

SECOND MORTGAGE, SECURITY AGREEMENT AND COLLATERAL ASSIGNMENT OF RENTS AND LEASES

THIS SECOND MORTGAGE, SECURITY AGREEMENT AND COLLATERAL ASSIGNMENT OF RENTS AND LEASES (the "Mortgage"), dated as of the 19th day of May, 1994, by and among MARQUETTE NATIONAL BANK ("Trustee"), not personally but solely as Trustee under a Trust Agreement dated September 12, 1988 and known as Trust Number 11969, CHURCHVIEW LIMITED PARTNERSHIP ("Beneficiary"), an Illinois limited partnership (Trustee and Beneficiary are sometimes hereinafter collectively referred to as "Mortgagor"), and the ILLINOIS HOUSING DEVELOPMENT AUTHORITY ("Mortgagee"), a body politic and corporate established pursuant to the Illinois Housing Development Act, 20 ILCS 3805/1 et seq. (1992), as amended and supplemented (the "Act");

WITNESSETH:

WHEREAS, Mortgagor is the owner of certain real property upon which a housing project has been constructed, located at 6250 S. Talman Avenue, Chicago, Illinois. The real property is legally described in Exhibit A attached hereto and by this reference made a part hereof (the "Real Estate"); and

WHEREAS, Mortgagee has agreed to make a loan to Mortgagor in the amount of TWO HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$250,000.00) (the "Loan") to be used with such other monies, if any, for the permanent financing of the Development (as hereinafter defined); and

WHEREAS, contemporaneously with the execution and delivery hereof, Trustee has executed and delivered to Mortgagee its mortgage note (hereinafter together with any renewals, modifications, extensions, amendments and replacements thereof, referred to as the "Note"), of even date herewith, as evidence of its indebtedness to Mortgagee in the principal sum of TWO HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$250,000.00), or so much thereof as may hereafter be advanced upon the Loan to Trustee by Mortgagee, with interest thereon at the rates and payable at the times and in the manner as specified in the Note; provided, however, the final payment of principal and interest and all

THIS INSTRUMENT WAS PREPARED BY AND AFTER RECORDING RETURN TO: Richard B. Muller Illinois Housing Development Authority 401 N. Michigan, Suite 900 Chicago, Illinois 60611

Permanent Index Tax Identification No. 19-13-426-033, 19-13-426-034 19-13-426-035, 19-13-426-036 19-13-426-037, 19-13-426-038 Property Address 6250 S. Talman Avenue Chicago, Illinois

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other indebtedness evidenced thereby, if not sooner paid, shall be due and payable on the 11th day of May, 2024; and

**WHEREAS**, the Loan is evidenced, secured and governed by, among other things: (a) the Conditional Commitment Letter from Mortgagee to or for the benefit of Beneficiary dated July 13, 1993 (the "Commitment"), (b) the Note, (c) this Mortgage, (d) the Regulatory and Land Use Restriction Agreement of even date herewith executed by Mortgagor and Mortgagee (the "Regulatory Agreement"), (e) The Environmental Indemnity Agreement executed by Beneficiary and Mortgagee (the "Environmental Indemnity") and (f) those certain Uniform Commercial Code financing statements executed by Mortgagor for the benefit of the Mortgagee (the "UCC's"). This Mortgage, the Commitment, Note, Regulatory Agreement, the UCC's and all other documents executed by Mortgagor that evidence or secure the Loan are hereinafter sometimes collectively referred to as the "Loan Documents."

**NOW, THEREFORE**, Mortgagor, to secure the (a) payment of the indebtedness evidenced by the Note (the "Mortgage Debt"), which Mortgage Debt includes, but is not limited to (i) so much thereof as may hereafter be advanced under the Loan to Mortgagor by Mortgagee, and (ii) any and all other costs and expenses of Mortgagee attributable to Mortgagor, as determined by Mortgagee, pursuant to the Note and this Mortgage (all of which payments are set forth in greater particularity and detail in the Note and as to which the Note shall control and prevail), such payments all to be made at the rates, times, manner and place specified and set forth in the Note; and (b) performance and observance of all of the provisions of this Mortgage and the other Loan Documents, does by these presents GRANT, BARGAIN, SELL, MORTGAGE, WARRANT AND CONVEY the Development (as hereinafter defined) and all of its estate, title and interest therein unto Mortgagee, its successors and assigns (the Real Estate, together with the property described in the next succeeding paragraph, is hereinafter referred to as the "Development").

**TOGETHER** with all improvements, tenements, easements, fixtures, and appurtenances thereto belonging, and all rents, issues and profits thereof for so long and during all such times as Mortgagor may be entitled thereto (which are pledged primarily and on a parity with the Development and not secondarily), including, without limiting the foregoing: (a) if and to the extent owned by Mortgagor: all fixtures, fittings, furnishings, appliances, apparatus, equipment and machinery, including, without limitation, all gas and electric fixtures, radiators, heaters, engines and machinery, boilers, ranges, ovens, elevators and motors, bathtubs, sinks, water closets, basins, pipes, faucets and other air-conditioning, plumbing and heating fixtures, mirrors, mantles, refrigerating plants, refrigerators, ice-boxes, dishwashers, carpeting, furniture, laundry equipment, cooking apparatus and appurtenances, and all building material,

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supplies and equipment now or hereafter delivered to the Development and intended to be installed therein; all other fixtures and personal property of whatever kind and nature at present contained in or hereafter placed in any building standing on the Development; such other goods, equipment, chattels and personal property as are usually furnished by landlords in letting other premises of the character of the Development; and all renewals or replacements thereof or articles in substitution thereof; and all proceeds and profits thereof and all of the estate, right, title and interest of Mortgagor in and to all property of any nature whatsoever, now or hereafter situated on the Development, or intended to be used in connection with the operation thereof; (b) all of the right, title and interest of Mortgagor in and to any fixtures or personal property subject to a lease agreement, conditional sale agreement, chattel mortgage, or security agreement, and all deposits made thereon or therefor, together with the benefit of any payments now or hereafter made thereon; (c) all leases and use agreements of machinery, equipment and other personal property of Mortgagor in the categories hereinabove set forth, under which Mortgagor is the lessee of, or entitled to use, such items; (d) all rents, income, profits, revenues, royalties, security deposits, bonuses, rights, accounts, accounts receivable, contract rights, general intangibles and benefits and guarantees under any and all leases or tenancies now existing or hereafter created the Development, or any part thereof, with the right to receive and apply the same to indebtedness due Mortgagee; Mortgagee may demand, sue for and recover such payments, but shall not be required to do so; (e) all documents, books, records, papers and accounts of Mortgagor relating to all or any part of the Development; (f) all judgments, awards of damages and settlements hereafter made as a result of, or in lieu of, any taking of the Development, or any part thereof or interest therein, under the power of eminent domain, or for any damage (whether caused by such taking or otherwise) to the Development or the improvements thereon or any part thereof or interest therein, including any award for change of grade of streets; (g) all proceeds of the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims; (h) any monies on deposit for the payment of real estate taxes or special assessments against the Development or for the payment of premiums on policies of fire and other hazard insurance covering the collateral described hereunder or the Development, and all proceeds paid for damage done to the collateral described hereunder or the Development; and (i) all the right, title and interest of Mortgagor in and to beds of the streets, roads, avenues, lanes, alleys, passages and ways, and any easements, rights, liberties, hereditaments and appurtenances whatsoever belonging to or running with, on, over, below or adjoining the Development; it being understood that the enumeration of any specific articles of property shall in no wise exclude or be held to exclude any items of property not specifically mentioned. All of the land, estate and property

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hereinabove described, real, personal and mixed, whether affixed or annexed or not (except where otherwise hereinabove specified), and all rights hereby conveyed and mortgaged are intended so to be as a unit and are hereby understood, agreed and declared to form a part and parcel of the Development and to be appropriated to the use of the Development, and shall be for the purposes of this Mortgage deemed to be the Development and conveyed and mortgaged hereby. As to the above personal property which the Illinois Uniform Commercial Code (the "Code") classifies as fixtures, this instrument shall constitute a fixture filing and financing statement under the Code.

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

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

1. **Recitals**

All of the foregoing recitals are made a part hereof.

2. **Incorporation of Other Documents**

The Loan Documents are each incorporated by reference herein and made a part hereof, and any default by Trustee or Beneficiary under any of the Loan Documents that is not cured within any applicable cure or grace period shall constitute a Default (as defined in Paragraph 12 hereof) under this Mortgage.

3. **Maintenance, Repair and Restoration of Improvements, Payment of Senior Liens, etc.**

Mortgagor shall (a) promptly repair, restore, or rebuild any buildings or improvements now or hereafter on the Development that may become damaged or be destroyed; (b) keep the Development in good condition and repair, without waste, and free from mechanics' liens or other liens or claims for lien not expressly subordinated to the lien hereof; (c) pay when due, any indebtedness that may be secured by a lien or charge on the Development superior to the lien hereof, except the First Mortgage (as defined in Paragraph 9 hereof) or any other senior lien approved by the Mortgagee, and upon request, exhibit satisfactory evidence of the discharge of such senior lien to Mortgagee; (d) obtain all Federal, State and local governmental approvals required by law for the acquisition, construction, ownership and operation of the Development; (e) complete, within a reasonable time, any building or other improvements now or at any time in process of erection upon the Development; (f) cause the Development to comply with all requirements of law, municipal ordinances, or restrictions of record with respect to the Development and the use thereof; (g) make no alterations in the



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Development costing more than Twenty-Five Thousand and No/100 Dollars (\$25,000.00) without Mortgagee's written approval which approval is hereby granted with respect to the renovations financed in whole or in part by the Loan, the First Loan (as defined in Paragraph 9 hereof); (h) suffer or permit no change in the general nature of the occupancy of the Development without Mortgagee's written consent; (i) initiate or acquiesce in no zoning variation or reclassification of the Development, without Mortgagee's written consent; and (j) pay each item of the Mortgage Debt when due according to the terms of this Mortgage or the Note.

## 4. Insurance

Mortgagor shall keep all buildings, improvements, fixtures and articles of personal property now or hereafter situated on the Development continuously insured against loss or damage by fire or other hazards, and such other appropriate insurance as may be required by Mortgagee, all in form and substance satisfactory to Mortgagee, including, without limitation of the generality of the foregoing, rent loss insurance, business interruption insurance and flood insurance (if and when the Development lies within an area designated by an agency of the Federal government as a flood risk area). Mortgagor shall also provide liability insurance with such limits for personal injury and death and property damage as Mortgagee may require. All policies of insurance to be furnished hereunder shall be in forms, companies and amounts satisfactory to Mortgagee, with mortgagee loss payable clauses or endorsements attached to all policies in favor of and in form satisfactory to Mortgagee, including a provision requiring that the coverage evidenced thereby shall not be terminated or materially modified without thirty (30) days' prior written notice to Mortgagee; provided, however, that such insurance policies may name the First Lender (as defined in Paragraph 9 hereof) as loss payee, subject to the rights of the Mortgagee as a subordinate mortgagee. Mortgagor shall deliver all policies, including additional and renewal policies, to Mortgagee, and shall deliver renewal policies to Mortgagee not less than ten (10) days prior to their respective dates of expiration of such policies. Mortgagor shall immediately reimburse Mortgagee for any premiums paid for insurance procured by Mortgagee or deemed necessary by Mortgagee to secure its interest under this Mortgage. From and after the date of entry of any judgment of foreclosure, all rights and powers conferred on Mortgagee by this Paragraph 4 shall continue in Mortgagee as judgment creditor or mortgagee until confirmation of sale.

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

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excess of Twenty-Five Thousand and No/100 Dollars (\$25,000.00), and subject to the terms of the documents securing the First Loan (as defined in Paragraph 9 hereof), Mortgagor is authorized to settle and adjust any claim under insurance policies which insure against such risks, subject to the approval of Mortgagee. If at the time of loss or damage there exists a Default or, with respect to matters relating to things other than payment of the obligations under the Note, a default which, with the passage of any applicable cure or grace period, would become a Default, Mortgagee is authorized to settle and adjust any claim under insurance policies which insure against such risks, subject to the rights of the First Lender. Mortgagee, in conjunction with the First Lender, is authorized to collect and issue a receipt for any such insurance money. Such insurance proceeds shall be held by Mortgagee in conjunction with the First Lender and shall be used to reimburse Mortgagor for the cost of the rebuilding or restoration of buildings or improvements on the Development. Irrespective of whether such insurance proceeds are or are not adequate for such purpose, the Development shall be so restored, repaired or rebuilt by Mortgagor so as to be of at least equal value and substantially the same character as those prior to such damage or destruction. If the cost of rebuilding, repairing or restoring the Development can reasonably be expected to exceed the sum of Twenty-Five Thousand and 00/100 Dollars (\$25,000.00), then Mortgagor must obtain the written consent of Mortgagee to the plans and specifications of such work before such work shall be commenced. In any case where the insurance proceeds are made available for repairing, rebuilding and restoring, such proceeds shall be disbursed in the manner and under the conditions that Mortgagee may require, and upon Mortgagee's being furnished with satisfactory evidence of the estimated cost of completion thereof and with architect's certificates, waivers of lien, contractor's and subcontractors' sworn statements and other evidence of cost and payments so that Mortgagee can verify that the amounts disbursed in connection with such work is free and clear of mechanic's lien or other lien claims. If the estimated cost of completion exceeds the amount of the insurance proceeds available, Mortgagor shall immediately, on written demand of Mortgagee, deposit with Mortgagee in cash the amount of such estimated excess cost. No payment made prior to the final completion of the work performed shall exceed ninety percent (90%) of the value of the work performed from time to time, and at all times, the undisbursed balance of such proceeds remaining in the hands of the disbursing party shall be at least sufficient to pay for the cost of completion of the work, free and clear of any liens. Any surplus which may remain out of said insurance proceeds after payment of such cost of rebuilding, repairing or restoring shall, at the option of Mortgagee, be applied toward the Mortgage Debt or be paid to any party entitled thereto, without interest. Any additional monies advanced by Mortgagee to Mortgagor for the repairing, rebuilding or restoring of the Development shall be added to the Mortgage Debt and shall be

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secured by this Mortgage.

**6. Payment of Taxes, Insurance Premiums, Utility Charges**

Mortgagor shall pay when due all real estate taxes, assessments, water rates, sewer, gas or electric charges, insurance premiums and any imposition or lien on the Development, and in default thereof, Mortgagee may, at its option, pay the same. The sum or sums so paid by Mortgagee shall be added to the Mortgage Debt and shall bear interest at the Default Rate, as stated in the Note. Mortgagee shall have the right to declare immediately due and payable any amount paid by it for any such real estate tax, assessment, water rate, sewer, gas or electric charge, insurance premium or imposition or lien, whether or not the same shall have priority over this Mortgage. Mortgagor shall, upon written request of Mortgagee, furnish to Mortgagee duplicate receipts evidencing payment of taxes and assessments, insurance premiums and utility charges. Notwithstanding the foregoing, Mortgagor may contest the validity or amount of any real estate taxes in good faith; provided, however, that Mortgagor shall deposit with Mortgagee an amount deemed reasonably necessary by Mortgagee to pay such taxes in the event that Mortgagee's challenge shall fail.

**7. Limitations on Sale, Assignments, Transfers, Encumbrances and Control**

(a) Mortgagor agrees that in determining whether or not to make the Loan, Mortgagee evaluated the background and experience of Mortgagor in owning and operating property such as the Development, found them acceptable and relied and continues to rely upon the same as the means of maintaining the value of the Development which is Mortgagee's primary security for the Note. Mortgagor is experienced in borrowing money and owning and operating property such as the Development, has been ably represented by a licensed attorney at law in the negotiation and documentation of the Loan and bargained at arms's length and without duress of any kind for all of the terms and conditions of the Loan, including this provision. Mortgagor recognizes that Mortgagee is entitled to keep its loan portfolio at current interest rates by, among other things, making new loans at such rates. Mortgagor further recognizes that any further financing placed upon the Development (i) could divert funds which would otherwise be used to pay the Note secured hereby, (ii) could result in acceleration and foreclosure of such further encumbrance, which would force Mortgagee to take measures and incur expenses to protect its security, (iii) would detract from the value of the Development should Mortgagee come into possession thereof with the intention of selling same, and (iv) would impair Mortgagee's right to accept a deed in lieu of foreclosure, because a foreclosure by Mortgagee would be

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necessary to clear the title to the Development.

In accordance with the foregoing and for the purposes of (i) protecting Mortgagee's security for the repayment of the Loan, the value of the Development, the payment of the Mortgage Debt and performance of Mortgagor's obligations under the Loan Documents; (ii) giving Mortgagee the full benefit of its bargain and contract with Mortgagor; and (iii) keeping the Development free of subordinate financing liens, Mortgagor agrees that if this Paragraph 7 be deemed a restraint on alienation, that it is a reasonable one, and that Mortgagor shall not, without the prior written consent of Mortgagee, create, effect, consent to, suffer or permit any "Prohibited Transfer". A "Prohibited Transfer" shall include any sale or other conveyance, transfer, lease or sublease, mortgage, refinancing, assignment, pledge, grant of a security interest, grant of any easement, license or right-of-way affecting the Development, hypothecation or other encumbrance of the Development, any interest therein or any interest in Mortgagor's interest in the Development or any interest in Trustee or Beneficiary, in each case whether any such Prohibited Transfer is effected directly, indirectly, voluntarily or involuntarily, by operation of law or otherwise; provided, however, that Mortgagor, without the prior written approval of Mortgagee, may:

- (i) grant easements, licenses or rights-of-way over, under the Development, so long as such easements, licenses or rights-of-way do not diminish the value or usefulness of the Development, as determined by Mortgagee in advance in writing;
- (ii) sell, transfer or otherwise convey limited partnership interests in the Mortgagor; and
- (iii) mortgage the Development in favor of the First Lender.

Mortgagee's written approval as required in this subparagraph 7(a) shall be granted, conditioned or withheld as the Mortgagee alone shall determine, except that with respect to sales, transfers, conveyances or other changes of Beneficiary's general partner, Mortgagee's consent shall not be unreasonably withheld or delayed.

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

- (i) any right to manage or receive the rents and profits from the Development; or

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- (ii) any general partnership interest, stock ownership interest or other interest in an entity or person comprising Mortgagor, except limited partnership interests in the Beneficiary,

shall be deemed a sale, conveyance, assignment, hypothecation or other transfer for the purposes of the restrictions imposed by the foregoing subparagraph 7(a). Furthermore, Mortgagor shall not, without the prior written consent of Mortgagee, permit the transfer of "control" of the Development to any other person or legal entity. For the purposes of the foregoing sentence, the term "control" shall mean the power to direct or cause the direction of the management and policies of the Development by the voting of securities or by contract.

Notwithstanding anything herein to the contrary, Mortgagor shall have the right, subject to Mortgagee's prior written approval, which approval shall not be unreasonably withheld, to sell the Development and assign this Mortgage and Mortgagor's right, title and interest in the other Loan Documents to another owner-mortgagor of the Development who expressly agrees to assume and comply with the terms of this Mortgage and all other Loan Documents on the same terms and conditions as apply to Mortgagor. The assumption transaction, any documents pertaining thereto deemed necessary by Mortgagee, shall be in form and substance satisfactory to Mortgagee.

The provisions of this Paragraph 7 shall not apply to (i) liens securing the Mortgage Debt, (ii) the lien of current taxes and assessments not yet due or payable, (iii) liens or encumbrances specifically permitted by the terms hereof or contested in accordance with the terms of this Mortgage and (iv) residential leases of individual units of the Development entered into in the ordinary course of business, provided that such leases have been entered into in conformity with the Regulatory Agreement. Mortgagor acknowledges that any agreements, liens or encumbrances created in violation of the provisions of this Paragraph 7 shall, at the option of Mortgagee, be voidable and, if Mortgagee exercises the option to void such agreement, lien or encumbrance, it shall be of no further force or effect, and to the extent the provisions of this Paragraph 7 conflict with or are inconsistent with similar provisions of the Note or any of the Loan Documents, the provisions of this Paragraph 7 shall govern and control.

## 8. Acknowledgment of Mortgage Debt

Mortgagor, within five (5) days from the receipt of written notice from the Mortgagee as provided in Paragraph 22 hereof, shall furnish to Mortgagee a written statement, duly acknowledged, of the amount advanced to it which is secured by



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this Mortgage, and/or the amount due to Mortgagee in order to release this Mortgage, and whether any offsets or defenses exist against the Mortgage Debt.

## 9. Subordination

This Mortgage shall be subject and subordinate in all respects to that certain mortgage dated as of August 30, 1991, between Mortgagor and Southwest Federal Savings Bank (the "First Lender"), recorded as Document No. 91460791 with the Cook County Recorder of Deeds on September 6, 1991 (the "First Mortgage"), to secure indebtedness in the original principal amount of ONE MILLION TWO HUNDRED THOUSAND AND NO/100 DOLLARS (\$1,200,000.00) (the "First Loan"); (the First Mortgage and all other documents evidencing, securing or governing the First Loan shall hereinafter be referred to as the "Senior Loan Documents"). Mortgagor shall not modify, extend or amend the First Mortgage, increase the amount of the indebtedness secured thereby, or incur additional indebtedness secured by a lien against any or all of the Development, without the prior written consent of the Mortgagee. So long as the Senior Loan Documents are in full force and effect, in the event of any conflict between the provisions of the Loan Documents and those of the Senior Loan Documents, the provisions of the Senior Loan Documents shall control. Any waiver or forbearance by the First Lender of any right or remedy under the Senior Loan Documents shall not impair the priority of their liens under the Senior Loan Documents, as applicable.

## 10. Assignment of Rents and Leases

As additional security for the payment of the Note secured hereby, and for the faithful performance of the terms and conditions contained herein, Mortgagor, subject to the rights of the First Lender, assigns to Mortgagee all of its right, title and interest as landlord in all current and future leases of the Development (the "Leases") and to any rents due and security deposits (held by Mortgagor) under such current or future leases of the Development (the "Assignment"). Notwithstanding anything herein to the contrary, so long as there exists no Default hereunder, as defined below, Mortgagor shall have the right to collect all rents, security deposits, income and profits from the Development and to retain, use and enjoy these funds.

Nothing in this Mortgage or any of the other Loan Documents shall be construed to obligate Mortgagee, expressly or by implication, to perform any of the covenants of any landlord under any of the leases assigned to Mortgagee or to pay any sum of money or damages therein provided to be paid by the landlord, each and all of which covenants and payments Mortgagor agrees to perform and pay.

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Subject to the rights of the First Lender, from and after a Default hereunder, or a default under the Note, or under any other Loan Documents, Mortgagee, in addition to the remedies set forth in Paragraph 13 hereof, is vested with full power to use all measures, legal and equitable, deemed by it necessary or proper to enforce this Assignment to collect the rents, income and profits assigned hereunder, including the right of Mortgagee or its designee to enter upon the Development, or any part thereof, with or without force and with or without process of law, with power to eject or dispossess tenants and to rent or lease any portion of the Development on any terms approved by Mortgagee and take possession of all or any part of the Development together with all personal property, fixtures, documents, books, records papers and accounts of Mortgagor relating thereto, and to exclude Mortgagor, its agents, and servants, wholly therefrom. Mortgagor hereby grants full power and authority to Mortgagee to exercise all rights, privileges and powers herein granted at any and all times from and after such Default or default, with full power to use and apply all of the rents and other income herein assigned to the payment of the costs of managing and operating the Development and of any indebtedness or liability of Mortgagor to Mortgagee, including but not limited to the payment of taxes, special assessments, insurance premiums, damage claims, the costs of maintaining, repairing, rebuilding and restoring the Development or of making the same rentable, attorneys' fees incurred in connection with the enforcement of this Mortgage, and of principal and interest payments due from Mortgagor to Mortgagee on the Note and the Mortgage, all in such order as Mortgagee may determine; Mortgagee shall be under no obligation to exercise or prosecute any of the rights or claims assigned to it hereunder or to perform or carry out any of the obligations of the landlord under any of the Leases and does not assume any of the liabilities in connection with or arising or growing out of the covenants and agreements of Mortgagor in the leases. Mortgagor agrees to indemnify Mortgagee and to hold it harmless from any liability, loss or damage, including, without limitation, reasonable attorneys' fees, which may be incurred by it under the Leases or by reason of this Assignment and from any and all claims and demands whatsoever which may be asserted against Mortgagor by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in any of the Leases, except for those losses which occur due to Mortgagee's gross negligence or willful misconduct. It is further understood that Mortgagee shall not be responsible for the control, care, management or repair of the Development, or parts thereof, nor shall Mortgagee be liable for the performance of any of the terms and conditions of any of the Leases, or for any waste of the Development by any tenant under any of the Leases or by any other person, or for any dangerous or defective condition of the Development or for any negligence in the management, upkeep, repair or control of the Development resulting in loss or injury

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or death to any lessee, licensee, employee or stranger.

## **11. Security Interest**

From time to time whenever written demand may be made therefor by Mortgagee, Mortgagor, within six (6) days following such demand, shall execute and deliver to Mortgagee documents sufficient in form and content to grant to Mortgagee a security interest under the Code (or to perfect, or to continue the perfection of, such security interest) covering the equipment, chattels, and personal property then or thereafter to be installed in, or used in connection with the operation or maintenance of the physical improvements in connection with the Development; and any delay, failure or refusal so to do shall constitute a Default; and all the equipment, chattels, and personal property aforesaid shall be and remain clear and unencumbered except by this Mortgage, the First Mortgage, any security interest granted under the Senior Loan Documents and the security interest under the Code delivered to Mortgagee, and such equipment, chattels, or personal property shall not be removed from the lien of this Mortgage unless promptly replaced with equipment, chattels or personal property of like quality. Mortgagor shall not attach to or incorporate into the Development any personal property that is subject to a security interest under the Code of anyone other than Mortgagee, other than the First Lender or the holders of the notes secured by the First Mortgage.

## **12. Events of Default**

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

(a) A default in the payment of any installment, fee or charge under the Note that continues unsecured for fifteen (15) days after its due date;

(b) A default by Trustee or Beneficiary in the observance or performance of any covenants, agreements or conditions contained, required to be kept or observed under any of the Loan Documents or any other instrument evidencing, securing or relating to the Loan not cured within the time, if any, specified therein;

(c) A default by Mortgagor, declared by the First

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Lender, continuing beyond all applicable cure periods under the financing secured by the Senior Loan Documents and permitting foreclosure thereunder.

(d) Failure to exhibit to Mortgagee, within ten (10) days after demand made therefor, receipted bills showing the payment of all real estate taxes, assessments, water rates, sewer, gas or electric charges, insurance premiums, or any charge or imposition, subject to Mortgagee's right to contest pursuant to Paragraph 6 hereof;

(e) Failure to pay, on or before the due date, any real estate tax, assessment, water rate, sewer, gas or electric charge, insurance premium, any reserve required by Mortgagee, or any charge or imposition heretofore or hereafter made, which is or may become a lien on the Development, subject to Mortgagee's right to contest pursuant to Paragraph 6 hereof;

(f) Pursuant to Paragraph 28 below, failure to pay the amounts secured by this Mortgage within thirty (30) days after notice and demand given by Mortgagee in the event of the passage after the date hereof of any law of the State of Illinois deducting from the value of the Development for the purpose of taxation, any lien thereon, or changing in any way the laws for the taxation of mortgages or of debts secured by mortgages, for State or local purposes, or the manner of the collection of any such taxes, so as to affect this Mortgage or any of the other Loan Documents;

(g) Failure on the part of Mortgagor to maintain the Development in a rentable and tenantable state of repair, within thirty (30) days after notice of the condition of the Development is given to Mortgagor by Mortgagee; or, failure on the part of Mortgagor to maintain the Development in a status required by any governmental entity after notice of a violation of law is given by such governmental entity claiming jurisdiction of the Development; or failure on the part of Mortgagor, to comply with all or any of the statutes, requirements, orders or decrees of any Federal, State or municipal entity relating to the use of the Development, or of any part thereof; provided, however, that if the condition is not reasonably curable despite Mortgagor's diligent efforts to cure such condition within such thirty (30) day period, Mortgagor shall have such additional time as is reasonably necessary to cure such condition so long as Mortgagor continues to make every diligent effort to cure such condition; and provided further, however, that in no event shall Mortgagor have the lesser of one hundred twenty (120) days or the time allotted by the Federal, State or municipal entity claiming jurisdiction over the Development to cure such condition;

(h) Failure to permit Mortgagee, its agents or representatives, at any and all reasonable times to inspect the

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Development, or to examine and make copies of the books and records of Mortgagor;

(i) If petition in bankruptcy is filed by or against Mortgagor, or a receiver or trustee of the property of Mortgagor is appointed, or if Mortgagor makes an assignment for the benefit of creditors or is adjudicated insolvent by any State or Federal court, except that in the case of an involuntary petition, action or proceeding for the adjudication as a bankrupt or for the appointment of a receiver or trustees of the property of Mortgagor not initiated by Mortgagor, Mortgagor shall have ninety (90) days after the service of such petition or the commencement of such action or proceeding, as the case may be, within which to obtain a dismissal of such petition, action or proceeding, provided that Mortgagor is not otherwise in default under the terms of this Mortgage, including, but not limited to, the payment of interest, principal and any other payments due hereunder;

(j) Failure to comply with the Illinois Affordable Housing Act, 310 ILCS 25/1 et seq. (1992) (the "Trust Fund Act"), as amended and supplemented, the rules promulgated thereunder, the Act and any rules, policies and procedures and regulations duly promulgated from time to time by Mortgagee, within thirty (30) days after Mortgagee gives Mortgagor notice of such failure; provided, however, that if the default is not reasonably curable despite Mortgagor's diligent efforts to cure such failure within such thirty (30) day period, Mortgagor shall have such additional time as is reasonably necessary to cure such failure so long as Mortgagor continues to make every diligent effort to cure such failure; and provided further, however, that in no event shall Mortgagor have more than one hundred twenty (120) days to cure such failure; or

(k) the occurrence of a Prohibited Transfer; provided, however, that if such Prohibited Transfer does not, in Mortgagee's sole judgment, endanger the lien granted hereunder, Mortgagor shall have thirty (30) days after Mortgagee gives Mortgagor notice of such Prohibited Transfer to cure such Prohibited Transfer; or

(l) A default in the performance or a breach of any of the other covenants or conditions contained, required to be kept or observed in any of the provisions of this Mortgage not cured within thirty (30) days after notice to Mortgagor provided, however, that if such Default is of a nature such that it cannot be cured within thirty (30) days despite Mortgagor's diligent efforts to cure such default, then, Mortgagor shall have such additional time as is reasonably necessary to cure such default so long as the cure is commenced within such thirty (30) day period, and Mortgagor continues to use diligent efforts to cure such default in good faith.

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ASSIGNOR NO

ASSIGNEE NO

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If, while any insurance proceeds or condemnation awards are being held by Mortgagee to reimburse Mortgagor for the cost of rebuilding or restoring of buildings or improvements on the Development, Mortgagee shall be or become entitled to, and shall, accelerate the Mortgage Debt, then and in such event, and subject to the rights of the First Lender, Mortgagee shall be entitled to apply all such insurance proceeds and condemnation awards then held by it in reduction of the Mortgage Debt, and any excess held by it over the amount of indebtedness then due hereunder shall be returned to Mortgagor, or any party entitled thereto, without interest.

### 13. Mortgagee's Remedies

To the extent provided in this Mortgage, and subject to the rights of the First Lender, the rents, issues and profits of the Development are specifically mortgaged, granted, pledged and assigned to Mortgagee as further security for the payment of the Mortgage Debt. Upon a Default, the holder of the Note and this Mortgage, as attorney-in-fact of Mortgagor or the then owner of the Development, shall thereupon be clothed with and shall possess all the powers, rights, remedies and authority of Mortgagor, as the landlord of the Development, with power to institute mortgage foreclosure proceedings, to eject or dispossess tenants and to rent or lease any portion or portions of the Development; in such event, Mortgagor shall, on demand, surrender possession of the Development to the holder of this Mortgage, and such holder may enter upon the Development and rent or lease it on any terms approved by it, and may collect all the rents that are due or become due, and may apply them, after payment of all charges and expenses, including the making of repairs that, in its judgment, may be necessary, on account of the Mortgage Debt; and the rents and all leases existing at the time of such Default are assigned to the holder of this Mortgage as further security for the payment of the Mortgage Debt. In the case of such a Default, the holder of this Mortgage, by virtue of such right to possession or as the agent of Mortgagor, may dispossess by legal proceedings, or other legally available means, any tenant defaulting in the payment to the holder of this Mortgage of any rent, and Mortgagor irrevocably appoints the holder of this Mortgage its agent for such purposes. If the then owner of the Development is an occupant of any part of the Development, such occupant agrees to surrender possession of the Development to the holder of this Mortgage immediately upon any such Default, and, if such occupant remains in possession, the possession shall be as tenant of the holder of this Mortgage, and such occupant agrees to pay monthly in advance to the holder of this Mortgage a rental determined by the holder of this Mortgage (in its sole discretion) for the portion of the Development so occupied, and in default of so doing, such occupant may also be dispossessed by the usual summary proceedings. Mortgagor makes these covenants for itself and, to the extent possible, for any

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subsequent owner of the Development, and these covenants shall become effective, immediately after the happening of any such Default, solely on the determination of the then holder of this Mortgage, who shall give notice of such determination to the Mortgagor or the then owner of the Development. In the case of foreclosure or the appointment of a receiver of rents, the covenants herein contained shall inure to the benefit of the holder of this Mortgage or any such receiver. In addition to the provisions of this Paragraph 13, if and when Mortgagee is placed in possession, Mortgagee shall have all rights, powers, immunities and duties provided for in Sections 15-1701 and 15-1703 of the Foreclosure Act.

## 14. Foreclosure: Expense of Litigation

Subject to the rights of the First Lender, when the Mortgage Debt, or any part of it, becomes due, whether by acceleration or otherwise, Mortgagee shall have the right to foreclose the lien hereof for any indebtedness hereunder or part thereof. In any civil action to foreclose that lien, there shall be allowed and included as additional Mortgage Debt in the order or judgment for sale all expenditures and expenses that may be paid or incurred by or on behalf of Mortgagee 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 order or judgment) of procuring all such abstracts of title, title searches and examinations, title insurance policies, surveys and similar data and assurances with respect to title as Mortgagee may deem reasonably necessary, either to prosecute such civil actions or to evidence to bidders at any sale held pursuant to such order or judgment, the true condition of the title to or the value of the Development. All such expenditures and expenses, and such expenses and fees as may be incurred in the protection of the Development and maintenance of the lien of this Mortgage, including the reasonable fees of any attorney employed by Mortgagee in any litigation or proceeding affecting this Mortgage, the Note or the Development, including probate, bankruptcy and appellate proceedings, or in preparations for the commencement or defense of any proceeding or threatened civil actions or proceeding, shall be immediately due and payable by Mortgagor, with interest thereon at the Default Rate, as specified in the Note, and shall be secured by this Mortgage. In any foreclosure sale, the Development may be sold in one or more parcels.

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## 15. Application of Proceeds of Foreclosure Sale

The proceeds of any foreclosure sale of the Development shall be distributed and applied in the following order of priority: first, on account of all costs and expenses incident to the foreclosure proceedings, including all such items as are



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mentioned in the preceding paragraph hereof; second, all other items which may under the terms hereof constitute secured indebtedness additional to the Mortgage Debt, with interest thereon as herein provided; third, all accrued interest remaining unpaid on the Note; fourth, all principal remaining unpaid on the Note; and fifth, any overplus to Mortgagor, its successors or assigns, as their rights may appear.

## **16. Appointment of Receiver**

Mortgagor agrees that, upon, or at any time after, the filing of a complaint to foreclose this Mortgage, the court in which such complaint is filed may appoint a receiver of the Development. Such appointment may be made either before or after sale, without notice, without regard to the solvency or insolvency of Mortgagor at the time of application for such receiver and without regard to the then value of the Development or whether the same shall be then occupied as a homestead or not, and the Mortgagee hereunder or any holder of the Note may be appointed as such receiver. Such receiver shall have power to collect the rents, issues and profits of the Development during the pendency of such foreclosure suit and, in case of a sale and a deficiency, during the full statutory period of redemption, whether there be redemption or not, as well as during any further times when Mortgagor, except for the intervention of such receiver, would be entitled to collect such rents, issues and profits, and all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Development during the whole of said period. The court, from time to time, may authorize the receiver to apply the net income from the Development that is in its possession in payment in whole or in part of: (a) the Mortgage Debt, or by any judgment or order 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 a foreclosure sale of the Development; and/or (b) the deficiency in case of a sale of the Development and deficiency thereunder. In addition to the powers granted by this Paragraph 16, such receiver shall have all rights, powers, immunities and duties as provided for in Sections 15-1701 and 15-1703 of the Foreclosure Act.

## **16A. Protective Advances**

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

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those provisions of the Foreclosure Act hereinbelow referred to:

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

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

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

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

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

(f) expenses deductible from proceeds of sale as referred to in Sections 15-1512(a) and (b) of the Foreclosure Act;

(g) expenses incurred and expenditures made by Mortgagee in connection with any one or more of the following: (i) if the Development or any portion thereof constitutes one or more units under a condominium declaration, assessments imposed upon the unit owner thereof; (ii) if Mortgagor's interest in the Development is a leasehold estate under a lease or sublease, rentals or other payments required to be made by the lessee under the

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terms of the lease or sublease; (iii) premiums for casualty and liability insurance paid by Mortgagee, whether or not Mortgagee or a receiver is in possession, if reasonably required, in reasonable amounts, and all renewals thereof, without regard to the limitation of maintaining existing insurance in effect at the time any receiver or mortgagee takes possession of the Development imposed by Section 15-1704(c)(1) of the Foreclosure Act; (iv) repair or restoration of damage or destruction in excess of available insurance proceeds or condemnation awards; (v) payments deemed by Mortgagee to be required for the benefit of the Development or required to be made by the owner of the Development under any grant or declaration of easement, easement agreement, agreement with any adjoining land owners or instruments creating covenants or restrictions for the benefit of or affecting the Development; (vi) shared or common expense assessments payable to any association or corporation in which the owner of the Development is a member in any way affecting the Development; (vii) if the loan secured hereby is a construction loan, costs incurred by Mortgagee for demolition, preparation for and completion of construction, as may be authorized by the applicable commitment, loan agreement or other agreement; (viii) payments required to be paid by Mortgagor or Mortgagee pursuant to any lease or other agreement for occupancy of the Development; and (ix) if the Mortgage is insured, payments of FHA or private mortgage insurance required to keep such insurance in force.

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

(h) any determination of the amount of the Mortgage Debt at any time;

(i) the indebtedness found due and owing to Mortgagee in the judgment of foreclosure and any subsequent supplemental judgments, orders, adjudications or findings by the court of any additional indebtedness becoming due after such entry of judgment, it being agreed that in any foreclosure judgment, the court may reserve jurisdiction for such purpose;

(j) if right of redemption has not been waived by this Mortgage, computation of amounts required to redeem, pursuant to subsections 15-1603(d)(2) and (e) of the Foreclosure Act;

(k) determination of amounts deductible from sale proceeds pursuant to Section 15-1512 of the Foreclosure Act;

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(l) application of income in the hands of any receiver or Mortgagee in possession; and

(m) computation of any deficiency judgment pursuant to Sections 15-1508(b)(2), 15-1508(e) and 15-1511 of the Foreclosure Act.

## **16B. Waiver of Redemption**

Mortgagor acknowledges that the Development does not constitute Agricultural Real Estate, as defined in Section 15-1201 of the Foreclosure Act, or Residential Real Estate as defined in Section 15-1219 of the Foreclosure Act. Pursuant to Section 15-1601(b) of the Foreclosure Act, Mortgagor hereby waives any and all right of redemption.

## **17. Rights Cumulative**

Each right, power and remedy herein conferred upon Mortgagee is cumulative and in addition to every other right, power or remedy, express or implied, given now or hereafter existing, at law or in equity, and each and every right, power and remedy 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 Mortgagee; the exercise or the beginning of the exercise of one right, power or remedy shall not be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy, and no delay or omission of Mortgagee in the exercise of any right, power or remedy accruing hereunder or arising otherwise shall impair any such right, power or remedy, or be construed to be a waiver of or acquiescence in any Default.

## **18. Effect of Extensions of Time**

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

## **19. Mortgagee's Right of Inspection**

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

## **20. Condemnation**

Subject to the rights of the First Lender, any award (the

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"Award") made to the present, or any subsequent, owner of the Development by any governmental or other lawful authority for the taking, by condemnation or eminent domain, of all or any part of the Development, are assigned by Mortgagor to Mortgagee. Mortgagee may collect any such Award from the condemnation authorities, and may give appropriate acquittance therefor. Mortgagor shall immediately notify Mortgagee of the actual or threatened commencement of any condemnation or eminent domain proceedings affecting any part of the Development and shall deliver to Mortgagee copies of all papers served in connection with any such proceedings. Mortgagor shall make, execute and deliver to Mortgagee, at any time upon request, free of any encumbrance, any further assignments and other instruments deemed necessary by Mortgagee for the purpose of assigning the Award to Mortgagee. Mortgagor shall not approve or accept the amount of any Award or sale price without approval by Mortgagee of such amount, confirmed in writing by an authorized officer of Mortgagee. If Mortgagor does not diligently pursue any such actual or threatened eminent domain proceedings and competently attempt to obtain a proper settlement or Award, Mortgagee, at Mortgagee's option, may take such steps, in the name of and in behalf of Mortgagor, as Mortgagee deems necessary to obtain such settlement or Award, and Mortgagor shall execute such instruments as may be necessary to enable Mortgagee to represent Mortgagor in such proceedings. If any portion of or interest in the Development is taken by condemnation or eminent domain, and the remaining portion of the Development is not, in the judgment of Mortgagee, a complete economic unit that, after restoration, would have equivalent value to the Development as it existed prior to the taking, then, at the option of Mortgagee, the entire Mortgage Debt shall immediately become due. Subject to the rights of the First Lender, after deducting from the Award for such taking all of its expenses incurred in the collection and administration of the Award, including reasonable attorneys' fees, Mortgagee shall be entitled to apply the net proceeds toward repayment of such portion of the Mortgage Debt as it deems appropriate without affecting the lien of this Mortgage. In the event of any partial taking of the Development or any interest in the Development that, in the judgment of Mortgagee, leaves the Development as a complete economic unit having equivalent value after restoration to the Development as it existed prior to the taking, and provided Mortgagor is not in Default, the Award shall be applied to reimburse Mortgagor for the cost of restoration and rebuilding the Development accordance with plans, specifications and procedures approved in advance by Mortgagee, and such Award shall be disbursed in the same manner as is provided above for the application of insurance proceeds. If all or any part of the Award is not applied for reimbursement of such restoration costs, the Award shall, at the option of Mortgagee, be applied against the Mortgage Debt, in such order or manner as Mortgagee elects, or paid to Mortgagor.

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## 21. Release upon Payment and Discharge of Mortgagor's Obligations

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

## 22. Giving of Notice

Any notice, demand, request or other communication which any party may desire or may be required to give to any other party hereunder shall be given in writing (at the addresses set forth below) by any of the following means: (a) personal service; (b) electronic communication, whether by telegram or telecopier, together with confirmation of transmission; (c) overnight courier; or (d) registered or certified United States mail, postage prepaid, return receipt requested.

Mortgagor: Marquette National Bank,  
6316 S. Western Ave.  
Chicago, Illinois 60636  
Attn: Trust Department  
Fax: (312) 476-8791

With copies to:

Churchview Limited Partnership  
c/o Churchview Corp.  
2601 West 63rd Street  
Chicago, Illinois 60629  
Attn: James Capraro  
Fax: (312) 417-8205

and:

Keck, Mahin and Cate  
77 W. Wacker Dr.  
49th Floor  
Chicago, Illinois 60601  
Attn: Mark Burns  
Fax: (312) 634-5000

Mortgagee: Illinois Housing Development  
Authority  
401 N. Michigan Ave., Suite 900  
Chicago, IL 60611  
Attention: Legal Department  
Fax: (312) 835-5215

Such addresses may be changed by notice to the other party given in the same manner as herein provided. Any notice, demand, request or other communication sent pursuant to either subsection

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(a) or (b) hereof shall be served and effective upon such personal service or upon dispatch by such electronic means, together with confirmation of transmission. Any notice, demand, request or other communication sent pursuant to subsection (c) shall be served and effective one (1) business day after deposit with the overnight courier. Any notice, demand, request or other communication sent pursuant to subsection (d) shall be served and effective three (3) business days after proper deposit with the United States Postal Service.

Except as otherwise specifically required herein, notice of the exercise of any right or option granted to Mortgagor by this Mortgage is not required to be given.

## **23. Waiver of Defense**

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

## **24. Illinois Mortgage Foreclosure Act**

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

## **25. Waiver of Statutory Rights**

Mortgagor shall not apply for or avail itself of any appraisal, valuation, stay, extension or exemption laws, or any so-called "Moratorium Laws," now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, but hereby waives the benefit of such laws. Mortgagor, for itself and all who may claim through or under it, waives any and all right to have the property and estates comprising the Development marshalled upon any foreclosure of the lien hereof, and agrees that any court having jurisdiction to foreclose such lien may order the Development sold as an entirety. Mortgagor does hereby expressly waive any and all rights of redemption under any order or decree of foreclosure of this Mortgage on behalf of Mortgagor, the trust estate and all persons beneficially interested therein, and on behalf of each

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and every person, except decree or judgment creditors of Mortgagor, in its representative capacity, and the trust estate, acquiring any interest in or title to the Development subsequent to the date of this Mortgage.

## **26. Furnishing of Financial Statements to Mortgagee**

Mortgagor shall keep and maintain books and records of account in which full, true and correct entries shall be made of all dealings and transactions relative to the Development, which books and records of account shall, at reasonable times, and on reasonable notice, be open to the inspection of Mortgagee and its accountants and other duly authorized representatives. Such books of record and account shall be kept and maintained in accordance with (a) generally accepted accounting practice consistently applied and (b) such additional requirements as Mortgagee may require.

## **27. Filing and Recording Fees**

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

## **28. Effect of Changes in Laws Regarding Taxation**

In the event of the enactment after the date of this Mortgage of any law of the State of Illinois deducting from the value of the Development for the purpose of taxation any lien thereon, or imposing upon, Mortgagee the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by Mortgagor, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or Mortgagee's interest in the Development, or the manner of collection of taxes, so as to affect this Mortgage or the debt secured hereby or the holders thereof, then, and in any event, Mortgagor, upon demand by Mortgagee, shall pay such taxes or assessments, or reimburse Mortgagee therefor; provided, however, that if in the opinion of counsel for Mortgagee (a) it might be unlawful to require Mortgagor to make such payment or (b) the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then and in such event, Mortgagee may elect, by notice given to Mortgagor as provided in Paragraph 22 hereof, to declare all of the indebtedness secured hereby to be and become due and payable thirty (30) days from the giving of such notice.

## **29. Business Purpose**



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Mortgagor recognizes and agrees that the proceeds of the loan secured by this Mortgage will be used for the purposes specified in Paragraph 204 of Chapter 810 of the Illinois Compiled Statutes, and that the principal obligation secured hereby constitutes a "business loan" within the purview of that Paragraph.

## 30. Miscellaneous

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

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

c. Mortgagor shall not, by act or omission, permit any building or other improvement comprising the Development, not subject to the lien of this Mortgage, to rely on the Development or any part thereof or any interest therein to fulfill any municipal or governmental requirement, and Mortgagor hereby assigns to Mortgagee any and all rights to give such consent for all or any portion of the Development or any interest therein to be so used. Similarly, Mortgagor shall not permit the Development to rely on any premises not subject to the lien of this Mortgage or any interest therein to fulfill any governmental or municipal requirement. Mortgagor shall not, by act or omission, impair the integrity of the Development as a single zoning lot separate and apart from all other premises.

d. Mortgagee shall have the right, at its option, to foreclose this Mortgage, subject to the rights of any tenant or tenants of the Development, and the failure to make any such tenant or tenants a party defendant to any such civil action or to foreclose their rights will not be asserted by Mortgagor as a defense in any civil action instituted to collect the Mortgage

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Debt, or any part thereof, any statute or rule of law at any time existing to the contrary notwithstanding.

e. At the option of Mortgagee, this Mortgage shall become subject and subordinate, in whole or in part (but not with respect to priority of entitlement to insurance proceeds or any award in condemnation) to any and all leases in connection with the Development upon the execution by Mortgagee and recording or registering thereof, at any time hereafter, in the office wherein this Mortgage was recorded or registered, of a unilateral declaration to that effect.

f. Mortgagor, upon written request of Mortgagee, will furnish a signed statement of the amount of the Mortgage Debt and whether or not any Default then exists hereunder and specifying the nature of such Default or Defaults.

## 31. Security Agreement

Subject to the rights of the First Lender, Mortgagor and Mortgagee agree that this Mortgage shall constitute a Security Agreement within the meaning of the Code with respect to any property included in the definition herein of the word "Development," which property may not be deemed to form a part of the Real Estate or may not constitute a "fixture" (within the meaning of Section 9-313 of the Code), and all replacements of such property, substitutions for such property, additions to such property, and the proceeds thereof (such property and the replacements, substitutions and additions thereto and the proceeds thereof are sometimes hereinafter collectively referred to as the "Collateral"), and that Mortgagor grants a security interest in and to the Collateral to Mortgagee to secure payment of the Mortgage Debt and to secure performance by Mortgagor of the terms, covenants and provisions hereof.

All of the terms, provisions, conditions and agreements contained in this Mortgage pertain and apply to the Collateral as fully and to the same extent as to any other property comprising the Development, and the following provisions of this Paragraph 31 shall not limit the applicability of any other provision of this Mortgage, but shall be in addition thereto:

a. Mortgagor (the Debtor, as that term is used in the Code) is and will be the true and lawful owner of the Collateral, subject to no liens, charges or encumbrances other than the lien hereof, other liens and encumbrances benefitting Mortgagee and the holder of the mortgage(s) permitted under Paragraph 9 hereof, and any other liens permitted hereunder.

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

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

d. Upon a Default hereunder, subject to the rights of the First Lender, Mortgagee 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 may, so far as Mortgagor can give authority therefor, with or without judicial process, enter (if this can be done without breach of the peace) upon any place in which the Collateral or any part thereof may be situated and remove the Collateral therefrom (provided that if the Collateral is affixed to the Real Estate, such removal shall be subject to the conditions stated in the Code); and Mortgagee shall be entitled to hold, maintain, preserve and prepare the Collateral for sale, until disposed of, or may propose to retain the Collateral, subject to Mortgagor's right of redemption, in satisfaction of Mortgagor's obligations, as provided in the Code. Mortgagee may (i) render the Collateral unusable without removal, (ii) dispose of the Collateral on the Development, or (iii) require Mortgagor to make the Collateral available to Mortgagee for its possession at a place to be designated by Mortgagee that is reasonably convenient to both parties. Mortgagee 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 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 United States mail or equivalent, postage prepaid, to the address of Mortgagor hereinabove set forth at least ten (10) days before the time of such sale or disposition. Mortgagee may buy the Collateral at any public sale and, if the Collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations, Mortgagee may buy the Collateral at any private sale. Any such sale may be held as part of and in conjunction with any foreclosure sale of the Development; the Development, including the Collateral, may be sold as one lot if Mortgagee so elects. The net proceeds realized upon any such disposition, after deduction for the expenses of retaking, holding, preparing for sale, selling or the like and the reasonable attorneys' fees and reasonable legal expenses incurred by Mortgagee, shall be applied against the indebtedness hereby secured in such order or manner as Mortgagee shall select. Mortgagee will pay to Mortgagor any surplus realized on such disposition.

e. The terms and provisions contained in this

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Paragraph 31 shall, unless the context otherwise requires, have the meanings and be construed as provided in the Code.

f. This Mortgage is intended to be a financing statement within the purview of the Code with respect to the Collateral and the goods described herein, which goods are or may become fixtures relating to the Development. The addresses of Mortgagor (Debtor) and Mortgagee (Secured Party) are set forth above. This Mortgage is to be filed for record with the Cook County Recorder of Deeds. Mortgagor is the record owner of the Development.

In the event of a Default under this Mortgage, Mortgagee, pursuant to the appropriate provisions of the Code, shall have the option of proceeding as to both real and personal property in accordance with its rights and remedies with respect to the Development, in which event the default provisions of the Code shall not apply.

## 32. Non-waiver

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

## 33. Maximum Indebtedness

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

## 34. Additional Governing Law

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

## 35. Non-Recourse Loan

Notwithstanding anything herein to the contrary, except for

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fraud or with respect to that certain Environmental Indemnity Agreement entered into by and between Beneficiary and Mortgagee in connection with the Loan (the "Environmental Indemnity"), the Loan is a non-recourse obligation of Mortgagor. Neither Mortgagor nor any other party shall have any personal liability for repayment of the Loan. Except in the event of fraud, the sole recourse of Mortgagee under the Loan Documents for repayment of the Loan shall be the exercise of its rights against the Development and related security interests thereunder.

## 36. Counterparts

This Mortgage may be executed in counterparts, and each counterpart shall, for all purposes for which an original of this Mortgage must be produced or exhibited, be the Mortgage, but all such counterparts shall constitute one and the same Mortgage.

## 37. Trustee Exculpation

This Mortgage is executed and delivered by Marquette National Bank, not personally, but solely as Trustee under a certain Trust Agreement dated September 12, 1988, and known as Trust No. 11969 in the exercise of the power and authority conferred upon and invested in it as such Trustee. It is expressly understood and agreed by each original and successive holder of this Mortgage, that no personal liability shall be asserted or be enforceable against said Trustee, because or in respect of the making, issue or transfer of this Mortgage, all such liability, if any, being expressly waived by each original and successive holder hereof, but nothing herein contained shall modify or discharge the personal liability for fraud or pursuant to the Environmental Indemnity expressly assumed by any other party and Mortgagee accepts the same upon the express condition that no duty shall rest upon Trustee, either personally or as said Trustee, to sequester the rents, issues and profits arising from the collateral given in connection with the Loan or the proceeds arising from the sale or other disposition thereof.

## 38. Incorporation of Rider

The provisions of the Rider to Second Mortgage, Security Agreement and Collateral Assignment of Rents and Leases attached hereto are incorporated herein by this reference.

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IN WITNESS WHEREOF, the undersigned have caused this Mortgage to be executed as of the day and year first above written.

**TRUSTEE:**

MARQUETTE NATIONAL BANK  
not personally, but solely as  
Trustee as aforesaid

**ATTEST:**

By: *Sylvia Knadit*  
Its: *Asst. Sec.*

By: *[Signature]*  
Its: *TRUST OFFICER*

**BENEFICIARY:**

CHURCHVIEW LIMITED PARTNERSHIP,  
an Illinois limited partnership

By: CHURCHVIEW CORPORATION  
its General Partner

**ATTEST:**

By: *Karen Wilson*  
Its: *[Signature]*

By: *[Signature]*  
Its: *[Signature]*

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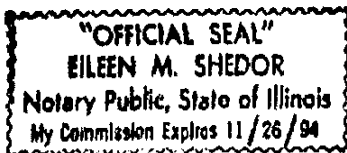
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STATE OF ILLINOIS    )  
                              )   SS  
COUNTY OF COOK        )

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that James F. Casadio and Karen Wilkosic personally known to me to be the President and Secretary of CHURCHVIEW CORPORATION, the general partner of Churchview Limited Partnership, an Illinois limited partnership, personally known to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed and delivered the said instrument in their capacities as President and Secretary of CHURCHVIEW CORPORATION as their free and voluntary act and deed and as the free and voluntary act and deed of CHURCHVIEW CORPORATION, for the uses and purposes therein set forth.

Given under my hand and official seal this 2nd day of May, 1994.



Eileen M. Shedor  
Notary Public

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CLERK OF COURT  
COOK COUNTY, ILL.

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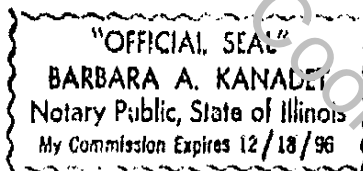
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STATE OF ILLINOIS     )  
                                  )   SS  
COUNTY OF COOK        )

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that Glen E. Skinner and Barbara Kanadet personally known to me to be the Trust Officer and Assistant Secretary of **MARQUETTE NATIONAL BANK**, personally known to be to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed and delivered the said instrument in their capacities as Trust Officer and Assistant Secretary of **MARQUETTE NATIONAL BANK**, as their free and voluntary act and deed and as the free and voluntary act and deed of **MARQUETTE NATIONAL BANK**, as trustee, for the uses and purposes therein set forth.

Given under my hand and official seal this 2nd day of May, 1994.



Barbara A. Kanadet  
Notary Public

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## EXHIBIT A

### LEGAL DESCRIPTION

LOTS 16 THROUGH 23 IN THE BLOCK 15 IN COBE AND MCKINNON'S 63RD STREET AND CALIFORNIA AVENUE SUBDIVISION OF THE WEST 1/2 OF THE SOUTHEAST 1/4 OF SECTION 13, TOWNSHIP 38 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDAN, IN COOK COUNTY, ILLINOIS.

JH/042094(LEGAL DES. RBM)(ADMIN)

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**RIDER DATED AS OF MAY/2, 1994 TO SECOND MORTGAGE,  
SECURITY AGREEMENT AND COLLATERAL ASSIGNMENT OF  
RENTS AND LEASES BY AND BETWEEN MARQUETTE NATIONAL  
BANK, AS TRUSTEE OF TRUST NO. 11969 AND CHURCHVIEW  
LIMITED PARTNERSHIP (COLLECTIVELY, "MORTGAGOR")  
AND ILLINOIS HOUSING DEVELOPMENT AUTHORITY**

Mortgagor is executing simultaneously herewith that certain Second Mortgage, Security Agreement and Collateral Assignment of Rents and Leases (the "Mortgage") in connection with the loan in the amount of Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00) being made to Mortgagor by Mortgagee. Capitalized terms contained herein and not otherwise defined shall have the meanings attributed to them in the Mortgage. In consideration of the respective covenants of the parties contained in the Mortgage, and for other good and valuable consideration, the receipt, adequacy and sufficiency of which are acknowledged, Mortgagor and Mortgagee further mutually agree as follows:

**R-1 First Mortgage.** Mortgagor has executed and delivered to the First Lender (i) that certain note in the original principal amount of One Million Two Hundred Thousand and No/100 Dollars (\$1,200,000.00) (the "First Note"); (ii) that certain first mortgage securing the First Note executed by Mortgagor in favor of the First Lender in the original principal amount of One Million Two Hundred Thousand and No/100 Dollars (\$1,200,000.00), recorded on September 30, 1991 as Document Number 91460791 with the Recorder of Deeds of Cook County, Illinois (the "First Mortgage"); and (iii) various other documents in connection with, evidencing or securing the First Note, Mortgagee acknowledges that the Mortgage is junior and subordinate to the lien of the First Mortgage.

**R-2 Mortgagor's Covenants with Respect to Senior Loan Documents.**

(a) Mortgagor covenants and agrees to comply with all of the terms and provisions of the Senior Loan Documents. If Mortgagor defaults in the performance of any term or provision contained in the Senior Loan Documents, the Mortgagee may, but shall not be obligated to, pay any principal or interest due under any of the defaulted Senior Loan Documents. To the extent the Mortgagee pays any installment of principal or interest or any other sums due under the Senior Loan Documents, Mortgagor shall become entitled to a lien on the Development covered by the applicable Senior Loan Documents in the amount of such payment, equal in rank and priority to the applicable Senior Loan Documents, and in addition to the extent necessary to make effective such rank and priority, (a) such owner and holder shall become, to the extent provided by the Senior Loan Documents and applicable law, entitled to a lien on the Development encumbered by this Mortgage and by the Senior Loan Documents, equal in rank and priority to the Senior Loan Documents, and in addition to the extent necessary to make effective such rank and priority, (a)

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Mortgagee shall become subrogated to receive and enjoy all of the rights, liens, powers and privileges granted to the First Lender and (b) the Senior Loan Documents shall remain in existence for the benefit of and to further secure the debt and other sums secured, or hereafter to become secured hereunder.

(b) Mortgagor shall give Mortgagee a copy of all notices given to Mortgagor with respect to any of the Senior Loan Documents within five (5) days after receiving such notices.

(c) Mortgagor shall not, without the prior written consent of Mortgagee, enter into any modification, extension, amendment, agreement or arrangement in connection with any of the Senior Loan Documents.

**R-3 Default under Senior Loan Documents; Mortgagee's Right to Cure.** If Mortgagor is declared by any holder of the Senior Loan Documents to be in default beyond any applicable grace or cure periods with respect to any requirement of any of the Senior Loan Documents, Mortgagor agrees that said default shall constitute a Default hereunder. Upon the occurrence of such Default, in addition to any other rights or remedies available to Mortgagee hereunder, Mortgagee may, but need not, make any payment or perform any act required to cure or attempt to cure any such default under any of the Senior Loan Documents in any manner and form deemed expedient by Mortgagee. Mortgagee shall not be responsible for determining the validity or accuracy of any claim of default made by the First Lender under the Senior Loan Documents, and the payment of any sum by Mortgagee in curing or attempting to cure any such alleged default or omission shall be presumed conclusively to have been reasonable, justified and authorized. Mortgagor grants to Mortgagee an irrevocable power of attorney, which power of attorney is coupled with an interest, for the term of this Mortgage to cure any default or forfeiture which may occur and be continuing beyond the expiry of any applicable cure or grace period under the First Mortgage. Mortgagor further agrees to execute a formal and recordable power of attorney granting such right at any time during the existence of this Mortgage if so requested by Mortgagee. All monies paid by Mortgagee in curing any default under the Senior Loan Documents, including, but not limited to, reasonable attorneys' fees and costs in connection therewith, shall bear interest from the date or dates of such payment at the Default Rate as described in the Note, shall be paid by Mortgagor to Mortgagee on demand, and shall be deemed a part of the Mortgage Debt and recoverable as such in all respects. Any inaction on the part of Mortgagee shall not be construed as a waiver of any right accruing to Mortgagee hereunder on account of any default under the Senior Loan Documents.

**R-4 Mortgagee's Right to Prepay First Note.** In the event of a Default hereunder or a default under the Senior Loan

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Documents, Mortgagee may prepay the entire balance due under the First Note and any prepayment fees or penalty incurred by Mortgagee in connection with such prepayment shall bear Default Interest from the date of such payment, as described in the Note; such Default Interest shall be paid by Mortgagor to Mortgagee upon demand, and shall be deemed a part of the Mortgage Debt and recoverable in all respects.

**TRUSTEE:**

MARQUETTE NATIONAL BANK,  
not personally, but solely as  
Trustee of Trust No. 11969

**ATTEST:**

By: *Subject*  
Its: *Asst. Sec.*

By: *[Signature]*  
Its: \_\_\_\_\_

This instrument is executed by the Marquette National Bank, not personally, but only as Trustee, and no personal liability is assumed by or shall be enforced against said Marquette National Bank because of or on account of the making of this instrument.

**OWNER:**

CHURCHVIEW LIMITED PARTNERSHIP

By: CHURCHVIEW CORPORATION

By: *[Signature]*  
Its: *PRESIDENT*

**ATTEST:**

By: *Karen [Signature]*  
Its: *Secretary*

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