Non-Recourse Loan.** Subject to the terms of Section 6 of Exhibit B hereto and notwithstanding any provision herein to the contrary, the indebtedness secured hereunder shall be non-recourse and in the event of default hereunder, Mortgagee's sole source of satisfaction of repayment of the amounts due to Mortgagee hereunder or under any of the Loan Documents shall be limited to Mortgagee's rights with respect to the collateral pledged and assigned hereunder or under the Assignment of Rents, the Assignment of Contracts or any of the other Loan Documents.

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(38) Advances. The Loan Agreement is referred to herein as the "Commitment". Mortgagee has bound itself and does hereby bind itself to make advances pursuant to and subject to the terms of the Commitment, and the parties hereby acknowledge and intend that all such advances, including future advances whenever hereafter made, shall be a lien from the time this Mortgage is recorded, as provided in Section 15-1302(b)(1) of the Act.

[Signature Appears on Next Page]

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IN WITNESS WHEREOF, Mortgagor has caused these presents to be signed and attested to on the day and year first above written.

WHP-IIB, LLC, an Illinois limited liability company

By: WHP-IIB Manager, LLC, an Illinois limited liability company,  
its manager

By: Brinshore Holding, LLC, an Illinois limited liability company, a member of  
WHP-IIB Manager, LLC

By: Brinshore Development, L.L.C., an Illinois limited liability company  
and its sole member

By: RJS Real Estate Services, Inc., an Illinois corporation,  
a member

By: 

Richard Sciortino  
President

By: Michaels Chicago Holding Company, LLC, an Illinois limited liability  
company, a member of WHP-IIB Manager, LLC

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

Name: \_\_\_\_\_

Its: \_\_\_\_\_



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IN WITNESS WHEREOF, Mortgagor has caused these presents to be signed and attested to on the day and year first above written.

WHP-IIB, LLC, an Illinois limited liability company

By: WHP-IIB Manager, LLC, an Illinois limited liability company,  
its manager

By: Brinshore Holding, LLC, an Illinois limited liability company, a member of  
WHP-IIB Manager, LLC

By: Brinshore Development, L.L.C., an Illinois limited liability company  
and its sole member

By: RJS Real Estate Services, Inc., an Illinois corporation,  
a member

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

Richard Sciortino  
President

By: Michaels Chicago Holding Company, LLC, an Illinois limited liability  
company, a member of WHP-IIB Manager, LLC

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

Name: John O'Donnell

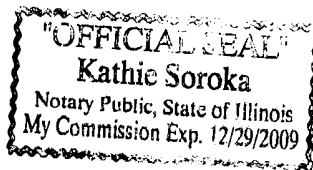
Its: VICE President

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STATE OF ILLINOIS       )  
                                       ) SS.  
 COUNTY OF COOK        )

I, the undersigned, a Notary Public in and for the county and State aforesaid, do hereby certify that Richard Sciortino, personally known to me to be the president of RJS Real Estate Services, Inc., an Illinois corporation, a member of Brinshore Development, L.L.C., an Illinois limited liability company, the sole member of Brinshore Holding, LLC, an Illinois limited liability company, a member of WHP-IIB Manager, LLC, an Illinois limited liability company (the "Manager"), the manager of WHP-IIB, LLC, an Illinois limited liability company (the "Mortgagor"), personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such officer, (s)he signed and delivered the said instrument pursuant to authority given by the members of the Manager as their free and voluntary act, and as the free and voluntary act and deed of the Manager and the Mortgagor for the uses and purposes therein set forth.

GIVEN under my hand and official seal this 26 day of October, 2006.



(SEAL)

Kathie Soroka  
 Notary Public

Cook County Clerk's Office

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STATE OF ~~ILLINOIS~~ <sup>New Jersey</sup> )  
COUNTY OF ~~COOK~~ <sup>Burlington</sup> ) SS.

I, the undersigned, a Notary Public in and for the county and State aforesaid, do hereby certify that John D'Donnell, personally known to me to be the Vice President of Michaels Chicago Holding Company, LLC, an Illinois limited liability company, a member of WHP-IIB Manager, LLC, an Illinois limited liability company (the "Manager"), the manager of WHP-IIB, LLC, an Illinois limited liability company (the "Mortgagor"), personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such vice president, (s)he signed and delivered the said instrument pursuant to authority given by the members of the Manager as their free and voluntary act, and as the free and voluntary act and deed of the Manager and the Mortgagor for the uses and purposes therein set forth.

GIVEN under my hand and official seal this 26<sup>th</sup> day of October, 2006.

Catherine A. Harding  
Notary Public

(SEAL)

CATHERINE ANN HARDING  
NOTARY PUBLIC OF NEW JERSEY  
Commission Expires 12/31/2011

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**Exhibit A**  
**LEGAL DESCRIPTION**  
**Westhaven Park Phase IIB**

**PARCEL 1:**

LEASEHOLD ESTATE CREATED BY GROUND LEASE DATED AS OF OCTOBER 1, 2006 BETWEEN CHICAGO HOUSING AUTHORITY, AN ILLINOIS MUNICIPAL CORPORATION, LANDLORD, AND WHP-IIB, LLC, AN ILLINOIS LIMITED LIABILITY COMPANY, TENANT, RECORDED 10-31-06, 2006 AS DOCUMENT NUMBER 0630442189, DEMISING AND LEASING FOR A TERM OF 99 YEARS EXPIRING ON SEPTEMBER 30, 2105, THE FOLLOWING DESCRIBED PARCEL, TO WIT:

LOTS 1, 14 AND 17 IN BLOCK 1 AND LOTS 1, 5, 6, 8, 10 AND OUT LOT 1 IN BLOCK 2 OF THE WESTHAVEN PARK RESUBDIVISION, ACCORDING TO THE PLAT THEREOF RECORDED SEPTEMBER 8, 2006, AS DOCUMENT NUMBER 0625145094, IN COOK COUNTY, ILLINOIS, BEING A RESUBDIVISION AND CONSOLIDATION IN THOMAS' SUBDIVISION OF THE WEST 152 FEET OF BLOCK 51 IN CANAL TRUSTEES' SUBDIVISION OF SECTION 7, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, AND IN ASSESSOR'S DIVISION OF 146.98 FEET EAST OF AND ADJOINING THE WEST 152 FEET OF SAID BLOCK 51, AND IN THE SUBDIVISION BY TAYLOR OF THE EAST ½ OF SAID BLOCK 51, INCLUDING ALL OF THE VACATED EAST-WEST AND NORTH-SOUTH ALLEYS AND VACATED WEST MAYPOLE AVENUE IN SAID BLOCK 51, TOGETHER WITH THAT PART OF THE WEST ½ OF THE SOUTHEAST ¼ OF SECTION 7, AFORESAID, LYING EAST OF THE EAST LINE OF ASSESSOR'S DIVISION AFORESAID, AND LYING WEST OF THE WEST LINE OF THE SUBDIVISION BY TAYLOR AFORESAID, ALL IN COOK COUNTY, ILLINOIS.

**PARCEL 2:**

ALL BUILDINGS AND IMPROVEMENTS LOCATED, OR TO BE LOCATED AFTER THE DATE OF THE AFORESAID GROUND LEASE, ON THE LEASEHOLD ESTATE HEREINABOVE DESCRIBED AS PARCEL 1.

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Having the following Parcel Identification Numbers (PINs):

17-07-417-032	17-07-422-007	17-07-422-021
17-07-417-033	17-07-422-008	17-07-422-022
17-07-417-036	17-07-422-009	17-07-422-023
17-07-417-037	17-07-422-010	17-07-422-024
17-07-417-038	17-07-422-011	17-07-422-025
17-07-417-039	17-07-422-012	17-07-422-026
	17-07-422-013	17-07-422-027
17-07-422-001	17-07-422-014	17-07-422-028
17-07-422-002	17-07-422-015	
17-07-422-003	17-07-422-016	17-07-422-038
17-07-422-004		
17-07-422-005	17-07-422-018	
17-07-422-006		

Formerly known as the following addresses, all in Chicago, IL:

140 N Wood  
 1832 W Washington  
 1836 W Washington  
 1850 W Washington  
 141 N Wolcott  
 1847 W Lake

Now currently known as the following addresses, all in Chicago, IL:

110 N Wood	1807 W Maypole	1807 W Lake
122 N Wood	1809 W Maypole	1809 W Lake
156 N Wood	1811 W Maypole	1811 W Lake
	1813 W Maypole	1813 W Lake
1804 W Washington	1817 W Maypole	1847 W Lake
1820 W Washington	1819 W Maypole	1849 W Lake
1822 W Washington	1820 W Maypole	1851 W Lake
1824 W Washington	1826 W Maypole	1853 W Lake
1826 W Washington	1828 W Maypole	
1830 W Washington	1830 W Maypole	
1832 W Washington	1832 W Maypole	
1834 W Washington	1836 W Maypole	
1836 W Washington	1837 W Maypole	
1854 W Washington	1838 W Maypole	
	1839 W Maypole	
103 N Wolcott	1840 W Maypole	
121 N Wolcott	1841 W Maypole	
155 N Wolcott	1845 W Maypole	
	1847 W Maypole	
	1849 W Maypole	
	1851 W Maypole	



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## EXHIBIT B

1. Address of Borrower: c/o Brinshore Development, L.L.C.  
666 Dundee Road  
Suite 1102  
Northbrook, Illinois 60062  
Attention: Richard Sciortino
- And: c/o The Michaels Development Company, Inc.  
1 East Stow Road  
Marlton, New Jersey 08053  
Attention: President
- And: c/o The Michaels Development Company, Inc.  
322 So. Green Street, Suite 212  
Chicago, Illinois 60607  
Attention: Whitney Weller
- And: FNBC Leasing Corporation  
21 South Clark, 12<sup>th</sup> Floor  
Mail Code IL 1-0502  
Chicago, Illinois 60603  
Attention: Mark McCann
- With Copies to: Applegate & Thorne-Thomsen, P.C.  
322 So. Green Street, Suite 400  
Chicago, Illinois 60607  
Attention: Bennett P. Applegate
2. Interest Rate on Note: 5.02%, the long-term, annual compounding applicable federal rate for October 2006
3. Initial Payment Date: Maturity Date
4. Principal Amount of Note: \$7,250,000
5. Repayment Terms and Maturity Date of the Loan:

No monthly installments of principal or interest are payable under the Note. The entire principal balance outstanding, together with any other sums due under any of the Loan Documents, shall be due and payable in full on the earliest (the "Maturity Date") of (i) the date on which all outstanding principal on the Senior Loan shall be due and payable in full, or (ii) October 1, 2038; provided, however, that the term "Maturity Date" shall also mean such earlier date as of

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which the principal of and interest on the Loan may become due and payable because of acceleration or prepayment as provided in any of the Loan Documents.

## 6. Non-Recourse Provisions:

(a) Notwithstanding Section 37 of the Mortgage, nothing herein or in any of the Loan Documents shall limit the rights of Mortgagee, following any of the events hereinafter described, to take any action as may be necessary or desirable to pursue Mortgagor, Manager, if any, and/or Owner, if any, for any and all Losses incurred by Mortgagee arising from: (i) a material misrepresentation, fraud made in writing or misappropriation of funds by Mortgagor, Manager, if any, and/or Owner, if any; (ii) intentional or material waste to the Premises; (iii) use of proceeds of the indebtedness evidenced by the Note for costs other than Eligible Costs; (iv) the occurrence of a Prohibited Transfer without Mortgagee's prior written consent, to the extent such Prohibited Transfer results from the intentional, willful, voluntary and/or negligent acts or omissions of Mortgagor, Manager, if any, and/or Owner, if any; (v) any breach of Mortgagor's representations, warranties or covenants regarding Hazardous Materials or Environmental Laws contained in any of the Loan Documents; (vi) the occurrence of any uninsured casualty to the Premises or other collateral or security provided under any of the Loan Documents for which there has been a failure to maintain insurance coverage as required by the terms and provisions of the Loan Documents; (vii) the misappropriation or misapplication of insurance proceeds or condemnation awards relating to the Premises or other collateral or security provided under any of the Loan Documents; or (viii) any inaccuracy in the statements in the Affidavits.

(b) Notwithstanding Section 37 of the Mortgage, nothing herein or in any of the Loan Documents shall limit the right of Mortgagee to assert liability against Mortgagor, Manager, if any, and/or Owner, if any, for the repayment of the Loan in the amount described in Section 3.07(d) of the Loan Agreement, in the event of a breach by Mortgagor of the requirements set forth in Sections 2.4, 2.5, 2.6, or 2.10 of the Regulatory Agreement as modified by Section 2.7 of the Regulatory Agreement, but only to the extent that such breach results in a demand by HUD on Mortgagee for repayment of the Loan in whole or in part, and only to the extent that as a result of such demand, Mortgagee is legally obligated to make such payment to HUD. Such payment may be made either by a direct payment from Mortgagee to HUD or by a deduction by HUD from other monies allocated or to be allocated to Mortgagee by HUD. If Mortgagee so chooses, Mortgagee shall pursue a diligent contest of any such demand by HUD through the administrative procedures outlined in 24 C.F.R. Section 92.552, as amended, supplemented and restated from time to time, but shall not be required to pursue the matter any further than reasonably prudent, as determined by Mortgagee. Mortgagor agrees to pay, as a recourse obligation of Mortgagor, all attorneys', experts' and consulting fees and disbursements and expenses incurred in connection with any such contest.

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(c) Mortgagee waives any and all right to seek or demand any personal deficiency judgment against Mortgagor, in conjunction with a foreclosure proceeding, under or by reason of any of the non-recourse monetary obligations of Mortgagor; provided, however, that the foregoing shall not limit or affect Mortgagee's right to sue or otherwise seek recourse against Mortgagor, Manager, if any, and/or Owner, if any, in any separate action or proceeding for all Losses incurred by Mortgagee arising from any of the matters described in the foregoing paragraphs of this Section 6.

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## EXHIBIT C

### PERMITTED ENCUMBRANCES

1) Those matters set forth as Schedule B title exceptions in Mortgagee's title insurance policy issued by Chicago Title Insurance Company as of the closing of the Loan evidenced by the Loan Documents, but only so long as applicable title endorsements issued in conjunction with such closing, if any, remain in full force and effect.

2) Residential leases entered into in the ordinary course of the Mortgagor's business in connection with the operation of the Premises.