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Illinois Anti-Predatory Lending Database Program

Certificate of Exemption



Report Mortgage Fraud
844-768-1713



2100434005

Doc# 2100434005 Fee \$88.00

KAREN A. YARBROUGH

COOK COUNTY CLERK

DATE: 01/04/2021 09:47 AM PG: 1 OF 41

The property identified as: **PIN:** 17-04-112-071

Address:

Street: 711 W. Schiller Street

Street line 2:

City: Chicago

State: IL

ZIP Code: 60642

Lender: Illinois Housing Development Authority

Borrower: Schiller Place LP

Loan / Mortgage Amount: \$13,000,000.00

This property is located within the program area and is exempt from the requirements of 765 ILCS 77/70 et seq. because it is commercial property.

Certificate number: C077B08F-7C71-4D9F-A35C-C6DE5A650B6F

Execution date: 12/30/2020

60624

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**CONSTRUCTION MORTGAGE, SECURITY AGREEMENT,
ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING**

by

SCHILLER PLACE LP, an Illinois limited partnership,
to and for the benefit of the

ILLINOIS HOUSING DEVELOPMENT AUTHORITY, a body corporate and politic,
organized and existing under the laws of the State of Illinois

**THIS DOCUMENT PREPARED BY AND
AFTER RECORDING RETURN TO:**

Charity & Associates, P.C.
20 N. Clark Street, Suite 1150
Chicago, Illinois 60602
Attn: Elvin E. Charity, Esq.

Property of Cook County Clerk's Office

6.6.22

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EXHIBITS

- EXHIBIT A - Legal Description
EXHIBIT B - Permitted Encumbrances
EXHIBIT C - Additional Collateral

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CONSTRUCTION MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING

THIS CONSTRUCTION MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING ("Mortgage") is made as of December 30, 2020, by **SCHILLER PLACE, LP**, an Illinois limited partnership, with a mailing address of c/o Evergreen Redevelopment LLC, 566 W. Lake Street, Suite 400, Chicago, IL 60661 ("Mortgagor"), to and for the benefit of the **ILLINOIS HOUSING DEVELOPMENT AUTHORITY**, a body corporate and politic, organized and existing under the laws of the State of Illinois, with a mailing address of 111 E. Wacker Drive, Suite 1000, Chicago, Illinois 60601 ("Lender").

RECITALS:

A. As more fully provided in that certain Borrower Loan Agreement (the "Borrower Loan Agreement"), dated as of December 1, 2020, between Mortgagor and Lender, Lender has agreed to make a loan to Mortgagor in the stated principal amount of \$13,000,000.00 (the "Loan"). The Loan is evidenced by (1) that certain Promissory Note-Borrower Loan, Series 2020A, dated as of December 30, 2020 in the stated principal amount not to exceed \$10,400,000.00 (as it may be amended, supplemented or replaced from time to time, the "Borrower Note A"), made by Borrower and payable to the order of Lender and (2) that certain Promissory Note-Borrower Loan, Series 2020B, dated as of December 30, 2020, in the stated principal amount not to exceed \$2,600,000.00 (as it may be amended, supplemented or replaced from time to time, the "Borrower Note B," and, collectively with the Borrower Note A, the "Borrower Notes"), made by Borrower and payable to the order of Lender.

B. The Loan is to be funded by the Lender with the proceeds of that certain funding loan (the "Funding Loan") in the principal amount of \$13,000,000.00 to be made by CIBC Bank USA, an Illinois state chartered bank ("the Bank") to the Lender pursuant to, among other documents, (1) the terms and conditions contained in that certain Funding Loan Agreement dated as of December 1, 2020, by and between Lender and the Bank (the "Funding Loan Agreement"), and (ii) that certain Construction Funding Agreement, dated as of even date herewith, by and between the Bank and Mortgagor (the "Construction Funding Agreement"). The Funding Loan is evidenced by the Lender's (i) Illinois Housing Development Authority Multi-Family Housing Revenue Note, Series 2020A (Schiller Place) in the principal amount of \$10,400,000.00 (the "Governmental Lender Note, Series 2020A") and (ii) Illinois Housing Development Authority Multi-Family Housing Revenue Note, Series 2020B (Schiller Place) in the principal amount of \$2,600,000.00 (the "Governmental Lender Note, Series 2020B," and collectively with the Governmental Lender Note, Series 2020A, the "Governmental Lender Notes"), each dated as of December 30, 2020.

C. As security for Lender's promise to make the payments required to be made under the Governmental Lender Note, the interest of Lender in: (i) subject to the Unassigned Rights (as defined in the Funding Loan Agreement), the Borrower Loan Agreement, (ii) this Mortgage, (iii) the Borrower Notes, and (iv) certain other documents, as provided in the Funding Loan

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Agreement, have been pledged and assigned by the Lender to the Bank pursuant to the terms of the Funding Loan Agreement and that certain Assignment of Mortgage and Loan Documents, dated as of even date herewith, from Lender to Funding Lender.

D. The Borrower Notes, the Borrower Loan Agreement, the Construction Funding Agreement, this Mortgage, and any other document or instrument now or hereafter given in connection with, or to evidence or secure, the Borrower Notes or delivered to induce Lender to disburse the proceeds of the Loan, as amended, restated or replaced from time to time, being collectively referred to herein as the "Loan Documents"). The Borrower Notes provide for a variable rate of interest.

E. A condition precedent to the Bank's making of the Governmental Loan to Lender, and Lender's extension of the Loan to Mortgagor, is the execution and delivery by Mortgagor of this Mortgage.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Mortgagor agrees as follows:

Subject to the terms and conditions of the documents listed on **Exhibit B** attached hereto (collectively, the "Permitted Encumbrances"), Mortgagor hereby mortgages, grants, assigns, remises, releases, warrants and conveys to Lender, its successors and assigns, and grants a security interest in, the following described property, rights and interests (referred to collectively herein as the "Mortgaged Property"), all of which property, rights and interests are hereby pledged primarily and on a parity with the Real Estate (as defined below) and not secondarily:

THE REAL ESTATE located in the County of Cook, State of Illinois and legally described on **Exhibit A** attached hereto and made a part hereof (the "Real Estate");

TOGETHER WITH all interest of Mortgagor, in fee simple or otherwise, in all improvements of every nature whatsoever now or hereafter situated on the Real Estate, and all fixtures and personal property of every nature whatsoever now or hereafter owned by Mortgagor and located on, or used in connection with the Real Estate or the improvements thereon, or in connection with any construction thereon, including all extensions, additions, improvements, betterments, renewals, substitutions and replacements to any of the foregoing and all of the right, title and interest of Mortgagor in and to any such personal property or fixtures together with the benefit of any deposits or payments now or hereafter made on such personal property or fixtures by Mortgagor or on its behalf (the "Improvements," and, together with the Real Estate, the "Premises");

TOGETHER WITH all easements, rights of way, gores of real estate, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances whatsoever, in any way now or hereafter belonging, relating or appertaining to the Real Estate, and the reversions, remainders, rents, issues and profits thereof, and all the estate, right, title, interest, property, possession, claim and demand whatsoever, at law as well as in equity, of Mortgagor of, in and to the same;

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TOGETHER WITH all rents, revenues, issues, profits, proceeds, income, royalties, Letter of Credit Rights (as defined in the Uniform Commercial Code of the State of Illinois (the “Code”) in effect from time to time), escrows, security deposits, impounds, reserves, tax refunds and other rights to monies from the Premises and/or the businesses and operations conducted by the Mortgagor thereon, to be applied against the Indebtedness (as hereinafter defined); provided, however, that the Mortgagor, so long as no Event of Default (as hereinafter defined) has occurred hereunder, may collect rent as it becomes due, but not more than one (1) month in advance thereof;

TOGETHER WITH all interest of Mortgagor in all leases now or hereafter on the Premises or any part thereof, whether written or oral (each, a “Lease”, and collectively, the “Leases”), together with all security therefor and all rents and other monies payable thereunder (the “Rents”), subject, however, to the conditional permission hereinabove given to Mortgagor to collect the rentals under any such Lease;

TOGETHER WITH all fixtures and articles of personal property now or hereafter owned by Mortgagor and forming a part of or used in connection with the Real Estate or the Improvements, including, but without limitation, any and all air conditioners, antennae, appliances, apparatus, awnings, basins, bathtubs, bidets, boilers, bookcases, cabinets, carpets, computer hardware and software used in the operation of the Premises, coolers, curtains, dehumidifiers, disposals, doors, drapes, dryers, ducts, dynamos, elevators, engines, equipment, escalators, exercise equipment, fans, fittings, floor coverings, furnaces, furnishings, furniture, hardware, heaters, humidifiers, incinerators, lighting, machinery, motors, ovens, pipes, plumbing, pumps, radiators, ranges, recreational facilities, refrigerators, screens, security systems, shades, shelving, sinks, sprinklers, stoves, toilets, ventilators, wall coverings, washers, windows, window coverings, wiring, and all renewals or replacements thereof or articles in substitution therefor, whether or not the same are or shall be attached to the Real Estate or the Improvements in any manner; it being mutually agreed that all of the aforesaid property owned by Mortgagor and placed on the Real Estate or the Improvements, so far as permitted by law, shall be deemed to be fixtures, a part of the realty, and security for the Indebtedness; notwithstanding the agreement hereinabove expressed that certain articles of property form a part of the realty covered by this Mortgage and be appropriated to its use and deemed to be realty, to the extent that such agreement and declaration may not be effective and that any of said articles may constitute Personal Property (as defined in Section 13) or Goods (as defined in the Code), this instrument shall constitute a security agreement, creating a security interest in such personal property and goods, as collateral, in Lender, as Secured Party, and Mortgagor, as Debtor, all in accordance with the Code; and

TOGETHER WITH all of Mortgagor’s interests in General Intangibles, including Payment Intangibles and Software (each as defined in the Code) now owned or hereafter acquired and related to the Premises, including, without limitation, all of Mortgagor’s right, title and interest in and to: (i) all agreements, licenses, permits and contracts to which Mortgagor is or may become a party and which relate to the Premises; (ii) all obligations and indebtedness owed to Mortgagor thereunder; (iii) all intellectual property related to the Premises; and (iv) all choses in action and causes of action relating to the Premises;

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TOGETHER WITH all of Mortgagor's accounts now owned or hereafter created or acquired as relate to the Premises and/or the business or operations conducted thereon, including, without limitation, all of the following now owned or hereafter created or acquired by Mortgagor: (i) Accounts (as defined in the Code), contract rights, health-care-insurance receivables, book debts, notes, drafts, and other obligations or indebtedness owing to the Mortgagor arising from the sale, lease or exchange of goods or other property and/or the performance of services; (ii) the Mortgagor's rights in, to and under all purchase orders for goods, services or other property; (iii) the Mortgagor's rights to any goods, services or other property represented by any of the foregoing; (iv) monies due or to become due to the Mortgagor under all contracts for the sale, lease or exchange of goods or other property and/or the performance of services including the right to payment of any interest or finance charges in respect thereof (whether or not yet earned by performance on the part of the Mortgagor); (v) Securities, Investment Property, Financial Assets and Securities Entitlements (each as defined in the Code); (vi) proceeds of any of the foregoing and all collateral security and guaranties of any kind given by any person or entity with respect to any of the foregoing; and (vii) all warranties, guarantees, permits and licenses in favor of Mortgagor with respect to the Premises; and

TOGETHER WITH all proceeds of the foregoing, including, without limitation, all judgments, awards of damages and settlements hereafter made resulting from condemnation proceeds or the taking of the Premises or any portion thereof under the power of eminent domain, any proceeds of any policies of insurance, maintained with respect to the Premises or proceeds of any sale, option or contract to sell the Premises or any portion thereof; and

TO HAVE AND TO HOLD the Mortgaged Property, unto Lender, its successors and assigns, forever, for the purposes and upon the uses herein set forth together with all right to possession of the Mortgaged Property after the occurrence of any Event of Default; Mortgagor hereby **RELEASING AND WAIVING** all rights under and by virtue of the homestead exemption laws of the State of Illinois.

FOR THE PURPOSE OF SECURING: (i) the payment when and as due and payable of the principal of and interest on the Loan or so much thereof as may be advanced from time to time, and any and all late charges, prepayment premiums, and all other indebtedness evidenced by or owing under the Borrower Notes and any of the other Loan Documents, together with any extensions, modifications, renewals or refinancings of any of the foregoing, (ii) the payment of all other indebtedness which this Mortgage by its terms secures, (iii) the performance and observance of the covenants and agreements contained in this Mortgage, the Construction Funding Agreement, the Borrower Notes and each of the other Loan Documents, and (iv) all obligations and liabilities of the Mortgagor to Lender under any interest rate protection agreements or letters of credit, if any (all of such indebtedness, obligations and liabilities identified in (i), (ii), (iii) and (iv) above being hereinafter referred to as the "Indebtedness"), the Mortgagor does hereby **GRANT, SELL, CONVEY, MORTGAGE and ASSIGN** unto the Lender, its successors and assigns, and does hereby grant to Lender, its successors and assigns a security interest in, all and singular the properties, rights, interests and privileges described in the Granting Clauses above.

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IT IS FURTHER UNDERSTOOD AND AGREED THAT:

1. **Title.** Mortgagor represents, warrants and covenants that (a) Mortgagor is the owner and holder of fee simple title to the Mortgaged Property, free and clear of all liens and encumbrances, except those liens and encumbrances in favor of Lender and the Permitted Encumbrances; and (b) Mortgagor has legal power and authority to mortgage and convey the Mortgaged Property.

2. **Maintenance, Repair, Restoration, Prior Liens, Parking.** Mortgagor covenants that, so long as any portion of the Indebtedness remains unpaid, Mortgagor will:

(a) promptly repair, restore or rebuild any Improvements now existing or hereafter constructed on the Mortgaged Property (other than those, if any, to be demolished in connection with the initial construction of the Improvements contemplated by the Construction Funding Agreement) which may become damaged or be destroyed to a condition substantially similar to the condition immediately prior to such damage or destruction, whether or not proceeds of insurance are available or sufficient for the purpose;

(b) keep the Mortgaged Property in good condition and repair, without waste, and free from mechanics', materialmen's or like liens or claims or other liens or claims for lien (subject to Mortgagor's right to contest liens as permitted by the terms of Section 28 hereof);

(c) pay when due the Indebtedness in accordance with the terms of the Borrower Notes and the other Loan Documents and duly perform and observe all of the terms, covenants and conditions to be observed and performed by Mortgagor under the Borrower Notes, this Mortgage and the other Loan Documents;

(d) pay when due any indebtedness which may be secured by a permitted lien or charge on the Mortgaged Property on a parity with, superior to or inferior to the lien hereof, and upon request exhibit satisfactory evidence of the discharge of such lien to the Lender (subject to Mortgagor's right to contest liens as permitted by the terms of Section 28 hereof);

(e) complete within a reasonable time (or, if a specific time period for such completion is stated in the Construction Funding Agreement, such period as is required by the Construction Funding Agreement) any Improvements now or at any time in the process of erection upon the Mortgaged Property;

(f) comply with all requirements of law, municipal ordinances or restrictions and covenants of record with respect to the Mortgaged Property and the use thereof;

(g) obtain and maintain in full force and effect, and abide by and satisfy the material terms and conditions of, all material permits, licenses, registrations and other

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authorizations with or granted by any governmental authorities that may be required from time to time with respect to the performance of its obligations under this Mortgage;

(h) make no material alterations in the Mortgaged Property or demolish any portion of the Mortgaged Property without Lender's prior written consent, except as contemplated by the Construction Funding Agreement or as required by law or municipal ordinance;

(i) suffer or permit no change in the use or general nature of the occupancy of the Mortgaged Property, without the Lender's prior written consent;

(j) pay when due all operating costs of the Mortgaged Property;

(k) not initiate or acquiesce in any zoning reclassification with respect to the Mortgaged Property, without Lender's prior written consent;

(l) provide and thereafter maintain adequate parking areas (including handicapped spaces) within the Mortgaged Property as may be required by law, ordinance or regulation (whichever may be greater), together with any sidewalks, aisles, streets, driveways and sidewalk cuts and sufficient paved areas for ingress, egress and right-of-way to and from the adjacent public thoroughfares necessary or desirable for the use thereof; and

(m) cause the Mortgaged Property at all times to be operated in compliance with all federal, state, local and municipal environmental, health and safety laws, statutes, ordinances, rules and regulations.

3. **Payment of Taxes and Assessments.** Mortgagor will pay when due and before any penalty attaches, all general and special taxes, payments in lieu of taxes, assessments, water charges, sewer charges, and other fees, taxes, charges and assessments of every kind and nature whatsoever (all herein generally called "Taxes"), whether or not assessed against Mortgagor, if applicable to the Mortgaged Property or any interest therein, or the Indebtedness, or any obligation or agreement secured hereby, subject to Mortgagor's right to contest the same, as provided by the terms hereof; and Mortgagor will, upon written request, furnish to the Lender duplicate receipts therefor within ten (10) days after Lender's request.

4. **Tax and Insurance Deposits.** At the option of Lender, upon each Borrower Loan Payment Date (as defined in the Borrower Loan Agreement), Mortgagor shall pay to the Lender an amount equal to one-twelfth (1/12th) of what the Lender estimates is necessary to pay, on an annualized basis, (1) all Taxes, and (2) all premiums for the insurance policies required under the Loan Agreement ("Premiums"), and to enable the Lender to pay same at least thirty (30) days before the Taxes would become delinquent and the Premiums are due (or shall release sufficient funds to Mortgagor for the payment thereof). If the funds so deposited are insufficient to pay any such Taxes and Premiums for any year (or installments thereof, as applicable) when the same shall become due and payable, Mortgagor shall, within ten (10) days after receipt of written demand therefor, deposit additional funds as may be necessary to pay such Taxes and Premiums in full. No amounts so paid shall be deemed to be trust funds, but may be commingled with the general funds of the Lender, and no interest shall be payable

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thereon. In the event that the Mortgagor does not pay such sums for Premiums and Taxes, then the Lender may, but shall not be obligated to, pay such Premiums and Taxes and any money so paid by the Lender shall constitute additional Indebtedness under Borrower Note A and shall be payable by Mortgagor to Lender on demand with interest thereon from the date of disbursement by Lender at the Default Rate (as defined in Borrower Note A) until repaid to Lender. If an Event of Default occurs, the Lender shall have the right, at its election, to apply any amounts so held under this Section 4 against all or any part of the Indebtedness, or in payment of the Premiums or Taxes for which the amounts were deposited. The Mortgagor will furnish to the Lender bills for Taxes and Premiums not less than thirty (30) days before such Taxes become delinquent and such Premiums become due.

5. **Lender's Interest In and Use of Deposits.** Upon an Event of Default, Lender may, at its option, apply any monies at the time on deposit pursuant to Section 4 hereof to cure an Event of Default or to pay any of the Indebtedness in such order and manner as Lender may elect. If such deposits are used to cure an Event of Default or pay any of the Indebtedness, Mortgagor shall immediately, upon demand by Lender, deposit with Lender an amount equal to the amount expended by Mortgagor from the deposits. When the Indebtedness has been fully and indefeasibly paid, any remaining deposits shall be returned to Mortgagor. Such deposits are hereby pledged as additional security for the Indebtedness and shall not be subject to the direction or control of Mortgagor. Lender shall not be liable for any failure to apply to the payment of Taxes any amount so deposited unless Mortgagor, prior to an Event of Default, shall have requested Lender in writing to make application of such funds to the payment of such Taxes, accompanied by the bills for such Taxes. Lender shall not be liable for any act or omission taken in good faith or pursuant to the instruction of any party.

6. **Insurance.**

(a) Mortgagor shall at all times maintain in place policies of insurance as required under Section 6.3 of the Construction Funding Agreement or by any other Loan Document.

(b) Unless Mortgagor provides Lender evidence of the insurance coverages required hereunder, Lender may purchase insurance at Mortgagor's expense to cover Lender's interest in the Mortgaged Property. The insurance may, but need not, protect Mortgagor's interest. The coverages that Lender purchases may not pay any claim that Mortgagor makes or any claim that is made against Mortgagor in connection with the Mortgaged Property. Mortgagor may later cancel any insurance purchased by Lender, but only after providing Lender with evidence that Mortgagor has obtained insurance as required by this Mortgage. If Lender purchases insurance for the Mortgaged Property, Mortgagor will be responsible for the costs of such insurance, including, without limitation, interest and any other charges which Lender may impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to the Indebtedness. The cost of the insurance may be more than the cost of insurance Mortgagor may be able to obtain on its own.

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(c) Mortgagor shall give Lender prompt written notice of the occurrence of any casualty affecting the Mortgaged Property, or any portion thereof, where an insurance claim is expected to be in excess of \$50,000. All insurance proceeds on the Mortgaged Property and all causes of action, claims, compensation, awards and recoveries for any damage to any part of the Mortgaged Property or for any damage or injury to the Mortgaged Property, for any loss or diminution in value of the same or any part thereof, are hereby assigned to and shall be paid to Lender. Lender may participate in any suits or proceedings relating to any such proceeds, causes of action, claims, compensation, awards or recoveries and Lender is hereby authorized, in its own name or in Mortgagor's name, to adjust any loss covered by insurance claim or cause of action, and to settle or compromise any claim or cause of action in connection therewith, and Mortgagor shall from time to time deliver to Lender any instruments required to permit such participation. Lender shall apply any sums received by it under this Section 6(d) first to the payment of all of its out-of-pocket costs and expenses (including, but not limited to, reasonable legal fees and disbursements) incurred in obtaining those sums, and then, Lender may elect, in Lender's absolute discretion and without regard to the adequacy of Lender's security, to apply the remainder of such sums received pursuant to this Section 6(d) to the payment of the Indebtedness in whatever order Lender determines in its sole and absolute discretion. Notwithstanding the foregoing (i) Lender shall make such insurance proceeds available to Mortgagor and grant Mortgagor the right to settle and adjust any claim respecting a loss or casualty that is covered by Mortgagor's "builder's risk" or other "property" insurance policy if such claim is less than or equal to \$50,000; and (ii) Lender shall make such insurance proceeds available to Mortgagor if the loss or casualty is greater than \$50,000 and each of the following conditions are satisfied:

(1) No Event of Default or any condition or event which, but for the lapse of time or the giving of notice, or both, would constitute an Event of Default has occurred and is continuing;

(2) Lender determines, in its reasonable discretion the Loan is In Balance and there will be sufficient funds to complete and/or restore the Improvements and if sufficient funds are not available, Mortgagor shall provide the same to Lender before any further disbursement of proceeds or awards are made;

(3) Lender determines that the Improvements can be completed in accordance with the Plans and Specifications, the Construction Funding Agreement, the Regulatory Agreements (as defined in the Construction Funding Agreement), the Subordinate Loan Documents Agreements (as defined in the Construction Funding Agreement), and the Mortgagor's Partnership Agreement Agreements (as defined in the Construction Funding Agreement);

(4) Lender determines that the restoration will be completed within the earlier to occur of (w) the date that is six (6) months prior to the Maturity Date (x) the date that is six (6) months prior to the [Outside Closing Date]; (y) the placed in service deadline under Section 42 of the Code with respect to the Tax Credits;

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and (z) the Completion Date (as defined in the Construction Disbursement Agreement);

(5) Lender determines that the occurrence of such casualty and the projected completion date of such restoration or repair will not, in Lender's reasonable judgment, have a material adverse effect on the obligation of the Equity Investor (as defined in the Construction Funding Agreement) to pay its capital contributions in the amounts contemplated by the Mortgagor's Partnership Agreement Investor (as defined in the Construction Funding Agreement) or the obligation of the Permanent Lender (as defined in the Construction Funding Agreement) to close and fund the Permanent Loan (as defined in the Construction Funding Agreement) pursuant to the Permanent Loan Commitment (as defined in the Construction Funding Agreement); and

(6) All of Lender's other reasonable conditions are satisfied.

(d) If insurance proceeds are made available by Lender to Mortgagor, Mortgagor shall comply with the following conditions:

(i) Before commencing to repair, restore or rebuild following damage to, or destruction of, all or a portion of the Mortgaged Property, whether by fire or other casualty, Mortgagor shall obtain from Lender its approval of all site and building plans and specifications pertaining to such repair, restoration or rebuilding.

(ii) Prior to each payment or application of any insurance proceeds to the repair or restoration of the improvements upon the Mortgaged Property to the extent permitted in subsection (c) above (which payment or application shall be made through a construction escrow, the terms and conditions of which are satisfactory to Lender and the cost of which is to be borne by Mortgagor), Lender shall be satisfied as to the following:

(a) no Event of Default or any event which, with the passage of time or giving of notice would constitute an Event of Default, has occurred;

(b) either such Improvements have been fully restored, or the expenditure of money as may be received from such insurance proceeds will be sufficient to repair, restore or rebuild the Mortgaged Property, free and clear of all liens, claims and encumbrances, except the lien of this Mortgage and the Permitted Encumbrances, or, if such insurance proceeds shall be insufficient to repair, restore and rebuild the Mortgaged Property, Mortgagor has deposited with Lender (or into a construction escrow account on terms satisfactory to Lender) such amount of money which, together with the insurance proceeds shall be sufficient to restore, repair and rebuild the Mortgaged Property. Lender agrees that in the event Lender shall determine, in its reasonable judgment, that the amount of the

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insurance proceeds to be paid by the insurer under any policy of insurance required under this Mortgage to be carried by Mortgagor (or any other policy of insurance carried by Mortgagor) is less than the amount required to repair, restore and rebuild the Mortgaged Property, Mortgagor and any other lender secured by the Mortgaged Property shall have a period of 15 days from the date of such determination to deposit such deficiency with Lender, which amount, together with the insurance proceeds, shall be disbursed through a construction escrow in accordance with this subsection (ii); and

(c) prior to each disbursement of any such proceeds, Lender shall be furnished with a statement of Lender's architect (the cost of which shall be borne by Mortgagor), certifying the extent of the repair and restoration completed to the date thereof, and that such repairs, restoration, and rebuilding have been performed to date in conformity with the plans and specifications approved by Lender and with all statutes, regulations or ordinances (including building and zoning ordinances) affecting the Mortgaged Property; and Lender shall be furnished with appropriate evidence of payment for labor or materials furnished to the Mortgaged Property, and total or partial lien waivers substantiating such payments.

(iii) If Mortgagor shall fail to restore, repair or rebuild the Improvements within a time deemed satisfactory by Lender, then Lender, at its option, may (A) commence and perform all necessary acts to restore, repair or rebuild the said Improvements for or on behalf of Mortgagor, or (B) declare an Event of Default. If insurance proceeds shall exceed the amount necessary to complete the repair, restoration or rebuilding of the Improvements, such excess shall be applied on account of the Indebtedness irrespective of whether such Indebtedness is then due and payable without payment of any premium or penalty.

(e) In the event of the sale of the Mortgaged Property upon foreclosure of this Mortgage, or in the event Lender or a receiver appointed by the court shall take possession of the Mortgaged Property without sale, then all right, title and interest of Mortgagor in and to all insurance policies then in force shall inure to the benefit of and pass to the mortgagee in possession, receiver or purchaser at such sale, as the case may be. Lender is hereby appointed attorney in fact for Mortgagor to assign and transfer such policies. The power of attorney given herein is a power coupled with an interest and shall be irrevocable so long as any part of the Indebtedness remains unpaid or unperformed. Lender shall have no obligation to exercise any of the foregoing rights and powers in any event.

7. **Condemnation.** If all or any part of the Mortgaged Property is damaged, taken or acquired, either temporarily or permanently, in any condemnation proceeding, or by exercise of the right of eminent domain, the amount of any award or other payment for such taking or damages made in consideration thereof, to the extent of the full amount of the remaining unpaid Indebtedness, is hereby assigned to Lender, who is empowered to collect and

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receive the same and to give proper receipts therefor in the name of Mortgagor and the same shall be paid forthwith to Lender. Such award or monies shall be applied on account of the Indebtedness, irrespective of whether such Indebtedness is then due and payable and, at any time from and after the taking Lender may declare the whole of the balance of the Indebtedness to be due and payable. Notwithstanding the provisions of this section to the contrary, if any condemnation or taking of less than the entire Mortgaged Property occurs and provided that no Event of Default and no event or circumstance which with the passage of time, the giving of notice or both would constitute an Event of Default then exists, and if such partial condemnation, in the reasonable discretion of Lender, has no material adverse effect on the operation or value of the Mortgaged Property or the obligation of the Equity Investor to pay its capital contributions in accordance with the Partnership Agreement or the obligation of the Permanent Lender to close and fund the Permanent Loan pursuant to the Permanent Loan Commitment, then the award or payment for such taking or consideration for damages resulting therefrom may be collected and received by Mortgagor, and Lender hereby agrees that in such event it shall not declare the Indebtedness to be due and payable, if it is not otherwise then due and payable. Notwithstanding anything in this Section 7 to the contrary, provided the provisions of Sections 6(c) and 6(d) above concerning the application and use of casualty proceeds are met with respect to the application and use of such condemnation proceeds, and Lender shall determine, in Lender's reasonable discretion, that, after the condemnation, operation of the Mortgaged Property as a rental apartment project as contemplated by the Construction Funding Agreement, Lender further agrees to permit application of any condemnation award or proceeds to the restoration of any part of the Mortgaged Property affected by such condemnation.

8. **Stamp Tax.** If, by the laws of the United States of America, or of any state or political subdivision having jurisdiction over Mortgagor, any tax is due or becomes due in respect of the execution and delivery of this Mortgage, the Borrower Notes or any of the other Loan Documents, Mortgagor shall pay such tax in the manner required by any such law. Mortgagor further agrees to reimburse Lender for any sums which Lender may expend by reason of the imposition of any such tax. Notwithstanding the foregoing, Mortgagor shall not be required to pay any income or franchise taxes of Lender.

9. **Lease Assignment.** Mortgagor hereby absolutely and unconditionally assigns to Lender all of Mortgagor's right, title and interest in and to all current and future Leases and Rents, including all prepaid rents and security deposits; it being intended by Mortgagor that this assignment constitutes a present, absolute assignment and not an assignment for additional security only. Nevertheless, Lender grants to Mortgagor a revocable license to collect, receive, use and enjoy the Rents (excluding however any Lease termination, cancellation, option or similar payments, which Mortgagor agrees shall be held in trust and turned over to Lender to be applied in accordance with the Loan Documents) so long as no Event of Default exists. Mortgagor shall hold the Rents, or a portion thereof sufficient to discharge all current sums due on the Indebtedness, in trust for the benefit of Lender, for use in the payment of such sums.

10. **Effect of Extensions of Time and Other Changes.** If the payment of the Indebtedness or any part thereof is extended or varied, if any part of any security for the payment of the Indebtedness is released, if the rate of interest charged under any of the Borrower Notes is changed or if the time for payment thereof is extended or varied, all persons now or at any time

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hereafter liable therefor, or interested in the Mortgaged Property or having an interest in Mortgagor, shall be held to assent to such extension, variation, release or change and their liability and the lien and all of the provisions hereof shall continue in full force, any right of recourse against all such persons being expressly reserved by Lender, notwithstanding such extension, variation, release or change.

11. **Effect of Changes in Laws Regarding Taxation.** If any law is enacted after the date hereof requiring (a) the deduction of any lien on the Mortgaged Property from the value thereof for the purpose of taxation or (b) the imposition upon Lender of the payment of the whole or any part of the Taxes, charges or liens herein required to be paid by Mortgagor, or (c) a change in the method of taxation of mortgages or debts secured by mortgages or Lender's interest in the Mortgaged Property, or the manner of collection of taxes, so as to affect this Mortgage or the Indebtedness or the holders thereof, then Mortgagor, upon demand by Lender, shall pay such Taxes or charges, or reimburse Lender therefor; provided, however, that Mortgagor shall not be deemed to be required to pay any income or franchise taxes of Lender. Notwithstanding the foregoing, if in the opinion of counsel for Lender it is or may be unlawful to require Mortgagor to make such payment or the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then Lender may declare all of the Indebtedness to be immediately due and payable.

12. **Lender's Performance of Defaulted Acts and Expenses Incurred by Lender.** If an Event of Default has occurred, Lender may, but need not, make any payment or perform any act herein required of Mortgagor in any form and manner deemed expedient by Lender, and may, but need not, make full or partial payments of principal or interest on prior encumbrances, if any, and purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof, or redeem from any tax sale or forfeiture affecting the Mortgaged Property or consent to any tax or assessment or cure any default of Mortgagor in any lease of the Mortgaged Property. All monies paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including reasonable attorneys' fees, and any other monies advanced by Lender in regard to any tax referred to in Section 8 above or to protect the Mortgaged Property or the lien hereof, shall be so much additional Indebtedness under Borrower Note A, and shall become immediately due and payable by Mortgagor to Lender, upon demand, and with interest thereon accruing from the date of such demand until paid at the Default Rate under Borrower Note A then in effect. In addition to the foregoing, any costs, expenses and fees, including reasonable attorneys' fees, incurred by Lender in connection with (a) sustaining the lien of this Mortgage or its priority, (b) protecting or enforcing any of Lender's rights hereunder, (c) recovering any Indebtedness, (d) any litigation or proceedings affecting the Borrower Notes, this Mortgage, any of the other Loan Documents or the Mortgaged Property, including without limitation, bankruptcy and probate proceedings, or (e) preparing for the commencement, defense or participation in any threatened litigation or proceedings affecting the Borrower Notes, this Mortgage, any of the other Loan Documents or the Mortgaged Property, shall be so much additional Indebtedness under Borrower Note A, and shall become immediately due and payable by Mortgagor to Lender, upon demand, and with interest thereon accruing from the date of such demand until paid at the Default Rate under Borrower Note A. The interest accruing with respect to any costs, expenses and fees, including reasonable attorneys' fees, incurred by Lender under this Section 12 shall be immediately due and payable by Mortgagor to Lender, and shall also be additional Indebtedness evidenced by the Borrower Note A and secured by this

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Mortgage. Lender's failure to act shall never be considered as a waiver of any right accruing to Lender on account of any Event of Default. Should any amount paid out or advanced by Lender hereunder, or pursuant to any agreement executed by Mortgagor in connection with the Loan, be used directly or indirectly to pay off, discharge or satisfy, in whole or in part, any lien or encumbrance upon the Mortgaged Property or any part thereof, then Lender shall be subrogated to any and all rights, equal or superior titles, liens and equities, owned or claimed by any owner or holder of said outstanding liens, charges and indebtedness, regardless of whether said liens, charges and indebtedness are acquired by assignment or have been released of record by the holder thereof upon payment.

13. **Security Agreement.** Mortgagor and Lender agree that this Mortgage shall constitute a Security Agreement within the meaning of the Code with respect to (a) all sums at any time on deposit for the benefit of Mortgagor or held by the Lender (whether deposited by or on behalf of Mortgagor or anyone else) pursuant to any of the provisions of this Mortgage or the other Loan Documents, and (b) with respect to any personal property included in the granting clauses of this Mortgage or described on **Exhibit C** attached hereto, which personal property may not be deemed to be affixed to the Mortgaged Property or may not constitute a "Fixture" (within the meaning of Section 9-102(41) of the Code and which property is hereinafter referred to as "Personal Property"), and all replacements of, substitutions for, additions to, and the proceeds thereof, and the "Supporting Obligations" (as defined in the Code) (all of said Personal Property and the replacements, substitutions and additions thereto and the proceeds thereof being sometimes hereinafter collectively referred to as "Collateral"), and that a security interest in and to the Collateral is hereby granted to the Lender, and the Collateral and all of Mortgagor's right, title and interest therein are hereby assigned to Lender, all to secure payment of the Indebtedness. All of the provisions contained in this Mortgage pertain and apply to the Collateral as fully and to the same extent as to any other property comprising the Mortgaged Property; and the following provisions of this section shall not limit the applicability of any other provision of this Mortgage but shall be in addition thereto:

(a) Mortgagor (being 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 hereof, other liens and encumbrances benefiting Lender and no other party, and liens and encumbrances, if any, expressly permitted by the other Loan Documents.

(b) The Collateral is to be used by Mortgagor solely for business purposes.

(c) The Collateral will be kept at the Real Estate and, except for Obsolete Collateral (as hereinafter defined), will not be removed therefrom without the consent of Lender (being the Secured Party as that term is used in the Code). The Collateral may be affixed to the Real Estate but will not be affixed to any other real estate.

(d) The only persons having any interest in the Mortgaged Property are Mortgagor, Lender and holders of interests, if any, expressly permitted hereby.

(e) No Financing Statement (other than Financing Statements showing Lender as the sole secured party, or with respect to liens or encumbrances, if any, expressly

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permitted hereunder or under the Construction Funding Agreement) covering any of the Collateral or any proceeds thereof is on file in any public office except pursuant hereto; and Mortgagor, at its own cost and expense, upon demand, will furnish to Lender such further information and will execute and deliver to Lender such financing statements and other documents in form satisfactory to Lender and will do all such acts as Lender may request at any time or from time to time or as may be necessary or appropriate to establish and maintain a perfected security interest in the Collateral as security for the Indebtedness, subject to no other liens or encumbrances, other than liens or encumbrances benefiting Lender and liens and encumbrances (if any) expressly permitted hereby; and Mortgagor will pay the cost of filing or recording such financing statements or other documents, and this instrument, in all public offices wherever filing or recording is deemed by Lender to be desirable. Mortgagor hereby irrevocably authorizes Lender at any time, and from time to time, to file in any jurisdiction any initial financing statements and amendments thereto or extensions thereof that (i) describe the Collateral as all assets of Mortgagor (or words of similar effect), regardless of whether any particular asset comprising a part of the Collateral falls within the scope of Article 9 of the Uniform Commercial Code of the jurisdiction wherein such financing statement or amendment is filed, or as being of an equal or lesser scope or with greater detail, and (ii) contain any other information required by Section 5. of Article 9 of the Uniform Commercial Code of the jurisdiction wherein such financing statement or amendment is filed regarding the sufficiency or filing office acceptance of any financing statement or amendment, including whether Mortgagor is an organization, the type of organization and any organizational identification number issued to Mortgagor, and in the case of a financing statement filed as a fixture filing or indicating Collateral as as-extracted collateral or timber to be cut, a sufficient description of real property to which the Collateral relates. Mortgagor agrees to furnish any such information to Lender promptly upon request. Mortgagor further ratifies and affirms its authorization for any financing statements and/or amendments thereto, executed and filed by Lender in any jurisdiction prior to the date of this Mortgage. In addition, Mortgagor shall make appropriate entries in its books and records disclosing Lender's security interests in the Collateral.

(f) Upon the occurrence of an Event of Default hereunder, Lender shall have the remedies of a secured party under the Code, including, without limitation, the right to take immediate and exclusive possession of the Collateral, or any part thereof, and for that purpose, so far as Mortgagor can give authority therefor, with or without judicial process, may enter (if this can be done without breach of the peace) upon any place which the Collateral or any part thereof may be situated and remove the same therefrom (provided that if the Collateral is affixed to real estate, such removal shall be subject to the conditions stated in the Code); and Lender 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. Lender may render the Collateral unusable without removal and may dispose of the Collateral on the Mortgaged Property. Lender may require Mortgagor to assemble the Collateral and make it available to Lender for its possession at a place to be designated by Lender which is reasonably convenient to both parties. Lender will 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

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intended disposition thereof 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 hereinafter set forth at least ten (10) days before the time of the sale or disposition. Lender may buy at any public sale. Lender may buy at private sale if the Collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations. Any such sale may be held in conjunction with any foreclosure sale of the Mortgaged Property. If Lender so elects, the Mortgaged Property and the Collateral may be sold as one lot. The net proceeds realized upon any such disposition, after deduction for the expenses of retaking, holding, preparing for sale, selling and the reasonable attorneys' fees and legal expenses incurred by Lender, shall be applied against the Indebtedness in such order or manner as Lender shall select. Lender will account to Mortgagor for any surplus realized on such disposition.

(g) The terms and provisions contained in this Section 13, unless the context otherwise requires, shall have the meanings and be construed as provided in the Code.

(h) This Mortgage is intended to be a financing statement within the purview of Section 9-502(b) of the Code with respect to the Collateral and the goods described herein, which goods are or may become fixtures relating to the Mortgaged Property. The addresses of Mortgagor (Debtor) and Lender (Secured Party) are hereinbelow set forth. This Mortgage is to be filed for recording with the Recorder of Deeds of the county or counties where the Mortgaged Property are located.

(i) To the extent permitted by applicable law, the security interest created hereby is specifically intended to cover all Leases between Mortgagor or its agents as lessor, and various tenants named therein, as lessee, including all extended terms and all extensions and renewals of the terms thereof, as well as any amendments to or replacement of said Leases, together with all of the right, title and interest of Mortgagor, as lessor thereunder.

(j) Mortgagor represents and warrants that:

- (i) Mortgagor is the record owner of the Mortgaged Property;
- (ii) Mortgagor's chief executive office is located in the State of Illinois;
- (iii) Mortgagor's state of organization is the State of Illinois;
- (iv) Mortgagor's exact legal name is as set forth in the first paragraph of this Mortgage; and
- (v) Mortgagor's organizational identification number is S029545.

(k) Mortgagor agrees that:

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(i) Where Collateral is in possession of a third party, Mortgagor will join with the Lender in notifying the third party of the Lender's interest and obtaining an acknowledgment from the third party that it is holding the Collateral for the benefit of Lender;

(ii) Mortgagor will cooperate with the Lender in obtaining control with respect to Collateral consisting of: deposit accounts, investment property, letter of credit rights and electronic chattel paper; and

(iii) Until the Indebtedness is paid in full, Mortgagor will not change the state where it is located or change its name or form of organization without Lender's prior written consent.

14 Restrictions on Transfer.

(a) Mortgagor, without the prior written consent of Lender, shall not effect, suffer or permit any Prohibited Transfer (as defined herein). Any conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation (or any agreement to do any of the foregoing) of any of the following properties or interests shall constitute a "Prohibited Transfer":

(i) The Mortgaged Property or any part thereof or interest therein, excepting only sales or other dispositions of Collateral (herein called "Obsolete Collateral") no longer useful in connection with the operation of the Mortgaged Property, provided that prior to the sale or other disposition thereof, such Obsolete Collateral has been replaced by Collateral of at least equal value and utility which is subject to the lien hereof with the same priority as with respect to the Obsolete Collateral;

(ii) All or any part of the general or limited partner interests in Mortgagor; provided, however:

(A) Lender consent shall not be required if Equity Investor exercises its right under the Partnership Agreement to remove the General Partner and appoint Equity Investor, or a single-purpose Affiliate of Equity Investor, as a substitute general partner so long as Equity Investor gives prompt written notice to Lender of such removal and appointment; provided that Lender's consent shall be required for the appointment of any entity other than Equity Investor or an Affiliate of Equity Investor as a substituted general partner; and

(B) Lender consent shall not be required if the Equity Investor transfers its limited partnership interest to an Affiliate of Equity Investor.

As used in this Section 14(a)(ii), "Affiliate" shall mean an entity directly or indirectly controlled by or under common control with, Equity Investor. Notwithstanding whether Lender's consent to any transfer of all or any part of the general or limited partner interests in Mortgagor may be required, no such transfer

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shall be made without the prior consent of any party whose consent is required under any other Related Document;

(iii) Except as permitted under subsection (ii) above, if there shall be any change in control (by way of transfers of stock, partnership or member interests or otherwise) in any partner, member, manager or shareholder, as applicable, which directly or indirectly controls the day to day operations and management of Mortgagor, General Partner, or Guarantor, and/or owns a controlling interest in Mortgagor, General Partner, or Guarantor;

in each case whether any such conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest, encumbrance or alienation is effected directly, indirectly (including the nominee agreement), voluntarily or involuntarily, by operation of law or otherwise, provided, however, that the foregoing provisions of this Section 14 shall not apply to the following (each, a "Permitted Transfer"): (i) liens securing the Indebtedness or any Permitted Encumbrances, (ii) the lien of current taxes and assessments not in default, (iii) any transfers of the Mortgaged Property, or part thereof, or interest therein, or any beneficial interests, or shares of stock or partnership or joint venture interests, as the case may be, by or on behalf of an owner thereof who is deceased or declared judicially incompetent, to such owner's heirs, legatees, devisees, executors, administrators, estate or personal representatives, (iv) Leases permitted under the Construction Funding Agreement or any other Loan Document.

(b) In determining whether or not to make the Loan, Lender evaluated the background and experience of Mortgagor and its partners in owning and operating property such as the Mortgaged Property, found it acceptable and relied and continues to rely upon same as the means of maintaining the value of the Mortgaged Property which is Lender's security for the Borrower Notes. Mortgagor and its partners are well experienced in borrowing money and owning and operating property such as the Mortgaged Property, were ably represented by a licensed attorney at law in the negotiation and documentation of the Loan and bargained at arm's length and without duress of any kind for all of the terms and conditions of the Loan, including this provision. Mortgagor recognizes that Lender is entitled to keep its loan portfolio at current interest rates by either making new loans at such rates or collecting assumption fees and/or increasing the interest rate on a loan, the security for which is purchased by a party other than the original Mortgagor. Mortgagor further recognizes that any secondary junior financing placed upon the Mortgaged Property without the consent of Lender (i) may divert funds which would otherwise be used to pay the Borrower Notes; (ii) could result in acceleration and foreclosure by any such junior encumbrancer which would force Lender to take measures and incur expenses to protect its security; (iii) would detract from the value of the Mortgaged Property should Lender come into possession thereof with the intention of selling same; and (iv) would impair Lender's right to accept a deed in lieu of foreclosure, as a foreclosure by Lender would be necessary to clear the title to the Mortgaged Property. In accordance with the foregoing and for the purposes of (A) protecting Lender's security, both of repayment and of value of the Mortgaged Property; (B) giving Lender the full benefit of its bargain and contract with Mortgagor; (C) allowing Lender to raise the interest rate and collect assumption fees; and

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(D) keeping the Mortgaged Property free of subordinate financing liens other than the Permitted Encumbrances, Mortgagor agrees that if this Section 14 is deemed a restraint on alienation, that it is a reasonable one.

15. **Single Asset Entity.** Mortgagor shall at all times comply with the covenants and agreements contained in Section 6.2.11 of the Construction Funding Agreement regarding its single asset status.

16. **Events of Default; Acceleration.** Each of the following shall constitute an “Event of Default” for purposes of this Mortgage:

(a) Mortgagor fails to pay (i) any installment of principal or interest payable pursuant to any of the Borrower Notes on the date when due, or (ii) any other amount payable to Lender under the Borrower Notes, this Mortgage or any other Loan Document within five (5) days after the date when any such payment is due in accordance with the terms hereof or thereof;

(b) Mortgagor fails to perform or cause to be performed any other obligation or observe any other condition, covenant, term, agreement or provision required to be performed or observed by Mortgagor under the Borrower Notes, this Mortgage or any of the other Loan Documents and not specifically described in this Section 16 or in the default section of any other Loan Document; provided, however, that if such failure by its nature can be cured, then so long as the continued operation and safety of the Mortgaged Property, and the priority, validity and enforceability of the liens created by the Mortgage or any of the other Loan Documents and the value of the Mortgaged Property are not impaired, threatened or jeopardized, then Mortgagor shall have a period (“Cure Period”) of thirty (30) days after Mortgagor obtains actual knowledge of such failure or receives written notice of such failure (any such notice from Lender to be provided to all parties listed in Section 26 hereof) to cure the same and an Event of Default shall not be deemed to exist during the Cure Period, provided further that if such failure by its nature can be cured but cannot be cured by the payment of money and Mortgagor commences to cure such failure during the Cure Period and is diligently and in good faith attempting to effect such cure, the Cure Period shall be extended for thirty (30) additional days, but in no event shall the Cure Period be longer than sixty (60) days in the aggregate;

(c) the existence of any inaccuracy or untruth in any material respect in any representation or warranty contained in this Mortgage or any of the other Loan Documents or of any statement or certification as to facts delivered to Lender by Mortgagor, General Partner or Guarantor;

(d) the occurrence of a Prohibited Transfer;

(e) the occurrence of an “Event of Default” under either of the Borrower Notes, the Borrower Loan Agreement, the Construction Funding Agreement, any Funding Loan Document, or any other Loan Document.

Notwithstanding anything to the contrary contained herein, Lender agrees that any cure of any default made or tendered by the Equity Investor shall be deemed to be a cure by

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Mortgagor and shall be accepted or rejected on the same basis as if made by Mortgagor. Copies of all notices of default which are sent to Mortgagor hereunder shall also be sent to the Equity Investor at the addresses provided in Section 26 of this Mortgage.

If an Event of Default occurs, Lender may, at its option, declare the whole of the Indebtedness to be immediately due and payable without further notice to Mortgagor, with interest thereon accruing from the date of such Event of Default until paid at the applicable Default Rate under the Borrower Notes; provided, however, that with respect to any Event of Default described in Section 8.1.6 of the Construction Funding Agreement, all principal of and interest on the Borrower Notes and all other obligations of the Mortgagor hereunder or under any other Loan Document shall become due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived.

17. Foreclosure; Expense of Litigation.

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

(b) In any suit to foreclose the lien hereof, there shall be allowed and included as additional indebtedness in the decree for sale all expenditures and expenses which may be paid or incurred by or on behalf of Lender for reasonable attorneys' fees, appraisers' fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to the title as Lender may deem reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or the value of the Mortgaged Property. All expenditures and expenses of the nature mentioned in this section and such other expenses and fees as may be incurred in the enforcement of Mortgagor's obligations hereunder, the protection of said Mortgaged Property and the maintenance of the lien of this Mortgage, including the reasonable fees of any attorney employed by Lender in any litigation or proceeding affecting this Mortgage, the Borrower Notes, or the Mortgaged Property, including probate and bankruptcy proceedings, or in preparations for the commencement or defense of any proceeding or threatened suit or proceeding shall be immediately due and payable by Mortgagor, with interest thereon until paid at the Default Rate chargeable under Borrower Note A and shall be secured by this Mortgage.

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18. **Application of Proceeds of Foreclosure Sale.** The proceeds of any foreclosure sale of the Mortgaged Property shall be distributed and applied in accordance with the Act and, unless otherwise specified therein, in such order as Lender may determine in its sole and absolute discretion.

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

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

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

(b) subject to the restrictions contained in any Regulatory Agreement affecting the Mortgaged Property that is superior to this Mortgage, elect to disaffirm any Lease or sublease which is then subordinate to the lien hereof;

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

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

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

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

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

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

(b) to the payment of Taxes and special assessments now due or which may hereafter become due on the Mortgaged Property; and

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

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

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

(b) If any provision of this Mortgage shall grant to Lender (including Lender acting as a mortgagee-in-possession) or a receiver appointed pursuant to the provisions of Section 19 of this Mortgage any powers, rights or remedies prior to, upon or following

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the occurrence of an Event of Default which are more limited than the powers, rights or remedies that would otherwise be vested in Lender or in such receiver under the Act in the absence of said provision, Lender and such receiver shall be vested with the powers, rights and remedies granted in the Act to the full extent permitted by law.

(c) Without limiting the generality of the foregoing, all expenses incurred by Lender which are of the type referred to in Section 5/15-1510 or 5/15-1512 of the Act, whether incurred before or after any decree or judgment of foreclosure, and whether or not enumerated in Sections 12, 17 or 29 of this Mortgage, shall be added to the Indebtedness and/or by the judgment of foreclosure.

23. **Rights Cumulative.** Each right, power and remedy herein conferred upon Lender is cumulative and in addition to every other right, power or remedy, express or implied, given now or hereafter existing under any of the Loan Documents or at law or in equity, and each and every right, power and remedy herein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient by Lender, and 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 Lender in the exercise of any right, power or remedy accruing hereunder or arising otherwise shall impair any such right, power or remedy, or be construed to be a waiver of any Event of Default or acquiescence therein.

24. **Lender's Right of Inspection.** Lender and its representatives shall have the right to inspect the Mortgaged Property and the books and records with respect thereto at all reasonable times upon not less than twenty-four (24) hours prior notice to Mortgagor, and access thereto, subject to the rights of tenants in possession, shall be permitted for that purpose.

25. **Release upon Payment and Discharge of Mortgagor's Obligations.** Lender shall release this Mortgage and the lien hereof by proper instrument upon the indefeasible payment and discharge of all Indebtedness, including payment of all reasonable expenses incurred by Lender in connection with the execution of such release.

26. **Notices.** Any notices, communications and waivers under this Mortgage shall be in writing and shall be (i) delivered in person, (ii) mailed, postage prepaid, either by registered or certified mail, return receipt requested, or (iii) by overnight express carrier, addressed in each case as follows:

To Lender: CIBC Bank USA
120 S. LaSalle Street
Chicago, Illinois 60603
Attn: Cheryl Wilson

And: Charity & Associates, P.C.
20 N. Clark Street
Suite 1150
Chicago, Illinois 60602
Attention: Elvin E. Charity

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If to Borrower: Schiller Place LP
 c/o Evergreen Redevelopment LLC
 566 W. Lake Street, Suite 400
 Chicago, IL 60661
 Attention: David Block

With copies to: Applegate & Thorne-Thomsen, P.C.
 425 South Financial Place, Suite 1900
 Chicago, Illinois 60605
 Attention: Paul Davis

And to: Structured Development LLC
 211 North Clinton Street, Suite 300S
 Chicago, IL 60661
 Attention: J. Michael Drew

And to: Hudson Housing Capital LLC
 630 Fifth Avenue, Suite 2850
 New York, NY 10111
 Attention: Joseph Macari

With copies to: Bocarsly Emden Cowan Esmail & Arndt LLP
 7700 Old Georgetown Road, Suite 600
 Bethesda, MD 20814
 Attention: Craig Emden, Esq.

or to any other address as to any of the parties hereto, as such party shall designate in a written notice to the other party hereto. All notices sent pursuant to the terms of this section shall be deemed received (i) if personally delivered, then on the date of delivery, (ii) if sent by overnight, express carrier, then on the next federal banking day immediately following the day sent, or (iii) if sent by registered or certified mail, then on the earlier of the third federal banking day following the day sent or when actually received. Any notice to legal counsel or other party other than the primary addressee for Mortgagor or Lender shall be a courtesy copy only and shall not affect the timeliness or effectiveness of delivery to Mortgagor or Lender.

27. **Waiver of Rights.** The Mortgagor hereby covenants and agrees that it will not at any time insist upon or plead, or in any manner claim or take any advantage of, any stay, exemption or extension law or any so-called "Moratorium Law" now or at any time hereafter in force providing for the valuation or appraisal of the Mortgaged Property, or any part thereof, prior to any sale or sales thereof to be made pursuant to any provisions herein contained, or to decree, judgment or order of any court of competent jurisdiction; or, after such sale or sales, claim or exercise any rights under any statute now or hereafter in force to redeem the property so sold, or any part thereof, or relating to the marshalling thereof, upon foreclosure sale or other enforcement hereof; and without limiting the foregoing:

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(a) The Mortgagor hereby expressly waives any and all rights of reinstatement and redemption, if any, under any order or decree of foreclosure of this Mortgage, on its own behalf and on behalf of each and every person, it being the intent hereof that any and all such rights of reinstatement and redemption of the Mortgagor and of all other persons are and shall be deemed to be hereby waived to the full extent permitted by the provisions of Illinois Compiled Statutes 735 ILCS 5/15 - 1601 or other applicable law or replacement statutes;

(b) The Mortgagor will not invoke or utilize any such law or laws or otherwise hinder, delay or impede the execution of any right, power remedy herein or otherwise granted or delegated to the Lender but will suffer and permit the execution by Lender of every such right, power and remedy as though no such law or laws had been made or enacted; and

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

28. **Contests.** Notwithstanding anything to the contrary herein contained, Mortgagor shall have the right to contest by appropriate legal proceedings diligently prosecuted any Taxes imposed or assessed upon the Mortgaged Property or which may be or become a lien thereon and any mechanics', materialmen's or other liens or claims for lien upon the Mortgaged Property (collectively, "Contested Liens"), and no Contested Liens shall constitute an Event of Default hereunder, if, but only if:

(a) Mortgagor shall forthwith give notice of any Contested Lien to Lender at the time the same shall be asserted;

(b) Mortgagor shall either pay under protest or deposit with Lender the full amount (the "Lien Amount") of such Contested Lien, together with such amount as Lender may reasonably estimate as interest or penalties which might arise during the period of contest; provided that in lieu of such payment Mortgagor may furnish to Lender a bond or title indemnity in such amount and form, and issued by a bond or title insuring company, as may be satisfactory to Lender;

(c) Mortgagor shall diligently prosecute the contest of any Contested Lien by appropriate legal proceedings having the effect of staying the foreclosure or forfeiture of the Mortgaged Property, and shall permit Lender to be represented in any such contest and shall pay all expenses incurred, in so doing, including fees and expenses of Lender's counsel (all of which shall constitute so much additional Indebtedness under Borrower Note A bearing interest at the Default Rate provided for thereunder until paid, and payable upon demand);

(d) Mortgagor shall pay each such Contested Lien and all Lien Amounts together with interest and penalties thereon (i) if and to the extent that any such Contested

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Lien shall be determined adverse to Mortgagor, or (ii) forthwith upon demand by Lender if, in the opinion of Lender, and notwithstanding any such contest, the Mortgaged Property shall be in jeopardy or in danger of being forfeited or foreclosed; provided that if Mortgagor shall fail so to do, Lender may, but shall not be required to, pay all such Contested Liens and Lien Amounts and interest and penalties thereon and such other sums as may be necessary in the judgment of the Lender to obtain the release and discharge of such liens; and any amount expended by Lender in so doing shall be so much additional Indebtedness under Borrower Note A bearing interest at the Default Rate provided for thereunder until paid, and payable upon demand; and provided further that Lender may in such case use and apply monies deposited as provided in subsection (b) above and may demand payment upon any bond or title indemnity furnished as aforesaid.

29. Expenses Relating to Borrower Notes and Mortgage.

(a) Mortgagor will pay all expenses, charges, costs and fees relating to the Loan or necessitated by the terms of the Borrower Notes, this Mortgage or any of the other Loan Documents, including without limitation, Lender's reasonable attorneys' fees in connection with the negotiation, documentation, administration, servicing and enforcement of the Borrower Notes, this Mortgage and the other Loan Documents, all filing, registration and recording fees, all other expenses incident to the execution and acknowledgment of this Mortgage and all federal, state, county and municipal taxes, and other taxes (provided Mortgagor shall not be required to pay any income or franchise taxes of Lender), duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of the Borrower Notes and this Mortgage. Mortgagor recognizes that, during the term of this Mortgage, Lender:

(i) May be involved in court or administrative proceedings, including, without restricting the foregoing, foreclosure, probate, bankruptcy, creditors' arrangements, insolvency, housing authority and pollution control proceedings of any kind, to which Lender shall be a party by reason of the Loan Documents or in which the Loan Documents or the Mortgaged Property are involved directly or indirectly;

(ii) May make preparations following the occurrence of an Event of Default hereunder for the commencement of any suit for the foreclosure hereof, which may or may not be actually commenced;

(iii) May make preparations following the occurrence of an Event of Default hereunder for, and do work in connection with, Lender's taking possession of and managing the Mortgaged Property, which event may or may not actually occur;

(iv) May make preparations for and commence other private or public actions to remedy an Event of Default hereunder, which other actions may or may not be actually commenced;

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(v) May enter into negotiations with Mortgagor or any of its agents, employees or attorneys in connection with the existence or curing of any Event of Default hereunder, the sale of the Mortgaged Property, the assumption of liability for any of the Indebtedness or the transfer of the Mortgaged Property in lieu of foreclosure; or

(vi) May enter into negotiations with Mortgagor or any of its agents, employees or attorneys pertaining to Lender's approval of actions taken or proposed to be taken by Mortgagor which approval is required by the terms of this Mortgage.

(b) All expenses, charges, costs and fees described in this section shall be so much additional Indebtedness under Borrower Note A, shall bear interest from the date so incurred until paid at the Default Rate provided for thereunder and shall be paid, together with said interest, by Mortgagor forthwith upon demand.

30. **Financial Statements.** Mortgagor represents and warrants that the financial statements for Mortgagor and the Mortgaged Property previously submitted to Lender are true, complete and correct in all material respects, disclose all actual and contingent liabilities of Mortgagor or relating to the Mortgaged Property and do not contain any untrue statement of a material fact or omit to state a fact material to such financial statements. No material adverse change has occurred in the financial condition of Mortgagor or the Mortgaged Property from the dates of said financial statements until the date hereof. Mortgagor shall furnish to Lender such financial information regarding Mortgagor, its constituent partners or members, as the case may be, the Mortgaged Property and each Guarantor as Lender may from time to time reasonably request, which shall include, without any further request therefor, all information required under the Construction Funding Agreement.

31. **Statement of Indebtedness.** Mortgagor, within seven days after being so requested by Lender, shall furnish a duly acknowledged written statement setting forth the amount of the debt secured by this Mortgage, the date to which interest has been paid and stating either that no offsets or defenses exist against such debt or, if such offsets or defenses are alleged to exist, the nature thereof.

32. **Further Instruments.** Upon request of Lender, Mortgagor shall execute, acknowledge and deliver all such additional instruments and further assurances of title and shall do or cause to be done all such further acts and things as may reasonably be necessary fully to effectuate the intent of this Mortgage and of the other Loan Documents.

33. **Additional Indebtedness Secured.** All persons and entities with any interest in the Mortgaged Property or about to acquire any such interest should be aware that this Mortgage secures more than the stated aggregate principal amount of the Borrower Notes and interest thereon; this Mortgage secures any and all other amounts which may become due under the Borrower Notes, this Mortgage and each other Loan Document and any other document or instrument evidencing, securing or otherwise affecting the Indebtedness, including, without limitation, any and all amounts expended by Lender to operate, manage or maintain the Mortgaged Property or to otherwise protect the Mortgaged Property or the lien of this Mortgage.

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34. **Indemnity.** Mortgagor hereby covenants and agrees that no liability shall be asserted or enforced against Lender in the exercise of the rights and powers granted to Lender in this Mortgage, and Mortgagor hereby expressly waives and releases any such liability. Mortgagor shall indemnify and save Lender harmless from and against any and all liabilities, obligations, losses, damages, claims, costs and expenses (including reasonable attorneys' fees and court costs) (collectively, "Claims") of whatever kind or nature which may be imposed on, incurred by or asserted against Lender at any time by any third party which relate to or arise from: (a) any suit or proceeding (including probate and bankruptcy proceedings), or the threat thereof, in or to which Lender may or does become a party, either as plaintiff or as a defendant, by reason of this Mortgage or for the purpose of protecting the lien of this Mortgage; (b) the offer for sale or sale of all or any portion of the Mortgaged Property; and (c) the ownership, leasing, use, operation or maintenance of the Mortgaged Property, if such Claims relate to or arise from actions taken prior to the surrender of possession of the Mortgaged Property to, and acceptance by, Lender in accordance with the terms of this Mortgage; provided, however, that Mortgagor shall not be obligated to indemnify or hold Lender harmless from and against any Claims directly arising from the gross negligence or willful misconduct of Lender. All costs provided for herein and paid for by Lender shall be so much additional Indebtedness under Borrower Note A and shall become immediately due and payable upon demand by Lender and with interest thereon from the date incurred by Lender until paid at the Default Rate provided for thereunder.

35. **Subordination of Property Manager's Lien.** Any property management agreement for the Mortgaged Property entered into hereafter with a property manager shall contain a provision whereby the property manager agrees that any and all mechanics' lien rights that the property manager or anyone claiming by, through or under the property manager may have in the Mortgaged Property shall be subject and subordinate to the lien of this Mortgage and shall provide that Lender may terminate such agreement at any time after the occurrence of an Event of Default hereunder. In addition, if the property management agreement in existence as of the date hereof does not contain a subordination provision, Mortgagor shall cause the property manager under such agreement to enter into a subordination of the management agreement with Lender, in recordable form, whereby such property manager subordinates present and future lien rights and those of any party claiming by, through or under such property manager to the lien of this Mortgage.

36. **Compliance with Environmental Laws.** Mortgagor acknowledges that concurrently herewith Mortgagor and Guarantor have executed and delivered to the Bank an Environmental Indemnity Agreement ("Indemnity") pursuant to which Mortgagor and Guarantors have fully indemnified the Bank for certain environmental matters concerning the Mortgaged Property, as more particularly described therein. The provisions of the Indemnity are hereby incorporated herein and this Mortgage shall secure the obligations of Mortgagor thereunder. Mortgagor agrees to abide by all of the provisions of the Indemnity.

37. **Miscellaneous.**

(a) **Successors and Assigns.** This Mortgage and all provisions hereof shall be binding upon and enforceable against Mortgagor and its assigns and other successors. This Mortgage and all provisions hereof shall inure to the benefit of Lender, its

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successors and assigns and any holder or holders, from time to time, of the Borrower Notes.

(b) **Invalidity of Provisions; Governing Law.** In the event that any provision of this Mortgage is deemed to be invalid by reason of the operation of law, or by reason of the interpretation placed thereon by any administrative agency or any court, Mortgagor and Lender shall negotiate an equitable adjustment in the provisions of the same in order to effect, to the maximum extent permitted by law, the purpose of this Mortgage and the validity and enforceability of the remaining provisions, or portions or applications thereof, shall not be affected thereby and shall remain in full force and effect. This Mortgage is to be construed in accordance with and governed by the laws of the State of Illinois.

(c) **Municipal Requirements.** Mortgagor shall not by act or omission permit any building or other improvement on premises not subject to the lien of this Mortgage to rely on the Mortgaged Property or any part thereof or any interest therein to fulfill any municipal or governmental requirement, and Mortgagor hereby assigns to Lender any and all rights to give consent for all or any portion of the Mortgaged Property or any interest therein to be so used. Similarly, no building or other improvement on the Mortgaged Property shall rely on any premises not subject to the lien of this Mortgage or any interest therein to fulfill any governmental or municipal requirement. Any act or omission by Mortgagor which would result in a violation of any of the provisions of this subsection shall be void.

(d) **Rights of Tenants.** Lender shall have the right and option to commence a civil action to foreclose this Mortgage and to obtain a decree of foreclosure and sale subject to the rights of any tenant or tenants of the Mortgaged Property having an interest in the Mortgaged Property prior to that of Lender. The failure to join any such tenant or tenants of the Mortgaged Property as party defendant or defendants in any such civil action or the failure of any decree of foreclosure and sale to foreclose their rights shall not be asserted by Mortgagor as a defense in any civil action instituted to collect the Indebtedness, or any part thereof or any deficiency remaining unpaid after foreclosure and sale of the Mortgaged Property, any statute or rule of law at any time existing to the contrary notwithstanding.

(e) **Option of Lender to Subordinate.** At the option of Lender, 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 condemnation or eminent domain award) to any and all Leases of all or any part of the Mortgaged Property upon the execution by Lender of a unilateral declaration to that effect and the recording thereof in the Office of the Recorder of Deeds in and for the county wherein the Mortgaged Property are situated.

(f) **Mortgagee-in-Possession.** Nothing herein contained shall be construed as constituting Lender a mortgagee-in-possession in the absence of the actual taking of possession of the Mortgaged Property by Lender pursuant to this Mortgage.

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(g) **Relationship of Lender and Mortgagor.** Lender shall in no event be construed for any purpose to be a partner, joint venturer, agent or associate of Mortgagor or of any lessee, operator, concessionaire or licensee of Mortgagor in the conduct of their respective businesses, and, without limiting the foregoing, Lender shall not be deemed to be such partner, joint venturer, agent or associate on account of Lender becoming a mortgagee-in-possession or exercising any rights pursuant to this Mortgage, any of the other Loan Documents, or otherwise. The relationship of Mortgagor and Lender hereunder is solely that of debtor/creditor.

(h) **Time of the Essence.** Time is of the essence of the payment by Mortgagor of all amounts due and owing to Lender under the Borrower Notes and the other Loan Documents and the performance and observance by Mortgagor of all terms, conditions, obligations and agreements contained in this Mortgage and the other Loan Documents.

(i) **No Merger.** The parties hereto intend that the Mortgage and the lien hereof shall not merge in fee simple title to the Mortgaged Property, and if Lender acquires any additional or other interest in or to the Mortgaged Property or the ownership thereof, then, unless a contrary intent is manifested by Lender as evidenced by an express statement to that effect in an appropriate document duly recorded, this Mortgage and the lien hereof shall not merge in the fee simple title and this Mortgage may be foreclosed as if owned by a stranger to the fee simple title.

(j) **Maximum Indebtedness.** Notwithstanding anything contained herein to the contrary, in no event shall the Indebtedness exceed an amount equal to \$30,000,000, plus the amount of any protective advances required to be made by Lender to protect and preserve the Mortgaged Property or Lender's interest in the Mortgaged Property hereunder; provided, however, in no event shall Lender be obligated to advance funds in excess of the aggregate face amount of the Borrower Notes.

(k) **Consent to Jurisdiction.** TO INDUCE LENDER TO ACCEPT THE BORROWER NOTES, MORTGAGOR IRREVOCABLY AGREES THAT, SUBJECT TO LENDER'S SOLE AND ABSOLUTE ELECTION, ALL ACTIONS OR PROCEEDINGS IN ANY WAY ARISING OUT OF OR RELATED TO THE BORROWER NOTES AND THIS MORTGAGE WILL BE LITIGATED IN COURTS HAVING SITUS IN CHICAGO, ILLINOIS. MORTGAGOR HEREBY CONSENTS AND SUBMITS TO THE JURISDICTION OF ANY COURT LOCATED WITHIN CHICAGO, ILLINOIS, WAIVES PERSONAL SERVICE OF PROCESS UPON MORTGAGOR, AND AGREES THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE BY REGISTERED MAIL DIRECTED TO MORTGAGOR AT THE ADDRESS STATED HEREIN AND SERVICE SO MADE WILL BE DEEMED TO BE COMPLETED UPON ACTUAL RECEIPT.

(l) **Waiver of Jury Trial.** MORTGAGOR AND LENDER (BY ITS ACCEPTANCE HEREOF) EACH HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR

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INDIRECTLY ARISING OUT OF OR RELATING TO THIS MORTGAGE OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH OF MORTGAGOR AND LENDER (BY ITS ACCEPTANCE HEREOF) (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

(m) **Complete Agreement.** This Mortgage, the Borrower Notes, the Borrower Loan Agreement, the Construction Funding Agreement, and the other Loan Documents constitute the complete agreement between the parties with respect to the subject matter hereof and the Loan Documents may not be modified, altered or amended except by an agreement in writing signed by both Mortgagor and Lender.

(n) **Construction Loan.** The Borrower Notes evidences a debt created by one or more disbursements made by Lender to Mortgagor to finance the cost of the construction of certain improvements upon the Real Estate in accordance with the provisions of the Construction Funding Agreement, and this Mortgage is a construction mortgage as such term is defined in Section 9-334(h) of the Code. The terms and conditions recited and set forth in the Construction Funding Agreement are fully incorporated in this Mortgage and made a part hereof, and an Event of Default under any of the conditions or provisions of the Construction Funding Agreement shall constitute a default hereunder. Upon the occurrence of any such Event of Default, the holder of the Borrower Notes may at its option declare the Indebtedness immediately due and payable, or complete the construction of said improvements and enter into the necessary contracts therefor, in which case all money expended shall be so much additional Indebtedness and any money expended in excess of the amount of the original principal shall be immediately due and payable with interest until paid at the applicable Default Rate. In the event of a conflict between the terms of the Construction Funding Agreement and this Mortgage, the provisions of the Construction Funding Agreement shall apply and take precedence over this Mortgage.

(o) **Waiver of Special Damages.** TO THE EXTENT PERMITTED BY APPLICABLE LAW, MORTGAGOR SHALL NOT ASSERT, AND HEREBY WAIVES, ANY CLAIM AGAINST LENDER, ON ANY THEORY OF LIABILITY, FOR SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES (AS OPPOSED TO DIRECT OR ACTUAL DAMAGES) ARISING OUT OF, IN CONNECTION WITH, OR AS A RESULT OF, THIS MORTGAGE ANY OTHER LOAN DOCUMENT, THE TRANSACTIONS CONTEMPLATED THEREBY, THE LOAN OR THE USE OF THE PROCEEDS THEREOF.

[SIGNATURE PAGE FOLLOWS]

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[SIGNATURE PAGE TO CONSTRUCTION MORTGAGE]

IN WITNESS WHEREOF, Mortgagor has executed and delivered this Mortgage the day and year first above written.

MORTGAGOR:

SCHILLER PLACE LP, an Illinois limited partnership

By: Evergreen-Schiller LLC,
an Illinois limited liability company,
Its general partner

By: 
Name: David Block
Title: Manager

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STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for the county and State aforesaid, do hereby certify that David Block, personally known to me to be the Manager of Evergreen-Schiller LLC, an Illinois limited liability company (the "General Partner"), the general partner of Schiller Place LP, an Illinois limited partnership, 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 severally acknowledged that as such manager, he signed and delivered the said instrument, pursuant to authority given by the members of the General Partner as his free and voluntary act and as the free and voluntary act and deed of the General Partner and Schiller Place LP, for the uses and purposes therein set forth.

Given under my hand and official seal this 26 day of October, 2020.

(SEAL)

Notary Public

Kaitlyn Elizabeth Nibbelin



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EXHIBIT A

LEGAL DESCRIPTION OF THE REAL ESTATE

LOT 12 IN NEW CITY SUBDIVISION, BEING A SUBDIVISION OF PART OF THE NORTHWEST QUARTER OF SECTION 4, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED MARCH 28, 2018 AS DOCUMENT 1808744017, IN COOK COUNTY, ILLINOIS.

Address: 711-49 W. Schiller Street, Chicago, IL 60642

PIN: 17-04-112-071

Property of Cook County Clerk's Office

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EXHIBIT B

PERMITTED ENCUMBRANCES

1. General real estate taxes for the year(s) 2020 and subsequent years.
2. Ordinance approving the redevelopment plan and feasibility of relocation for slum and blighted area redevelopment project Clybourn-Ogden, a copy of which was recorded April 9, 1969 as document 20806066, and the terms, conditions, limitations and provisions contained therein.
3. Covenants, conditions and restrictions contained in Quit Claim Deed from City of Chicago, a municipal corporation to Young Men's Christian Association of Chicago dated May 23, 1979 and recorded on July 6, 1979 as document 25038783 relating to non discrimination.
4. Certificate of Completion recorded as document no. 25924196 (Note: Per the terms of the above mentioned Deed the Certificate of Completion terminates all of the recited covenants except covenant no. 5 (non discrimination).
5. Rights of the public or quasi-public utilities in said vacated alley as described in Ordinance recorded October 30, 2001 as document 0011013797 and recorded February 14, 2008 as document 0804503104 and the terms and provisions contained in said Ordinances.
6. Terms, provisions and conditions contained in Grant of Easement made by and between 1515 N. Halsted LLC and Comcast Of Chicago, Inc., dated March 18, 2015 and recorded October 02, 2015 as Document no. 1527529141.
7. Environmental No Further Remediation Letter recorded March 30, 2016 as Document No. 1609016010, and the terms, provisions, conditions and limitations contained therein.
8. Terms, matters, provisions and conditions as shown on the Plat of New City Subdivision recorded March 28, 2018 as document 1808744017.
9. Rights of the Public, the State of Illinois and the Municipality in and to that part of the land, if any, taken or used for road purposes.
10. Mechanic's Lien Claim in the amount of \$318,989.91, plus interest and costs, recorded November 15, 2019 as document 1931934056, made by Urban Works, Ltd., and against 1515 N. Halsted, LLC and subject land.
11. Complaint filed as Case No. 2020-CH-03688, Circuit Court of Cook County, by the Urban Works, Ltd., and against 1515 N. Halsted, LLC, D&K Sheet Metal, Inc., Dick's Sporting Goods, Earl's Restaurant, New City Affordable Limit Pacific Theatres, Roundy's

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Supermarkets, Inc., Wells Fargo Bank, N.A., Yard House USA, Inc., for Foreclosure of Mechanic Lien. Note: Lis Pendens notice recorded May 14, 2020 as document 2013503080.

12. Section 811 Use Agreement, of even date herewith by and between the Illinois Housing Development Authority (“IHDA”) and Schiller Place LP (“Borrower”).

13. Subordination and Intercreditor Agreement, of even date herewith, by and among CIBC Bank USA (the “Bank”), IHDA, the Borrower and Housing & Human Development Corporation, an Illinois not-for-profit corporation (“HHDC”).

14. Land Use Restriction Agreement, of even date herewith, between IHDA and the Borrower.

15. Low Income Housing Tax Credit Extended Use Agreement, of even date herewith, between IHDA and the Borrower.

16. IHDA Regulatory Agreement (IHDA Loan No. 11830), of even date herewith, between IHDA and the Borrower.

17. Mortgage, Security Agreement and Assignment of Rents and Leases (Trust Fund Loan) from Borrower in favor of IHDA.

18. Regulatory and Land Use Restriction Agreement (Trust Fund Loan), of even date herewith, between IHDA and the Borrower.

19. Subordination Agreement (IAHTC Loan), of even date herewith, by and between IHDA and HHDC, with the acknowledgment and consent of Borrower.

20. Subordination Agreement (Seller Loan), of even date herewith, by and between IHDA and HHDC, with the acknowledgment and consent of Borrower.

21. Subordination of Management Agreement (Trust Fund Loan), of even date herewith, between IHDA and Evergreen Real Estate Services, LLC, an Illinois limited liability company (the “Property Manager”).

22. Mortgage, Security Agreement and Assignment of Rents and Leases (Credit Advantage Loan) from Borrower in favor of IHDA.

23. Regulatory Agreement (Credit Advantage Loan), of even date herewith, between IHDA and the Borrower.

24. Subordination of Management Agreement (Credit Advantage Loan), of even date herewith, between IHDA and Property Manager.

25. Junior Mortgage, Assignment of Rents and Security Agreement (DTC Loan), of even date herewith, from Borrower to HHDC.

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26. Illinois Affordable Housing Tax Credit Regulatory Agreement, of even date herewith, by and among IHDA, Borrower and HHDC.

27. Junior Mortgage, Assignment of Rents and Security Agreement (Seller Loan), of even date herewith, from Borrower to HHDC

Property of Cook County Clerk's Office

UNOFFICIAL COPY

EXHIBIT C

ADDITIONAL COLLATERAL

1. All personal property of every nature whatsoever now or hereafter owned by Mortgagor, including all extensions, additions, improvements, betterments, renewals, substitutions and replacements thereof and all of the right, title and interest of Mortgagor in and to any such personal property together with the benefit of any deposits or payments now or hereafter made on such personal property by Mortgagor or on its behalf;

2. Any and all rents, revenues, issues, profits, proceeds, income, royalties, accounts (including health care receivables), escrows, reserves, impounds, security deposits and other rights to monies now owned or hereafter acquired and arising from or out of the Real Estate and/or the businesses and operations conducted by Mortgagor thereon;

3. All fixtures and articles of personal property now or hereafter owned by Mortgagor and forming a part of or used in connection with the Real Estate or the improvements thereon, including, but without limitation, any and all air conditioners, antennae, appliances, apparatus, awnings, basins, bathtubs, bidets, boilers, bookcases, cabinets, carpets, coolers, curtains, dehumidifiers, disposals, doors, drapes, dryers, ducts, dynamos, elevators, engines, equipment, escalators, exercise equipment, fans, fittings, floor coverings, furnaces, furnishings, furniture, hardware, heaters, humidifiers, incinerators, lighting, machinery, motors, ovens, pipes, plumbing, pumps, radiators, ranges, recreational facilities, refrigerators, screens, security systems, shades, shelving, sinks, sprinklers, stokers, stoves, toilets, ventilators, wall coverings, washers, windows, window coverings, wiring, and all renewals or replacements thereof or articles in substitution therefor;

4. All proceeds of the foregoing, including, without limitation, all judgments, awards of damages and settlements hereafter made resulting from condemnation proceeds or the taking of the Real Estate or improvements thereon or any portion thereof under the power of eminent domain, any proceeds of any policies of insurance, maintained with respect to the Real Estate or improvements thereon or proceeds of any sale, option or contract to sell the Real Estate or improvements thereon or any portion thereof;

5. Any and all other personal property of any kind, nature or description, whether tangible or intangible, (including without limitation, any and all goods, contract rights, franchises, licenses, permits, chattel paper (including electronic chattel paper), money, equipment, deposit accounts, documents, investment property, instruments, letter-of-credit rights, supporting obligations, and general intangibles including payment intangibles) of Mortgagor, whether now owned or hereafter acquired, or in which Mortgagor now has or shall hereafter acquire any right, title or interest whatsoever (whether by bill of sale, lease, conditional sales contract, or other title retention document or otherwise);

6. Any and all additions and accessories to all of the foregoing and any and all proceeds (including proceeds of insurance, eminent domain or other governmental takings and tort claims), renewals, replacements and substitutions of all of the foregoing;

7. All of the books and records pertaining to the foregoing.