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Cook County Recorder

JUNIOR PURCHASE MONEY MORTGAGE

THIS JUNIOR PURCHASE MONEY MORTGAGE, is made and delivered as of the 15th day of July, 1998 by KINZIE PARK L.L.C., an Illinois limited liability company (herein referred to as "Borrower"), for the benefit of MERCHANDISE MART OWNERS, L.L.C., an Illinois limited liability company ("Lender"), having its principal office and place of business in Chicago, Illinois.

WITNESSETH:

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A. Borrower has executed and delivered to Lender a Contingent Purchase Money Note of even date herewith in the principal amount of Five Million and No/100 Dollars (\$5,000,000.00) (which Note, together with all notes issued and accepted in substitution or exchange therefor, and as any of the foregoing may from time to time be modified or extended, is hereinafter referred to as the "Note"). The Note evidences indebtedness of the Borrower for a portion of the purchase price of the "Property" (as defined in the Note), which constitutes part of the real estate described in Exhibit A attached hereto, acquired by Borrower from Lender pursuant to that certain Agreement to Purchase Land dated as of August 22, 1997, between LaSalle National Bank, as Trustee under Trust Agreement dated August 14, 1986 and known as Trust No. 111429, as Seller, and Borrower, as Purchaser (herein referred to as the "Purchase Agreement"). The Note provides, among other things, for final payment of all principal and interest thereunder, if not sooner paid or payable as provided therein, to be due on July 15, 2008, being the tenth (10th) anniversary of the date of the Note.

B. Lender is desirous of securing the prompt payment of the Note together with interest, if any, thereon in accordance with the terms of the Note, and any additional indebtedness accruing to Lender on account of any future payments, advances or expenditures made by Lender pursuant to the Note or this Mortgage (all hereinafter sometimes collectively referred to as the "indebtedness secured hereby").

Made this 15th day of July 1998 at Chicago, Illinois
KINZIE PARK L.L.C.
By: _____
Title: _____

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NOW, THEREFORE, Borrower, to secure payment of the indebtedness secured hereby and the performance of the covenants and agreements herein contained to be performed by Borrower, and for good and valuable consideration in hand paid, the receipt and sufficiency whereof are hereby acknowledged, hereby agrees and covenants that:

ARTICLE I. GRANTING CLAUSES.

Borrower does hereby grant, mortgage, convey, transfer and assign to Lender, its successors and assigns, all of Borrower's present and hereafter acquired estate, right, title and interest in, to and under, and grants to Lender a security interest in, the following:

(a) The real property described in Exhibit A attached hereto and incorporated herein by this reference (and the real property described in Exhibit A-1 attached hereto and incorporated herein by reference, referred to herein and in the Purchase Agreement as the "Additional Parcel," if said parcel is at any time during the term of the Note acquired by Borrower, as described in Section 6.13 hereof), together with all buildings, structures and improvements now or hereafter erected thereupon and together with the fixtures and personal property hereinafter described (which real property, buildings, structures, improvements, fixtures and personal property is hereinafter sometimes referred to as the "Mortgaged Premises"); and

(b) All and singular the easements, rights-of-way, licenses, permits, rights of use or occupancy, privileges, tenements, appendages, hereditaments and appurtenances and other rights and privileges thereunto belonging or in any wise appertaining, whether now or in the future, and all the rents, issues and profits therefrom;

(c) All right, title and interest, if any, of Borrower, in and to the land lying within any street, alley, avenue, roadway or right-of-way open or proposed or hereafter vacated in front of or adjoining said Mortgaged Premises; and all right, title and interest, if any, of Borrower in and to any strips and gores adjoining said Mortgaged Premises;

(d) All machinery, apparatus, equipment, goods, systems, building materials, carpeting, furnishings, fixtures and property of every kind and nature whatsoever, now or hereafter located in or upon or affixed to the said Mortgaged Premises, or any part thereof, or used or usable in connection with any construction on or any present or future operation of said Mortgaged Premises, now owned or hereafter acquired by Borrower, including, but without limitation of the generality of the foregoing; all heating, lighting, refrigerating, ventilating, air-conditioning, air-cooling, fire extinguishing, plumbing, water lines, sewer lines and power equipment, systems and apparatus; and all motors, pumps, screens, awnings, floor coverings, cabinets, partitions, conduits, ducts and compressors; it being understood and agreed that all such machinery, equipment, apparatus, goods, systems, fixtures, and property are a part of the said Mortgaged Premises and are declared to be a portion of the security for

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the indebtedness secured hereby (whether in single units or centrally controlled, and whether physically attached to said real estate or not), excluding, however, personal property owned by tenants of the Mortgaged Premises or contractors or subcontractors performing work on the Mortgaged Premises; and

(e) Any and all awards, payments or insurance proceeds, including interest thereon, and the right to receive the same, which may be paid or payable with respect to the Mortgaged Premises as a result of (1) the exercise of the right of eminent domain, or (2) the alteration of the grade of any street, or (3) any fire, casualty, accident, damage or other injury to or decrease in the value of the Mortgaged Premises, to the extent of all amounts which may be secured by this Mortgage at the date of receipt of any such award or payment by Lender, and of the reasonable counsel fees, costs and disbursements incurred by Lender in connection with the collection of such award or payment. Borrower agrees to execute and deliver, from time to time, such further instruments as may be requested by Lender to confirm such assignment to Lender of any such award or payment;

TO HAVE AND TO HOLD the Mortgaged Premises with all rights, privileges and appurtenances thereunto belonging, and all rents, issues and profits therefrom, unto Lender, its successors and assigns, forever, for the uses and purposes herein expressed;

Provided, however, that the foregoing grant is made subordinate and subject to the lien and provisions of the "Prior Mortgage" and the rights of the "Prior Lender," as those terms are defined in Section 6.12 hereof.

THIS MORTGAGE IS GIVEN TO SECURE:

- (1) Payment of the indebtedness secured hereby;
- (2) Payment of such additional sums with interest thereon which may hereafter be loaned to Borrower by Lender or advanced under the Loan Documents (hereinafter defined), even though the aggregate amount outstanding at any time may exceed the original principal balance stated herein and in the Note (provided, however, that the indebtedness secured hereby shall in no event exceed an amount equal to three hundred percent (300%) of the face amount of the Note); and
- (3) The due, prompt and complete performance of each and every covenant, condition and agreement contained in this Mortgage, the Note, and every other agreement, document and instrument to which reference is expressly made in this Mortgage or which at any time evidences or secures the indebtedness evidenced by the Note (this Mortgage, the Note, and all such other instruments are hereinafter sometimes collectively referred to as the "Loan Documents").

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ARTICLE 2. REPRESENTATIONS AND COVENANTS.

It is a condition of this Mortgage that the representations and covenants made in this Article 2 be true, correct and complete upon the execution and delivery of the Loan Documents, and Borrower hereby represents and covenants to Lender that:

2.1 Due Organization, Authority. Borrower is duly organized and validly existing and in good standing under the laws of the State of Illinois and has power and authority adequate to carry on its business as presently conducted, to own the Mortgaged Premises, to make and enter into the Loan Documents and to carry out the transactions contemplated therein.

2.2 Execution, Delivery and Effect of Loan Documents. The Loan Documents have each been duly authorized, executed and delivered by Borrower, and each is intended to be a legal, valid and binding obligation of Borrower enforceable in accordance with its terms, except to the extent that the enforceability thereof may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights generally and subject to the exercise of judicial discretion in accordance with general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

2.3 Other Obligations. The execution and performance of the Loan Documents and all agreements and covenants therein and the consummation of the transactions contemplated thereby will not result in any breach of, or constitute a default under, any contract, agreement, document or other instrument to which Borrower is a party or by which Borrower may be bound or affected, and do not and will not violate or contravene any law to which Borrower is subject; nor do any such instruments impose or contemplate any obligations which are or will be inconsistent with the Loan Documents. No approval by, authorization of, or filing with any federal, state or municipal or other governmental commission, board or agency or other governmental authority is necessary in connection with the authorization, execution and delivery of the Loan Documents.

2.4 Compliance with Laws. Borrower shall comply with all applicable laws, ordinances, rules, regulations and orders of all governmental authorities with respect to the development, use, operation and sale of the Mortgaged Premises and, without limitation of the foregoing, shall maintain in effect all certificates, licenses and permits required by applicable law with respect to the development, use, operation and sale of the Mortgaged Premises.

ARTICLE 3. BORROWER'S COVENANTS OF PAYMENT AND OPERATION.

3.1 Performance of Covenants in Loan Documents. Borrower shall fully perform, observe and comply with all agreements, covenants, conditions and provisions hereof, of the Note and of the other Loan Documents, and shall duly and punctually pay to Lender the sums of money expressed in the Note, and all other sums required to be paid by Borrower pursuant to

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the provisions of this Mortgage and the other Loan Documents, all without any deduction or credit for taxes or other similar charges paid by Borrower.

3.2 Payment of Taxes. Borrower shall pay or cause to be paid all taxes, assessments and other similar charges of whatever nature, ordinary and extraordinary, and to whomever assessed which are now or may hereafter be assessed or levied against the Mortgaged Premises or any portion thereof or interest therein or which become payable with respect thereto or with respect to the occupancy, use or possession thereof, before the same become delinquent; and shall deliver to Lender within thirty (30) days after the payment thereof receipts of the proper officers for such payment. In default thereof, Lender may, but shall not be obligated to, pay such taxes, assessments, and other similar charges, including any penalties or interest thereon (without inquiring into the validity or invalidity of such taxes, assessments or other similar charges and for which the receipt of the proper officer shall be conclusive evidence of the payment, amount and validity thereof, and any amount so paid by Lender shall become immediately due and payable by Borrower with interest as described in Section 5.6 hereof until paid and shall be secured by this Mortgage. Borrower shall have the right to contest the amount or validity of any such tax, assessment or other similar charge by appropriate legal proceedings if: (i) the legal proceedings shall operate to prevent the collection of such taxes, assessment or other similar charge so contested and the sale of the Mortgaged Premises or any part thereof to satisfy the same, and (ii) Borrower (unless such taxes, assessment or other similar charge have been paid in full under protest) shall deposit with the Prior Lender (if the Prior Mortgage has not yet been fully released), or with Lender or with the appropriate court or other governmental authority or title insurance company satisfactory to Lender an amount, with such subsequent additions thereto as may be necessary, sufficient in Lender's opinion to pay such taxes, assessment or other similar charge, together with all estimated interest and penalties in connection therewith, and all charges that may be assessed in said legal proceedings against, or may become a charge on, the Mortgaged Premises.

3.3 Insurance.

(a) Required Coverage. Borrower shall procure, deliver to, and maintain for the benefit of Lender as an additional insured to the extent of the balance of the indebtedness secured hereby during the continuance of this Mortgage and until the same is fully satisfied and released, the following insurance policies:

(1) "All-Risk" casualty insurance policies insuring the buildings, structures, improvements and fixtures now existing or hereafter constructed upon the Mortgaged Premises against all loss or damage occasioned by casualties which, under good insurance practice, are commonly insured against for buildings, structures, and improvements of like character in Cook County, Illinois. The amount of such insurance shall be not less than one hundred percent (100%) of the full replacement cost of such buildings, structures and improvements, without deduction for depreciation;

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(2) Comprehensive general liability coverage with a broad form coverage endorsement in an amount not less than \$5,000,000 combined single limit, including products and completed operations; and

(3) Automobile liability insurance with limits not less than \$1,000,000 combined single limit for bodily injury and property damage.

(b) Form of Policies. All policies of insurance required hereunder shall be issued by responsible companies, and for purposes of determining the foregoing, so long as the Prior Mortgage has not yet been fully released, any insurance company approved by the Prior Lender shall be deemed to be a responsible company, and shall contain a non-contributory standard mortgagee clause acceptable to Lender, a lender's loss payable endorsement, a waiver of subrogation endorsement, and replacement cost and agreed amount endorsements and shall further provide that such insurance coverage may not be changed or canceled without at least thirty (30) days' prior written notice to Lender. Borrower shall promptly pay when due any premiums on any policy or policies of insurance required hereunder, and will deliver to Lender certificates evidencing renewals of such policy or policies at least fifteen (15) days prior to the expiration dates thereof, said policies and renewals or invoices therefor to be marked "paid" by the issuing company or agent. Upon Borrower's failure to comply with the requirements of this Section 3.3, Lender may, in its discretion, procure any insurance required hereunder in the amounts required pursuant to the terms and provisions of this Mortgage and pay the premiums due therefor, and any amounts so paid by Lender shall become immediately due and payable by Borrower with interest as described in Section 5.6 hereof, and shall be secured by this Mortgage. The delivery to Lender of any policy of insurance hereunder or renewals thereof shall constitute an assignment to Lender of all unearned premiums thereon as further security for the payment of the indebtedness secured hereby. If any foreclosure action or other proceeding hereunder is successfully maintained by Lender, all right, title, and interest of Borrower in or to any policy or policies of insurance then in force shall vest in Lender insofar as such policy or policies apply to the Mortgaged Premises.

(c) Application of Loss Proceeds. In the event of any loss or damage to any part of the Mortgaged Premises, Borrower shall give prompt notice thereof to Lender and shall promptly make proof of such loss or damage. Lender may make proof of such loss or damage if the same is not promptly made by Borrower or the Prior Lender. In the event of such loss or damage and, subject to the rights of the Prior Lender: (1) all proceeds of casualty insurance shall be payable to Lender to the extent of the full amount of the remaining unpaid indebtedness secured hereby; (2) any affected insurance company is authorized and directed to make payment thereof directly to Lender to the extent of the full amount of the then remaining

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unpaid indebtedness secured hereby; (3) Lender and Borrower shall jointly settle, adjust or compromise any claims for loss, damage, or destruction in excess of \$100,000.00 under any policy or policies of insurance; and (4) Borrower is authorized and empowered to settle, adjust or compromise any claims for loss, damage or destruction for \$100,000.00 or less under any policy or policies of insurance. Borrower agrees to execute, upon demand by Lender, all receipts, vouchers, releases and other instruments which may be necessary or desirable in aid of the aforementioned authorizations. All such insurance proceeds shall be: (i) at the option of Borrower, provided Borrower is not in default under the terms of this Mortgage, applied to the restoration, repair, replacement or rebuilding of the Mortgaged Premises; or otherwise (ii) applied to the payment of the indebtedness secured hereby (whether or not then due and payable).

3.4 Maintenance, Repairs and Restoration. Borrower shall keep and maintain the Mortgaged Premises in good order, condition and repair and will make, regardless of the sufficiency of insurance proceeds, as and when the same shall become necessary, all ordinary and extraordinary, foreseen and unforeseen, repairs, restorations and maintenance, including any replacements, necessary or appropriate including, without limitation, repairs of damage or destruction caused by fire or other casualty or as the result of any taking under the power of eminent domain. Borrower shall give Lender prompt written notice of any damage or destruction to the Mortgaged Premises caused by fire or other casualty. Borrower will suffer or commit no waste to the Mortgaged Premises or any portion thereof.

3.5 Sale and Assignment.

(a) **Current Ownership.** Borrower represents and warrants that, as of the date hereof: Borrower is the sole legal and beneficial owner of the Mortgaged Premises; the sole manager of the Borrower is the entity set forth in the signature block for Borrower at the end of this document; and the only members of Borrower are as previously disclosed by Borrower to Lender.

(b) **Prohibition on Transfers of Ownership.** Borrower covenants and agrees that at all times until payment in full of the Note (or, if earlier, until all units in the development in the Mortgaged Premises have been sold to individual purchasers) (1) neither Borrower nor any successor or assignee of Borrower shall assign all or any of Borrower's rights and obligations under the Purchase Agreement or in respect of the Development to any person or entity other than a Permitted Owner Entity (as defined below), and (2) except for individual purchasers of units to be developed on the Mortgaged Premises (and common areas held by a property owners association), the Mortgaged Premises shall be beneficially owned by a (i) Permitted Owner Entity or (ii) in the event of the death or incapacity of Daniel E. Levin ("Levin"), a Qualified Owner (as defined in Section 3.5(c) below). As used herein, "Permitted Owner Entity" means (A) an entity a majority of whose

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ownership interests are beneficially owned by Levin and which is controlled by Levin (herein a "Levin Entity"), or (B) an entity (x) in which Levin directly or indirectly beneficially owns at least fifty-one percent (51%) of the ownership interests and (y) which is controlled by Levin or a Levin Entity. As used herein, "control" and "controlled" shall mean the power and authority to direct and manage the business and affairs of an entity without the consent of any other party.

(c) Qualified Succession. If at any time from and after the date hereof Levin dies or becomes incapacitated, then (1) Borrower shall be deemed to constitute a "Qualified Owner" for purposes hereof so long as said Borrower, The Habitat Company, Levin and Douglas R. Woodworth, President of The Habitat Company ("Woodworth"), satisfy the requirements described in that certain letter dated May 30, 1977 from Woodworth and further identified in Section 21.03(u) of the Purchase Agreement, and provided that (i) the requirements of said letter shall remain in effect until the Note is paid in full, and (ii) Woodworth shall exercise his purchase right under the buy/sell agreement referenced in said letter when said right becomes exercisable; and (2) in addition, Borrower's interest in the Purchase Agreement, the Mortgaged Premises and the Development may be transferred to another entity whose residential development and sales expertise and financial strength are demonstrated, to the reasonable satisfaction of Lender, to be appropriate for the completion of the Development and the contemplated sales program for the residential units in the Development, and such entity shall also be deemed a "Qualified Owner" for purposes of this Mortgage.

(d) Sale of Units. As contemplated by the Purchase Agreement, the Mortgaged Premises will be developed with the "Development" (as defined in Section 3.8(a) hereof). So long as Borrower is not in default under the terms of this Mortgage or the Note secured hereby, Borrower may, without the prior written consent of Lender, sell or contract to sell individual units in the Development to any third party. Upon the closing of the sale of each of the units, and provided that Borrower is not in default under the terms of this Mortgage or the Note secured hereby, and further provided that the Borrower has paid all sums then due and payable to Lender pursuant to the Note, then Lender shall release each unit from the lien of this Mortgage upon the closing of the sale of each such unit. In the event that an Event of Default has occurred hereunder or under the Note secured hereby which has not been cured within applicable grace and cure periods then, notwithstanding any provisions of the Note to the contrary, all proceeds otherwise due and payable to Borrower from any such sale shall, at the election of Lender but subject to the rights of any "Prior Lender" (as defined in Section 6.12 hereof), be paid to Lender as a condition of granting the partial release and be applied to the indebtedness outstanding hereunder.

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3.6 Further Encumbrances and Other Liens.

(a) Prohibition on Further Encumbrances. Borrower covenants and agrees that this Mortgage is and will be maintained as a valid second lien on the Mortgaged Premises, and that Borrower will not, without the prior written consent of Lender, directly or indirectly, create, suffer or permit to be created or filed against the Mortgaged Premises, or any portion thereof, or against the rents, issues and profits therefrom, any mortgage lien or security interest superior or inferior to the lien of this Mortgage, except the lien of current general taxes duly levied and assessed but not yet due and payable and the lien of any "Prior Mortgage" (as defined in Section 6.12 hereof).

(b) Mechanic's Liens; Utility Charges. Borrower shall keep and maintain the Mortgaged Premises free from all liens and encumbrances, whether claimed by operation of law or by virtue of any expressed or implied contract, of persons supplying labor or materials, or both of them, entering into the construction, modification, repair, restoration or maintenance of the Mortgaged Premises or any portion thereof. If any such liens shall be filed against the Mortgaged Premises in amounts in excess of \$10,000 for any individual lien or \$25,000 in the aggregate, Borrower shall discharge the same of record within thirty (30) days after Borrower has notice thereof, provided, however, Borrower shall have the right, at Borrower's sole expense, to contest the validity of any such liens asserted by persons allegedly supplying such labor and materials by appropriate legal proceedings so long as: (i) such legal proceedings shall be diligently prosecuted and shall operate to prevent the collection of such liens so contested and the sale of the Mortgaged Premises or any part thereof to satisfy the same; and (ii) Borrower shall either obtain title insurance coverage for Lender against such claims in a form reasonably satisfactory to Lender or deposit an amount reasonably satisfactory to Lender, to be held by Lender without the payment of interest, or, until such time as the Prior Mortgage has been fully released, to be held by the Prior Lender, or to be held by an appropriate court or other governmental authority or title insurance company satisfactory to Lender, in any case until such contested liens are removed of record or are satisfied. Borrower shall pay promptly, when due, all charges for utilities or services, including without limitation any charges for electricity, gas, water and sewer, and all license fees, rents and other charges for the use of vaults, canopies or other appurtenances to the Mortgaged Premises. If Borrower fails to pay promptly all such charges described above, Lender may, but shall not be obligated to, pay same and any amounts so paid by Lender shall become immediately due and payable by Borrower with interest as described in Section 5.6 hereof and shall be secured by this Mortgage. Borrower agrees that Lender is under no obligation to inquire into or establish the validity of any liens or claims of lien or interest before making advances to satisfy or settle all or any part of said claims.

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3.7 Books and Records; Financial Statements. Borrower will keep and maintain or will cause to be kept and maintained accurate books, records and accounts in connection with the ownership, development and operation of the Development, and will prepare and deliver, or cause to be prepared and delivered, cash flow and distribution statements and other statements relating to the Development, all as provided by the terms of the Note. Lender shall have such rights of inspection and audit as provided by the terms of the Note.

3.8 Development of the Mortgaged Premises.

(a) Attached to the Purchase Agreement as the "Development Exhibits" a current site plan showing Borrower's intended use of the Mortgaged Premises and the type, number and location of residential units and other improvements to be constructed (Exhibit B) (the "Development Plan"), a development budget showing Borrower's estimated cost of development of the Mortgaged Premises (Exhibit C) (the "Development Budget"), and a pro forma profit statement showing Borrower's estimated revenues and net profits from development of the Mortgaged Premises (Exhibit D) (the "Pro Forma Profit Statement"). The Development Exhibits, as attached to the Purchase Agreement, have been reviewed and approved by Lender. Purchaser may make modifications to the Development Exhibits subject to and in accordance with requirements and limitations described in Section 12.02 of the Purchase Agreement. As contemplated by the Purchase Agreement and the Development Exhibits, the Mortgaged Premises will be developed as a residential development (the "Development") consisting of approximately 300 residential units (including single-family townhouses, mid-rise condominiums and high-rise condominiums), and including approximately 450 parking spaces.

(b) Borrower covenants and agrees that, to the extent it has not done so prior to the date hereof, Borrower shall invest not less than \$1,500,000 as "Pre-Development Expenditures" (as defined in Section 11.03 of the Purchase Agreement) in connection with pre-development activities and shall invest not less than an additional \$1,500,000 for the acquisition, construction and development of the Mortgaged Premises, for an aggregate total Borrower's invested capital of not less than \$3,000,000.

(c) Purchaser covenants and agrees to use all reasonable efforts to proceed diligently with the construction and development of the Development and the sale of the residential units therein, all in accordance with the then current approved Development Exhibits. Any modifications to the Development Exhibits shall be subject to the provisions of Section 3.8(a) hereof and Section 12.02 of the Purchase Agreement.

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(d) Borrower covenants and agrees that it will not, without the prior written consent of Lender, which consent shall not be unreasonably withheld, seek or consent to any amendment to the Planned Development Ordinance (as amended through the date hereof) applicable to the Mortgaged Premises and that Borrower will observe and perform the other covenants, agreements, terms and conditions relating to said Planned Development Ordinance contained in Section 16.02 of the Purchase Agreement.

(e) Without limitation on the foregoing provisions of this Section 3.8, Borrower covenants and agrees to observe and perform all of the terms, conditions, covenants and agreements contained in Section 16.02 (Purchaser's Post-Closing Obligations) of the Purchase Agreement.

3.9 Use of Loan Proceeds.

(a) Business Loan. Borrower covenants and agrees that the entire principal obligation secured hereby constitutes: (1) a "business loan" as that term is defined in, and for all purposes of, Section 205/4(1)(e) of Chapter 815 of the Illinois Compiled Statutes Annotated; and (2) "a loan secured by a mortgage on real estate" within the purview and operation of Section 205/4(1)(1) of Chapter 815 of said Statutes.

(b) Usury. All agreements between Borrower and Lender (including, without limitation, those contained in this Mortgage, the Note and any other Loan Documents) are expressly limited so that in no event whatsoever shall the amount paid or agreed to be paid to the Lender exceed the highest lawful rate of interest permissible under the laws of the State of Illinois. If, from any circumstances whatsoever, fulfillment of any provision hereof or of the Note or any other documents securing the indebtedness secured hereby, at the time performance of such provision shall be due, shall involve the payment of interest exceeding the highest rate of interest permitted by law which a court of competent jurisdiction may deem applicable hereto, then, ipso facto, the obligation to be fulfilled shall be reduced to the highest lawful rate of interest permissible under the laws of the State of Illinois; and if for any reason whatsoever, the Lender shall ever receive as interest an amount which would be deemed unlawful, such interest shall be applied to the payment of the last maturing installment or installments of the indebtedness secured hereby (whether or not then due and payable) and not to the payment of interest.

3.10 Estoppel Certificate. At any time and from time to time upon not less than ten (10) days' prior written request, Borrower or Lender as the case may be, shall deliver to the requesting party, or to any person designated by the requesting party, a written statement executed and acknowledged in recordable form certifying: (1) that this Mortgage, the Note and the Loan Documents are in full force and effect (or, if there have been modifications, that this

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Mortgage, the Note and the Loan Documents are in full force and effect as modified and stating the modifications); (2) the date to which the indebtedness and all other charges secured hereby have been paid; (3) that neither Borrower nor Lender is in default under this Mortgage, the Note or the Loan Documents (or, if such a default allegedly exists, stating those claimed); (4) that there are no offsets or defenses to the payment of the sums secured hereby (or, if there are alleged offsets or defenses, specifying such alleged offsets or defenses); and (5) such other information as the requesting party may reasonably require.

3.11 Environmental Matters.

(a) Borrower will not install, use, generate, manufacture, produce, store, release, discharge or dispose of on, under or about the Mortgaged Premises, nor transport to or from the Mortgaged Premises, any Hazardous Substance (as defined in the Purchase Agreement) nor allow any other person or entity to do so except under conditions and in minor amounts as may be permitted by applicable laws, regulations and ordinances.

(b) Borrower will keep and maintain the Mortgaged Premises in compliance with, and shall not cause or permit the Mortgaged Premises to be in violation of, any environmental law.

(c) Borrower will give prompt written notice to Lender of:

(i) any proceeding, investigation or inquiry commenced by any governmental authority with respect to the presence of any Hazardous Substance under or about the Mortgaged Premises or the migration thereof to or from adjoining property;

(ii) any release, discharge, spill or other occurrence of any Hazardous Substance on or from the Mortgaged Premises, or any migration of any Hazardous Substance from neighboring lands to the Mortgaged Premises; and

(iii) the receipt by Borrower of any notice from any governmental agency or authority or from any other person with respect to any alleged release, discharge, spill or other occurrence of any Hazardous Substance.

ARTICLE 4. CONDEMNATION AND EMINENT DOMAIN.

4.1 If all or any substantial part of the Mortgaged Premises are damaged, taken or acquired, either temporarily or permanently, as a result of any condemnation proceeding or by exercise of the power of eminent domain, or by the alteration of the grade of any street affecting the Mortgaged Premises, or by private agreement or sale in lieu of any of the foregoing, the entire indebtedness secured hereby shall, at Lender's option, become

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immediately due and payable. As additional security for the payment of the indebtedness secured by this Mortgage, 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 then remaining unpaid indebtedness secured hereby, is hereby assigned to Lender, who is empowered to collect and receive the same and to give proper receipts therefor in the name of Borrower, and the same shall be paid forthwith to Lender. Any award or payment so received by Lender may, at the option of Lender and after the payment of all its expenses in connection with the foregoing proceedings: (a) be retained and applied, in whole or in part, to the indebtedness secured hereby, in such manner as Lender may determine, or (b) be released, in whole or in part and on such terms and conditions and according to such procedures as Lender may require, to Borrower for the purpose of altering, restoring or rebuilding any part of the Mortgaged Premises which may have been altered, damaged or destroyed as the result of such taking, alteration or proceeding; provided, however, that Lender shall not be obligated to see to the application of any amounts so released, and such release shall not affect the validity and priority of the lien of this Mortgage for the full indebtedness secured hereby before the release or payment took place. Notwithstanding the above, so long as the Prior Loan is outstanding the rights granted to Lender hereby shall be subordinate to the rights of the Prior Lender and shall be deemed satisfied if exercised or waived by Prior Lender.

For the purposes of this Section 4.1, reference to a "substantial part" of the Mortgaged Premises means any portion of the land the loss of which would materially adversely affect the value of the security granted to Lender hereby or the prospects (as to timing or amount) for the payment of the Note.

ARTICLE 5. EVENTS OF DEFAULT; REMEDIES.

5.1 Defaults. Each of the following shall constitute an "Event of Default" (herein collectively called "Events of Default" and each individually an "Event of Default"):

(a) The failure by Borrower to make any payment of principal or interest, if any, under the Note or this Mortgage, or of any other payment required to be made hereunder or under any of the other Loan Documents, in any case within ten (10) days after written notice thereof; or

(b) The failure by Borrower to observe or perform any of the terms, conditions, covenants, agreements, representations or warranties contained in Section 3.5 or Section 3.8 hereof, which failure is not cured within ten (10) days after written notice thereof from Lender; or

(c) The failure by Borrower to observe or perform any other term, condition, covenant, agreement, representation or warranty contained herein or in the Note, or any of the other Loan Documents, which failure is not cured within thirty (30) days after written notice thereof from Lender, or the failure of any

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representation, statement or warranty contained herein or in any of the other Loan Documents or in any instrument or certification delivered to Lender in connection with the making of the loan or pursuant to the terms and provisions of the Loan Documents to be true and accurate in all material respects; or

(d) Borrower shall commit fraud in the operation of the Mortgaged Premises or in the reporting to Lender as required by the Loan Documents; or

(e) The declaration of an event of default by the "Prior Lender" under the terms and provisions of the "Prior Loan Documents" (as such terms are defined in Section 6.12 hereof), which event of default is not cured within the applicable grace and cure periods under such Prior Loan Documents, if any.

(f) The occurrence of any of the following events:

(i) Borrower shall generally not pay its debts as they become due or shall admit in writing its inability to pay its debts, or shall make a general assignment for the benefit of creditors;

(ii) Borrower shall commence any case, proceeding or other action seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of it or its debts under any law relating to bankruptcy, insolvency, reorganization or relief of debtors, or seeking appointment of a receiver, trustee, custodian or other similar official for it or for all or any substantial part of its property;

(iii) Borrower shall take any action, including corporate or partnership action, to authorize any of the actions set forth in Subsections 5.1(f)(i) or 5.1(f)(ii) above; or

(iv) Any case, proceeding or other civil action in the nature of a bankruptcy or insolvency proceeding against Borrower shall be commenced seeking to have an order for relief entered against it as debtor, or seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of it or its debts under any law relating to bankruptcy, insolvency, reorganization or relief of debtors, or seeking appointment of a receiver, trustee, custodian or other similar official for it or for all or any substantial part of its property, and such case, proceeding or other action: (i) results in the entry of an order for relief against it which is not fully stayed within thirty (30) days after the entry thereof; or (ii) remains undismissed for a period of ninety (90) days; or

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5.2 Remedies. Without limitation of the foregoing provisions of this Article 5 or of any other provision hereof or of any other Loan Document, upon the occurrence of an Event of Default and at any time thereafter, Lender shall have the right, at its option and without further notice (subject, however, to the terms of any subordination agreement between Lender and the Prior Lender, which shall be for the benefit solely of the Prior Lender and not for the benefit of Borrower), without waiving or releasing Borrower from any of its obligations hereunder, to exercise any or all of the following remedies:

(a) Additional Net Cash Flow. In accordance with the terms of the Note, upon the occurrence and during the continuance of any Event of Default, 100% of all "Net Cash Flow" (as defined in the Note) shall be applied to the payment of the \$5,000,000 "Deferred Principal" (as defined in the Note).

(b) Acceleration. Lender may declare the Deferred Principal remaining unpaid under the Note, together with all accrued interest thereon, if any, and all other indebtedness secured hereby, immediately due and payable.

(c) Foreclosure. Lender may foreclose this Mortgage to collect all or any part of the indebtedness secured hereby, by instituting a foreclosure action in the Circuit Court of Cook County, Illinois. Lender shall have the right to purchase the Mortgaged Premises at any foreclosure sale.

(d) Offset Rights. Lender may apply in satisfaction of the indebtedness secured hereby or any amount at any time to become due or payable in connection with the ownership, occupancy, use, restoration or repair of the Mortgaged Premises, any deposits or other sums credited by or due from Lender to Borrower, including, without limitation, insurance proceeds and proceeds of condemnation.

(e) Cure of Default. Without releasing Borrower from any obligation hereunder or under any of the Loan Documents, Lender shall have the right to cure any Event of Default. In connection therewith, Lender may enter upon the Mortgaged Premises and may do such acts and things as Lender deems necessary or desirable to protect the Mortgaged Premises including, without limitation:

(1) paying, purchasing, contesting or compromising any encumbrance, charge, lien, claim of lien, taxes or other charges or liabilities against the Mortgaged Premises;

(2) paying any insurance premiums; and

(3) employing counsel, accountants, contractors and other appropriate persons to assist Lender in the foregoing; and all monies expended by Lender in connection therewith (including, but not limited to, reasonable attorneys' fees

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and costs) shall become immediately due and payable by Borrower, with interest as described in Section 5.6 hereof until paid, and shall be secured by this Mortgage.

(f) Possession of Mortgaged Premises. Lender shall have the right to take physical possession of the Mortgaged Premises and of all books, records, documents and accounts relating thereto including, without limiting the generality of the foregoing, all sales contracts, deposits, construction contracts, plans, specifications and permits relating to the Mortgaged Premises, and exercise without interference from Borrower any and all rights which Borrower has with respect to the Mortgaged Premises. If necessary to obtain possession as provided for herein, Lender may, without exposure to liability from Borrower or any other persons, invoke any and all legal remedies to dispossess Borrower including, without limitation, one or more civil actions for forcible entry and detainer, trespass and restitution. In connection with any action taken by Lender pursuant to this Subsection 5.2(f), Lender shall not be liable for any loss sustained by Borrower resulting from any act or omission of Lender in managing the Mortgaged Premises unless caused by the willful misconduct or bad faith of Lender, nor shall Lender be obligated to perform or discharge any obligation, duty or liability under any lease or contract or by reason of any Loan Document. Lender shall have full power to make from time to time all alterations, renovations, repairs and replacements to the Mortgaged Premises as may seem appropriate to Lender.

(g) Appointment of a Receiver. Upon application to a court of competent jurisdiction, Lender shall be entitled to the appointment of a receiver for the Mortgaged Premises, without notice, without regard to the solvency or insolvency of the person or persons, if any, liable for the payment of the indebtedness secured hereby, and without regard to the then value of the Mortgaged Premises, whether the same shall be then occupied as a homestead or not, and Lender may be appointed as such receiver. Such receiver shall have power to collect the rents, issues and profits of the Mortgaged Premises and all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Mortgaged Premises, to the fullest extent permitted by law. The court from time to time may authorize the receiver to apply the net income in his hands in payment in whole or in part of: (i) the indebtedness and other sums secured hereby or by any order or judgment foreclosing this Mortgage, or any tax, special assessment or other lien which may be or become superior to the lien hereof or of such order or judgment, provided such application is made prior to the foreclosure sale; and (ii) the deficiency in case of a sale and deficiency.

(h) Uniform Commercial Code Remedies. Lender may exercise any and all rights of a secured party with respect to the personal property encumbered hereby as provided under the Illinois Uniform Commercial Code.

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(i) Subrogation. Lender shall have and may exercise all rights, powers, privileges, options and remedies of any person, entity or body politic to whom Lender renders payment or performance in connection with the exercise of its rights and remedies under the Loan Documents, including without limitation any rights, powers, privileges, options and remedies under any mechanic's or vendor's lien or liens, superior titles, mortgages, deeds of trust, liens, encumbrances, rights, equities and charges of all kinds heretofore or hereafter existing on the Mortgaged Premises, to the extent that the sums are paid or discharged pursuant to Subsection 5.2(e) or from the proceeds of the Note, whether or not released of record.

(j) Other. Lender may take such other actions or commence such other proceedings as Lender deems necessary or advisable to protect its interest in the Mortgaged Premises and its ability to collect the indebtedness secured hereby as are available under applicable laws, ordinances and rules of courts having jurisdiction.

(k) Mortgagee in Possession. Nothing herein contained shall be construed as constituting the Lender a mortgagee in possession in the absence of the actual taking of possession of the Mortgaged Premises by Lender.

5.3 Sums Received by Lender. All sums received by Lender under Section 5.2 above, less all costs and expenses incurred by Lender under Section 5.2, including, without limitation, reasonable attorneys' fees and disbursements, property management fees, costs of alterations, renovations, repairs and replacements made or authorized by Lender and all expenses incident to Lender taking possession of the Mortgaged Premises, and such sums as Lender deems appropriate as a reserve to meet future expenses of the Mortgaged Premises, shall be applied to the indebtedness secured hereby in such order as Lender shall determine. Thereafter, any balance shall be paid to the person or persons legally entitled thereto.

5.4 Fees and Expenses; Distribution of Foreclosure Sale Proceeds. If Lender shall incur or expend any sums, including reasonable attorneys' fees, whether or not in connection with any action or proceeding to sustain the lien of this Mortgage or its priority, or to protect or enforce any of Lender's rights hereunder, or to recover any indebtedness secured hereby, or on account of its being Lender hereunder or its making the loan evidenced by the Note, including without limitation Lender's participation in any bankruptcy proceeding commenced by or against Borrower, all such sums shall become immediately due and payable by Borrower with interest thereon as described in Section 5.6 hereof. All such sums shall be secured by this Mortgage and be a lien on the Mortgaged Premises prior to any right, title, interest or claim in, to or upon the Mortgaged Premises attaching or accruing subsequent to the date of this Mortgage. Without limitation of the generality of the foregoing, in any civil action to foreclose the lien hereof, there shall be allowed and included as additional indebtedness secured hereby in the order or judgment for sale all costs and expenses which may be paid or incurred by or on behalf of Lender or the holder of the Note for reasonable attorneys' fees, appraisers' fees,

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receiver's costs and expenses, insurance, taxes, outlays for documentary and expert evidence, costs for preservation of the Mortgaged Premises, stenographer's charges, publication costs and costs of procuring all abstracts of title, title searches and examinations, title insurance policies and commitments therefor, and similar data and assurances with respect to title as Lender or holders of the Note may deem to be reasonably necessary either to prosecute such civil action or to evidence to bidders at any sale which may be had pursuant to such order or judgment the true condition of the title to or value of the Mortgaged Premises or for any other reasonable purpose. The amount of any such costs and expenses which may be paid or incurred after the order or judgment for sale is entered may be estimated and the amount of such estimate may be allowed and included as additional indebtedness secured hereby in the order or judgment for sale.

5.5 Lender's Exercise of Rights.

(a) Effect of Modification. If Lender in one or more instances: (1) grants any extension of time or forbearance with respect to the payment of any indebtedness secured by this Mortgage; (2) takes other or additional security for the payment thereof; (3) waives or fails to exercise any right granted herein or under the Note or in any other Loan Document; (4) grants, with or without consideration, any release from the lien of this Mortgage or other Loan Document of the whole or any part of the security held for the payment of indebtedness secured hereby (whether or not such security is the property of Borrower or others); (5) agrees to any amendment or modification of any of the terms and provisions hereof or of the Note or of any other instrument securing the Note; then and in any such event, any such act or omission to act shall not: (i) release Borrower or any co-makers, sureties or guarantors of this Mortgage or of the Note from any covenant of this Mortgage or the Note or any other Loan Document, nor (ii) preclude Lender from exercising any right, power, privilege, option or remedy granted herein or in any other Loan Document or so intended to be granted upon the occurrence of any Event of Default or otherwise, nor (iii) in any way impair or affect the lien or priority of the lien of this Mortgage.

(b) Remedies Not Exclusive. No right, power, privilege, option or remedy of Lender under this Mortgage, the Note or any other Loan Document shall be exclusive of, but shall be in addition to, every other right, power, privilege, option and remedy under this Mortgage and the Note and every other right, power, privilege, option and remedy now or hereafter existing at law or in equity. Every such right, power, privilege, option and remedy may be exercised concurrently or independently, and when and as often as may be deemed expedient by Lender. No delay in exercising or omission to exercise any right, power, privilege, option or remedy accruing on any default shall impair any such right, power, privilege, option or remedy or shall be construed to be a waiver of any such default or acquiescence therein, nor shall it affect any subsequent default of the same or a different nature. A waiver of any of the terms, covenants, conditions or provisions hereof, or of the

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Note or of any other instrument given by Borrower to secure the indebtedness secured hereby, shall apply to the particular instance and at the particular time only; and no such waiver shall be deemed a continuing waiver, but all of the terms, covenants, conditions and other provisions of this Mortgage, the Note and of such other instruments shall survive and continue to remain in full force and effect.

5.6 Interest on Advances. If Lender makes any advances hereunder, Lender will promptly notify Borrower of such advances and the amounts so advanced shall become immediately due and payable with interest at the Default Rate per annum specified in the Note applicable to a period when an uncured Event of Default has occurred. The failure of Lender to give the notice contemplated by this Section 5.6 shall not affect the securing by this Mortgage of those amounts so advanced.

5.7 Valuation and Appraisal. Borrower shall not and will not apply for or avail itself of any appraisal, valuation, stay, extension or exemption laws or any so-called "Moratorium Laws", whether now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, and Borrower hereby waives the benefit of all such laws. Borrower for itself and all who may claim through or under it waives any and all right to have the property and estates comprising the mortgaged property marshaled upon any foreclosure of the lien hereof, and agrees that any court having jurisdiction to foreclose such lien may order the Mortgaged Premises sold in one parcel as an entirety or in such parcels, manner or order as the Lender in its sole discretion may elect.

5.8 Release and Waiver of Statutory Rights. To the fullest extent allowed by applicable law, Borrower hereby releases and waives: (i) any and all rights under and by virtue of the homestead exemption laws of the State of Illinois; (ii) all rights to retain possession of the Mortgaged Premises after an Event of Default; and (iii) any and all rights of reinstatement of this Mortgage and of redemption from sale under any order or judgment of foreclosure of this Mortgage or under any sale or statute or order, decree or judgment of any court relating to this Mortgage, on behalf of itself and each and every person acquiring any interest in or title to any portion of the Mortgaged Premises, it being the intent hereof that any and all such rights of reinstatement and redemption of Borrower and of all such other persons are and shall be deemed to be hereby waived to the maximum extent and with the maximum effect permitted by the provisions of the Illinois Mortgage Foreclosure Law, including without limitation 735 ILCS 5/15-1601 and 5/15-1602 and any other applicable sections thereof, and to the maximum extent and with the maximum effect permitted by the provisions of all other applicable laws or by any successor or replacement statutes.

ARTICLE 6. GENERAL.

6.1 Modification. No change, amendment, modification, waiver, cancellation or discharge hereof, or any part hereof, shall be valid unless in writing and signed by Borrower and Lender or their respective successors and assigns.

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6.2 Notices. All notices, demands and requests given or required or desired to be given hereunder by Borrower or Lender shall be in writing and shall be delivered in person or by overnight express delivery or by United States certified mail, return receipt requested, postage prepaid, as follows:

If to Borrower: e/o The Habitat Company
350 West Hubbard, Suite 500
Chicago, Illinois 60610
Attn: Daniel Levin

With a copy to: Jeffrey C. Rappin
350 West Hubbard, Suite 500
Chicago, Illinois 60610

If to Lender: Merchandise Mart Properties, Inc.
The Merchandise Mart
Suite 470
Chicago, Illinois 60654
Attn: Thomas M. Kennedy, Jr.

With a copy to: Michael F. Csar
Wilson & McIlvaine
500 W. Madison Street, Suite 3700
Chicago, Illinois 60661

or to such other addresses as Borrower or Lender may from time to time designate by written notice given as herein required.

Notices, demands and requests given by certified mail as aforesaid shall be deemed sufficiently served or given for all purposes hereunder three (3) days after the time such notice, demand or request shall be deposited in the mails. Notice sent by overnight express delivery service shall be deemed served or given on the first (1st) business day following the date such notice is delivered to the carrier.

6.3 Definition of Terms. Whenever used in this instrument, unless the context shall otherwise clearly require, the term "Borrower" and the term "Lender" shall include their successors and assigns, as the case may be, of Borrower and Lender; the term "person" shall include any individual, partnership, corporation, limited liability company, trust, unincorporated association or government, or any agency or political subdivision thereof; the singular shall include the plural, and the plural, the singular; and the gender used shall include the other genders.

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6.4 Releases. The right is hereby reserved by Lender to make partial release or releases of the Mortgaged Premises or of a unit or units comprising the Mortgaged Premises or of any other security held by Lender with respect to all or any part of the indebtedness secured hereby, without notice to, or the consent, approval or agreement of, other parties in interest, including junior lienors, which partial release or releases shall not impair in any manner the validity of or priority of this Mortgage on the portion of said Mortgaged Premises not so released.

6.5 Successors and Assigns. Subject to and without limiting the provisions herein restricting or limiting Borrower's right of assignment and transfer, all of the terms, covenants, conditions and agreements herein set forth shall be binding upon and inure to the benefit of the respective heirs, executors, administrators, legal representatives, successors and assigns, as the case may be, of the parties hereto.

6.6 No Merger. It being the desire and intention of the parties hereto that this Mortgage and the lien hereof shall not merge in fee simple title to the Mortgaged Premises, it is hereby understood and agreed that should Lender acquire any additional or other interests in or to the Mortgaged Premises or the ownership thereof, then, unless a contrary intent is manifested by Lender as evidenced by an appropriate document duly recorded, this Mortgage and the lien hereof shall not merge in the fee simple title, toward the end that this Mortgage may be foreclosed as if owned by a stranger to the fee simple title.

6.7 Applicable Law. This Mortgage shall be governed by the laws of the State of Illinois, which laws shall also govern and control the construction, enforceability, validity and interpretation of this Mortgage.

6.8 Severability. In the event that any provision of this Mortgage or the application thereof to any person or circumstance shall be invalid or unenforceable or contrary to law, the remaining provisions of this Mortgage and the application of such provision or provisions to other persons or circumstances shall not be affected thereby and shall be fully effective and enforceable to the extent permitted by law.

6.9 Debtor-Creditor Relationship. The parties intend that the Note and this Mortgage shall create no relationship between Borrower and Lender other than a debtor-creditor relationship, and that, without limitation on the foregoing, the Note and this Mortgage shall not create any joint venture, partnership, co-ownership, agency, or any other fiduciary relationship between Borrower and Lender.

6.10 Headings. Paragraph and section headings contained herein are for convenience of reference only and are not intended to define, limit or describe the scope or intent of any provision of this instrument.

6.11 Incorporation of Other Documents. It is acknowledged and agreed that the indebtedness secured hereby is, in addition to this Mortgage, evidenced and secured by the

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other Loan Documents. Borrower covenants and agrees that all the terms, covenants, conditions, representations, obligations and provisions of the Note and the other Loan Documents are, by this reference, adopted and incorporated into this Mortgage to the same full extent and with the same binding force and effect as if all such terms, covenants, conditions, representations, obligations and provisions were herein stated in full, and Borrower will pay, perform, and observe, or cause to be paid, performed and observed, all the terms, covenants, conditions, representations, obligations and provisions of the Note and the other Loan Documents, it being the express intent that each of the Note and the other Loan Documents complement and supplement one another to the extent necessary or required to protect, preserve and confirm the rights, powers and remedies of Lender in respect of the indebtedness secured hereby and that any default under this Mortgage, or the other Loan Documents shall also be a default under all of such documents.

6.12 Prior Loan Documents.

(a) This Mortgage is junior and subordinate to (i) the terms, conditions, and security of that certain prior mortgage or trust deed described on Exhibit B attached hereto and made a part hereof and, of any other security documents given in connection therewith to the extent such mortgage or trust deed encumbers property subject to the lien hereof, and (ii) the rights of each holder thereof from time to time (including, without limiting the generality thereof, the rights of each such holder to the proceeds of condemnation and insurance as may be set forth in the "Prior Loan Documents" (as hereinafter defined). Such prior mortgage or trust deed, any addition thereto, modification thereof, or substitution therefor and any mortgage or trust deed securing any additional permitted financing by Borrower described in Section 6.12(b) below are herein collectively referred to as the "Prior Mortgage"; the loan(s) secured thereby are herein collectively referred to as the "Prior Loan"; the lender(s) under any Prior Loan and any holder(s) of the Prior Mortgage are herein collectively referred to as the "Prior Lender"; and the Prior Mortgage and all other documents or instruments evidencing or securing the Prior Loan are herein collectively referred to as the "Prior Loan Documents."

(b) In addition to the mortgage financing specifically identified in Exhibit B attached hereto, Borrower may enter into any other third-party mortgage financing for the acquisition, development and/or construction of the Development, provided that such financing is consistent with the terms of the then current "Development Budget" and "Pro Forma Profit Statement" (as such terms are defined in Section 3.8(a) hereof). Borrower shall give Lender prompt written notice of any such other financing, together with a description thereof in reasonable detail. Upon request of Lender, Borrower shall deliver to Lender copies of any or all of the documents relating to such financing.

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(c) Borrower hereby covenants and agrees (i) not to suffer or permit any default to occur under any of the terms of the Prior Mortgage and (ii) immediately upon receipt thereof, to deliver to Lender copies of all notices received from the Prior Lender relating to any claimed default under any of the Prior Loan Documents.

(d) Borrower hereby authorizes Lender at Lender's sole option, without any requirement to do so, to perform any covenants, do any acts, and make any payments required by the terms of the Prior Mortgage or any of the other Prior Loan Documents that have not been performed by, done by, or paid by Borrower at the time required by such documents and instruments. All expenses incurred and all sums paid by Lender relative to the foregoing authority shall be secured hereby with interest thereon at the interest rate then in effect as the "Default Rate" (as defined in the Note) and shall be payable to Lender on demand.

6.13 After Acquired Parcel. Borrower covenants and agrees that if at any time during the term of the Note Borrower acquires all or any portion of the real property legally described in Exhibit A-1 attached hereto (referred to herein and in the Purchase Agreement as the "Additional Parcel"), said property shall automatically be and become part of the Mortgaged Premises subject to the lien of this Mortgage. Without limiting the foregoing, Borrower agrees to execute and deliver in recordable form an addendum or supplement to this Mortgage in such form as reasonably requested by Lender to confirm the inclusion of the Additional Parcel in the Mortgaged Premises.

6.14 Limitation on Liability. Without in any manner releasing, impairing or otherwise adversely affecting the validity of the Note, the lien and covenants of this Mortgage, or any of the other security given for the payment of the indebtedness secured hereby, it is understood and agreed that in any action or proceeding brought on the Note, this Mortgage or any other instrument securing the indebtedness secured hereby in which a money judgment is sought, Lender will look solely to the Mortgaged Premises and the rents and profits therefrom and any other security granted to Lender to secure payment of the indebtedness secured hereby, and specifically, and without limitation, agrees to waive any right to seek or obtain a deficiency judgment against Borrower.

Notwithstanding the foregoing, nothing contained in this Section 6.14 shall be deemed to prejudice the rights of Lender to proceed against any individual or entity whatsoever, including Borrower, with respect to: (i) the enforcement of any guarantees or leases or contracts; or (ii) fraud or material misrepresentation in connection with the making of the Note or this Mortgage; or (iii) fraud or misrepresentation or gross negligence in connection with any statement, warranty or representation given by Borrower pursuant to the requirements of the Note, this Mortgage, or any of the other Loan Documents; or (iv) recovery of any condemnation or insurance proceeds or other similar funds or payments attributable to the Mortgaged Premises which under the terms of the Mortgage securing this Note should have been paid to Lender or were paid to Lender but released by Lender and not

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applied in accordance with the conditions of this Mortgage or such release, except as required by the Prior Mortgage; or (v) recovery of any tenant security deposits, advance or prepaid rents, earnest money deposits or other similar sums paid to or held by Borrower or any other individual or entity in connection with the operation or sale of the Mortgaged Premises unless such sums have been transferred to the Prior Lender; or (vi) recovery of any revenues from the Mortgaged Premises received after the occurrence of an Event of Default, as defined herein, unless such sums have been transferred to the Prior Lender.

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IN WITNESS WHEREOF, the undersigned has executed and delivered this instrument as of the day and year first above written.

KINZIE PARK L.L.C.,
an Illinois limited liability company

BY: Habitat Kinzie Park L.L.C.,
an Illinois limited liability company,
its Managing Manager

BY: The Habitat Company, its Manager

By: 
Its: President

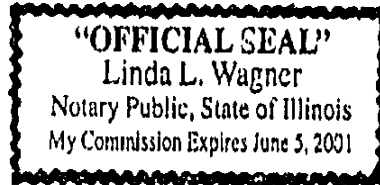
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STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

The foregoing instrument was acknowledged before me, Linda L. Wagner, a Notary Public, by Daniel R. Wagner the President of Habitat Kinzie Park L.L.C., an Illinois limited liability company, on behalf of the company and as Manager of KINZIE PARK L.L.C., an Illinois limited liability company, for the uses and purposes therein set forth.


Notary Public



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EXHIBIT A

Legal Description

PARCEL 1:

THAT PART OF THE SOUTH EAST 1/4 OF THE NORTH WEST 1/4 OF SECTION 9, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTH LINE OF WEST GRAND AVENUE AS OPENED PER ORDINANCE ASSESSMENT CONFIRMED OCTOBER 4, 1858, SAID POINT BEING 235.06 FEET (AS MEASURED ALONG SAID SOUTH LINE) EASTERLY OF THE POINT OF INTERSECTION OF SAID SOUTH LINE WITH THE EAST LINE OF BLOCK 60 IN RUSSELL, MADIER AND ROBERT'S ADDITION TO CHICAGO IN SECTION 9 AFORESAID; THENCE NORTH 84 DEGREES 13 MINUTES 57 SECONDS EAST ALONG SAID SOUTH LINE OF WEST GRAND AVENUE 218.415 FEET TO THE PRESENT WESTERLY DOCK LINE OF THE NORTH BRANCH OF THE CHICAGO RIVER; THENCE SOUTH 21 DEGREES 44 MINUTES 38 SECONDS EAST ALONG THE WESTERLY DOCK LINE 325.00 FEET; THENCE CONTINUING ALONG SAID WESTERLY DOCK LINE SOUTH 32 DEGREES 34 MINUTES 19 SECONDS EAST, 37.508 FEET; THENCE CONTINUING ALONG SAID WESTERLY DOCK LINE SOUTH 33 DEGREES 18 MINUTES 37 SECONDS EAST, 424.195 FEET TO THE POINT OF INTERSECTION WITH THE NORTHEASTERLY EXTENSION OF THE NORTHWESTERLY LINE OF LOT 1 AS SHOWN ON MAP OF WABANSIA A SUBDIVISION OF PART OF SECTION 9 AFORESAID; THENCE SOUTH 62 DEGREES 02 MINUTES 12 SECONDS WEST ALONG THE NORTHEASTERLY EXTENSION OF THE AFORESAID NORTHWESTERLY LINE OF LOT 1, A DISTANCE OF 21.559 FEET TO THE NORTH EAST CORNER OF SAID LOT 1 AS SHOWN ON THE AFORESAID MAP OF WABANSIA; THENCE SOUTH 6 DEGREES 10 MINUTES 14 SECONDS EAST, 71.359 FEET ALONG A LINE DRAWN FROM THE AFORESAID CORNER OF LOT 1 TO A POINT ON THE SOUTH LINE OF SAID LOT 1, SAID POINT BEING 140.00 FEET EAST OF THE SOUTH WEST CORNER OF SAID LOT 1 (THE LAST DESCRIBED LINE BEING ALSO THE WESTERLY LINE OF TRACT OF LAND DESCRIBED IN AGREEMENT DATED JULY 14, 1885, BETWEEN CHICAGO AND NORTHWESTERN RAILWAY COMPANY AND CHICAGO AND EVANSTON RAILROAD COMPANY); THENCE NORTH 89 DEGREES 42 MINUTES 58 SECONDS WEST, 140.00 FEET ALONG THE AFORESAID SOUTH LINE OF LOT 1, BEING ALSO THE NORTH LINE OF WEST KINZIE STREET TO THE SOUTH WEST CORNER OF SAID LOT 1; THENCE CONTINUING ALONG THE AFORESAID NORTH

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LINE OF WEST KINZIE STREET NORTH 89 DEGREES 42 MINUTES 58 SECONDS WEST, 168.30 FEET; THENCE NORTH 30 DEGREES 42 MINUTES 23 SECONDS WEST, 192.00 FEET; THENCE NORTH 62 DEGREES 09 MINUTES 22 SECONDS EAST, 2.54 FEET; THENCE NORTH 27 DEGREES 50 MINUTES 38 SECONDS WEST, 321.00 FEET; THENCE NORTHWESTERLY 236.479 FEET ALONG THE ARC OF A CIRCLE OF 1427.49 FEET RADIUS, CONVEX TO THE NORTH EAST AND TANGENT TO THE LAST DESCRIBED LINE; THENCE NORTH 37 DEGREES 20 MINUTES 08 SECONDS WEST, 100.622 FEET, ALONG A LINE TANGENT TO SAID ARC, TO THE POINT OF INTERSECTION WITH THE AFORESAID SOUTH LINE OF WEST GRAND AVENUE, SAID POINT OF INTERSECTION BEING 163.616 FEET (AS MEASURED ALONG SAID SOUTH LINE) WEST OF THE POINT OF BEGINNING; THENCE NORTH 84 DEGREES 13 MINUTES 57 SECONDS EAST, ALONG SAID SOUTH LINE, 163.616 FEET, TO SAID POINT OF BEGINNING, EXCEPTING FROM THE ABOVE DESCRIBED PARCEL OF LAND THAT PART THEREOF DESCRIBED AS FOLLOWS:

THAT PART OF THE SOUTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 9, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE AFORESAID POINT OF BEGINNING; THENCE NORTH 84 DEGREES 13 MINUTES 57 SECONDS EAST ALONG THE AFORESAID SOUTH LINE OF WEST GRAND AVENUE 218.415 FEET TO THE PRESENT WESTERLY DOCK LINE OF THE NORTH BRANCH OF THE CHICAGO RIVER; THENCE SOUTH 21 DEGREES 44 MINUTES 38 SECONDS EAST ALONG SAID WESTERLY DOCK LINE 325.00 FEET; THENCE SOUTH 68 DEGREES 15 MINUTES 22 SECONDS WEST, 60.00 FEET; THENCE NORTH 43 DEGREES 01 MINUTES 18 SECONDS WEST, 413.29 FEET TO THE POINT OF BEGINNING, THE ABOVE-DESCRIBED PROPERTY BEING PART OF WABANSIA (AND ITS ACCRETIONS THERETO), A SUBDIVISION OF PART OF SECTION 9, ALL IN COOK COUNTY, ILLINOIS.

PARCEL 2:

THAT PART OF THE SOUTH EAST 1/4 OF THE NORTH WEST 1/4 OF SECTION 9, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE NORTH LINE OF WEST KINZIE STREET, SAID POINT BEING 168.30 FEET NORTH 89 DEGREES 42 MINUTES 58 SECONDS WEST OF THE SOUTH WEST CORNER OF LOT 1 AS SHOWN ON MAP OF WABANSIA, A SUBDIVISION OF PART OF SECTION 9

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AFORESAID; THENCE NORTH 30 DEGREES 42 MINUTES 23 SECONDS WEST 192.0 FEET; THENCE NORTH 62 DEGREES 09 MINUTES 22 SECONDS EAST 2.54 FEET; THENCE NORTH 27 DEGREES 50 MINUTES 38 SECONDS WEST 321.0 FEET TO A POINT OF CURVE; THENCE NORTHWESTERLY ALONG AN ARC OF A CIRCLE CONVEX NORTHEASTERLY HAVING A RADIUS OF 1427.49 FEET AND BEING TANGENT TO THE LAST DESCRIBED LINE FOR A DISTANCE OF 236.479 FEET TO A POINT OF TANGENCY; THENCE NORTH 37 DEGREES 20 MINUTES 08 SECONDS WEST ALONG A LINE TANGENT TO THE LAST DESCRIBED ARC FOR A DISTANCE OF 100.622 FEET TO A POINT IN THE SOUTH LINE OF GRAND AVENUE, SAID POINT BEING 71.444 FEET (AS MEASURED ALONG SAID SOUTH LINE) EASTERLY OF THE POINT OF INTERSECTION OF SAID SOUTH LINE WITH THE EAST LINE OF BLOCK 60 IN RUSSELL MATHER AND ROBERT'S ADDITION TO CHICAGO IN SECTION 9 AFORESAID, SAID POINT BEING IN THE EAST LINE OF NORTH JEFFERSON STREET; THENCE SOUTH 00 DEGREES 12 MINUTES 36 SECONDS WEST ALONG SAID EAST LINE 88.89 FEET; THENCE SOUTH 39 DEGREES 21 MINUTES 56 SECONDS EAST 212.99 FEET TO A POINT ON AN ARC OF A CIRCLE CONVEX NORTHEASTERLY AND HAVING A RADIUS OF 294.53 FEET; THENCE SOUTHEASTERLY ALONG SAID ARC, BEING TANGENT TO THE LAST DESCRIBED LINE FOR A DISTANCE OF 58.74 FEET (THE CHORD OF SAID ARC BEARING SOUTH 33 DEGREES 39 MINUTES 06 SECONDS EAST 58.64 FEET); THENCE SOUTH 27 DEGREES 56 MINUTES 22 SECONDS EAST ALONG A LINE TANGENT TO THE LAST DESCRIBED COURSE A DISTANCE OF 189.16 FEET; THENCE NORTH 62 DEGREES 03 MINUTES 38 SECONDS EAST 11.38 FEET; THENCE SOUTH 27 DEGREES 56 MINUTES 21 SECONDS EAST 121.02 FEET; THENCE SOUTH 30 DEGREES 42 MINUTES 23 SECONDS EAST 383.73 FEET TO THE NORTH LINE OF WEST KINZIE STREET; THENCE SOUTH 69 DEGREES 42 MINUTES 58 SECONDS EAST ALONG SAID NORTH LINE 17.50 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

P.I.N.s: 17-09-112-010-0000
17-09-112-018-0000

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EXHIBIT A-1

Legal Description of Additional Parcel

PARCEL A:

THAT PART OF BLOCK 8 OF ORIGINAL TOWN (NOW CITY) OF CHICAGO IN SECTION 9, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, TOGETHER WITH ALL RIGHT TITLE AND INTEREST TO THAT PART OF VACATED ALLEY (VACATED BY ORDINANCE PASSED JULY 7, 1978 AND RECORDED AUGUST 1, 1978 AS DOCUMENT NUMBER 24562615) LYING WITHIN THE FOLLOWING DESCRIBED PREMISES, BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTH EAST CORNER OF BLOCK 8; THENCE SOUTH ALONG THE EAST LINE OF SAID BLOCK 8 A DISTANCE OF 149.75 FEET TO A POINT BEING 15.0 FEET NORTHERLY MEASURED RADially FROM THE CENTERLINE OF THE PRESENT MOST NORTHEASTERLY MAIN TRACK OF THE CHICAGO NORTHWESTERN TRANSPORTATION COMPANY; THENCE NORTHWESTERLY IN A CURVED LINE, CONVEX TO THE SOUTH WEST, HAVING A RADIUS OF 491.0 FEET (WHOSE CHORD BEARS NORTH 62 DEGREES 04 MINUTES 12 SECONDS WEST A DISTANCE OF 281.95 FEET) AN ARC DISTANCE OF 285.98 FEET TO ITS INTERSECTION OF WITH THE NORTHEASTERLY FACE OF AN OVERHEAD VIADUCT STRUCTURE (BEING PLUMBED TO GROUND LEVEL) OF AFORESAID TRANSPORTATION COMPANY, (AFORESAID ARC BEING CONCENTRIC WITH THE AFORESAID CENTER LINE); THENCE NORTH 24 DEGREES 06 MINUTES 20 SECONDS WEST IN THE NORTHEASTERLY FACE OF AFORESAID VIADUCT (AS PRODUCED TO GROUND LEVEL) A DISTANCE OF 22.00 FEET TO ITS INTERSECTION WITH THE NORTH LINE OF AFORESAID BLOCK 8 AND BEING 258.10 FEET WESTERLY OF SAID NORTH EAST CORNER OF SAID BLOCK 8; THENCE SOUTH 89 DEGREES 28 MINUTES EAST IN THE NORTH LINE OF AFORESAID BLOCK 8, A DISTANCE OF 258.10 FEET TO ITS INTERSECTION WITH THE EAST LINE OF AFORESAID BLOCK 8, BEING THE POINT OF BEGINNING, ALL IN COOK COUNTY, ILLINOIS.

Permanent Index Nos.	17-09-305-013
	17-09-305-014
	17-09-305-022
	17-09-305-024
	17-09-305-026

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EXHIBIT B

Description of Prior Mortgage

1. Mortgage dated as of July ____, 1998 made by Borrower in favor of LaSalle national Bank securing a revolving construction loan an aggregate amount outstanding at any time not to exceed \$30,000,000 (the "Construction Loan").
2. Assignment of Rents and Leases dated as of July ____, 1998 made by Borrower in favor of LaSalle National Bank securing the Construction Loan.

Property of Cook County Clerk's Office

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