

## UNOFFICIAL COPY



Document Prepared by  
~~And after recording return to:~~  
 Amy K Kozlowski, Esq.  
 13715 S Janas Parkway  
 Homer Glen, IL 60491

Doc# 1734129032 Fee \$56.00

RHSP FEE:\$9.00 RPRF FEE: \$1.00

KAREN A. YARBROUGH

COOK COUNTY RECORDER OF DEEDS

DATE: 12/07/2017 10:43 AM PG: 1 OF 10

When Recorded Return to:  
 Title Source, Inc. -  
 Commercial Team  
 662 Woodward Avenue  
 Detroit, MI 48226  
 TSI#: 63734009 JV

### CROSS COLLATERAL AGREEMENT

THIS CROSS COLLATERAL AGREEMENT ("Agreement") is dated as of November 30, 2017 by MDA CITY APARTMENTS, LLC, a Delaware limited liability company ("Borrower") and JONATHAN HOLTZMAN, individually, WAYNE MORETTI, individually and RONALD J. BENACH, individually (collectively, "Principals") to and in favor of MONY LIFE INSURANCE COMPANY ("Lender").

### RECITALS

A. Borrower owns certain property legally described in Exhibit A ("Property"). Lender made a loan in the amount of \$37,600,000.00 ("Senior Loan") to Borrower. The Senior Loan is evidenced by an Amended and Restated Note dated as of December 17, 2012 executed and delivered by Borrower and secured by, among other things, an Amended and Restated Mortgage, Security Agreement and Fixture Filing dated as of December 17, 2012 and recorded December 31, 2012 in the Office of the Cook County Recorder as Document No. 1236612023 ("Senior Mortgage").

B. Lender is making an additional loan to Borrower in the amount of \$3,000,000.00 ("Junior Loan") as evidenced by a Promissory Note of even date herewith executed and delivered by Borrower ("Junior Note") and secured by, among other things, a Mortgage and Security Agreement of even date herewith to be recorded in the Office of the Cook County Recorder ("Junior Mortgage").

C. Principals have executed and delivered to Lender certain other documents in connection with the Senior Loan ("Senior Loan Documents") and the Junior Loan ("Junior Loan Documents").

D. As a condition to making the Junior Loan, Lender has required that the Senior Loan and the Junior Loan (collectively the "Loans" and each individually a "Loan") be cross-collateralized and cross-defaulted with each other and Borrower and Principals have agreed, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, to execute and deliver this Agreement to evidence same.

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NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Recitals. The Recitals are incorporated into this Agreement as if fully set forth in this Section 1. All terms used herein, unless otherwise specified, shall have the meaning ascribed under the Senior Loan Documents and the Junior Loan Documents.

2. Cross Default.

A. A default beyond any applicable notice and cure period under the Senior Note, Senior Mortgage or any other of the Senior Loan Documents shall be deemed a default under the Junior Loan Documents.

B. A default beyond any applicable notice and cure period under any of the Junior Note, Junior Mortgage or any other of the Junior Loan Documents shall be a default under the Senior Loan Documents.

C. Upon the occurrence and during the continuance of a default beyond any applicable notice and cure period under any of the Senior Loan Documents or the Junior Loan Documents (collectively, the "Aggregate Loan Documents"), Lender may exercise any or all rights and remedies provided in any of the Aggregate Loan Documents, whether or not the Lender exercises its right to accelerate the Senior Loan or the Junior Loan or exercises any other rights contained in any of the Aggregate Loan Documents.

3. Cross-Collateral. The Property and any security granted to Lender in connection with the Loans (including, without limitation, any letter of credit) shall secure to Lender the payment of all amounts due or payable and the performance of all of the covenants and agreements set forth in the Senior Loan Documents and the Junior Loan Documents, without apportionment or allocation of any part or portion of the Property or any other security or collateral.

4. Prepayment of Senior Loan. Any right of Borrower to prepay the Senior Loan shall be subject to the requirement that Borrower simultaneously prepay the Junior Loan in accordance with its terms. Neither Loan may be prepaid without full prepayment of the other Loan.

5. Selection of Remedies. In addition to the rights and remedies provided to Lender in any of the Aggregate Loan Documents, during the continuance of any breach of any covenant or agreement contained in any of the Aggregate Loan Documents, Lender shall be allowed to exercise all of the rights, remedies and powers provided under any or all of the Aggregate Loan Documents, or under any provision of law, in one or more proceedings, whether contemporaneous, consecutive or both, as determined by Lender in its sole and absolute discretion. Lender may enforce its rights against the Property or any other security or collateral (including, without limitation, any letter of credit) in such order and manner as the Lender may elect in its sole and absolute discretion. The enforcement of any of the Aggregate Loan Documents, whether by court action or otherwise, shall not constitute an election of remedies, and shall not prejudice or in any way limit or preclude the enforcement of the Aggregate Loan Documents, or any of them, through one or more additional proceedings. No judgment obtained

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by Lender in any one or more enforcement proceedings shall merge the debt secured hereby into such judgment, and all of such debt which shall remain unpaid shall be a continuing obligation and shall not be merged into any such judgment. The Aggregate Loan Documents shall secure to Lender the repayment of any amount owed to Lender under any of the Aggregate Loan Documents, including without limitation any prepayment premium and the amount of any judgment, together with any interest thereon, which may be rendered in connection with the enforcement of the Aggregate Loan Documents (collectively, the "Total Debt"). Borrower waives and relinquishes any and all rights it may have, whether at law or in equity, to require Lender to proceed to enforce or exercise any rights, powers or remedies Lender may have under the Aggregate Loan Documents in any particular manner or order. Lender may bring any action or proceeding, including without limitation foreclosure through judicial proceedings in state or federal courts, and such proceeding may relate to all or any part of the Property or any other security or collateral without regard to the fact that any one or more prior or contemporaneous proceedings have been commenced elsewhere with respect to the same or any other part of the Property or other security or collateral.

6. Application of Proceeds. In the event of the enforcement or foreclosure of any of the Aggregate Loan Documents whether by way of judicial proceedings or nonjudicial proceedings, the proceeds of such enforcement or foreclosure shall be applied to the Total Debt in such order as the Lender may determine, in its sole discretion.

7. Waiver of Marshaling. Lender shall have the right to determine the order in which any or all of the Property or any other security or collateral shall be subjected to the remedies provided in the Aggregate Loan Documents. Borrower and any party who now has or may in the future have a security or other interest in any of the Property hereby waives any and all right to require the marshaling of assets or to require that any of the Property or other security or collateral be sold in the inverse order of alienation, in parcels, or as an entirety, or in any combination.

8. Consent of Principals. Principals have joined in the execution of this Agreement to evidence their consent to the terms hereof. Principals confirm that all documents and agreements previously executed and delivered to Lender remain in full force and effect and are hereby ratified and affirmed in all respects. By execution hereof, Principals confirm that there is no defense or setoff with respect to these obligations. This Section 8 shall not create any additional personal liability for Principals.

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

10. Modification. This Agreement may not be modified or amended except by written agreement executed by the parties hereto.

11. Governing Law. The validity, meaning and effect of this Agreement shall be determined in accordance with the laws of the State of Illinois.

12. Severability. The parties hereto intend and believe that each provision in this Agreement comports with all applicable local, state and federal laws and judicial decisions.

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However, if any provision in this Agreement is found by a court of law to be in violation of any applicable ordinance, statute, law, administrative or judicial decision, or public policy, and if such court should declare such provision to be illegal, void or unenforceable as written, then such provision shall be given force to the fullest possible extent that the same is legal, valid and enforceable and the remainder of this Agreement shall be construed as if such provision was not contained therein.

13. Construction. The headings of this Agreement are for convenience only and shall not define or limit the provisions hereof. Where the context so requires, words used in singular shall include the plural and vice versa, and words of one gender shall include all other genders. In the event of a conflict between the terms and conditions of the Aggregate Loan Documents and the terms and conditions of this Agreement, the terms and conditions of this Agreement shall prevail.

14. No Third Party Beneficiaries. This Agreement shall inure to the sole benefit of the parties hereto. Nothing contained herein shall create, or be construed to create, any right in any person not a party to this Agreement.

REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK

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IN WITNESS WHEREOF, this instrument has been executed by the undersigned under seal on the date first set forth above.

**BORROWER:**

**MDA CITY APARTMENTS, LLC**, a Delaware limited liability company

By: \_\_\_\_\_  
JONATHAN HOLTZMAN, Authorized Representative

Principals hereby join in the execution of this Agreement for the sole purpose of agreeing to Section 8 above.

**PRINCIPALS:**

\_\_\_\_\_  
JONATHAN HOLTZMAN, individually

*see following pages*  
\_\_\_\_\_  
WAYNE MORETTI, individually

*see following pages*  
\_\_\_\_\_  
RONALD J. BENACH, individually

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IN WITNESS WHEREOF, this instrument has been executed by the undersigned under seal on the date first set forth above.

**BORROWER:**

**MDA CITY APARTMENTS, LLC**, a Delaware limited liability company

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

Name: Jonathan Holtzman

Its: Authorized Representative

Principals hereby join in the execution of this Agreement for the sole purpose of agreeing to Section 8 above.

**PRINCIPALS:**

\_\_\_\_\_/ JONATHAN HOLTZMAN, individually

\_\_\_\_\_/ WAYNE MORETTI, individually

\_\_\_\_\_/ RONALD J. BENACH, individually

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**IN WITNESS WHEREOF**, this instrument has been executed by the undersigned under seal on the date first set forth above.

**BORROWER:**

**MDA CITY APARTMENTS, LLC**, a Delaware limited liability company

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

Name: Jonathan Holtzman

Its: Authorized Representative

Principals hereby join in the execution of this Agreement for the sole purpose of agreeing to Section 8 above.

**PRINCIPALS:**

\_\_\_\_\_  
JONATHAN HOLTZMAN, individually /

\_\_\_\_\_  
WAYNE MORETTI, individually /

\_\_\_\_\_  
RONALD J. BENACCI, individually

Property of Cook County Clerk's Office

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STATE OF Michigan )  
 )  
COUNTY OF Oakland )

I, Elizabeth K Korona, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that JONATHAN HOLTZMAN, individually and as Authorized Representative of MDA CITY APARTMENTS, LLC, a Delaware limited liability company, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Manager appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said limited liability companies for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 27<sup>th</sup> day of November, 2017.

Elizabeth K Korona  
Notary Public

**ELIZABETH K KORONA**  
Notary Public, State of Michigan  
County of Wayne  
My Commission Expires 04-05-2019  
Acting in the County of Oakland

STATE OF \_\_\_\_\_ )  
 )  
COUNTY OF \_\_\_\_\_ )

I, \_\_\_\_\_, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that WAYNE MORETTI, individually, who is 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 signed and delivered the said instrument as his own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this \_\_\_ day of November, 2017.

\_\_\_\_\_  
Notary Public

STATE OF \_\_\_\_\_ )  
 )  
COUNTY OF \_\_\_\_\_ )

I, \_\_\_\_\_, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that RONALD J. BENACH, individually, who is 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 signed and delivered the said instrument as his own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this \_\_\_ day of November, 2017.

\_\_\_\_\_  
Notary Public



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STATE OF \_\_\_\_\_ )  
 )  
COUNTY OF \_\_\_\_\_ )

I, \_\_\_\_\_, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Jonathan Holtzman, individually and as Authorized Representative of MDA CITY APARTMENTS, LLC, a Delaware limited liability company, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument individually and as such Authorized Representative appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said limited liability companies for the uses and purposes herein set forth.

GIVEN under my hand and notarial seal this \_\_\_\_ day of November, 2017.

\_\_\_\_\_  
Notary Public

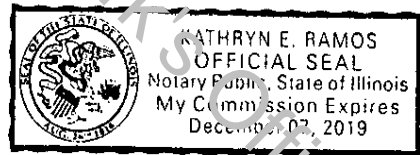
STATE OF ILLINOIS )  
 )  
COUNTY OF COOK )

I, Kathryn E Ramos, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that WAYNE MORETTI, individually, who is 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 signed and delivered the said instrument as his own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 27 day of November, 2017.

Kathryn E Ramos  
Notary Public

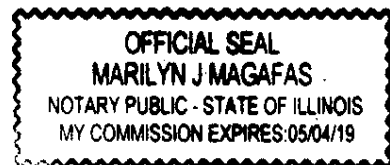
STATE OF Illinois )  
 )  
COUNTY OF Mc Henry )



I, Marilyn J. Magafas, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that RONALD J. BENACH, individually, who is 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 signed and delivered the said instrument as his own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 22<sup>nd</sup> day of November, 2017.

Marilyn J. Magafas  
Notary Public



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## EXHIBIT "A"

### LEGAL DESCRIPTION

Tax Id Number(s): 17-10-306-002-0000, 17-10-306-001-0000

Address: 60 East Lake Street, Chicago, IL

Land situated in the City of Chicago in the County of Cook in the State of IL:

**Parcel 1:**

Lots 3 to 6, both inclusive, in Richard T. Haines' Subdivision of Lots 1 to 5 in Block 10 of Fort Dearborn Addition to Chicago, in Section 10, Township 39 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

**Parcel 2:**

Lots 1 and 2 in Richard T. Haines' Subdivision of Lots 1 to 5 in Block 10 of Fort Dearborn Addition to Chicago, in Section 10, Township 39 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

**Parcel 3:**

The North 1/2 of a strip of land 9.5 feet in width: (I) lying South of and adjoining Lots 1 through 6, both inclusive, in Richard T. Haines' Subdivision of Lots 1 to 5 in Block 10 of Fort Dearborn Addition to Chicago; (II) lying North of and adjoining Lot 7 in Richard T. Haines' Subdivision aforesaid; and (III) lying North of the North line extended East, of Lot 7 in Richard T. Haines' Subdivision; all in Block 10 of Fort Dearborn Addition to Chicago aforesaid, in Section 10, Township 39 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

**Parcel 4:**

Non-exclusive easement in favor of Parcels 1, 2 & 3 as created by Grant of Easement made by and between Consolidated Equity III, LLC, and MDA City Apartments, LLC, recorded March 16, 2006 as Document Number 0607544098, for vehicular and pedestrian ingress and egress over, upon, on or through the South 1/2 of the vacated alley lying North of and adjoining Lot 7 in Richard T. Haines' Subdivision of Lots 1 to 5 in Block 10 of Fort Dearborn Addition to Chicago aforesaid, in Section 10, Township 39 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois, excepting therefrom any portion situated more than thirty (30) feet above current grade.