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## Illinois Anti-Predatory Lending Database Program



1100604054

### Certificate of Exemption

Doc#: 1100604054 Fee: \$94.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 01/06/2011 10:38 AM Pg: 1 of 30

Report Mortgage Fraud  
800-532-8785

The property identified as: PIN: 17-09-433-001-0000

**Address:**

**Street:** 188 West Randolph Street, Units 1 and 2

**Street line 2:**

**City:** Chicago

**State:** IL

**ZIP Code:** 60601

**Lender:** Illinois Housing Development Authority

**Borrower:** Randolph Tower City Apartments, LLC and Randolph Tower Affordable City Apartments, LLC

**Loan / Mortgage Amount:** \$10,000,000.00

This property is located within the program area and is exempt from the requirements of 765 ILCS 7770 et seq. because it is commercial property.

Box 400-CTCC

S ✓  
P 30  
N  
y  
y

**Certificate number:** 50AE1763-42D8-4911-9A67-95C016F3C3D9

**Execution date:** 12/22/2010

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Property of Cook County Clerk's Office

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**THIS INSTRUMENT WAS PREPARED  
BY AND AFTER RECORDING RETURN**

**TO: Thomas M. Jenkins  
Illinois Housing Development  
Authority**

**401 N. Michigan Ave.  
Chicago, Illinois 60611  
Permanent Tax Index**

**Identification No.:  
See Exhibit A**

**Property Address:  
188 W. Randolph Street  
Chicago, Illinois**

**JUNIOR MORTGAGE, SECURITY AGREEMENT AND  
ASSIGNMENT OF RENTS AND LEASES**

**THIS JUNIOR MORTGAGE, SECURITY AGREEMENT AND ASSIGNMENT  
OF RENTS AND LEASES** (this "Mortgage"), dated as of the 22nd day of December, 2010, made by **RANDOLPH TOWER CITY APARTMENTS, LLC ("Tower") and RANDOLPH TOWER AFFORDABLE CITY APARTMENTS, LLC ("Tower Affordable")** (Tower and Tower Affordable shall collectively be referred to herein as "Mortgagor"), to the **ILLINOIS HOUSING DEVELOPMENT AUTHORITY ("Mortgagee")**, a body politic and corporate established pursuant to the Illinois Housing Development Act, 20 ILCS 3805/1 et seq., as amended from time to time (the "Act"), and the rules promulgated under the Act, as amended and supplemented (the "Rules");

**WITNESSETH:**

**WHEREAS**, Mortgagor is the owner of Unit 2 in the Randolph Tower City Apartments Condominium located on certain real property located in Chicago, Illinois. Such real property is legally described in Exhibit A attached to and made a part of this Mortgage (the "Real Estate"); the Real Estate and the improvements constructed on it are referred to in this Mortgage as the "Premises"; and

**WHEREAS**, Holtzman Affordable Holdings, LLC is the managing member of Tower Affordable ("Prime Member"). Randolph Tower Master Affordable Tenant, LLC ("Affordable Master Tenant"), Holtzman Interests #24, LLC ("Holtzman") and Randolph Tower City Apartments, Inc. ("Randolph, Inc.") are the sole members of Prime Member (collectively "Sub-Members") (Prime Member, Holtzman and Randolph, Inc. shall collectively be referred to herein as the "Members"); and

**WHEREAS**, Pursuant to Sections 1404 and 1602 of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5) ("Law") and any guidelines, rules, regulations, or notices published by the Internal Revenue Service ("IRS") or the United States Department of the Treasury ("Treasury") from time to time relating to the Law (together with the Law collectively the "1602 Program Requirements"), the Mortgagee shall receive funds ("1602 Funds") from the

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Treasury with which the Mortgagee is authorized to make grants to eligible developments as determined by the Mortgagee in conformance with the 1602 Program Requirements; and

**WHEREAS**, Mortgagee has agreed to make a grant to Tower Affordable in the maximum amount of Ten Million and No/100 Dollars (\$10,000,000.00) (the "Grant"), to be used with other monies for the acquisition, rehabilitation and permanent financing of the Development; and

**WHEREAS**, contemporaneously with the execution and delivery of this Mortgage, Tower Affordable has executed and delivered to Mortgagee that certain Mortgage Note (together with any renewals, modifications, extensions, amendments and replacements), (the "Note") of even date herewith, as evidence of the obligation of Mortgagor with respect to the Grant; and

**WHEREAS**, the Grant is evidenced, secured and governed by, among other things: (a) the Conditional Commitment Letter from Mortgagee to or for the benefit of Tower Affordable dated December 6, 2010 (the "Commitment"), (b) the 1602 Written Agreement of even date herewith between Mortgagor and Mortgagee (the "1602 Agreement"), (c) this Mortgage, (d) the Note, (e) the Regulatory Agreement of even date herewith, (f) that certain Guaranty of Completion and Payment even date herewith, executed by the Guarantors (as defined in the Guaranty) for the benefit of Mortgagee (the "Guaranty"), and (g) the Environmental Indemnity executed by Mortgagor and Members, as indemnitor, and delivered to Mortgagee, as indemnitee (the "Environmental Indemnity"). This Mortgage, the Commitment, the 1602 Agreement, the Note, the Regulatory Agreement, the Guaranty, the Environmental Indemnity, and all other documents that evidence, govern or secure the Grant are sometimes collectively referred to as the "Grant Documents."

**NOW, THEREFORE**, Mortgagor, to secure the (a) obligation of the Tower Affordable to pay the Grant, including without limitation, the obligation to pay the Recapture Amount (as defined in the 1602 Agreement) (also known herein as the "Mortgage Debt"), which includes, but is not limited to, (i) so much of the Grant as Mortgagee may hereafter advance to Mortgagor and (ii) any and all other costs and expenses of Mortgagee attributable to Mortgagor as determined by Mortgagee, pursuant to the Grant Documents and this Mortgage, such payments all to be made at the times, manner and place specified and set forth in the Note and the 1602 Agreement; and (b) performance and observance of all of the provisions of this Mortgage and the other Grant Documents, does by these presents MORTGAGE AND WARRANT and grant a security interest in the Premises and all of its estate, title and interest in the Premises to Mortgagee, its successors and assigns (the Premises, together with the property described in the next succeeding paragraph, are referred to as the "Development").

**TOGETHER** with all improvements, tenements, easements, fixtures, and appurtenances now or hereafter belonging to it, and all rents, issues and profits of the Premises for so long and during all such times as Mortgagor may be entitled to them (which are pledged primarily and on a parity with the Premises and not secondarily), including, without limiting the foregoing: (a) if and to the extent owned by Mortgagor: all fixtures, fittings, furnishings, appliances, apparatus, equipment and machinery, including, without limitation, all gas and electric fixtures, radiators,

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heaters, engines and machinery, boilers, ranges, ovens, elevators and motors, bathtubs, sinks, water closets, basins, pipes, faucets and other air-conditioning, plumbing and heating fixtures, mirrors, mantles, refrigerating plants, refrigerators, ice-boxes, dishwashers, carpeting, furniture, laundry equipment, cooking apparatus and appurtenances, and all building material, supplies and equipment now or hereafter delivered to the Premises and intended to be installed in it; all other fixtures and personal property of whatever kind and nature at present contained in or hereafter placed in any building standing on the Premises; such other goods, equipment, chattels and personal property as are usually furnished by landlords in letting other premises of the character of the Premises and placed in or located upon the Premises; and all renewals or replacements, or articles in substitution thereof; and all proceeds and profits of the Premises and all of the estate, right, title and interest of Mortgagor in and to all property of any nature whatsoever, now or hereafter situated on the Premises, or intended to be used in connection with the operation of the Premises; (b) all of the right, title and interest of Mortgagor in and to any fixtures or personal property subject to a lease agreement, conditional sale agreement, chattel mortgage, or security agreement, and all deposits made thereon or therefor, together with the benefit of any payments now or hereafter made thereon; (c) all leases and use agreements of machinery, equipment and other personal property of Mortgagor in the categories set forth above in this Mortgage, under which Mortgagor is the lessee of, or entitled to use, such items; (d) all rents, income, profits, revenues, royalties, security deposits, bonuses, rights, accounts, accounts receivable, contract rights, general intangibles and benefits and guarantees under any and all leases or tenancies now existing or hereafter created with respect to the Premises, or any part of them, with the right to receive and apply the same to indebtedness due Mortgagee; Mortgagee may demand, sue for and recover such payments, but shall not be required to do so; (e) all documents, books, records, papers and accounts of Mortgagor relating to all or any part of the Premises; (f) all judgments, awards of damages and settlements hereafter made for the benefit of Mortgagor as a result of, or in place of, any taking of the Premises, or any part of it or interest in them, under the power of eminent domain, or for any damage (whether caused by such taking or otherwise) to the Premises or the improvements to them or any part of it or interest in them, including any award for change of grade of streets; (g) all proceeds of the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims; (h) any monies on deposit in any account for the Development, including without limitation the replacement reserve account and the account for the payment of real estate taxes or special assessments against the Premises or for the payment of premiums on policies of fire and other hazard insurance covering the Collateral (as defined in Paragraph 11 hereof) or the Premises, and all proceeds paid to or for the Mortgagor for damage done to the Collateral or the Premises; (i) all the right, title and interest of Mortgagor in and to beds of the streets, roads, avenues, lanes, alleys, passages and ways, and any easements, rights, liberties, hereditaments and appurtenances whatsoever belonging to or running with, on, over, below or adjoining the Premises; and (j) the enumeration of any specific articles of property shall in no way exclude or be held to exclude any items of property not specifically mentioned. All of the land, estate and property described above, real, personal and mixed, whether affixed or annexed or not (except where otherwise specified above), and all rights conveyed and mortgaged by this Mortgage are intended to be conveyed and mortgaged as a unit and are understood, agreed and declared to form a part and parcel of the Development and to be appropriated to the use of the Development, and shall be deemed to be the Development and conveyed and mortgaged by this Mortgage. As to the above personal property which the Illinois Uniform Commercial Code

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(the "Code") classifies as fixtures, this instrument shall constitute a fixture filing and financing statement under the Code.

**TO HAVE AND TO HOLD** the Development unto Mortgagee, its successors and assigns, forever, for the purposes and uses set forth in this Mortgage.

## **IT IS FURTHER UNDERSTOOD AND AGREED THAT:**

### **1. Recitals.**

All of the foregoing recitals are made a part of this Mortgage.

### **2. Incorporation of Other Documents.**

The other Grant Documents are each incorporated by reference into and made a part of this Mortgage.

### **2A. Future Advances.**

Mortgagee has bound itself to make advances pursuant to and subject to the terms of the 1602 Agreement, and Mortgagor acknowledges that all such advances, including future advances whenever made after the date of this Mortgage, shall be a lien from the time this Mortgage is recorded, as provided in Section 15-1302(b)(1) of the Illinois Mortgage Foreclosure Law, 735 ILCS 5/15 et seq., as amended from time to time (the "Foreclosure Law").

### **3. Maintenance, Repair and Restoration of Improvements.**

Mortgagor shall (a) promptly repair, restore or rebuild any buildings or improvements now or hereafter situated on the Development that may be damaged or destroyed; (b) following completion of the rehabilitation or improvement of the Development, keep the Development in good condition and repair, without waste, and free from mechanics liens or other liens or claims for lien not expressly subordinated to the lien of this Mortgage or contested in accordance with the terms of this Mortgage; Mortgagor may contest the validity or amount of any such lien in good faith, so long as Mortgagor posts a bond or other security reasonably satisfactory to Mortgagee and otherwise complies with all applicable laws, rules and regulations governing such contest; (c) obtain all federal, state and local governmental approvals required by law for the acquisition, rehabilitation, ownership and operation of the Development; (d) complete, within a reasonable time, any building or other improvements now or at any time in process of erection upon the Development; (e) cause the Development to comply with all requirements of law, municipal ordinances or restrictions of record with respect to the Development and its use; (f) make no alterations in the Development without Mortgagee's written approval; (g) following completion of the rehabilitation of the Development, suffer or permit no change in the general nature of the occupancy of the Development without Mortgagee's written consent; (h) not initiate or acquiesce in any zoning variation or reclassification of the Development without Mortgagee's written consent; (i) pay each item of the Mortgage Debt when due according to the terms of this

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Mortgage or the Note; and (j) pay when due, any indebtedness that may be secured by a lien or charge on the Development superior to the lien of this Mortgage, and upon request, exhibit satisfactory evidence of the discharge of such senior lien to Mortgagee.

#### 4. Contest of Mechanics Lien Claims.

Mortgagor, or any party obligated to Mortgagor to do so, may in good faith and with reasonable diligence contest the validity or amount of any mechanics lien and defer its payment and discharge of any such mechanics lien during the pendency of such contest, so long as: (i) such contest has the effect of preventing the sale or forfeiture of the Development or any part of or interest in it, to satisfy such mechanics lien; (ii) within ten (10) days after Mortgagor has notice of the filing of such mechanics lien, Mortgagor has notified Mortgagee in writing of Mortgagor's intention to contest, or to cause another party to contest, it; and (iii) Mortgagor has obtained a title insurance endorsement over such mechanics lien insuring Mortgagee against loss or damage in connection with it.

#### 5. Insurance.

Mortgagor shall keep all buildings, improvements, fixtures and articles of personal property now or hereafter situated on the Development continuously insured against loss or damage by fire or other hazards, and such other appropriate insurance as may be required by Mortgagee, all in form and substance reasonable / satisfactory to Mortgagee, including, without limitation, rent loss insurance, business interruption insurance and flood insurance (if and when the Development lies within an area designated by an agency of the federal government as a flood risk area). Mortgagor shall also provide liability insurance with such limits for personal injury and death and property damage as Mortgagee may require. All such policies of insurance shall be in forms, amounts and with companies satisfactory to Mortgagee, with mortgagee loss payable clauses or endorsements attached to all policies in favor of and in form satisfactory to Mortgagee, including a provision requiring that the coverage evidenced by such policies shall not be terminated or materially modified without thirty (30) days' prior written notice to Mortgagee; such insurance policies shall name Mortgagee as loss payee. Mortgagor shall deliver copies of all policies, including additional and renewal policies, to Mortgagee, and shall deliver copies of renewal policies or other evidence of renewal to Mortgagee not less than ten (10) days prior to the respective dates of expiration of such policies. Mortgagor shall, upon notice from Mortgagee, immediately reimburse Mortgagee for any premiums paid for insurance procured by Mortgagee, or reasonably deemed necessary by Mortgagee due to Mortgagor's failure to provide insurance as required under this Paragraph 5, to secure its interest under this Mortgage. From and after the date of entry of any judgment of foreclosure, all rights and powers conferred on Mortgagee by this Paragraph 5 shall continue in Mortgagee as judgment creditor or mortgagee until confirmation of sale of the Development.

#### 6. Adjustment of Losses With Insurer and Application of Proceeds of Insurance.

Mortgagor is authorized to settle and adjust any claim under insurance policies that insure against such risks, subject to the approval of Mortgagee. If at the time of loss or damage there



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exists a Default (as that term is defined in Paragraph 12 hereof) or a default that, with the passage of any applicable cure or grace period, would become a Default, Mortgagee is authorized to settle and adjust any claim under insurance policies which insure against such risks. Mortgagee is authorized to collect and issue a receipt for any such insurance money. Such insurance proceeds shall be held by Mortgagee and may be either applied to the Mortgage Debt or, at the option of Mortgagee, used to pay directly or reimburse Mortgagor for the cost of the rebuilding of buildings or improvements on the Development, at Mortgagee's sole discretion. If such proceeds are used to rebuild the buildings or improvements, whether or not such insurance proceeds are adequate for such purpose, the Development shall be restored, repaired or rebuilt by Mortgagor so as to be of at least equal value and substantially the same character as prior to such damage or destruction. If the cost of rebuilding, repairing or restoring the Development can reasonably be expected to exceed the sum of Fifty Thousand and No/100 Dollars (\$50,000.00), then Mortgagor shall obtain the written consent of Mortgagee to the plans and specifications of such work before such work is begun. In any case where the insurance proceeds are made available for repairing and rebuilding, such proceeds shall be disbursed in the manner and under the conditions that Mortgagee may require, provided Mortgagee is furnished with (i) satisfactory evidence of the estimated cost of completion of such work and (ii) architect's certificates, waivers of lien, contractor's and subcontractors' sworn statements and other evidence of cost and payments so that Mortgagee can verify that the amounts disbursed in connection with such work are free and clear of mechanics lien or other lien claims, other than those contested in accordance with this Mortgage. If the estimated cost of completion exceeds the amount of the insurance proceeds available, Mortgagor shall, within thirty (30) days following written demand of Mortgagee, deposit with Mortgagee in cash the amount of such estimated excess cost. No payment made prior to the final completion of the work performed shall exceed ninety percent (90%) of the value of the work performed from time to time, and at all times, the undisbursed balance of such proceeds remaining in the hands of the disbursing party shall be at least sufficient to pay for the cost of completion of the work, free and clear of any liens. Any surplus that may remain out of the insurance proceeds after payment of costs of rebuilding, repairing or restoring the Development shall, at the option of Mortgagee, be applied toward the Mortgage Debt or be paid to any party entitled to it, without interest. Any additional monies advanced by Mortgagee to Mortgagor for the repairing, rebuilding or restoring of the Development shall be added to the Mortgage Debt and shall be secured by this Mortgage. The provisions of this Paragraph are subject to the Senior Mortgage (as defined in Paragraph 8.c herein).

## **7. Payment of Taxes, Insurance Premiums and Utility Charges.**

Mortgagor shall pay when due all real estate taxes, and in any event shall pay all assessments, water rates, sewer, gas or electric charges, insurance premiums and any imposition or lien on the Development. If Mortgagor fails to make any such payment, Mortgagee may, at its option, after the expiration of any applicable cure period and upon reasonable prior notice to Mortgagor, pay them. The sum or sums so paid by Mortgagee shall be immediately due and payable to Mortgagee without notice and shall bear interest at the Default Rate, as stated in the Note. Mortgagee shall have the right to declare immediately due and payable the amount of any such payment made by Mortgagee, whether or not such payment has priority over this Mortgage. Mortgagor shall, upon written request of Mortgagee, furnish to Mortgagee duplicate receipts

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evidencing payment of taxes and assessments, insurance premiums and utility charges. Notwithstanding the foregoing, Mortgagor may contest the validity or amount of any real estate taxes in good faith; however, Mortgagor shall deposit with Mortgagee an amount deemed reasonably necessary by Mortgagee to pay such taxes should the Mortgagor's challenge fail. If the Mortgagee subordinates the lien of this Mortgage to another loan made by a third party lender, the third party lender may hold the a tax and insurance reserve account ("Tax and Insurance Reserve Account"). If the third party lender: (i) does not require a Tax and Insurance Reserve Account, or (ii) no longer requires one, or (iii) requires one for an amount less than the amount required in this Paragraph, the Mortgagor shall comply with the requirements of this Paragraph and the Mortgagee shall hold the Tax and Insurance Reserve Account, except that if (iii) is applicable, the Mortgagor shall deposit with the Mortgagee the difference between the requirements of the third party lender and the Mortgagee. If the third party lender holds a Tax and Insurance Reserve Account, funds shall not be disbursed from such account without the prior written consent of the Mortgagee.

## 8. Limitations on Sale, Assignments, Transfers, Encumbrances and Control.

(a) Mortgagor recognizes that in determining whether or not to make the Grant, Mortgagee evaluated the background and experience of Mortgagor in owning and operating property such as the Development, found them acceptable and relied and continues to rely upon them as the means of maintaining the value of the Development, which is Mortgagee's primary security for the Mortgage Debt. Mortgagor is experienced in owning and operating property such as the Development, has been ably represented by a licensed attorney at law in the negotiation and documentation of the Grant and bargained at arm's length and without duress of any kind for all of the terms and conditions of the Grant, including the provisions of this Paragraph 8. Mortgagor recognizes that any further financing placed upon the Development (i) could divert funds that would otherwise be used to pay the Mortgage Debt, (ii) could result in acceleration and foreclosure of such further encumbrance, which would force Mortgagee to take measures and incur expenses to protect its security under this Mortgage, (iii) would detract from the value of the Development should Mortgagee come into possession of it with the intention of selling it and (iv) would impair Mortgagee's right to accept a deed in lieu of foreclosure, because a foreclosure by Mortgagee would be necessary to clear the title to the Development.

In accordance with the foregoing and for the purposes of (i) protecting Mortgagee's security, the value of the Development, the payment of the Mortgage Debt and performance of Mortgagor's obligations under the Grant Documents; (ii) giving Mortgagee the full benefit of its bargain and contract with Mortgagor; and (iii) keeping the Development free of subordinate financing liens, Mortgagor agrees that if this Paragraph 8 is deemed a restraint on alienation, it is a reasonable one. Mortgagor shall not create, effect, consent to, suffer or permit any "Prohibited Transfer" (as hereinafter defined). Except as permitted elsewhere in the Grant Documents, a "Prohibited Transfer" shall include any sale or other conveyance, transfer, lease or sublease, mortgage, refinancing (except as permitted hereinbelow), assignment, pledge, grant of a security interest, grant of any easement, license or right-of-way affecting the Development, any hypothecation or other encumbrance of the Development, any interest in the Development, or any interest in Mortgagor's interest in the Development, or any interest in Mortgagor, in each case



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whether any such Prohibited Transfer is effected directly, indirectly, voluntarily or involuntarily, by operation of law or otherwise.

(b) In addition to the matters set forth above, any sale, conveyance, dilution, assignment, pledge, hypothecation or other transfer of all or any part of:

- (i) any right to manage or receive the rents and profits from the Development; or
- (ii) any member interest, stock ownership interest or other interest in an entity or person comprising Mortgagor under this Mortgage, including, but not limited to the Members,

shall be deemed a sale, conveyance, assignment, hypothecation or other transfer for the purposes of the restrictions imposed by the foregoing subparagraph 8(a). Furthermore, Mortgagor shall not, without the prior written consent of Mortgagee, permit the transfer of "control" of the Development to any other person or legal entity. For the purposes of the foregoing sentence, the term "control" shall mean the power to direct or cause the direction of the management and policies of the Development by the voting of securities or by contract.

The provisions of this Paragraph 8 shall not apply to (i) the lien of current taxes and assessments not yet due or payable; (ii) liens or encumbrances specifically permitted by, or contested in accordance with, the terms of this Mortgage; (iii) residential leases of individual units of the Development entered into in the ordinary course of business, if such leases have been entered into in conformity with the 1602 Agreement; (iv) liens or encumbrances contained in the title policy received and approved by Mortgagee, (v) transfers of investor member's interests as permitted in Section 5.3D of the 1602 Agreement (collectively the "Permitted Exceptions"), and (vi) transfers by and among members of Holtzman, admission of new members of Holtzman, or transfers for estate planning purposes. Mortgagor acknowledges that any agreements, liens or encumbrances created in violation of the provisions of this Paragraph 8 shall, at the option of Mortgagee, constitute a Default, and to the extent the provisions of this Paragraph 8 conflict with or are inconsistent with similar provisions of the other Grant Documents, the provisions of this Paragraph 8 shall govern and control.

(c) If the Mortgagee approves a mortgage lien or liens senior to the lien of this Mortgage ("Senior Mortgage"), such approval to be in the Mortgagee's sole and absolute discretion, the Mortgagee shall determine which, if any, of the terms and conditions of the Senior Mortgage shall control in the event of a conflict between the terms and conditions contained herein and those contained in the Senior Mortgage. Mortgagee hereby approves a Senior Mortgage to Citibank, N.A. in an amount not to exceed \$50,580,000 ("Citi Loan"). Notwithstanding any provision contained herein, the Citi Loan may be refinanced at any time (or initially sized at permanent loan conversion at an amount in excess of \$50,580,000) without the prior consent of Mortgagee, provided: (i) a default does not exist in the Grant Documents and (ii) if the refinanced loan is more than \$50,580,000, the proceeds in excess of \$50,580,000 shall be applied in the following order of priority, subject to reasonable approval of such amounts by Mortgagee: (a) costs, expenses and fees associated with the refinancing (or permanent loan closing), (b)

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payment of any Developer Fee (as defined in the Commitment) and other fees and advances not previously paid, but in any event not more than \$4,431,465, (c) payments to U.S. Bancorp Community Development Corporation of any preferred return and put fee relating to the Historic Tax Credits, in an amount not to exceed \$4,700,000, and (d) to an operating reserve held by a third party lender, subject to such terms and conditions reasonably approved by Mortgagee, which includes the right of the Mortgagor to pay operating deficits, extraordinary capital expenditures or other capital improvements.

(d) Notwithstanding any restrictions on transfer in the Grant Documents, Mortgagee will not unreasonably withhold or delay its consent to a transfer of the Development if the transferee satisfies Mortgagee's standard requirements for transfers of physical assets or general partnership changes.

## 9. Acknowledgment of Mortgage Debt.

Mortgagor, within five (5) business days from the receipt of written notice from Mortgagee, shall furnish to Mortgagee a written statement, duly acknowledged, of the amount advanced to it which is secured by this Mortgage, and the amount due to Mortgagee in order to release this Mortgage, and whether any offsets or defenses exist against the Mortgage Debt.

## 10. Assignment of Rents and Leases.

As additional security for the payment of the Mortgage Debt, and for the faithful performance of the terms and conditions of this Mortgage, Mortgagor assigns to Mortgagee all of its right, title and interest as landlord in all current and future leases of the Development (the "Leases") and to any rents due and Mortgagor's rights in all security deposits (held by Mortgagor) under the Leases (the "Assignment"). Notwithstanding anything in this Mortgage to the contrary, so long as there exists no Default, Mortgagor shall have the right to collect all rents, security deposits, income and profits from the Development and to retain, use and enjoy them.

Nothing in this Mortgage or any of the other Grant Documents shall be construed to obligate Mortgagee, expressly or by implication, to perform any of the covenants of any landlord under any of the Leases or to pay any sum of money or damages that the Leases require the landlord to pay. Mortgagor agrees to perform and pay each and all of such covenants and payments.

From and after a Default, Mortgagee, in addition to the remedies set forth herein, is vested with full power to use all measures, legal and equitable, it deems necessary or proper to enforce this Assignment and to collect the rents, income and profits assigned under this Mortgage. Such power shall include the right of Mortgagee or its designee to enter upon the Development, or any part of it, with power to eject or dispossess tenants, subject to applicable law, and to rent or lease any portion of the Development on any terms approved by Mortgagee, and take possession of all or any part of the Development together with all personal property, fixtures, documents, books, records, papers and accounts of Mortgagor relating to it, and to exclude Mortgagor, its agents, and servants, wholly from it. Mortgagor grants full power and

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authority to Mortgagee to exercise all rights, privileges and powers granted by this Assignment at any and all times from and after such Default, with full power to use and apply all of the rents and other income granted by this Assignment to the payment of the costs of managing and operating the Development and of any indebtedness or liability of Mortgagor to Mortgagee. Such costs shall include, but are not limited to, the payment of taxes, special assessments, insurance premiums, damage claims, the costs of maintaining, repairing, rebuilding and restoring the Development or of making it rentable, reasonable attorneys' fees incurred in connection with the enforcement of this Mortgage, and of principal and interest payments due from Mortgagor to Mortgagee on the Note and the Mortgage, all in such order as Mortgagee may determine. Mortgagee shall be under no obligation to exercise or prosecute any of the rights or claims assigned to it under this Paragraph 10 or to perform or carry out any of the obligations of the landlord under any of the Leases, and Mortgagee does not assume any of the liabilities in connection with or arising or growing out of the covenants and agreements of Mortgagor in the Leases until Mortgagee forecloses the Mortgage, or acquires title to the Development through deed in lieu of foreclosure, and takes physical possession of the Development. Mortgagor agrees to indemnify Mortgagee and to hold it harmless from any liability, loss or damage, including, without limitation, reasonable attorneys' fees, that Mortgagee may incur under the Leases or by reason of this Assignment and from any and all claims and demands whatsoever that may be asserted against Mortgagee by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in any of the Leases, except for those liabilities, losses or damages that occur due to Mortgagee's gross negligence or willful misconduct or in connection with Leases entered into by Mortgagee. Mortgagee shall not be responsible for the control, care, management or repair of the Development, or parts of it, nor shall Mortgagee be liable for the performance of any of the terms and conditions of any of the Leases, or for any waste of the Development by any tenant under any of the Leases or by any other person, or for any dangerous or defective condition of the Development or for any negligence in the management, upkeep, repair or control of the Development resulting in loss or injury or death to any lessee, licensee, employee or stranger until such time as Mortgagee forecloses the Mortgage and takes physical possession of the Development. Mortgagee shall be responsible and liable only for its own actions or omissions occurring after such foreclosure and possession.

## 11. Security Agreement.

a. Mortgagor, within five (5) business days after the effective date of notice by Mortgagee, shall execute and deliver to Mortgagee documents sufficient in form and content to grant to Mortgagee a security interest under the Code (or to perfect, or to continue the perfection of, such security interest) covering the equipment, chattels, and personal property then or thereafter to be installed in, or used in connection with the operation or maintenance of the physical improvements in connection with the Development. Any delay, failure or refusal to comply with such demand shall constitute a Default.

b. Mortgagor and Mortgagee agree that this Mortgage shall constitute a security agreement within the meaning of the Code with respect to any property included in the definition of the word "Development" that may not be deemed to form a part of the Real Estate or may not

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constitute a “fixture” (within the meaning of Section 9-102(b)(41) of the Code), and all replacements of such property, substitutions for such property, additions to such property, and the proceeds thereof (such property and the replacements, substitutions and additions thereto and the proceeds thereof are sometimes hereinafter collectively referred to as the “Collateral”). Mortgagor grants a security interest in and to the Collateral to Mortgagee to secure payment of the Mortgage Debt and to secure performance by Mortgagor of the terms, covenants and provisions of this Mortgage.

All of the terms, provisions, conditions and agreements contained in this Mortgage pertain and apply to the Collateral as fully and to the same extent as to any other property comprising the Development, and the following provisions of this Paragraph 11 shall not limit the applicability of any other provision of this Mortgage, but shall be in addition to them:

1. Mortgagor (the “Debtor”, as that term is used in the Code) is and will be the true and lawful owner of the Collateral, subject to no liens, charges or encumbrances other than the lien of this Mortgage, other liens and encumbrances benefiting Mortgagee and any other liens permitted under this Mortgage.
2. The Collateral is to be used by Mortgagor solely for business purposes.
3. The Collateral shall be kept at the Development, and, except for Collateral which has been removed and replaced with Collateral of equal or greater value, shall not be removed from it (except for obsolete Collateral) without the consent of Mortgagee (the “Secured Party”, as that term is used in the Code). The Collateral may be affixed to the Real Estate, or the rest of the Development, but shall not be affixed to any other real estate.
4. Mortgagor shall not attach to or incorporate into the Development any personal property that is subject to a security interest under the Code of anyone other than Mortgagee, other than personal property subject to the purchase money security interest of the seller of such personal property.
5. Upon a Default, Mortgagee shall have the remedies of a Secured Party under the Code, including, without limitation, the right to take immediate and exclusive possession of all or any part of the Collateral and for that purpose may, so far as Mortgagor can give authority therefor, with or without judicial process, enter (if this can be done without breach of the peace) upon any place in which all or any part of the Collateral may be situated and remove it (provided that if the Collateral is affixed to the Real Estate, such removal shall be subject to the conditions stated in the Code). Mortgagee shall be entitled to hold, maintain, preserve and prepare the Collateral for sale, until disposed of, or may propose to retain the Collateral, subject to Mortgagor’s right of redemption, in satisfaction of Mortgagor’s obligations, as provided in the Code. Mortgagee may (i) render the Collateral unusable without removal, (ii) dispose of the Collateral on the Development or (iii) require Mortgagor to make the Collateral available to Mortgagee for its possession at a place to be designated by Mortgagee that is

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reasonably convenient to both parties. Mortgagee shall give Mortgagor at least ten (10) days' notice of the time and place of any public sale of the Collateral or of the time after which any private sale or any other intended disposition of it is made. The requirements of reasonable notice shall be met if such notice is mailed, by certified United States mail or equivalent, postage prepaid, to the address of Mortgagor set forth in Paragraph 24 hereof at least ten (10) days before the time of such sale or disposition. Mortgagee may buy the Collateral at any public sale and, if the Collateral is of a type customarily sold in a recognized market or is of a type that is the subject of widely distributed standard price quotations, Mortgagee may buy the Collateral at any private sale. Any such sale may be held as part of and in conjunction with any foreclosure sale of the Development; the Development, including the Collateral, may be sold as one lot if Mortgagee so elects. The net proceeds realized upon any such disposition, after deduction for the expenses of retaking, holding, preparing for sale, selling or the like and the reasonable attorneys' fees and reasonable legal expenses incurred by Mortgagee, shall be applied against the Mortgage Debt in such order or manner as Mortgagee shall select. Mortgagee shall pay to Mortgagor any surplus realized on such disposition.

6. The terms and provisions contained in this Paragraph 11 shall, unless the context otherwise requires, have the meanings and be construed as provided in the Code.

7. The addresses of Mortgagor (Debtor) and Mortgagee (Secured Party) are set forth in Paragraph 24 below.

8. This Mortgage is intended to be a financing statement within the purview of the Code with respect to both the Collateral and the other property described in this Mortgage that are or may become fixtures relating to the Development. The addresses of Mortgagor (Debtor) and Mortgagee (Secured Party) are set forth in this Mortgage. This Mortgage is to be filed for record with the Recorder of Deeds of the county in which the Development is located. Mortgagor is the record owner of the Real Estate.

## 12. Events of Default.

Upon the occurrence of any one or more of the following events (each, a "Default"), the whole of the Mortgage Debt and any other amounts payable to Mortgagee pursuant to this Mortgage shall immediately become due and payable at the option of Mortgagee, its successors and assigns, and Mortgagee shall have the right to an order of court directing Mortgagor to specifically perform its obligations under this Mortgage, the irreparable injury to Mortgagee and inadequacy of any remedy at law being expressly recognized by Mortgagor:

- a. A default in the payment of any amounts due under the Note;
- b. A default by Mortgagor in the observance or performance of any covenants, certification agreements or conditions contained, required to be kept or observed under any of the Grant Documents other than this Mortgage, or any other instrument evidencing, securing or relating to the Grant not cured within the time, if any, specified in such Grant Document.



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c. Failure to exhibit to Mortgagee, within ten (10) days after Mortgagee has made demand for them, receipted bills showing the payment of all real estate taxes, assessments, water rates, sewer, gas or electric charges, insurance premiums, or any charge or imposition, subject to Mortgagor's right to contest pursuant to Paragraph 7 hereof;

d. Failure to pay, on or before the due date, any real estate tax, assessment, water rate, sewer, gas or electric charge, insurance premium, any reserve required by Mortgagee, or any charge or imposition that is or may become a lien on the Development, subject to Mortgagor's right to contest pursuant to Paragraph 7 hereof;

e. Failure to comply with the terms contained in Paragraph 30 below within sixty (60) days after notice and demand given by Mortgagee (the "Compliance Period"). If any demand concerns the payment of any tax or assessment, and such payment is due prior to the expiration of the Compliance Period, then Mortgagor shall pay the tax or assessment prior to such date;

f. Failure on the part of Mortgagor, after completion of the rehabilitation or improvement of the Development, within thirty (30) days after notice from Mortgagee to Mortgagor, (i) to maintain the Development in a rentable and tenantable state of repair; (ii) to maintain the Development in a status required by any federal, state or local governmental entity having jurisdiction over the Development after notice of a violation of law is given by such governmental entity; and (iii) to comply with all or any of the statutes, requirements, orders or decrees of any federal, state or local entity relating to the use of the Development, or of any part thereof. If such condition is not reasonably curable despite Mortgagor's reasonable efforts to cure it within the time period set forth in the applicable Grant Documents, Mortgagor shall have up to sixty (60) additional days to cure such default, so long as (i) that cure is commenced within such thirty (30) day period, (ii) Mortgagor continues to diligently pursue such cure in good faith and (iii) Mortgagee's security for the Grant is not, in the sole judgment of Mortgagee, impaired as a result of the existence of such failure. In no event, however, shall Mortgagor have more than ninety (90) days, or the time allotted by the federal, state or local entity having jurisdiction over the Development to cure such default

g. Failure to permit Mortgagee, its agents or representatives, at any and all reasonable times and upon prior written notice, to inspect the Development, or to examine and make copies of the books and records of Mortgagor;

h. If a petition in bankruptcy is filed by or against Mortgagor, or a receiver or trustee of the property of Mortgagor is appointed, or if Mortgagor makes an assignment for the benefit of creditors or is adjudicated insolvent by any state or federal court. In the case of an involuntary petition, action or proceeding for the adjudication as a bankrupt or for the appointment of a receiver or trustees of the property of Mortgagor not initiated by Mortgagor, Mortgagor shall have ninety (90) days after the service of such petition or the commencement of such action or proceeding, as the case may be, within which to obtain a dismissal of such petition, action or proceeding, provided that Mortgagor is not otherwise in default under the terms of this Mortgage;

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i. Failure to comply with the Act, the Law, the Rules, the 1602 Program Requirements, and any rules, policies and procedures and regulations duly promulgated from time to time by Mortgagee in connection with the Act or the 1602 Program Requirements within the time periods if any as provided in the 1602 Agreement;

j. The occurrence of a Prohibited Transfer; however, if such Prohibited Transfer does not, in Mortgagee's sole judgment, endanger the lien granted under this Mortgage, Mortgagor shall have thirty (30) days after Mortgagee gives Mortgagor notice of such default to cure it; or

k. A default in the performance or a breach of any of the other covenants or conditions contained, required to be kept or observed in any of the provisions of this Mortgage not cured within thirty (30) days after notice to Mortgagor; however, if such default is of a nature such that it cannot be cured within thirty (30) days, then, so long as the cure is commenced within such thirty (30) day period, and Mortgagor continues diligently to pursue it in good faith, it shall not be considered to be a Default. In no event, however, shall Mortgagor have more than ninety (90) days to cure such default, or

l. A default, after expiration of any applicable cure period, under any document evidencing, governing or securing any other loan or grant made to the Mortgagor by the Mortgagee; or

m. A default, after expiration of any applicable cure period, under any document evidencing, securing or governing any other loan or grant made to Mortgagor and approved by Mortgagee.

If, while any insurance proceeds or Awards (as defined in Paragraph 22 hereof) are being held by Mortgagee to reimburse Mortgagor for the cost of rebuilding or restoring of buildings or improvements on the Development, Mortgagee is or becomes entitled to accelerate the Mortgage Debt and exercises that right, then Mortgagee shall be entitled to apply all such insurance proceeds and Awards in reduction of the Mortgage Debt, and any excess held by it over the Mortgage Debt then due shall be returned to Mortgagor, or any party entitled to it, without interest.

### 13. Mortgagee's Remedies.

To the extent provided in this Mortgage, the rents, issues and profits of the Development are specifically mortgaged, granted, pledged and assigned to Mortgagee as further security for the payment of the Mortgage Debt. Upon a Default, and so long as such Default is continuing, the holder of the Note and this Mortgage, as attorney-in-fact of Mortgagor or the then owner of the Development, shall have all the powers, rights, remedies and authority of Mortgagor, as the landlord of the Development, with power to institute mortgage foreclosure proceedings, to eject or dispossess tenants and to rent or lease any portion or portions of the Development. In such event, Mortgagor shall surrender possession of the Development to the holder of this Mortgage, and such holder may enter upon the Development and rent or lease the Development on any terms approved by it, and may collect all the rents from it that are due or become due, and may

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apply them, after payment of all charges and expenses, including the making of repairs that, in its judgment, may be necessary, on account of the Mortgage Debt. The rents and all leases existing at the time of such Default are assigned to the holder of this Mortgage as further security for the payment of the Mortgage Debt. In the case of a Default, and so long as such Default is continuing, the holder of this Mortgage, by virtue of such right to possession or as the agent of Mortgagor, subject to applicable law, may dispossess by legal proceedings, or other legally available means, any tenant defaulting in the payment to the holder of this Mortgage of any rent, and Mortgagor irrevocably appoints the holder of this Mortgage as its agent for such purposes. If the then owner of the Development is an occupant of any part of the Development, such occupant agrees to surrender possession of the Development to the holder of this Mortgage immediately upon any such Default; if such occupant remains in possession, the possession shall be as tenant of the holder of this Mortgage, and such occupant agrees to pay in advance to the holder of this Mortgage a monthly rental determined by the holder of this Mortgage (in its sole discretion) for the portion of the Development so occupied, and in default of so doing, such occupant may also be dispossessed by the usual summary proceedings. Mortgagor makes these covenants for itself and, to the extent possible, for any subsequent owner of the Development. The covenants of this Paragraph 13 shall become effective immediately after the happening of any Default, solely on the determination of the then holder of this Mortgage, who shall give notice of such determination to the Mortgagor or the then owner of the Development. In the case of foreclosure or the appointment of a receiver of rents, the covenants in this Paragraph 13 shall inure to the benefit of the holder of this Mortgage or any such receiver. In addition to the provisions of this Paragraph 13, if and when Mortgagee is placed in possession, Mortgagee shall have all rights, powers, immunities and duties as provided for in Sections 15-1701 and 15-1703 of the Illinois Foreclosure Law.

Mortgagee has filed a Uniform Commercial Code Financing Statement to evidence the security interest in the Collateral Assignment and upon a Default, and so long as such Default is continuing, the holder of the Note and this Mortgage, shall have all the right, which it may exercise in its sole and absolute discretion, in addition to any other remedy contained in any of the Grant Documents, at law or in equity, to institute the proper procedure to effectuate the Collateral Assignment and become the owner of all of the ownership interest in Mortgagee.

#### **14. Foreclosure; Expense of Litigation.**

When the Mortgage Debt, or any part of it, becomes due, whether by acceleration or otherwise, Mortgagee shall have the right to foreclose the lien of this Mortgage for all or any part of the Mortgage Debt. Mortgagee shall also have the right to apply funds obtained by presenting any letters of credit for collection, in any account of the Development held by Mortgagee, including without limitation, the Tax and Insurance Reserve Account to the Mortgage Debt. In any civil action to foreclose the lien of this Mortgage, in the order or judgment for sale there shall be allowed and included as additional Mortgage Debt all expenditures and expenses that may be paid or incurred by or on behalf of Mortgagee, including, but not limited to, reasonable attorneys' fees, appraisers' fees, accounting and auditing fees and costs, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the order or judgment) of procuring all such abstracts of title,

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title searches and examinations, title insurance policies, surveys, Torrens certificates, and similar data and assurances with respect to title as Mortgagee may deem reasonably necessary, either to prosecute such civil actions or to evidence to bidders at any sale that may occur pursuant to such order or judgment, the true condition of the title to or the value of the Development. All expenditures and expenses of the nature mentioned in this Paragraph 14, and such reasonable expenses and fees as may be incurred in the protection of the Development and maintenance of the lien of this Mortgage, including the reasonable fees of any attorney employed by Mortgagee in any litigation or proceeding affecting this Mortgage, the Note or the Development, including probate, bankruptcy and appellate proceedings, or in preparations for the commencement or defense of any proceeding or threatened civil actions or proceeding, shall be immediately due and payable by Mortgagor, with interest on them at the Default Rate, as specified in the Note, and shall be secured by this Mortgage. In case of a foreclosure sale, the Development may be sold in one or more parcels.

## 15. Application of Proceeds of Foreclosure Sale.

The proceeds of any foreclosure sale of the Development shall be distributed and applied in the following order of priority: first, on account of all costs and expenses incident to the foreclosure proceedings, including all such items as are mentioned in Paragraph 14 hereof; second, all other items that may, under the terms of this Mortgage, constitute secured indebtedness additional to the Mortgage Debt, with any Default Interest (as defined in the Note) due on them, as provided in this Mortgage; third, any late fees; fourth, all accrued interest and any accrued Default Interest remaining due and unpaid; fifth, any surplus to Mortgagor, its successors or assigns, as their rights may appear.

## 16. Appointment of Receiver.

Mortgagor agrees that, upon, or at any time after, the filing of a complaint to foreclose this Mortgage, the court in which such complaint is filed may appoint a receiver of the Development. Such appointment may be made either before or after sale, without notice, without regard to the solvency or insolvency of Mortgagor at the time of application for such receiver and without regard to the then value of the Development, and the Mortgagee or any holder of the Note may be appointed as such receiver. Such receiver shall have the power to collect the rents, issues and profits of the Development during the pendency of such foreclosure suit and, in case of a sale and a deficiency, during the full statutory period of redemption, whether there be redemption or not, as well as during any further times when Mortgagor, except for the intervention of such receiver, would be entitled to collect such rents, issues and profits; such receiver shall have all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Development during the whole of such redemption period. The court, from time to time, may authorize the receiver to apply the net income from the Development that is in its possession in payment in whole or in part of: (a) the Mortgage Debt, or any judgment or order foreclosing this Mortgage, or any tax, special assessment or other lien that may be or become superior to the lien hereof or of such decree, provided such application is made prior to a foreclosure sale of the Development; and (b) any deficiency arising out of a sale of the Development. In addition to the powers granted by this



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Paragraph 16, such receiver shall have all rights, powers, immunities and duties as provided for in Sections 15-1701 and 15-1703 of the Foreclosure Law.

## 17. Protective Advances.

All advances, disbursements and expenditures made or incurred 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 Foreclosure Law (collectively, "Protective Advances"), shall have the benefit of all applicable provisions of the Foreclosure Law, including the following provisions:

a. all advances by Mortgagee in accordance with the terms of the Mortgage to: (i) preserve, maintain, repair, restore or rebuild the Development; (ii) preserve the lien of the Mortgage or its priority; or (iii) enforce the Mortgage, all as referred to in subsection (b)(5) of Section 15-1302 of the Foreclosure Law;

b. payments by Mortgagee or: (i) real estate taxes and assessments, general and special and all other taxes and assessments of any kind or nature whatsoever that are assessed or imposed upon the Development or any part of it; (ii) other obligations authorized by the Mortgage; or (iii) 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 15-1505 of the Foreclosure Law;

c. reasonable attorneys' fees and other costs incurred: (i) in connection with the foreclosure of the Mortgage as referred to in Section 1504(d)(2) and 15-1510 of the Foreclosure Law; (ii) in connection with any action, suit or proceeding brought by or against Mortgagee for the enforcement of the Mortgage or arising from the interest of Mortgagee under the Mortgage; or (iii) in preparation for or in connection with the commencement, prosecution or defense of any other action related to the Mortgage or the Development;

d. Mortgagee's fees and costs, including reasonable attorneys' fees, arising between the entry of judgment of foreclosure and the confirmation hearing as referred to in Section 15-1508(b)(1) of the Foreclosure Law;

e. expenses deductible from proceeds of sale, as referred to in Sections 15-1512(a) and (b) of the Foreclosure Law;

f. expenses incurred and expenditures made by Mortgagee in connection with any one or more of the following: (i) if the Development or any portion of it constitutes one or more units under a condominium declaration, assessments imposed upon the unit owner; (ii) if Mortgagor's interest in the Development 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 of such



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insurance, without regard to the limitation of maintaining existing insurance in effect at the time any receiver or Mortgagee takes possession of the Development imposed by Section 15-1704(c)(1) of the Foreclosure Law; (iv) repair or restoration of damage or destruction in excess of available insurance proceeds or Awards; (v) payments Mortgagee deems necessary for the benefit of the Development or that the owner of the Development is required to make 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 Development; (vi) shared or common expense assessments payable to any association or corporation in which the owner of the Development is a member that affect the Development; (vii) if the Grant is a construction Grant, costs incurred by Mortgagee for demolition, preparation for and completion of construction, as may be authorized by the applicable documents or other agreement; (viii) payments that Mortgagee or Mortgagor must make pursuant to any lease or other agreement for occupancy of the Development; and (ix) if the Mortgage is insured, payments of FHA or private mortgage insurance that are required to keep such insurance in force.

All Protective Advances shall, except to the extent clearly contrary to or inconsistent with the provisions of the Foreclosure Law, apply to and be included in:

- a. any determination of the amount of the Mortgage Debt at any time;
- b. 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; Mortgagor agrees that in any foreclosure judgment, the court may reserve jurisdiction for such purpose;
- c. computation of amounts required to redeem, pursuant to subsections 15-1603(d)(2) and (e) of the Foreclosure Law;
- d. determination of amounts deductible from sale proceeds pursuant to Section 15-1512 of the Foreclosure Law; and
- e. application of income in the hands of any receiver or Mortgagee in possession.

## 18. Waiver of Redemption.

Mortgagor acknowledges that the Development does not constitute Agricultural Real Estate, as defined in Section 15-1201 of the Foreclosure Law, or Residential Real Estate as defined in Section 15-1219 of the Foreclosure Law. Pursuant to Section 15-1601(b) of the Foreclosure Law, Mortgagor waives any and all right of redemption under any order or decree of this Mortgage on behalf of Mortgagor and each and every person, except decree or judgment creditors of Mortgagor, in its representative capacity, acquiring any interest in or title to the Development subsequent to the date of this Mortgage to the extent permitted by law.

## 19. Rights Cumulative.

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Each right, power and remedy conferred by this Mortgage upon Mortgagee is cumulative and in addition to every other right, power or remedy, express or implied, given now or hereafter existing, at law or in equity, and each and every right, power and remedy set forth in this Mortgage or otherwise so existing may be exercised from time to time as often and in such order as Mortgagee may deem expedient. The exercise or the beginning of the exercise of one right, power or remedy shall not be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy, and no delay or omission of Mortgagee in the exercise of any right, power or remedy accruing under this Mortgage or arising otherwise shall impair any such right, power or remedy, or be construed to be a waiver of or acquiescence in any Default.

## 20. Effect of Extensions of Time.

If the payment of the Mortgage Debt or any part of it is extended or varied, or if any part of any security for the payment of the Mortgage Debt is released or additional security is taken, all persons now or at any time hereafter liable for the Mortgage Debt, or interested in the Development, shall be held to assent to such extension, variation, or taking of additional security or release, and their liability and the lien and all provisions of this Mortgage shall continue in full force.

## 21. Mortgagee's Right of Inspection.

Mortgagee shall have the right to inspect the Development at all reasonable times, upon advance notice to Mortgagor. Mortgagor shall permit Mortgagee to have access to the Development for that purpose.

## 22. Condemnation.

Any award (the "Award") made to the present, or any subsequent, owner of the Development by any governmental or other lawful authority for the taking, by condemnation or eminent domain, of all or any part of the Development, is assigned by Mortgagor to Mortgagee. Mortgagee may collect any such Award from the condemnation authorities, and may give appropriate acquittance for it. Mortgagor shall immediately notify Mortgagee of the actual or threatened commencement of any condemnation or eminent domain proceedings affecting any part of the Development and shall deliver to Mortgagee copies of all papers served in connection with any such proceedings. Mortgagor shall make, execute and deliver to Mortgagee, at any time upon request, free of any encumbrance, any further assignments and other instruments Mortgagee deems necessary for the purpose of assigning the Award to Mortgagee. Mortgagor shall not approve or accept the amount of any Award or sale price without Mortgagee's approval, confirmed in writing by an authorized officer of Mortgagee. If Mortgagor does not diligently pursue any such actual or threatened eminent domain proceedings and competently attempt to obtain a proper settlement or Award, Mortgagee, at Mortgagee's option, may take such steps, in the name of and on behalf of Mortgagor, as Mortgagee deems necessary to obtain such settlement or Award, and Mortgagor shall execute such instruments as may be necessary to enable Mortgagee to represent Mortgagor in such proceedings. If any portion of or interest in the Development is taken by condemnation or eminent domain, and the remaining portion of the

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Development is not, in the judgment of Mortgagee, a complete economic unit that, after restoration, would have equivalent value to the Development as it existed prior to the taking, then, at the option of Mortgagee, the entire Mortgage Debt shall immediately become due. Mortgagee, after deducting from the Award all of its expenses incurred in the collection and administration of the Award, including reasonable attorneys' fees, shall be entitled to apply the net proceeds of the Award toward repayment of such portion of the Mortgage Debt as it deems appropriate without affecting the lien of this Mortgage. In the event of any partial taking of the Development or any interest in the Development that, in the judgment of Mortgagee, leaves the Development as a complete economic unit having equivalent value, after restoration, to the Development as it existed prior to the taking, and provided Mortgagor is not in Default, the Award shall be applied to reimburse Mortgagor for the cost of restoring and rebuilding the Development in accordance with plans, specifications and procedures approved in advance by Mortgagee, and such Award shall be disbursed in the same manner as is provided in Paragraph 5 for the application of insurance proceeds. If all or any part of the Award is not applied for reimbursement of such costs of restoration and rebuilding, the Award shall, at the option of Mortgagee, be applied against the Mortgage Debt, in such order or manner as Mortgagee elects, or paid to Mortgagor.

**23. Release Upon Payment and Discharge of Mortgagor's Obligations.**

Mortgagee shall release this Mortgage and the lien thereof by proper instrument(s) in recordable form upon payment and discharge of the Mortgage Debt.

**24. Giving of Notice.**

Notices under this Mortgage shall be given as provided in Exhibit B attached to and made a part hereof.

**25. Waiver of Defense.**

No action for the enforcement of the lien or any provision of this Mortgage shall be subject to any defense that would not be good and available to the party interposing such defense in an action at law upon the Note.

**26. Illinois Mortgage Foreclosure Law.**

All covenants and conditions of this Mortgage, other than those required by Illinois law, shall be construed as affording to Mortgagee rights in addition to, and not exclusive of, the rights conferred under the provisions of the Foreclosure Law. Mortgagor and Mortgagee shall have the benefit of all of the provisions of the Foreclosure Law, including all amendments to it that may become effective from time to time after the date of this Mortgage. To the extent provided by law, if any provision of the Foreclosure Law that is specifically referred to in this Mortgage is repealed, Mortgagee shall have the benefit of such provision as most recently existing prior to such repeal, as though the provision were incorporated in this Mortgage by express reference.

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## 27. Waiver of Statutory Rights.

To the extent permitted by law, Mortgagor shall not apply for or avail itself of any appraisal, valuation, stay, extension or exemption laws, or any so-called "Moratorium Laws," now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, and 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 Development marshaled upon any foreclosure of the lien hereof, and agrees that any court having jurisdiction to foreclose such lien may order the Development sold as an entirety.

## 28. Furnishing of Financial Statements to Mortgagee.

Mortgagor shall keep and maintain books and records of account in which full, true and correct entries shall be made of all dealings and transactions relative to the Development. Such books of record and account shall be kept and maintained in accordance with (a) generally accepted accounting practice consistently applied and (b) such additional requirements as Mortgagee may require, and shall, at reasonable times, and on reasonable notice, be open to the inspection of Mortgagee and its accountants and other duly authorized representatives. Upon a Default, after expiration of any applicable cure period, the Mortgagee may inspect the books and records of Mortgagor and the Development either with its own employees, or with third parties accountants and auditors and in either case, the costs, expenses and fees of such inspection and audit shall be immediately due and payable to Mortgagee from Mortgagor. If a government entity inspects or audits the books and records of the Development and Mortgagor for any reason, and such government entity charges Mortgagee for costs, expenses and fees for such activity, the Mortgagor shall immediately reimburse Mortgagee for such costs, expenses and fees.

## 29. Filing and Recording Fees.

Mortgagor shall pay all filing, registration or recording fees, and all expenses incident to the execution and acknowledgment of this Mortgage and the other Grant Documents and all federal, state, county, and municipal taxes, and other taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Mortgage and the other Grant Documents.

## 30. Effect of Changes in Laws Regarding Taxation.

If, after the date of this Mortgage, by the laws of the United States of America, the State of Illinois, or of any municipality having jurisdiction over Mortgagee or the Development, any tax is imposed or becomes due in respect of the issuance of the Grant or the recording of this Mortgage, Mortgagor shall pay such tax in the manner required by such law. If any law, statute, rule, regulation, order or court decree has the effect of requiring the Mortgagee to pay all or any part of the taxes or assessments or charges or liens that this Mortgage requires Mortgagor to pay, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or Mortgagee's interest in the Development, or the manner of collection of taxes, so as

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to affect this Mortgage or the Mortgage Debt or the holders of them, then Mortgagor, upon demand by Mortgagee, shall pay such taxes or assessments within sixty (60) days of receipt of Mortgagee's demand, or reimburse Mortgagee for such payments. If, in the opinion of counsel for Mortgagee, (a) it might be unlawful to require Mortgagor to make such payment or (b) the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then Mortgagee may elect, by notice given to Mortgagor, to declare all of the Mortgage Debt due and payable sixty (60) days from the day of such notice.

## 31. Miscellaneous.

a. This Mortgage, and all of its provisions, shall extend to and be binding upon Mortgagor and its successors, grantees and assigns, any subsequent owner or owners of the Development and all persons claiming under or through Mortgagor, and the word "Mortgagor", when used in this Mortgage, shall include all such persons and all persons liable for the payment of all or any part of the Mortgage Debt, whether or not such persons have executed the Note or this Mortgage. The word "Mortgagee," when used in this Mortgage, shall include the successors and assigns of Mortgagee, and the holder or holders, from time to time, of the Note.

b. If one or more of the provisions contained in this Mortgage or the Note, or in any of the other Grant Documents, is for any reason held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall, at the option of Mortgagee, not affect any other provision of this Mortgage, and this Mortgage shall be construed as if such invalid, illegal or unenforceable provision had never been contained in the Mortgage or the Note, as the case may be. This Mortgage, the Note and the other Grant Documents are to be construed and governed by the laws of the State of Illinois, exclusive of its conflict of laws provisions.

c. Mortgagor shall not, by act or omission, permit any building or other improvement comprising the Development, not subject to the lien of this Mortgage, to rely on the Development or any part of or any interest in it to fulfill any municipal or governmental requirement, and Mortgagor assigns to Mortgagee any and all rights to give such consent for all or any portion of the Development or any interest in it to be so used. Similarly, Mortgagor shall not permit the Development to rely on any premises not subject to the lien of this Mortgage or any interest in it to fulfill any governmental or municipal requirement.

d. Subject to the provisions of Paragraph 14, Mortgagee shall have the right, at its option, to foreclose this Mortgage, subject to the rights of any tenant or tenants of the Development, and the failure to make any such tenant or tenants a party defendant to any such civil action or to foreclose their rights shall not be asserted by Mortgagor as a defense in any civil action instituted to collect all or any part of the Mortgage Debt, any statute or rule of law at any time existing to the contrary notwithstanding.

e. At the option of Mortgagee, this Mortgage shall become subject and subordinate, in whole or in part (but not with respect to priority of entitlement to insurance proceeds or any award in condemnation) to any and all leases in connection with the Development at such time after the date of this Mortgage that Mortgagee executes and records, in the office in which this



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Mortgage was recorded or registered, a unilateral declaration to that effect.

f. The failure or delay of Mortgagee, or any subsequent holder of the Note and this Mortgage, to assert in any one or more instances any of its rights under this Mortgage shall not be deemed or construed to be a waiver of such rights.

## 32. Maximum Indebtedness.

At all times, regardless of whether any Grant proceeds have been disbursed, this Mortgage secures as part of the Mortgage Debt the payment of all Grant commissions, service charges, liquidated damages, attorneys' fees, expenses and advances due to or incurred by Mortgagee in connection with the Mortgage Debt, all in accordance with the Note and this Mortgage. In no event shall the total amount of the Mortgage Debt, including Grant proceeds disbursed plus any additional charges, exceed three hundred percent (300%) of the face amount of the Grant. All such advances are intended by the Mortgagor to be a lien on the Development pursuant to this Mortgage from the time this Mortgage is recorded, as provided in the Foreclosure Law.

## 33. Additional Governing Law.

This Mortgage, to the extent inconsistent with the Act and the 1602 Program Requirements, shall be governed by the Act and the 1602 Program Requirements and the rights and obligations of the parties shall at all times be in conformance with the Act and the 1602 Program Requirements.

## 34. Non-Recourse

Except as otherwise set forth in the Environmental Indemnity and the Guaranty, Mortgagor's liability created under this Mortgage and the Grant Documents shall be non-recourse and neither Mortgagor nor the Members shall have any personal liability for repayment of the 1602 Grant. The Mortgagee shall look only to the Development and its reserves and any other funds or letters of credit relating to the Development for repayment of the 1602 Grant. The foregoing shall not limit Mortgagor's and Member's liability for damages (or in the case of (xi) hereinbelow, the amount due) as a result of (i) fraudulent acts, or willful and wanton acts or omissions in violation of the provisions of this Mortgage and the other Grant Documents; (ii) the fair market value of the personalty or fixtures removed or disposed of from the Development in violation of the terms of the Grant Documents; (iii) the misapplication, in violation of the terms of the Grant Documents, of any funds to the full extent of such misapplied funds and proceeds, including, without limitation, any funds or proceeds received under any insurance policies or awards resulting from condemnation or the exercise of the power of eminent domain; (iv) any misapplication of any security deposits attributable to any leases of units, or failure to pay interest on such security deposits as required by law; (v) waste committed on the Development to the extent that funds in the Replacement Reserve Account or otherwise available in any property account held by Mortgagor, are available to remedy such waste and Mortgagor has failed to remedy the waste despite the written instructions of the Mortgagee; (vi) the occurrence of a

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Prohibited Transfer, without the prior written consent of the Mortgagee; (vii) an oral or written material misrepresentation was made by Mortgagor, any party in the ownership structure of Mortgagor, or any employee or agent of Mortgagor or any other such entity or individual; (viii) a material error or omission was made in the Ownership Structure Certificate ( as defined in the Commitment); (ix) the Mortgagor has violated the single asset requirement contained in the Commitment; (x) the Mortgagor has delivered a false certification pursuant to **Paragraph C.10** of the Commitment; and (xi) the full amount of any Recapture Amount that is due, plus other costs, default interest (on the Recapture Amount), and damages due as a result of the Recapture Event (as defined in the 1602 Agreement). Any liability incurred pursuant to this Paragraph shall be the personal liability of the Mortgagor and the Members. The provisions of this Paragraph shall have no effect on the liabilities and obligations contained in the Guaranty.

### 35. Indemnification of the Mortgagee.

Mortgagor agrees to defend and indemnify and hold harmless Mortgagee from and against any and all damages, including, but not limited to, any past, present or future claims, actions, causes of action, suits, demands, liens, debts, judgments, losses, costs, liabilities and other expenses, including, but not limited to, reasonable attorneys' fees, costs, disbursements, and other expenses, that Mortgagee may incur or suffer by reason of or in connection with the Real Estate or the Development, except if arising solely due to Mortgagee's gross negligence, willful misconduct or after Mortgagee takes possession of the Development. Mortgagor further agrees that Mortgagee, if it so chooses, shall have the right to select its own counsel with respect to any such claims.

### 36. Counterparts.

This Mortgage may be executed in counterparts, and each counterpart shall, for all purposes for which an original of this Mortgage must be produced or exhibited, be the Mortgage, but all such counterparts shall constitute one and the same instrument. As used herein, the term "counterparts" shall include full copies of this Mortgage signed and delivered by facsimile transmission, as well as photocopies of such facsimile transmissions. Mortgagee reserves, in its sole and absolute discretion, the right to require original signatures or to rely on facsimile transmissions or photocopies of facsimile transmissions and the Mortgagor and any other party signing this Mortgage, hereby waives any rights to object to the validity of their signature based upon the Mortgagee's determination as aforesaid.

(THE REMAINDER OF THIS PAGE IS LEFT BLANK INTENTIONALLY.)

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IN WITNESS WHEREOF, Mortgagor has caused this Mortgage to be executed by its authorized representative.

**MORTGAGOR:**

**RANDOLPH TOWER CITY APARTMENTS, LLC**

By: Holtzman Interests #24, LLC,  
Its managing member

By: \_\_\_\_\_  
Jonathan Holtzman, A Manager

**RANDOLPH TOWER AFFORDABLE CITY APARTMENTS, LLC,**

By: Holtzman Affordable Holdings, LLC  
Its managing member

By Holtzman Interests #24, LLC,  
Its managing member

By: \_\_\_\_\_  
Jonathan Holtzman, A Manager

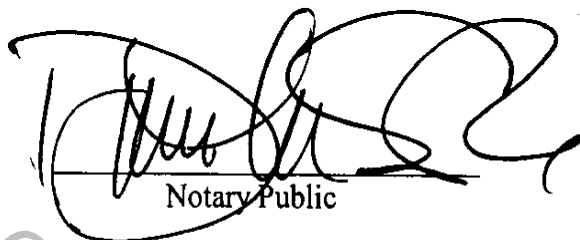
Property of Cook County Clerk's Office

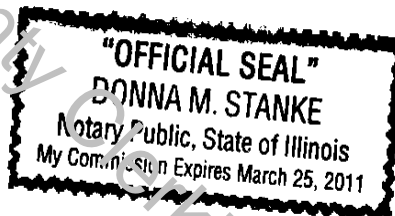
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STATE OF ILLINOIS     )  
  ) SS  
COUNTY OF COOK     )

I, the undersigned, a Notary Public in and for the County and State aforesaid, certify that Jonathan Holtzman, personally known to me to be a manager of Holtzman Interests #24, LLC and 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 acknowledged that he/she signed and delivered the said instrument in his/her capacity as manager of Holtzman Interests #24, LLC, as his/her free and voluntary act and deed and as the free and voluntary act and deed of Holtzman Interests #24, LLC, for the uses and purposes therein set forth.

Given under my hand and official seal this 17 day of December, 2010.

  
Notary Public



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## EXHIBIT A

### LEGAL DESCRIPTION

**UNIT NOS. 1 AND 2 IN THE RANDOLPH TOWER CITY APARTMENTS  
CONDOMINIUM AS DELINEATED ON A SURVEY OF THE FOLLOWING  
DESCRIBED REAL ESTATE:**

**LOT 5 IN BLOCK 33 IN ORIGINAL TOWN OF CHICAGO IN SECTION 9, TOWNSHIP  
39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK  
COUNTY ILLINOIS, WHICH SURVEY IS ATTACHED AS EXHIBIT "C" TO THE  
DECLARATION OF CONDOMINIUM RECORDED Dec. 20, 2010 AS DOCUMENT  
NUMBER 1035422069 TOGETHER WITH ITS UNDIVIDED PERCENTAGE  
INTEREST IN THE COMMON ELEMENTS, ALL IN COOK COUNTY, ILLINOIS.**

**Commonly Known As: 188 West Randolph Street, Units 1 and 2, Chicago,  
Illinois 60601**

**Permanent Index Number: 17-09-433-001-000**



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## EXHIBIT B

### NOTICE PROVISIONS

Any notice, demand, request or other communication that any party may desire or may be required to give to any other party under this document shall be given in writing, at the addresses set forth below, by any of the following means: (a) personal service; (b) overnight courier; or (c) registered or certified United States mail, postage prepaid, return receipt requested.

If to the Mortgagee:

Illinois Housing Development Authority  
401 North Michigan Avenue  
Chicago, Illinois 60611  
Attention: Assistant to the Executive Director for Multifamily Programs

with a copy to:

Illinois Housing Development Authority  
401 North Michigan Avenue  
Chicago, Illinois 60611  
Attention: General Counsel

If to Mortgagor:

Randolph Tower Affordable City Apartments, LLC  
c/o Lexington Homes, L.L.C.  
1731 N. Marcey, Suite 200  
Chicago, Illinois 60614  
Attention: Wayne Moretti

And

Village Green Companies  
30833 Northwestern Highway  
Farmington Hills, Michigan 48334  
Attention: Jonathan Holtzman

With a Courtesy Copy to:

Wildman, Harrold, Allen and Dixon LLP  
225 W. Wacker Drive, Suite 2800  
Chicago, Illinois 60606  
Attention: Thomas P. Duffy

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Such addresses may be changed by notice to the other party given in the same manner as provided in this Exhibit. Any notice, demand, request or other communication sent pursuant to subparagraph (a) shall be served and effective upon such personal service. Any notice, demand, request or other communication sent pursuant to subparagraph (b) shall be served and effective one (1) business day after deposit with the overnight courier. Any notice, demand, request or other communication sent pursuant to subparagraph (c) shall be served and effective three (3) business days after proper deposit with the United States Postal Service. In connection with the courtesy copy, the Mortgagee will exercise reasonable efforts to provide copies of any notices given to Mortgagor; however, the Mortgagee's failure to furnish copies of such notices shall not limit the Mortgagee's exercise of any of its rights and remedies under any document evidencing, securing or governing the Grant or effect the validity of the notice.

**COOK COUNTY**  
**RECORDER OF DEEDS**  
**SCANNED BY \_\_\_\_\_**