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Doc#: 0736005051 Fee: \$82.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 12/26/2007 10:34 AM Pg: 1 of 30

Recording Requested By  
And When Recorded Mail  
To:  
Charity & Associates, P.C.  
20 N. Clark Street, Suite 1150  
Chicago, Illinois 60602  
Attention: Elvin E. Charity

Space Above For Recorder's Use

**CONSTRUCTION MORTGAGE**  
**with Assignment of Rents, Security Agreement,**  
**and Fixture Filing**

The parties to this Mortgage With Assignment of Rents, Security Agreement, and Fixture Filing (this "Mortgage"), is made and entered into as of December 21, 2007, by **SLRDM 7400 SOUTH ROCKWELL DEVELOPMENT, LLC**, an Illinois limited liability company ("Mortgagor"), with a mailing address at 1200 North Ashland Avenue, Suite 400, Chicago, Illinois 60622, in favor of **HARRIS N.A.** (the "Mortgagee"), a national banking association, having its principal office at 111 W. Monroe, 2<sup>nd</sup> Floor East, Chicago, Illinois 60603.

**1. Grant/Secured Obligations.**

**1.1 Grant.** For the purpose of securing payment and performance of the Secured Obligations defined and described in **Section 1.2**, in such order of priority as Mortgagee may determine in its sole and absolute discretion, Mortgagor hereby irrevocably and unconditionally grants, bargains, conveys, mortgages, encumbers, sells, transfers, and assigns to Mortgagee, all estate, right, title, and interest which Mortgagor now has or may later acquire in and to the following property (all or any part of such property, or any interest in all or any part of it, as the context may require, the "Property") and Mortgagor shall and will warrant and forever defend the Property in the quiet and peaceable possession of the Mortgagee, its successors and assigns, against all and every person or persons lawfully claiming or to claim the whole or any part thereof. Mortgagor agrees that any greater title to the Property hereafter acquired by Mortgagor during the term hereof shall be subject hereto. The Property includes the following:

(a) Mortgagor's fee simple estate in the real property located in the City of Chicago, County of Cook, State of Illinois, as more fully described in **Exhibit A** attached hereto and made a part hereof, together with all of the Mortgagor's interest in all existing and future easements, water rights, hereditaments, mineral rights and other rights and interests appurtenant thereto (the "Land"); together with

(b) All buildings, structures and improvements now located or later to be constructed on the Land, including the Units described in the Loan Agreement (the "Improvements"); together with

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(c) All articles of personal property now or hereafter attached to, placed upon for an indefinite term, or used in connection with the Land and/or Improvements, together with all goods and other property that are, or at any time become, so related to the Property that an interest in them arises under real estate law, or they are otherwise adjudged to be a "fixture" under applicable law (each a "Fixture," collectively "Fixtures"); together with

(d) All existing and future appurtenances, privileges, rights, easements, franchises and tenements of the Land, including all minerals, oil, gas, other hydrocarbons and associated substances, sulphur, nitrogen, carbon dioxide, helium and any other commercially valuable substances which may be in, under or produced from any part of the Land, all development rights and credits, air rights, water, water courses, water rights (whether riparian, appropriative or otherwise, and whether or not appurtenant) and water stock, easements, rights-of-way, gores or strips of land, and any land lying in the streets, ways, alleys, passages, roads or avenues, open or proposed, in front of or adjoining the Land and Improvements; together with

(e) All existing and future leases, subleases, subtenancies, licenses, occupancy agreements, concessions, and other agreements of any kind relating to the use or occupancy of all or any portion of the Property, whether now in effect or entered into in the future (each a "Lease," collectively, the "Leases") relating to the use and enjoyment of all or any part of the Land and Improvements, all amendments, extensions, renewals, or modifications thereof (subject to Mortgagee's right to approve same pursuant to the terms of this Mortgage and the hereinafter defined Loan Agreement), and any and all guaranties of, and security for, lessees' performance under any and all Leases, and all other agreements relating to or made in connection with any of such Leases; together with

(f) All rents (and payments in lieu of rents), royalties, issues, profits, income, proceeds, payments, and revenues of or from the Property, and/or at any time payable under any and all Leases, including all prepaid rents and any and all security deposits received or to be received by Mortgagor pursuant to any and all Leases, and all rights and benefits accrued, or to accrue to, Mortgagor under any and all Leases (some or all collectively, as the context may require, "Rents"); together with

(g) All real property and improvements on it, and all appurtenances and other property and interests of any kind or character, whether described in **Exhibit A** or not, which may be reasonably necessary or desirable to promote the present and any reasonable future beneficial use and enjoyment of the Land and Improvements; together with

(h) All rights to the name, signs, and trade names used to operate the Land and Improvements; together with

(i) All goods, materials, supplies, chattels, furniture, fixtures, machinery, apparatus, fittings, equipment, and articles of personal property of every kind and nature whatsoever, including consumable goods, now or hereafter located in or upon the Property or any part thereof, or to be attached to or placed in or on, or used or useable in connection with any present or future use, enjoyment, occupancy or operation of all or any part of the Land and Improvements, whether stored on the Land or elsewhere, including by way of description but without limiting the generality of the foregoing, all pumps or pumping plants, tanks, motors, conduits, engines, pipes, ditches and flumes, and also all gas and electrical apparatus (including, but not limited to, all electrical transformers, switches, switch boxes, and equipment boxes), cooking, heating, cooling, air conditioning, lighting, power equipment, refrigeration and plumbing apparatus, fixtures and equipment, screens, storm doors and windows, stoves, wall beds, refrigerators, attached cabinets, partitions, ovens, ranges, disposals, dishwashers, carpeting, plants and shrubbery, ground

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maintenance equipment, ducts and compressors; together with all building materials, goods and personal property on or off the Property intended to be affixed to or incorporated in the Property but not yet affixed to or incorporated in the Property, all which shall be considered to the fullest extent of the law to be real property for purposes of this Mortgage; together with

(j) All building materials, equipment, work in process or other personal property of any kind, whether stored on the Land or elsewhere, which have been or later will be acquired for the purpose of being delivered to, incorporated into or installed in or about the Land or Improvements; together with

(k) All deposit accounts of Mortgagor; together with

(l) All federal, state, and local tax credits, and other tax benefits related and appurtenant to, but not severable from, the Property; together with

(m) All rights to the payment of money, accounts, accounts receivable, reserves, deferred payments, refunds of real property and personal property taxes and other refunds, cost savings, payments and deposits, whether now or later to be received from third parties (including all earnest money sales deposits) or deposited by Mortgagor with third parties (including all utility deposits), contract rights, development and use rights, governmental permits and licenses, applications, architectural and engineering plans, specifications and drawings, as-built drawings, chattel paper, instruments, documents, notes, drafts and letters of credit, which arise from or relate to construction on the Land or to any business now or later to be conducted on it, or to the Land and Improvements generally; together with

(n) All proceeds, including all claims to and demands for them, of the voluntary or involuntary conversion of any of the Land, the Improvements, or the other property described above into cash or liquidated claims, including proceeds of all present and future fire, hazard or casualty insurance policies and all condemnation awards or payments now or later to be made by any public body or decree by any court of competent jurisdiction for any taking or in connection with any condemnation or eminent domain proceeding, and all causes of action and their proceeds for any damage or injury to the Land, the Improvements, or the other property described above or any part of them, or breach of warranty in connection with the construction of the Improvements, including causes of action arising in tort, contract, fraud or concealment of a material fact; together with

(o) All books and records pertaining to any and all of the property described above, including records relating to tenants under any leases, and the qualification of such tenants, and all certificates, vouchers, and other documents in any way related thereto, and all records relating to the application and allocation of any federal, state, and local tax credits or benefits, including computer-readable memory and any computer hardware or software necessary to access and process such memory (the "Books and Records"); together with

(p) All proceeds of, additions and accretions to, substitutions and replacements for, and changes in any of the property described above, including all proceeds of any voluntary or involuntary disposition or claim respecting any such property (arising out of any judgment, condemnation or award, or otherwise arising) and all goods, documents, general intangibles, chattel paper and accounts, wherever located, acquired with cash proceeds of any of the foregoing or its proceeds.

Capitalized terms used above and elsewhere in this Mortgage without definition have the meanings given them in the Loan Agreement referred to in Section 1.2(a) below.

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## 1.2 Secured Obligations.

(a) Mortgagor makes the grant, bargain, conveyance, sale, mortgage, encumbrance, transfer, and assignment set forth in Section 1.1 and grants the security interest set forth in Section 3 for the purpose of securing the following obligations (the "Secured Obligations") in any order of priority that Mortgagee may choose:

(i) Payment and performance of all Obligations of Mortgagor under that certain Construction Loan Agreement executed as of the date hereof, by Mortgagor and Mortgagee (the "Loan Agreement") pursuant to which Bank agreed to make the following loans: (1) a loan to the Mortgagor in the principal amount not to exceed Five Million Thirty-Two Thousand and No/100 Dollars (\$5,032,000.00) (the "Acquisition Loan") to be evidenced by a promissory note (the "Acquisition Loan Note") executed by Mortgagor to the order of Mortgagee in the principal amount of the Acquisition Loan, (2) a bridge loan to the Mortgagor in the principal amount not to exceed Three Million and No/100 Dollars (\$3,000,000.00) (the "Bridge Loan") to be evidenced by a promissory note (the "Bridge Loan Note") executed by Mortgagor to the order of Mortgagee in the principal amount of the Bridge Loan, and (3) a construction loan to the Mortgagor in the principal amount not to exceed Three Million Five Hundred Thousand and No/100 Dollars (\$3,500,000.00) (the "Construction Loan," and, together with the Acquisition Loan and the Bridge Loan, the "Loans") to be evidenced by a promissory note (the "Construction Loan Note," and, together with the Acquisition Loan Note and the Bridge Loan Note, the "Notes") executed by Mortgagor to the order of Mortgagee in the principal amount of the Construction Loan;

(ii) Payment and performance of all Obligations of Mortgagor under the Loan Agreement and any of the other Loan Documents executed by Mortgagor in connection with the making of the Loans; provided, however, that this Mortgage does not secure any Bank Loan Document that is expressly stated to be unsecured, and

(iii) Payment of all obligations and indebtedness at any time evidenced by, and owing under, the Acquisition Loan Note, the Bridge Loan Note and the Construction Loan Note; and

(iv) Payment and performance of all obligations of Mortgagor under this Mortgage; and

(v) Payment and performance of all future advances and other obligations that Mortgagor or any successor in ownership of all or part of the Property may agree to pay and/or perform (whether as principal, surety or guarantor) for the benefit of Mortgagee, when a writing evidences the parties' agreement that the advance or obligation be secured by this Mortgage;

(vi) Payment and performance of all obligations of Mortgagor under any agreement, whether or not in writing, relating to any transaction that is a rate swap, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap or option, bond, note or bill option, interest rate option, forward foreign exchange transaction, interest cap, collar or floor transaction, currency swap, cross-currency rate swap, swap option, currency option or any other similar transaction (including any option to enter into the foregoing) or any combination of the foregoing, and, unless the context otherwise clearly requires, any form of master agreement published by the International Swaps and Derivatives Association, Inc., or any other master agreement, entered into between Mortgagee (or its affiliate) and Mortgagor (or



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its affiliate) in connection with the Loans, together with any related schedules and confirmations, as amended, supplemented, superseded or replaced from time to time, relating to or governing any or all of the foregoing, if any; and

(vii) Payment and performance of all modifications, amendments, extensions, and renewals, however evidenced, of any of the Secured Obligations.

(b) All persons who may have or acquire an interest in all or any part of the Property will be considered to have notice of, and will be bound by, the terms of the Secured Obligations and each other agreement or instrument made or entered into in connection with each of the Secured Obligations. **Such terms include any provisions in the Loan Agreement, the Acquisition Loan Note, the Bridge Loan Note or the Construction Loan Note which permit borrowing, repayment, and reborrowing, or which provide that the interest rate on one or more of the Secured Obligations may vary from time to time.**

## **2. Assignment of Lessor's Interest in Leases and Assignment of Rents.**

**2.1 Absolute Assignment.** Effective upon the recordation of this Mortgage, Mortgagor hereby irrevocably, absolutely, presently and unconditionally assigns, transfers, and sets over to Mortgagee:

(a) All of Mortgagor's right, title and interest in, to and under any and all Leases, all amendments, extensions, renewals, or modifications thereof (subject to Mortgagee's right to approve same pursuant to the terms of the Loan Agreement), and any and all guaranties of, and security for, lessees' performance under any and all Leases, and all other agreements relating to or made in connection with any of such Leases; and

(b) All Rents.

**THIS IS AN ABSOLUTE ASSIGNMENT OF MORTGAGOR'S INTEREST IN LEASES AND RENTS, NOT AN ASSIGNMENT FOR SECURITY ONLY.**

**2.2 Grant of License.** Mortgagee hereby confers upon Mortgagor a license (the "License") to collect and retain the Rents as they become due and payable, so long as no Event of Default, as defined in **Section 6.2**, shall exist and be continuing. If an Event of Default (after the expiration of applicable grace periods) has occurred and is continuing, Mortgagee shall have the right, which it may choose to exercise in its sole and absolute discretion, to terminate this License without notice (other than as expressly required herein) to or demand upon Mortgagor, and without regard to the adequacy of Mortgagee's security under this Mortgage.

**2.3 Collection and Application of Rents and Enforcement of Leases.** Subject to the License granted to Mortgagor under **Section 2.2**, Mortgagee has the right, power, and authority to collect any and all Rents and enforce the provisions of any Lease. Mortgagor hereby irrevocably appoints Mortgagee its attorney-in-fact, with full power of substitution, to perform any and all of the following acts subsequent to the occurrence of an Event of Default, if and at the times when Mortgagee in its sole and absolute discretion may so choose:

(a) Demand, receive, and enforce payment of any and all Rents; or

(b) Give receipts, releases, and satisfactions for any and all Rents; or

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- (c) Sue either in the name of Mortgagor or in the name of Mortgagee for any and all Rents; or
- (d) Enforce the provisions of any and all Leases.

The appointment granted in this Section 2.3 shall be deemed to be a power coupled with an interest. Mortgagee's right to the Rents, or to enforce the provisions of any Lease, does not depend on whether or not Mortgagee takes possession of the Property as permitted under Section 6.3(c). In Mortgagee's sole and absolute discretion, subsequent to the occurrence of an Event of Default, Mortgagee may choose to collect Rents or enforce any and all Leases either with or without taking possession of the Property. Mortgagee shall apply all Rents collected by it in the manner provided under Section 6.6. If an Event of Default occurs while Mortgagee is in possession of all or part of the Property and is collecting and applying Rents as permitted under this Mortgage, Mortgagee and any receiver shall nevertheless be entitled to exercise and invoke every right and remedy afforded any of them under this Mortgage and at law or in equity, including the right to exercise the power of sale granted under Section 1.1 and Section 6.3(g).

**2.4 Notice.** All lessees under any and all Leases are hereby irrevocably authorized and notified by Mortgagor to rely upon and to comply with (and will be fully protected in so doing) any notice or demand by Mortgagee for the payment to Mortgagee of any rental or other sums which may at any time become due under the Leases, or for the performance of any of lessees' undertakings under the Leases, and lessees have no right or duty to inquire whether any Event of Default has actually occurred or is then existing hereunder.

**2.5 Proceeds.** Mortgagee has the right to apply all amounts received by it pursuant to this assignment to pay any of the following in the amounts and in the order Mortgagee deems appropriate: (a) any and all Secured Obligations, together with all costs and reasonable attorneys' fees; (b) all expenses of leasing, operating, maintaining, and managing the Property, including, without limitation, the salaries, fees, commissions and wages of a managing agent, and the other employees, agents, or independent contractors Mortgagee deems necessary or desirable; (c) all taxes, charges, claims, assessments, any other liens, and premiums for all insurance Mortgagee deems necessary or desirable; and (d) the cost of all alterations, renovations, repairs or replacements, and all expenses incident to taking and retaining possession of the Property.

**2.6 Mortgagee Not Responsible.** Under no circumstances shall Mortgagee have any duty to produce Rents from the Property. Regardless of whether or not Mortgagee, in person or by agent, takes actual possession of the Land and the Improvements, Mortgagee is not and shall not be deemed to be:

- (a) A "mortgagee in possession" for any purpose; or
- (b) Responsible for performing any of the obligations of the Mortgagor as lessor under any lease; or
- (c) Responsible for any waste committed by lessees or any other parties, any dangerous or defective condition of the Property, or any negligence in the management, upkeep, repair or control of the Property; or
- (d) Liable in any manner for the Property or the use, occupancy, enjoyment or operation of all or any part of it.

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**2.7 Leasing.** Mortgagor shall not accept any deposit or prepayment of Rents for any rental period exceeding one (1) month without Mortgagee's express prior written consent. Mortgagor shall not lease the Property or any part of it except strictly in accordance with the Loan Agreement. Mortgagor shall apply all Rents in the manner required by the Loan Agreement.

## **3. Grant of Security Interest.**

**3.1 Security Agreement.** The parties intend for this Mortgage to create a lien on the Property, and an absolute assignment of the Rents and Leases, all in favor of Mortgagee. The parties acknowledge that some of the Property and some of the Rents and Leases may be determined under applicable law to be personal property or fixtures. To the extent that any Property, Rents, or Leases may be or be determined to be personal property, Mortgagor, as debtor, hereby grants to Mortgagee, as secured party, a security interest in all such Property, Rents, and Leases, to secure payment and performance of the Secured Obligations. This Mortgage constitutes a security agreement under the Illinois Uniform Commercial Code, as amended or recodified from time to time, covering all such Property, Rents, and Leases. To the extent such Property, Rents, or Leases, are not real property encumbered by the lien granted above, and are not absolutely assigned by the assignment set forth above, it is the intention of the parties that such Property, Rents and/or Leases shall constitute "proceeds, products, offspring, rents or profits" (as defined in and for the purposes of Section 552(b) of the United States Bankruptcy Code, as such section may be modified or supplemented) of the Land and Improvements.

**3.2 Financing Statements.** Mortgagor shall execute one or more financing statements and such other documents as Mortgagee may reasonably require from time to time to perfect or continue the perfection of Mortgagee's security interest in any Property, Leases, or Rents. As provided in **Section 5.11**, Mortgagor shall pay all fees and costs that Mortgagee may incur in filing such documents in public offices and in obtaining such record searches as Mortgagee may reasonably require. In case Mortgagor fails to execute any financing statements or other documents for the perfection or continuation of any security interest, Mortgagor hereby appoints Mortgagee as its true and lawful attorney-in-fact to execute any such documents on its behalf. If any financing statement or other document is filed in the records normally pertaining to personal property, that filing shall never be construed as in any way derogating from or impairing this Mortgage or the rights or obligations of the parties under it.

Everything used in connection with the Property and/or adapted for use therein and/or which is described or reflected in this Mortgage is, and at all times and for all purposes and in all proceedings both legal or equitable shall be regarded as part of the real estate encumbered by this Mortgage irrespective of whether (i) any such item is physically attached to the Improvements, (ii) serial numbers are used for the better identification of certain equipment items capable of being thus identified in a recital contained herein or in any list filed with Mortgagee or (iii) any such item is referred to or reflected in any such Financing Statement so filed at any time. Similarly, the mention in any such Financing Statement of (1) rights in or to the proceeds of any fire and/or hazard insurance policy, or (2) any award in eminent domain proceedings for a taking or for lessening of value, or (3) Mortgagor's interest as lessor in any present or future lease or rights to income growing out of the use and/or occupancy of the property conveyed hereby, whether pursuant to lease or otherwise, shall never be construed as in any way altering any of the rights of Mortgagee as determined by this instrument or impugning the priority of Mortgagee's lien granted hereby or by any other recorded document. Such mention in the Financing Statement is declared to be solely for the protection of Mortgagee in the event any court or judge shall at any time hold, with respect to the matters set forth in the foregoing clauses (1), (2), and (3), that notice of Mortgagee's priority of interest is required in order to be effective against a particular class of persons, including but not limited to the federal government and any subdivisions or entity of the federal government, shall be filed in the Uniform Commercial Code records.

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## 4. Fixture Filing.

This Mortgage constitutes a financing statement filed as a fixture filing under Section 5/9-402 of the Illinois Uniform Commercial Code, as amended or recodified from time to time, covering any Property which now is or later may become fixtures attached to the Land or Improvements. The addresses of Mortgagor (debtor) and Mortgagee (secured party) are hereinabove set forth. This Mortgage is to be filed with the Recorder of Deeds of the County where the Property is located. Mortgagor is the record owner of the Property.

## 5. Rights and Duties of the Parties.

**5.1 Representations and Warranties.** Mortgagor represents and warrants that, except as previously disclosed to Mortgagee in a writing making reference to this **Section 5.1**:

(a) Mortgagor lawfully possesses and holds fee simple title to all of the Land and the Improvements described in **Exhibit A**; and

(b) Mortgagor has or will have good and marketable title to all Property subject only to any such exceptions and conditions to title as Mortgagee has approved in writing in its sole and absolute discretion (the "Prior Approved Encumbrances"); and

(c) Mortgagor has the full and unlimited power, right, and authority to encumber the Property and assign the Rents; and

(d) This Mortgage creates a first priority lien on the Property subject only to the Prior Approved Encumbrances; and

(e) The Property includes all property and rights which may be reasonably necessary or desirable to promote the present and any reasonable future beneficial use and enjoyment of the Land and the Improvements; and

(f) Mortgagor owns any Property which is personal property free and clear of any security agreements, reservations of title, or conditional sales contracts, and there is no presently effective financing statement affecting such personal property on file in any public office; except with respect to Prior Approved Encumbrances; and

(g) The Property has frontage on and direct access for ingress and egress to streets; and

(h) Electricity (and gas, if available), water facilities, sewer facilities and any other necessary utilities are, or shall be, available in sufficient capacity to service the Property satisfactorily and any easements necessary to the furnishing of such utilities are or will be granted and duly recorded; and

(i) Mortgagor's place of business, or its chief executive office if it has more than one place of business, is located at the address specified below.



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## 5.2 Taxes and Assessments

Mortgagor shall pay prior to delinquency all taxes, levies, charges and assessments, including assessments on a appurtenant water stock (individually and collectively, an "Imposition"), imposed by any public or quasi-public authority or utility company that are (or if not paid, may become) a lien on all or part of the Property or any interest in it, or that may cause any decrease in the value of the Property or any part of it. If any Imposition becomes delinquent, Mortgagee may require Mortgagor to present evidence that it has been paid in full, on ten (10) days' written notice by Mortgagee to Mortgagor. The foregoing provisions of this Section notwithstanding, Mortgagor may, at its expense, contest the validity or application of any Imposition by appropriate legal proceedings promptly initiated and conducted in good faith and with due diligence, provided that (i) Mortgagee is reasonably satisfied that neither the Property nor any part thereof or interest therein will be in danger of being sold, forfeited, or lost as a result of the contest, and (ii) Mortgagor shall have posted a bond or furnished other security as may be reasonably required from time to time by Mortgagee and provided further that if at any time payment of any obligation imposed upon Mortgagor by this **Section 5.2** becomes necessary to prevent a lien foreclosure sale or forfeiture or loss of the Property, or any part thereof, then Mortgagor must pay the same in sufficient time to prevent such sale, forfeiture, or loss.

**5.3 Performance of Secured Obligations.** Mortgagor shall promptly pay and perform each Secured Obligation in accordance with its terms.

**5.4 Liens, Charges and Encumbrances.** Mortgagor shall immediately discharge any lien on the Property which Mortgagee has not consented to in writing. Mortgagor shall pay when due each obligation secured by or reducible to a lien, charge or encumbrance which now does or later may encumber or appear to encumber all or part of the Property or any interest in it, whether the lien, charge or encumbrance is or would be senior or subordinate to this Mortgage. This Section is subject to any right granted to Mortgagor in the Loan Agreement to contest in good faith claims and liens for labor done and materials and services furnished in connection with construction of the Improvements.

## 5.5 Damages and Insurance and Condemnation Proceeds.

(a) Mortgagor hereby absolutely and irrevocably assigns to Mortgagee, and authorizes the payor to pay to Mortgagee, the following claims, causes of action, awards, payments, and rights to payment:

(i) All awards of damages and all other compensation payable directly or indirectly because of a condemnation, proposed condemnation or taking for public or private use which affects all or part of the Property or any interest in it; and

(ii) All other awards, claims, and causes of action, arising out of any warranty affecting all or any part of the Property, or for damage or injury to or decrease in value of all or part of the Property or any interest in it; and

(iii) All proceeds of any insurance policies payable because of loss sustained to all or part of the Property, whether or not such insurance policies are required by Mortgagee; and

(iv) All interest which may accrue on any of the foregoing.

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Notwithstanding the foregoing, Mortgagor may settle and adjust with the insurance company any claims for casualty loss or damage to the Property from a single casualty event that does not exceed \$50,000 per claim.

(b) Mortgagor shall immediately notify Mortgagee in writing if:

(i) Any material damage occurs or any injury or loss is sustained to all or any part of the Property, or any action or proceeding relating to any such damage, injury, or loss is commenced; or

(ii) Any offer is made, or any action or proceeding is commenced, which relates to any actual or proposed condemnation or taking of all or part of the Property.

(c) If Mortgagee chooses to do so, Mortgagee may in its own name appear in or prosecute any action or proceeding to enforce any cause of action based on warranty, or for damage, injury or loss to all or part of the Property, and Mortgagee may make any compromise or settlement of the action or proceeding. Mortgagee, if it so chooses, may participate in any action or proceeding relating to condemnation or taking of all or part of the Property, and may join Mortgagor in adjusting any loss covered by insurance.

(d) All proceeds of these assigned claims and all other property and rights which Mortgagor may receive or be entitled to shall be paid to Mortgagee. In each instance, Mortgagee shall apply such proceeds first toward reimbursement of all of Mortgagee's costs and expenses of recovering the proceeds, including reasonable attorneys' fees. If, in any instance, each and all of the following conditions are satisfied in Mortgagee's reasonable judgment, Mortgagee shall permit Mortgagor to use the balance of such proceeds (the "Net Claims Proceeds") to pay costs of repairing or reconstructing the Property in the manner described below:

(i) The plans and specifications, cost breakdown, construction contract, construction schedule, contractor and payment and performance bond for the work of repair or reconstruction shall all be acceptable to Mortgagee; and

(ii) Mortgagee shall receive evidence satisfactory to it that after repair or reconstruction, there shall be no reduction in the aggregate number of Units (as defined in the Loan Agreement) to be constructed on the Property from the number of Units contemplated by the Loan Agreement and the Property would be at least as valuable as it was immediately before the damage or condemnation occurred and that there shall occur no reduction in the Minimum Pricing Schedule (as defined in the Loan Agreement) for the Units or the Absorption Schedule (as defined in the Loan Agreement) for the Units required pursuant to the Loan Agreement; and

(iii) The Net Claims Proceeds shall be sufficient in Mortgagee's determination to pay for the total cost of repair or reconstruction, including all associated development costs and interest and other sums projected to be payable on the Secured Obligations until the repair or reconstruction is complete; or Mortgagor shall provide its own funds in an amount equal to the difference between the Net Claims Proceeds and a reasonable estimate, made by Mortgagor and found acceptable by Mortgagee, of the total cost of repair or reconstruction; and

(iv) Unless otherwise agreed to by Mortgagee, Mortgagee shall receive evidence satisfactory to it that all Firm Contracts shall continue and remain in effect during any

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such reconstruction (or a replacements therefor reasonably satisfactory to Mortgagee are in place); and

(v) Mortgagee shall be satisfied that the repair or reconstruction can be completed prior to the maturity date of the Construction/ Loan Note; and

(vi) the Mortgagor's representations and warranties made in the Loan Agreement shall be correct in all material respects as of the date of the disbursement as though made as of that date, and Mortgagee shall have received a certificate to that effect signed by a Designated Representative; and

(vii) Mortgagee shall have received, at Mortgagor's expense, all endorsements, binders, supplements and modifications to the Title Policy (as defined in the Loan Agreement) reasonably required by Mortgagee at any time after the issuance of the Title Policy; and

(viii) No default, Event of Default or Unmatured Event of Default shall have occurred and be continuing under this Mortgage or the Loan Agreement or any of the other Mortgagee Loan Documents.

If Mortgagee finds that all of the foregoing conditions have been satisfied, Mortgagee shall hold the Net Claims Proceeds, and any funds which Mortgagor is required to provide, in an interest-bearing account and shall disburse them to Mortgagor to pay costs of repair or reconstruction upon presentation of evidence reasonably satisfactory to Mortgagee that repair or reconstruction has been completed satisfactorily and lien-free, including partial progress payments of Net Claims Proceeds from time to time, in accordance with a project budget approved by Mortgagee. All disbursements of Net Claims Proceeds shall be in accordance with the same procedures and subject to the same conditions as are set forth in the Loan Agreement for disbursements of proceeds of the Loans. However, if Mortgagee finds that one or more of such conditions have not been satisfied and that restoration is not feasible, Mortgagee may apply the Net Claims Proceeds to pay or prepay some or all of the Secured Obligations in such order and proportions as Mortgagee in its sole and absolute discretion may choose.

## 5.6 Surety Bond Proceeds.

(a) Mortgagor hereby absolutely and irrevocably assigns to Mortgagee, and authorizes the payor to pay to Mortgagee, all payments, rights to payment, and all other compensation payable, directly or indirectly, under any payment, performance, or other bond (each a "Surety Bond") related to, or issued in connection with, the construction of any Improvements or the performance of any acts, related to the Property or any interest in it, whether or not such Surety Bonds are required by Mortgagee.

(b) Mortgagor shall immediately notify Mortgagee in writing of:

(i) Any default or breach of any obligation under any Surety Bond; or

(ii) Any action or inaction, including a breach by any contractor under their contract (if applicable), which would give rise to the obligation of the payor/surety to pay any sums or perform any acts pursuant to the terms of any Surety Bond.

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(c) If Mortgagee chooses to do so, Mortgagee may in its own name appear in or prosecute any action or proceeding to enforce any cause of action based on any claim under a Surety Bond, and Mortgagee may make any compromise or settlement of any such action or proceeding.

(d) All proceeds of these assigned payments, rights to payment, and compensation payable, directly or indirectly, under any Surety Bond which Mortgagor may receive or be entitled to, shall be paid to Mortgagee. In each instance, Mortgagee shall apply such proceeds first toward reimbursement of all of Mortgagee's costs and expenses of recovering the proceeds, including reasonable attorneys' fees. If each and all of the following conditions are satisfied in Mortgagee's reasonable judgment, Mortgagee shall permit Mortgagor to use the balance of such proceeds (the "Net Bond Proceeds") to pay the costs of completing all or a part of the construction of certain of the Improvements in the manner described below:

(i) The plans and specifications, cost breakdown, construction contract (including any replacement contract), construction schedule (including all revision thereto), contractor (including any replacement contractor), and, if required by Mortgagee, any replacement payment and performance bond for the construction work, shall all be acceptable to Mortgagee; and

(ii) To the extent allowed pursuant to the terms of the Surety Bond, Mortgagee shall have approved any replacement contractor(s); and

(iii) Mortgagee shall receive evidence reasonably satisfactory to it that after the construction is complete, the Property would be at least as valuable as it would have been if completed pursuant to the original construction contract; and

(iv) The Net Bond Proceeds shall be sufficient in Mortgagee's determination to pay for the total cost of the applicable construction, including all associated development costs and interest and other sums projected to be payable on the Secured Obligations until the applicable construction is complete; or Mortgagor shall provide its own funds in an amount equal to the difference between the Net Bond Proceeds and a reasonable estimate, made by Mortgagor and found acceptable by Mortgagee, of the total cost of such construction; and

(v) Mortgagee shall be satisfied that the repair or reconstruction can be completed prior to the maturity date of the Construction Loan Note; and

(vi) No default, Event of Default or Unmatured Event of Default (shall have occurred and be continuing under this Mortgage or the Loan Agreement or any of the other Mortgagee Loan Documents.

If Mortgagee finds that such conditions have been met, Mortgagee shall hold the Net Bond Proceeds, and any funds which Mortgagor is required to provide, in an interest-bearing account and shall disburse them to Mortgagor to pay costs of construction upon presentation of evidence reasonably satisfactory to Mortgagee that the construction has been completed satisfactorily and lien-free, including partial progress payments of Net Bond Proceeds from time to time, in accordance with a project budget approved by Mortgagee. All disbursements of Net Bond Proceeds shall be in accordance with the same procedures and subject to the same conditions as are set forth in the Loan Agreement for disbursements of proceeds of the Loans. However, if Mortgagee finds that one or more of such conditions have not been satisfied, Mortgagee may apply the Net Bond Proceeds to pay or prepay (without imposing any "Prepayment Fee" as may be defined in and required by, the Loan Agreement or any of the Notes) some or

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all of the Secured Obligations in such order and proportions as Mortgagee in its sole and absolute discretion may choose.

(e) Notwithstanding anything herein to the contrary, to the extent that any of the terms of this Section conflict with the terms of any Surety Bond which has been approved in writing by Mortgagee, the terms of such Surety Bond shall control.

## 5.7 Maintenance and Preservation of Property.

(a) Mortgagor shall insure the Property as required by the Loan Agreement and keep the Property in good condition and repair.

(b) Mortgagor shall not remove or demolish the Property or any part of it, or alter, restore or add to the Property, or initiate or allow any change in any zoning or other land use classification which affects the Property or any part of it, except as permitted or required by the Loan Agreement or with Mortgagee's express prior written consent in each instance.

(c) If all or part of the Property becomes damaged or destroyed, Mortgagor shall promptly and completely repair and/or restore the Property in a good and workmanlike manner in accordance with sound building practices.

(d) Mortgagor shall not commit or allow any act upon or use of the Property which would violate: (i) any applicable law or order of any governmental authority, whether now existing or later to be enacted and whether foreseen or unforeseen; or (ii) any public or private covenant, condition, restriction or equitable servitude affecting the Property. Mortgagor shall not bring or keep any article on the Property or cause or allow any condition to exist on it, if that could invalidate or would be prohibited by any insurance coverage required to be maintained by Mortgagor on the Property or any part of it under the Loan Agreement.

(e) Mortgagor shall not commit or allow waste of the Property, including those acts or omissions characterized under the Loan Agreement as waste that arise out of Hazardous Substances (as such term is defined in the Loan Agreement).

(f) Mortgagor shall perform all other acts which from the character or use of the Property may be reasonably necessary to maintain and preserve its value and utility.

## 5.9 Releases, Extensions, Modifications and Additional Security.

(a) From time to time, Mortgagee may perform any of the following acts without incurring any liability or giving notice to any person:

(i) Release any person liable for payment of any Secured Obligation; or

(ii) Extend the time for payment, or otherwise alter the terms of payment, of any Secured Obligation; or

(iii) Accept additional real or personal property of any kind as security for any Secured Obligation, whether evidenced by deeds of trust, mortgages, security agreements or any other instruments of security; or



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- (iv) Alter, substitute or release any property securing the Secured Obligations.
- (b) From time to time, when requested to do so by Mortgagor in writing, Mortgagee may perform any of the following acts without incurring any liability or giving notice to any person:
  - (i) Consent to the making of any plat or map of the Property or any part of it; or
  - (ii) Join in granting any easement or creating any restriction affecting the Property; or
  - (iii) Join in any subordination or other agreement affecting this Mortgage or the lien of it; or
  - (iv) Reconvey the Property or any part of it without any warranty.

**5.10 Reconveyance.** When all of the Secured Obligations have been paid and performed in full, Mortgagee shall reconvey the Property, and shall release this Mortgage and reconvey the Property, or so much of it as is then held under this Mortgage, without warranty to the person or persons legally entitled to it and surrender all notes and instruments evidencing the Secured Obligations to Mortgagor. Such person or persons shall pay any costs of recordation of any instrument of release and reconveyance. In the reconveyance, the grantee may be described as "the person or persons legally entitled thereto," and the recitals of any matters or facts shall be conclusive proof of their truthfulness. Mortgagee shall have no duty to determine the rights of persons claiming to be rightful grantees of any reconveyance.

**5.11 Compensation, Exculpation, Indemnification.**

(a) Mortgagor agrees to pay reasonable fees as may be charged by Mortgagee for any services that Mortgagee may render in connection with this Mortgage, including Mortgagee's providing a statement of the Secured Obligations or Mortgagee's rendering of services in connection with a reconveyance (full or partial). Mortgagor shall also pay or reimburse all of Mortgagee's costs and expenses which may be incurred in rendering any such services. Mortgagor further agrees to pay or reimburse Mortgagee for all costs, expenses, and other advances which may be incurred or made by Mortgagee in any efforts to enforce any terms of this Mortgage, including any rights or remedies afforded to Mortgagee under **Section 6.3**, whether any lawsuit is filed or not, or in defending any action or proceeding arising under or relating to this Mortgage, including reasonable attorneys' fees and other legal costs, costs of any Foreclosure Sale (as defined in **Section 6.3(i)**) and any cost of evidence of title. If Mortgagee chooses to dispose of its interest in the Property through more than one Foreclosure Sales, Mortgagor shall pay all costs, expenses, or other advances that may be incurred or made by Mortgagee in each of such Foreclosure Sales.

(b) Mortgagee shall not be directly or indirectly liable to Mortgagor or any other person as a consequence of any of the following:

- (i) Mortgagees exercise any rights, remedies or powers granted to Mortgagee in this Mortgage, unless the loss is caused by the gross negligence or willful misconduct of Mortgagee or failure to exercise any rights, remedies or powers granted to Mortgagee in this Mortgage; or

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(ii) Mortgagee's failure or refusal to perform or discharge any obligation or liability of Mortgagor under any agreement related to the Property or under this Mortgage; or

(iii) Any loss sustained by Mortgagor or any third party resulting from Mortgagee's failure to lease the Property, or from any other act or omission of Mortgagee in managing the Property, after an Event of Default, unless the loss is caused by the gross negligence or willful misconduct of Mortgagee.

Mortgagor hereby expressly waives and releases all liability of the types described above, and agrees that no such liability shall be asserted against or imposed upon Mortgagee.

(c) Mortgagor agrees to indemnify, defend, and hold Mortgagee harmless, for, from, and against all losses, damages, liabilities, claims, causes of action, judgments, court costs, reasonable attorneys' fees and other legal expenses, cost of evidence of title, cost of evidence of value, and other costs and expenses which either may suffer or incur, unless caused by Mortgagee's gross negligence or willful misconduct:

(i) In performing any act required or permitted by this Mortgage, the Loan Agreement or any of the other Loan Documents or by law; or

(ii) Because of any failure of Mortgagor to perform any of Mortgagor's obligations; or

(iii) Because of any alleged obligation of or undertaking by Mortgagee to perform or discharge any of the representations, warranties, conditions, covenants, or other obligations in any document relating to the Property other than this Mortgage, the Loan Agreement or any of the other Loan Documents.

This agreement by Mortgagor to indemnify Mortgagee shall survive payoff, termination, or the release and cancellation of any or all of the Secured Obligations and the full or partial release and/or reconveyance of this Mortgage.

(d) Mortgagor shall pay all obligations to pay money arising under this Section immediately upon demand by Mortgagee. Each such obligation shall be added to, and considered to be part of, the principal of the Construction Loan Note, and shall bear interest from the date the obligation arises at the same rate being applied to the principal balance of the Construction Loan Note. Notwithstanding the foregoing, if indebtedness evidenced by the Construction Loan Note is repaid in full prior to the indebtedness evidenced by the Bridge Loan Note, then each such obligation arising under this Section from and after the payment in full of the Construction Loan Note shall be added to, and considered to be part of, the principal of the Bridge Loan Note, and shall bear interest from the date the obligation arises at the same rate being applied to the principal balance of the Bridge Loan Note.

**5.12 Defense and Notice of Claims and Actions.** At Mortgagor's sole expense, Mortgagor shall protect, preserve and defend the Property and title to and right of possession of the Property, and the security of this Mortgage and the rights and powers of Mortgagee created under it, against all adverse claims. Mortgagor shall give Mortgagee prompt notice in writing if any claim is asserted which does or could affect any of such matters, or if any action or proceeding is commenced which alleges or relates to any such claim.

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**5.14 Subrogation.** Mortgagee shall be subrogated to the liens of all encumbrances, whether released of record or not, which are discharged in whole or in part by Mortgagee in accordance with this Mortgage or with the proceeds of any loan secured by this Mortgage.

**5.15 Site Visits, Observation and Testing.** Subject to the rights of tenants under the Leases, Mortgagee and its agents and representatives shall have the right at any reasonable time to enter and visit the Property for the purpose of performing appraisals. In addition, the Indemnified Parties (as such term is defined in the Loan Agreement), and their agents and representatives, shall have the right at any reasonable time to enter and visit the Property for the purposes of observing the Property, performing appraisals, taking and removing soil or groundwater samples, and conducting tests on any part of the Property. The Indemnified Parties have no duty, however, to visit or observe the Property or to conduct tests, and no site visit, observation or testing by any Indemnified Party shall impose any liability on any Indemnified Party. In no event shall any site visit, observation or testing by any Indemnified Party be a representation that Hazardous Substances (as such term is defined in the Loan Agreement) are or are not present in, on, or under the Property, or that there has been or shall be compliance with any law, regulation, or ordinance pertaining to Hazardous Substances or any other applicable governmental law. Neither Mortgagor nor any other party is entitled to rely on any site visit, observation, or testing by any Indemnified Party. The Indemnified Parties owe no duty of care to protect Mortgagor or any other party against, or to inform Mortgagor or any other party of, any Hazardous Substances or any other adverse condition affecting the Property. The Indemnified Parties may in their discretion disclose to Mortgagor or any other party any report or findings made as a result of, or in connection with, any site visit, observation, or testing by the Indemnified Parties. Mortgagor understands and agrees that the Indemnified Parties make no representation or warranty to Mortgagor or any other party regarding the truth, accuracy, or completeness of any such report or findings that may be disclosed. Mortgagor also understands that, depending on the results of any site visit, observation, or testing by any Indemnified Party which are disclosed to Mortgagor, Mortgagor may have a legal obligation to notify one or more environmental agencies of the results and that such reporting requirements are site-specific and are to be evaluated by Mortgagor without advice or assistance from the Indemnified Parties. Any Indemnified Party shall give Mortgagor reasonable notice before entering the Property. Such Indemnified Party shall make reasonable efforts to avoid interfering with Mortgagor's use of the Property in exercising any rights provided in this Section.

**5.16 Notice of Change.** Mortgagor shall give Mortgagee prior written notice of any change in: (a) the location of Mortgagor's place of business or its chief executive office if it has more than one place of business; (b) the location of any of the Property, including the Books and Records; and (c) Mortgagor's name, the state or jurisdiction of its organization or its business structure. Unless otherwise approved by Mortgagee in writing, all Property that consists of personal property (other than the Books and Records) will be located on the Land and all Books and Records will be located at Mortgagor's place of business or chief executive office if Mortgagor has more than one place of business.

## **6. Accelerating Transfers, Default and Remedies.**

### **6.1 Accelerating Transfers.**

(a) "Accelerating Transfer" means any sale, contract to sell, conveyance, encumbrance, pledge, mortgage, or lease or other transfer of all or any part of the Mortgagor's estate in the Property or any portion thereof or interest therein, whether voluntary, involuntary, by operation of law or otherwise, which is not expressly permitted under this Mortgage or the Loan Agreement. "Accelerating Transfer" also means withdrawal or removal of any member of the Mortgagor, the dissolution of the Mortgagor under Illinois law, or any transfer or transfers of the membership interests in Mortgagor.

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(b) Mortgagor acknowledges that Mortgagee is making one or more advances under the Loan Agreement in reliance on the expertise, skill, and experience of Mortgagor; thus, the Secured Obligations include material elements similar in nature to a personal service contract. In consideration of Mortgagee's reliance, Mortgagor agrees that Mortgagor shall not make any Accelerating Transfer, unless the transfer is preceded by Mortgagee's express written consent to the particular transaction and transferee. Mortgagee may withhold such consent in its sole and absolute discretion. If any Accelerating Transfer occurs, Mortgagee in its sole and absolute discretion may declare all of the Secured Obligations to be immediately due and payable, and Mortgagee may invoke any rights and remedies provided by **Section 6.3** of this Mortgage. Mortgagor acknowledges the materiality of the provisions of this **Section 6.1** as a covenant of Mortgagor, given individual weight and consideration by Mortgagee in entering into the Secured Obligations, and that any Accelerating Transfer in violation of the prohibited transfer provisions herein set forth shall result in a material impairment of Mortgagee's interest in the Property and be deemed a breach of the foregoing covenant.

**6.2 Events of Default.** Mortgagor will be in default under this Mortgage upon the occurrence of any one or more of the following events (some or all collectively, "Events of Default;" any one singly, an "Event of Default"):

(a) Mortgagor fails to perform any obligation to pay money which arises under the Loan Agreement, the Acquisition Loan Note, the Bridge Loan Note or the Construction Loan Note when due and payable thereunder; or

(b) Mortgagor fails to perform any obligation to pay money which arises under this Mortgage and does not cure that failure within ten (10) days after the date such payment is due; or

(c) Mortgagor fails to perform any obligation arising under this Mortgage other than one to pay money, and does not cure that failure either within thirty (30) days (the "Initial Cure Period") after written notice from Mortgagee, or within ninety (90) days after such written notice, so long as Mortgagor begins within the Initial Cure Period and diligently continues to cure the failure, and Mortgagee, exercising reasonable judgment, determines that the cure cannot reasonably be completed at or before expiration of the Initial Cure Period (provided, however, that Bank shall not be precluded during any such periods from, after prior written notice to Assignor, except in an emergency, exercising any remedies available hereunder or under any of the Loan Documents, if its security in the collateral described herein or therein becomes or is about to become materially jeopardized by any failure to cure a default within such period); or

(d) A default or Event of Default occurs under any of the Secured Obligations and any applicable cure period has elapsed; or

(e) A Default or Event of Default is declared under the Loan Agreement or any other Loan Document; or

(f) Mortgagor makes or permits the occurrence of an Accelerating Transfer in violation of **Section 6.1**; or

(g) Any representation or warranty made or given by Mortgagor in this Mortgage proves to be false or misleading in any material respect.



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**6.3 Remedies.** At any time after an Event of Default, Mortgagee shall be entitled to invoke any and all of the rights and remedies described below or permitted by applicable law. All of such rights and remedies shall be cumulative, and the exercise of any one or more of them shall not constitute an election of remedies.

(a) Acceleration. Mortgagee may declare any or all of the Secured Obligations to be due and payable immediately.

(b) Receiver. Mortgagee may apply to any court of competent jurisdiction for, and obtain appointment of, a receiver for the Property.

(c) Entry. Mortgagee, in person, by agent or by court-appointed receiver, may, to the extent permitted by law, enter, take possession of, manage and operate all or any part of the Property, and may also do any and all other things in connection with those actions that Mortgagee may in its sole and absolute discretion consider necessary and appropriate to protect the security of this Mortgage. Such other things may include: taking and possessing all of Mortgagor's or the then owner's Books and Records; entering into, enforcing, modifying, or canceling leases on such terms and conditions as Mortgagee may consider proper; obtaining and evicting tenants; fixing or modifying Rents (but not in excess of any applicable maximum low income rents for residential tenants); collecting and receiving any payment of money owing to Mortgagor; completing any unfinished construction; and/or contracting for and making repairs and alterations. If Mortgagee so requests, Mortgagor shall assemble all of the Property that has been removed from the Land and make all of it available to Mortgagee at the site of the Land. Mortgagor hereby irrevocably constitutes and appoints Mortgagee as Mortgagor's attorney-in-fact, with full power of substitution, to perform such acts and execute such documents as Mortgagee in its sole and absolute discretion may consider to be appropriate in connection with taking these measures, including endorsement of Mortgagor's name on any instruments. The appointment granted in this Section 6.3(c) shall be deemed to be a power coupled with an interest. Regardless of any provision of this Mortgage, the Loan Agreement or any of the other Mortgagee Loan Documents, Mortgagee shall not be considered to have accepted any property other than cash or immediately available funds in satisfaction of any obligation of Mortgagor to Mortgagee, unless Mortgagee has given express written notice of Mortgagee's election of that remedy in accordance with Illinois Uniform Commercial Code Section 5/9-505, as it may be amended or recodified from time to time.

(d) Cure; Protection of Security. Mortgagee may cure any breach or default of Mortgagor, and if it chooses to do so in connection with any such cure, Mortgagee may also, to the extent permitted by law, enter the Property and/or do any and all other things which it may in its sole and absolute discretion consider necessary and appropriate to protect the security of this Mortgage. Such other things may include: appearing in and/or defending any action or proceeding which purports to affect the security of, or the rights or powers of Mortgagee under, this Mortgage; paying, purchasing, contesting or compromising any encumbrance, charge, lien or claim of lien which in Mortgagee's sole judgment is or may be senior in priority to this Mortgage, such judgment of Mortgagee to be conclusive as among the parties to this Mortgage; obtaining insurance and/or paying any premiums or charges for insurance required to be carried under the Loan Agreement; otherwise caring for and protecting any and all of the Property; and/or employing counsel, accountants, contractors and other appropriate persons to assist Mortgagee. Mortgagee may take any of the actions permitted under this Section 6.3(d) either with or without giving notice to any person.

(e) Uniform Commercial Code Remedies. Mortgagee may exercise any or all of the remedies granted to a secured party under the Illinois Uniform Commercial Code.



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(f) Judicial Action. Mortgagee may bring an action in any court of competent jurisdiction to foreclose this instrument or to obtain specific enforcement of any of the covenants or agreements of this Mortgage. If Mortgagee brings such an action, Mortgagor agrees to pay Mortgagee's reasonable attorneys' fees (including the allocated costs of in-house counsel) and court costs as determined by the court (but not the jury).

(g) UCC Sale. Mortgagee shall have the discretionary right to cause some or all of the Property, including any Property which constitutes personal property, to be sold or otherwise disposed of in any combination and in any manner permitted by applicable law.

(i) Sales of Personal Property.

(A) Mortgagee may elect to treat as personal property any Property which is intangible or which can be severed from the Land or Improvements without causing structural damage. If it chooses to do so, Mortgagee may dispose of any personal property separately from the sale of real property, in any manner permitted by Article 9 of the Illinois Uniform Commercial Code, including any public or private sale, or in any manner permitted by any other applicable law. Any proceeds of any such disposition shall not cure any Event of Default or reinstate any Secured Obligation.

(B) In connection with any sale or other disposition of such personal property disposed of separately from the sale of the real property, Mortgagor agrees that the following procedures constitute a commercially reasonable sale. Mortgagee shall mail written notice of the sale to Mortgagor not later than forty-five (45) days prior to such sale. Once per week during the four weeks immediately preceding such sale, Mortgagee will publish notice of the sale in a local daily newspaper of general circulation. Upon receipt of any written request, Mortgagee will make the personal property available to any bona fide prospective purchaser for inspection during reasonable business hours. Notwithstanding, Mortgagee shall be under no obligation to consummate a sale if, in its judgment, none of the offers received by it equal the fair value of the personal property offered for sale. The foregoing procedures do not constitute the only procedures that may be commercially reasonable.

(ii) UCC Sales of Real Property or Mixed Collateral.

(A) Mortgagee may choose to dispose of some or all of the Property which consists solely of real property in any manner then permitted by applicable law. In its sole and absolute discretion, Mortgagee may also or alternatively choose to dispose of some or all of the Property, in any combination consisting of both real and personal property, together in one sale to be held in accordance with the law and procedures applicable to real property, as permitted by Section 5/9-501(4) of the Illinois Uniform Commercial Code. Mortgagor agrees that such a sale of personal property together with real property constitutes a commercially reasonable sale of the personal property. For purposes of this power of sale, either a sale of real property alone, or a sale of both real and personal property together in accordance with Illinois Uniform Commercial Code Section 5/9 501(4), will sometimes be referred to as a "UCC Sale."

(B) Before any UCC Sale, Mortgagee shall give such notice of default and election to sell as may then be required by law. When all time periods then legally

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mandated have expired, and after such notice of sale as may then be legally required has been given, Mortgagee shall sell the property being sold at a public auction to be held at the time and place specified in the notice of sale. Mortgagee shall not have any obligation to make demand on Mortgagor before any UCC Sale. From time to time in accordance with then applicable law, Mortgagee may, and in any event at Mortgagee's request shall, postpone any UCC Sale by public announcement at the time and place noticed for that sale.

(h) Attorney-in-Fact. Mortgagor hereby irrevocably constitutes and appoints Mortgagee as Mortgagor's attorney-in-fact to perform such acts and execute such documents as Mortgagee in its sole and absolute discretion may consider to be appropriate in connection with taking the measures described in this Section 6, including endorsement of Mortgagor's name on any instruments.

(i) Single or Multiple Foreclosure Sales. If the Property consists of more than one lot, parcel or item of property, Mortgagee may:

(i) Designate the order in which the lots, parcels and/or items shall be sold or disposed of or offered for sale or disposition; and

(ii) Elect to dispose of the lots, parcels and/or items through a single consolidated sale or disposition to be held or made under the power of sale granted in Section 6.3(g), or in connection with judicial proceedings, or by virtue of a judgment and decree of foreclosure and sale; or through two or more such sales or dispositions; or in any other manner Mortgagee may deem to be in its best interests (any such sale or disposition, a "Foreclosure Sale;" any two or more, "Foreclosure Sales").

If Mortgagee chooses to have more than one Foreclosure Sale, Mortgagee at its option may cause the Foreclosure Sales to be held simultaneously or successively, on the same day, or on such different days and at such different times and in such order as Mortgagee may deem to be in its best interests. No Foreclosure Sale shall terminate or affect the lien of this Mortgage on any part of the Property which has not been sold, until all of the Secured Obligations have been paid and performed in full.

**6.4 Credit Bids.** At any Foreclosure Sale, any person, including Mortgagor or Mortgagee, may bid for and acquire the Property or any part of it to the extent permitted by then applicable law. Instead of paying cash for such property, Mortgagee may settle for the purchase price by crediting the sales price of the property against the following obligations:

(a) First, the portion of the Secured Obligations attributable to the expenses of sale, costs of any action, and any other sums for which Mortgagor is obligated to pay or reimburse Mortgagee under Section 5.11; and

(b) Second, all other Secured Obligations in any order and proportions as Mortgagee in its sole and absolute discretion may choose.

**6.5 Application of Foreclosure Sale Proceeds.** Mortgagee shall apply the proceeds of any Foreclosure Sale in the following manner:

(a) First, to pay the portion of the Secured Obligations attributable to the expenses of sale, including all costs and expenses of exercising the power of sale and other costs of sale, including, but

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not limited to, fees and reasonable attorneys' fees actually incurred, the costs of any action, and any other sums for which Mortgagor is obligated to reimburse Mortgagee under **Section 5.11**; and

(b) Second, to pay the portion of the Secured Obligations attributable to any sums expended or advanced by Mortgagee under the terms of this Mortgage which then remain unpaid; and

(c) Third, to pay all other Secured Obligations, to the extent permitted by applicable law, in any order and proportions as Mortgagee in its sole and absolute discretion may choose; and

(d) Fourth, to remit the remainder, if any, to the person or persons entitled to it.

If the Secured Obligations include more than one loan or line of credit, by cross collateralization or otherwise, it is specifically agreed that the proceeds of any Foreclosure Sale or other foreclosure action shall not be applied pro rata unless such application is directed by Mortgagee, but instead shall be applied to all such Secured Obligations in any order, proportions and manner as Mortgagee in its sole and absolute discretion may choose.

**6.6 Application of Rents and Other Sums.** Mortgagee shall apply any and all Rents collected by it, and any and all sums other than proceeds of a Foreclosure Sale which Mortgagee may receive or collect under **Section 6.3**, in the following manner:

(a) First, to pay the portion of the Secured Obligations attributable to the costs and expenses of operation of the Property and collection of Rents and other sums that may be incurred by Mortgagee, and/or any receiver, including but not limited to reasonable attorneys' fees and any and all expenses of leasing, operating, maintaining, and managing the Property, and all other costs and charges incident to the Property; and

(b) Second, to pay all other Secured Obligations in any order and proportions as Mortgagee in its sole and absolute discretion may choose; and

(c) Third, to remit the remainder, if any, to the person or persons entitled to it.

Mortgagee shall have no liability for any funds which it does not actually receive.

## **7. Miscellaneous Provisions.**

**7.1 Additional Provisions.** The Loan Agreement and the other Loan Documents fully state all of the terms and conditions of the parties' agreement regarding the matters mentioned in or incidental to this Mortgage. The Loan Agreement and the other Loan Documents also grant further rights to Mortgagee and certain of them contain further agreements and affirmative and negative covenants by Mortgagor which apply to this Mortgage and to the Property.

## **7.2 No Waiver or Cure.**

(a) Each waiver by Mortgagee shall be in writing, and no waiver shall be construed as a continuing waiver. No waiver shall be implied from any delay or failure by Mortgagee to take action on account of any default of Mortgagor. Consent by Mortgagee to any act or omission by Mortgagor shall not be construed as a consent to any other or subsequent act or omission or to waive the requirement for Mortgagee's consent to be obtained in any future or other instance. Reinstatement of the Secured

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Obligations following an acceleration thereof by Mortgagee following the occurrence of an Event of Default shall not constitute a waiver of any Event of Default then existing or subsequently occurring, nor impair the right of Mortgagee to declare other Events of Default, nor otherwise affect this Mortgage, the Loan Agreement or any of the other Loan Documents, or any of the rights, obligations, or remedies of Mortgagee under this Mortgage, the Loan Agreement or any of the other Loan Documents.

(b) If any of the events described below occurs, that event alone shall not: cure or waive any breach, Event of Default or notice of default under this Mortgage or invalidate any act performed pursuant to any such default or notice; or nullify the effect of any notice of default or sale (unless all Secured Obligations then due have been paid and performed and all other defaults under the Loan Agreement and the other Loan Documents have been cured); or impair the security of this Mortgage; or prejudice Mortgagee, or any receiver in the exercise of any right or remedy afforded any of them under this Mortgage; or be construed as an affirmation by Mortgagee of any tenancy, lease or option, or a subordination of the lien of this Mortgage.

(i) Mortgagee, its agent, or a receiver takes possession of all or any part of the Property in the manner provided in Section 6.3(c); or

(ii) Mortgagee collects and applies Rents and enforces any Lease provision as permitted under Section 2.3 and Section 6.6, either with or without taking possession of all or any part of the Property; or

(iii) Mortgagee receives and applies to any Secured Obligation any proceeds of any Property, including any proceeds of insurance policies, condemnation awards, or other claims, property or rights assigned to Mortgagee under Section 5.5; or

(iv) Mortgagee makes a site visit, observes the Property and/or conducts tests as permitted under Section 5.15; or

(v) Mortgagee receives any sums under this Mortgage or any proceeds of any collateral held for any of the Secured Obligations, and applies them to one or more Secured Obligations; or

(vi) Mortgagee or any receiver invokes any right or remedy provided under this Mortgage.

## 7.3 Powers of Mortgagee.

(a) Mortgagee shall have no obligation to perform any act which it is empowered to perform under this Mortgage unless it is requested to do so in writing and is reasonably indemnified against loss, cost, liability and expense.

(b) If Mortgagee performs any act which it is empowered or authorized to perform under this Mortgage, including any act permitted by Section 5.9 or Section 6.3(d), that act alone shall not release or change the personal liability of any person for the payment and performance of the Secured Obligations then outstanding, or the lien of this Mortgage on all or the remainder of the Property for full payment and performance of all outstanding Secured Obligations. The liability of the original Mortgagor shall not be released or changed if Mortgagee grants any successor in interest to Mortgagor any extension of time for payment, or modification of the terms of payment, of any Secured Obligation. Mortgagee shall not

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be required to comply with any demand by the original Mortgagor that Mortgagee refuse to grant such an extension or modification to, or commence proceedings against, any such successor in interest.

(c) Mortgagee may take any of the actions permitted under Section 6.3(b) and/or Section 6.3(c) regardless of the adequacy of the security for the Secured Obligations, or whether any or all of the Secured Obligations have been declared to be immediately due and payable, or whether notice of default and election to sell has been given under this Mortgage.

(d) From time to time, Mortgagee may apply to any court of competent jurisdiction for aid and direction in executing the trust and enforcing the rights and remedies created under this Mortgage. Mortgagee may from time to time obtain orders or decrees directing, confirming, or approving acts in executing this trust and enforcing such rights and remedies.

**7.4 Merger.** No merger shall occur as a result of Mortgagee's acquiring any other estate in or any other lien on the Property unless Mortgagee consents to a merger in writing.

**7.5 Joint and Several Liability.** If Mortgagor consists of more than one person, each shall be jointly and severally liable for the faithful performance of all of Mortgagor's obligations under this Mortgage.

**7.6 Applicable Law.** This Mortgage is governed by the laws of the State of Illinois, without regard to the choice of law rules of that state.

**7.7 Successors in Interest.** The terms, covenants, and conditions of this Mortgage shall be binding upon and inure to the benefit of the heirs, successors, and assigns of the parties. However, this Section 7.7 does not waive the provisions of Section 6.1.

**7.8 Statute of Limitations.** To the extent permitted by law, Mortgagor hereby waives the right to plead the statute of limitations as a defense to any and all obligations secured by this Mortgage.

**7.10 Time of Essence.** Time is of the essence of this Mortgage.

**7.11 Interpretation.**

(a) Whenever the context requires, all words used in the singular will be construed to have been used in the plural, and vice versa, and each gender will include any other gender. The captions of the sections of this Mortgage are for convenience only and do not define or limit any terms or provisions. The word "include(s)" means "include(s), without limitation," and the word "including" means "including, but not limited to."

(b) The word "obligations" is used in its broadest and most comprehensive sense, and includes all primary, secondary, direct, indirect, fixed, and contingent obligations. It further includes all principal, interest, prepayment fees, late charges, loan fees, and any other fees and charges accruing or assessed at any time, as well as all obligations to perform acts or satisfy conditions.

(c) No listing of specific instances, items or matters in any way limits the scope or generality of any language of this Mortgage. The Exhibits to this Mortgage are hereby incorporated in this Mortgage.



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(d) No course of prior dealing, usage of trade, or parol or extrinsic evidence of any nature shall be used to supplement, modify, or vary any of the terms hereof.

**7.12 In-House Counsel Fees.** Whenever Mortgagor is obligated to pay or reimburse Mortgagee for any attorneys' fees, those fees shall include the allocated costs for services of in-house counsel.

**7.13 Waiver of Marshalling.** Mortgagor waives all rights, legal and equitable, it may now or hereafter have to require marshalling of assets or to require upon foreclosure sales of assets in a particular order. Each successor and assign of Mortgagor, including any holder of a lien subordinate to this Mortgage, by acceptance of its interest or lien agrees that it shall be bound by the above waiver, as if it had given the waiver itself.

**7.14 Waiver of Redemption** Mortgagor waives, to the fullest extent permitted by law, all rights of reinstatement and redemption with respect to this Mortgage. Each successor and assign of Mortgagor, including any holder of a lien subordinate to this Mortgage, by acceptance of its lien or interest agrees it will be bound by the above waiver as if it had given the waiver itself.

**7.14 Severability.** If any provision of this Mortgage should be held unenforceable or void, that provision shall be deemed severable from the remaining provisions and shall in no way affect the validity of this Mortgage, except that if such provision relates to the payment of any monetary sum, then Mortgagee may, at its option, declare all Secured Obligations immediately due and payable.

**7.15 Notices.** Notice of default and notice of sale shall be mailed to Mortgagor at the address set forth below. If any Mortgagor fails to insert an address, that failure will constitute a designation of Mortgagor's last known address as the address of such notice. That address is also the mailing address of Mortgagor as debtor under the Illinois Uniform Commercial Code. Mortgagee's address given below is the address for Mortgagee as secured party under the Illinois Uniform Commercial Code.

**7.16 Future Advances.**

All advances, disbursements and expenditures (collectively "Protective Advances") 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 Illinois Mortgage Foreclosure Act (the "Act"), 735 ILCS 5/15-1101 *et seq.* 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 Property; (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 any senior mortgage 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 Mortgaged Property 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;

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

(d) reasonable 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 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 Property 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 Property is a leasehold estate under a lease or sublease, rental's 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 Mortgaged Property 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 Mortgaged Property or required to be made by the owner of the Mortgaged Property 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 Mortgaged Property; (vi) shared or common expense assessments payable to any association or corporation in which the owner of the Mortgaged Property is a member in any way affecting the Mortgaged Property; (vii) costs incurred by Mortgagee for demolition, preparation for and completion of construction, as may be; (viii) pursuant to any lease or other agreement for occupancy of the Mortgaged Property; and (ix) if this Mortgage is insured, payments of FHA or private mortgage insurance.

All Protective Advances shall be so much additional Secured Obligations 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 a default under the terms of the Loan Agreement.

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 Secured Obligations secured by this Mortgage at any time;
- (2) the Obligations 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 Obligations 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 lender 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 is \$30,000,000, plus interest, plus any disbursements for the payment of taxes and insurance on the Mortgaged Property, together with interest thereon, plus the amount of any other Protective Advances, together with interest thereon.

**Section 7.17 Partial Releases of Property.** Pursuant to Section 3.3 of the Loan Agreement, and subject to the payment of the applicable Unit Release Price (as defined in the Loan Agreement) and the satisfaction of the other terms and conditions set forth in Section 3.3 of the Loan Agreement, Mortgagee shall provide partial releases (in recordable form) in respect of its interest under this Mortgage in the Units and related ancillary Improvements, constructed on the Land.

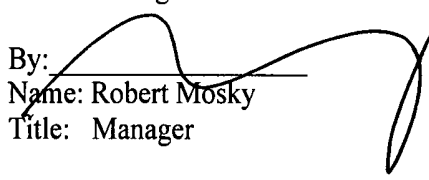
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IN WITNESS WHEREOF, Mortgagor has executed this Mortgage, Assignment of Rents and Leases, Security Agreement and Fixture Filing the day and year first above written.

"MORTAGOR"

SLRDM 7400 SOUTH ROCKWELL  
DEVELOPMENT, LLC, an Illinois limited  
liability company

By:   
Name: Wojciech Kocemba  
Title: Manager

By:   
Name: Robert Mosky  
Title: Manager

Mortgagor's Address:

RDM Development & Investment, LLC  
1200 Ashland Avenue  
Suite 400  
Chicago, Illinois 60622  
Attention: Wojciech Kocemba and Robert Mosky

Address of Mortgagor:

Harris N.A.  
111 West Monroe Street,  
2<sup>nd</sup> Floor, East  
Chicago, Illinois 60603  
Attention: Michael Chip

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## EXHIBIT A

**Exhibit A** to **MORTGAGE** executed as of December 21 2007, by SLRDM 7400 SOUTH ROCKWELL DEVELOPMENT, LLC, an Illinois limited liability company, as "Mortgagor" to HARRIS, N.A., a national banking association, as "Mortgagee."

### Description of Property

LOTS 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139 AND 140 IN THE FINAL PLAT OF SUBDIVISION MARQUETTE VILLAGE, BEING A SUBDIVISION OF PART OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 25, TOWNSHIP 38 NORTH, RANGE 13, EAST OF THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT RECORDED APRIL 23, 2007 AS DOCUMENT NUMBER 0711322000 IN COOK COUNTY, ILLINOIS.

Street Address: 7400 South Rockwell Avenue, in Chicago, Illinois

P.I.N.s: 19-25-124-003-0000  
19-25-125-001-0000  
19-25-125-003-0000

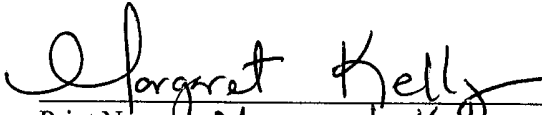


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## ACKNOWLEDGEMENT

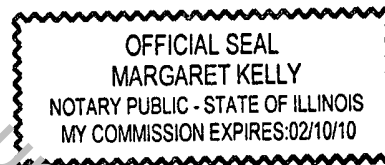
STATE OF ILLINOIS                   )  
                                                  )  
COUNTY OF COOK                   )ss.

This instrument was acknowledged before me on 12/21, 2007, by Wojciech Kocemba, as the Manager of SLRDM 7400 Rockwell Development, LLC, an Illinois limited liability company, as his free and voluntary act, for the uses and purposes herein intended.

  
Print Name: Margaret Kelly  
Notary Public in and for said  
County and State

My Commission Expires:

2/10/10



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## ACKNOWLEDGEMENT

STATE OF ILLINOIS                   )  
                                                   )  
 COUNTY OF COOK                    )ss.

This instrument was acknowledged before me on 12/21, 2007, by Robert Mosky, as the Manager of SLRDM 7400 Rockwell Development, LLC, an Illinois limited liability company, as his free and voluntary act, for the uses and purposes herein intended.

*Margaret Kelly*  
 Print Name: Margaret Kelly  
 Notary Public in and for said  
 County and State

My Commission Expires:

2/10/10

