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THIS INSTRUMENT WAS PREPARED BY AND AFTER RECORDING SHOULD BE RETURNED TO:

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98319064

1998-04-21 16:45:38

Property Address:

Tax Identification Number(s):

29-08-201-056-0000  
29-08-301-057-0000  
29-08-301-053-0000

## MORTGAGE, ASSIGNMENT OF RENTS AND SECURITY AGREEMENT

THIS MORTGAGE, ASSIGNMENT OF RENTS AND SECURITY AGREEMENT (this "Mortgage") is made as of April 22, 1998, by and between LaSalle National Bank ("Land Trustee"), not personally but as trustee under a Trust Agreement dated January 20, 1998, and known as Trust Number 121509 ("Trust"), having its principal office at 135 South LaSalle Street, Chicago, Illinois 60690 and BETHLEHEM VILLAGE LIMITED PARTNERSHIP, an Illinois Limited Partnership ("Customer"), having its office at 20 E. 147th Street, Harvey, Illinois 60426 (herein, the Customer and Land Trustee, individually and collectively, jointly and severally together with successor and assigns of each of them are sometimes called the "Mortgagor") for the benefit of Suburban Federal Savings, A Federal Savings Bank, a Corporation organized and existing under the laws of the United States of America, whose address is 150th Street at Broadway, Harvey, Illinois 60426 ("Mortgagee").

### W I T N E S S E T H

WHEREAS, the Trust has legal title to the property located at 147th Street (also known as Sibley Boulevard) at Vine Avenue, Harvey, Illinois 60426 and legally described on Exhibit "A" ("Real Estate") and Customer is the owner of the entire beneficial interest in, to and under the Trust.

WHEREAS, Customer has requested the City of Harvey, Cook County, Illinois ("Issuer"), to finance a loan to Customer by the issuance, pursuant to an Indenture of Trust dated as of December 1, 1997, (the "Indenture"), between Issuer and Harris Trust and Savings Bank as trustee ("Trustee"), of Variable Rate Demand Multi-Family Housing Revenue Bonds, Series 1997 (Bethlehem Village Project), of Issuer in the aggregate principal amount of Three

Million Four Hundred Thousand (\$3,400,000.00) Dollars ("Bonds"); and

WHEREAS, Issuer has determined to issue, sell and deliver the Bonds and to cause the proceeds derived from the sale thereof to be loaned to Customer to assist Trust in financing the acquisition of the Property and construction of buildings and related improvements on the Property; and

WHEREAS, Issuer and Customer have entered into a Loan Agreement of even date herewith (the "Loan Agreement"), pursuant to which, together with the Promissory Note of Customer issued thereunder (the "Bond Note"), Customer has agreed to make payments to Issuer in an amount sufficient to pay the principal of, premium, if any, and interest on the Bonds; and

WHEREAS, payments to Issuer of principal and interest on the Bonds shall be made by draws from time to time by Trustee under a letter of credit in favor of Trustee for the benefit of the owners of the Bonds under the Indenture and Customer has requested Mortgagee to issue Letter of Credit No. 1998-02 (said letter of credit and any and all extensions and renewals thereof, amendments thereto and substitutions or replacements therefor is referred to herein as the "Letter of Credit") in the amount of Three Million Four Hundred Thirty Nine Thousand One Hundred Twenty Three and 29/100s (\$3,439,123.29) Dollars in favor of Trustee for the account of Customer for the benefit of the owners of the Bonds under the Indenture with an expiration date of April 21, 2008 and as may be extended from time to time ("Expiration Date") and Mortgagee has agreed to issue the Letter of Credit on the terms and conditions set forth in that certain Reimbursement Agreement (the "Reimbursement Agreement") of even date herewith between Mortgagor and Mortgagee;

WHEREAS, draws under the Letter of Credit shall be evidenced by that certain Promissory Note of even date herewith (the "Note") made by Mortgagor and payable to Mortgagee and shall bear interest at the rate per annum set forth in the Reimbursement Agreement.

NOW, THEREFORE, for and in consideration of the Mortgagee's issuance of the Letter of Credit and as an inducement to Mortgagee to do so, for and in consideration of the mutual covenants and agreements hereinafter set forth, and to secure (i) the repayment when and as due and payable of draws of principal under the Letter of Credit and interest thereon and fees incurred in connection therewith; (ii) the repayment when and as due and payable of principal and interest under the Note; (iii) the payment of all other indebtedness which this Mortgage by its terms secures; and (iv) the performance and observance of the covenants and agreements contained in this Mortgage, the Reimbursement Agreement, the Note, the Letter of Credit and any other instrument or document securing the Letter of Credit and the Note (all of such indebtedness,

obligations and liabilities identified in (i), (ii), (iii) and (iv) above being hereinafter referred to as the "indebtedness hereby secured"), Mortgagor does hereby GRANT, SELL, CONVEY, MORTGAGE and ASSIGN (and the Customer also warrants) to Mortgagee, its successors and assigns and does hereby grant to Mortgagee, its successors and assigns a security interest in all and singular the properties, rights, interests and privileges described below, all of same being collectively referred to herein as the "Mortgaged Premises":

A. That certain real estate lying and being in the City of Harvey, County of Cook and State of Illinois, more particularly described in Exhibit A attached hereto and made a part hereof (the "Real Estate");

B. All buildings and improvements of every kind and description heretofore or hereafter erected or placed on the Real Estate (the "Buildings") and all fixtures, machinery, apparatus, equipment, fittings and articles of personal property of every kind and nature whatsoever now or hereafter attached to or contained in or used in connection with the Real Estate and the Buildings now or hereafter located thereon and the operation, maintenance and protection thereof, including, without limitation, all machinery, motors, fittings, radiators, awnings, shades, screens, all gas, coal, steam, electric, oil and other heating, cooking, power and lighting apparatus and fixtures, all fire prevention and extinguishing equipment and apparatus, all cooling and ventilating apparatus and systems, all plumbing, incinerating, sprinkler equipment and fixtures, all elevators and escalators, all communication and/electronic monitoring equipment, all window and structural cleaning rigs and all other machinery and other equipment of every nature and fixtures and appurtenances thereto and all items of furniture, appliances, draperies, carpets, other furnishings, equipment and personal property used or useful in the operation, maintenance and protection of the Real Estate and the Buildings now or hereafter located thereon and all renewals or replacements thereof or articles in substitution therefor, whether or not the same are or shall be attached to said buildings or improvements in any manner; it being mutually agreed, intended and declared that all the aforesaid property shall, so far as permitted by law, be deemed to form a part and parcel of the Real Estate and for the purpose of this Mortgage to be real estate and covered by this Mortgage; and as to the balance of the property aforesaid, this Mortgage is hereby deemed to be as well a Security Agreement under the provisions of the Uniform Commercial Code for the purpose of creating hereby a security interest in said property, which is hereby granted by Mortgagor as debtor to Mortgagee as secured party, securing the indebtedness hereby secured. The addresses of Mortgagor (debtor) and Mortgagee (secured party) appear at the beginning hereof;

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C. All right, title and interest of Mortgagor now owned or hereafter acquired in and to all and singular the estates, tenements, hereditament, privileges, easements, licenses, franchises, appurtenances and royalties, mineral, oil and water rights belonging or in any wise appertaining to the Real Estate and the Buildings now or hereafter located hereon and the reversions, rents, issues, revenues and profits thereof, including all interest of Mortgagor in all rents, issues and profits of the aforementioned property and all rents, issues, profits, revenues, royalties, bonuses, rights and benefits due, payable or accruing (including all deposits of money as advance rent or for security) under any and all leases, and all credits, deposits, privileges, rights, options to renew, extend and any other options or rights of Mortgagor under all leases and renewals thereof or under any contracts or options for the sale of all or any part of said property (including during any period allowed by law for the redemption of said property after any foreclosure or other sale), together with the right, but not the obligation, to collect, receive and receipt for all such rents and other sums and apply them to the indebtedness hereby secured and to demand, sue for and recover the same when due or payable; provided that the assignments made hereby shall not impair or diminish the obligations of Mortgagor under the provisions of such leases or other agreements nor shall such obligations be imposed upon Mortgagee. By acceptance of this Mortgage, Mortgagee agrees that until an Event of Default (as hereinafter defined) shall occur giving Mortgagee the right to foreclose this Mortgage, Mortgagor may collect, receive (but not more than thirty (30) days in advance) and enjoy such rents;

D. All rights of Customer or the Trust, if any, to plans and specifications, drawings and other matters, prepared in connection with the Real Estate (all of the foregoing are herein called the "Plans").

E. All rights of Customer and the Trust, if any, under any contracts executed by any of them with any provider of goods or services for or in connection with any construction undertaken or, as services performed to be performed in connection with the Real Estate or the Buildings, including architect's contract (all of the foregoing are herein referred to collectively as the "Contracts for Construction").

F. All rights of Customer and the Trust, if any, as seller or borrower under any agreement, contract, understanding or arrangement pursuant to which the Mortgagor has with the prior written consent of the Mortgagee, obtained the agreement of any person to pay or disburse any money for the Mortgagor's sale (or borrowing on the security) of the Mortgaged Premises as any part thereof (all of the foregoing is referred to collectively as the "Contracts for Sale")

G. All judgments, awards of damages, settlements and other

compensation hereafter made resulting from condemnation proceedings or the taking of the Real Estate or any part thereof or any Building now or at any time hereafter located thereon or any easement or other appurtenance thereto under the power of eminent domain, or any similar power or right (including any award from the United States Government at any time after the allowance of the claim therefor, the ascertainment of the amount thereof and the issuance of the warrant for the payment thereof), whether permanent or temporary, or for any damage (whether caused by such taking or otherwise) to said property or any part thereof or the improvements thereon or any part thereof, or to any rights appurtenant thereto, including severance and consequential damage, and any award for change of grade of streets (collectively "Condemnation Awards");

H. All property and rights, if any, which are by the express provisions of this instrument required to be subjected to the lien hereof and any additional property and rights that may from time to time hereafter by installation or writing of any kind, be subjected to the lien hereof; and

I. All rights in and to common areas and access roads on adjacent properties heretofore or hereafter granted to Mortgagor and any after-acquired title or reversion in and to the beds of any ways, roads, streets, avenues and alleys adjoining the Real Estate or any part thereof.

J. All other property or rights of Customer and the Trust of any kind as character related to the Real Estate or the Buildings and all proceeds (including insurance and condemnation proceeds) and products of any of the foregoing, including all proceeds of the conversion, whether voluntary or involuntary, of any of the foregoing in to cash or liquidated claims.

TO HAVE AND TO HOLD the Mortgaged Premises and the properties, rights and privileges hereby granted, bargained, sold, conveyed, mortgaged, pledged and assigned, and in which a security interest is granted, unto Mortgagee, its successors and assigns, forever; provided, however, that this instrument is upon the express condition that if the principal of and interest on the Letter of Credit and the Note shall be paid in full and all other indebtedness hereby secured shall be fully paid and performed and any commitment to advance funds shall have been terminated then this instrument and the estate and rights hereby granted shall cease, determine and be void and this instrument shall be released by Mortgagee upon the written request and at the expense of Mortgagor, otherwise to remain in full force and effect.

Mortgagor hereby covenants and agrees with Mortgagee as follows:

1. Payment of the Indebtedness. The indebtedness hereby secured will be promptly paid as and when the same becomes due.

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2. Representation of Title and Further Assurance. Mortgagee will execute and deliver such further instruments and do such further acts, as may be reasonably necessary or proper to carry out more effectively the purpose of this instrument and, without limiting the foregoing, to make subject to the lien hereof any property agreed to be subjected hereto or covered by the granting clauses hereof or intended so to be. At the time of delivery of these presents, Mortgagor is well seized of a fee simple estate in the Mortgaged Premises which constitutes real property subject only to the matters set forth in Exhibit B attached hereto and hereby made a part hereof (the "Permitted Exceptions"), Mortgagor is the owner of the Mortgaged Premises which constitutes personal property, and Mortgagor has good right, full power and lawful authority to convey, mortgage and create a security interest in the same, in the manner and form aforesaid; except as set forth in Exhibit B hereto, the same is free and clear of all liens, charges, easements, covenants, conditions, restrictions and encumbrances whatsoever, including the personal property and fixtures, security agreements, conditional sales contracts and anything of a similar nature, and Mortgagor shall and will forever defend the fee title to the Mortgaged Premises against the claims of all persons whomsoever.

3. Mortgage Constitutes Construction Mortgage. This Mortgage secures an obligation for the construction of improvements on the Real Estate and constitutes a construction mortgage for the purpose of Article 9 of the Uniform Commercial Code of Illinois and is entitled to all of the benefits afforded construction mortgages thereunder.

4. Compliance with Reimbursement Agreement. Mortgagor will abide by and comply with and be governed and restricted by all of the terms, covenants, provisions, restrictions and agreements contained in the Reimbursement Agreement, and in each and every supplement thereto or amendment thereof which may at any time or from time to time be executed and delivered by the parties thereto or their successors and assigns.

5. Provisions of Letter of Credit, Note and Reimbursement Agreement. Draws under the Letter of Credit are to be disbursed by Mortgagee in accordance with the terms contained in the Reimbursement Agreement, the provisions of which are incorporated herein by reference to the same extent as if fully set forth herein. Mortgagor covenants that any and all monetary disbursements made in accord with the Letter of Credit, the Note and the Reimbursement Agreement shall constitute adequate consideration to Mortgagor for the enforceability of this Mortgage, the Note, the Reimbursement Agreement and the Letter of Credit, and that all advances and indebtedness arising and accruing under the Letter of Credit, the Note and the Reimbursement Agreement from time to time, whether or not the total amount thereof may exceed the stated amount of the Letter of Credit, shall be secured by this Mortgage. Upon the occurrence of an Event of Default under the Reimbursement

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Agreement, the Note or hereunder, Mortgagee may (but need not) pursue all remedies conferred upon Mortgagee by this Mortgage or by law upon a default. All monies so expended shall be so much additional indebtedness hereby secured and shall be payable on demand with interest at the rate per annum equal to eighteen (18%) percent (but not greater than the maximum rate permitted by law). The provisions, rights, powers and remedies contained in the Reimbursement Agreement and in the Note are in addition to, and not in substitution for, those contained herein.

6. Payment of Taxes. Mortgagor shall pay before any penalty attaches all general taxes and all special taxes, special assessments, water, drainage and sewer charges and all other charges, of any kind whatsoever, ordinary or extraordinary, which may be levied, assessed, imposed or charged on or against the Mortgaged Premises or any part thereof and which, if unpaid, might by law become a lien or charge upon the Mortgaged Premises or any part thereof, and shall exhibit to Mortgagee, upon request, official receipts evidencing such payments, except that, unless and until foreclosure, distraint, sale or other similar proceedings shall have been commenced, no such charge or claim need be paid if being contested (except to the extent any full or partial payment shall be required by law), after notice to Mortgagee, by appropriate proceedings which shall operate to prevent the collection thereof or the sale or forfeiture of the Mortgaged Premises or any part thereof to satisfy the same, conducted in good faith and with due diligence and if Mortgagor shall have furnished such security, if any, as may be required in the proceedings or required by Mortgagee's title insurer to insure over the lien of such taxes.

7. Payment of Taxes on Letter of Credit, Note, Mortgage or Interest of Mortgagee. Mortgagor agrees that if any tax, assessment or imposition upon this Mortgage or the indebtedness hereby secured or the Letter of Credit or the Note or the interest of Mortgagee in the Mortgaged Premises or upon Mortgagee by reason of any of the foregoing (including, without limitation, corporate privilege, franchise and excise taxes, but excepting therefrom any income tax on interest payments on the principal portion of the indebtedness hereby secured imposed by the United States or any State) is levied, assessed or charged, then, unless all such taxes are paid by Mortgagor to, for or on behalf of Mortgagee as they become due and payable (which Mortgagor agrees to do upon demand of Mortgagee, to the extent permitted by law), or Mortgagee is reimbursed for any such sum advanced by Mortgagee, all sums hereby secured shall become immediately due and payable, at the option of Mortgagee upon thirty (30) days notice to Mortgagor, notwithstanding anything contained herein. Mortgagor agrees to provide to Mortgagee, upon request, official receipts showing payment of all taxes and charges which Mortgagor is required to pay hereunder.

8. Tax and Insurance Deposits. Unless Mortgagee advises Mortgagor otherwise covenants and agrees to deposit with Mortgagee, commencing on the date of this Mortgage and on the first day of each month thereafter until the indebtedness hereby secured is fully paid, a sum equal to (i) one-twelfth (1/12th) of Mortgagee's reasonable estimate of annual taxes and assessments (general and special) on the Mortgaged Premises and (ii) one twelfth (1/12th) of the annual premiums payable for the insurance required to be maintained in accordance with Paragraph 11 hereof. If prior deposits are insufficient, Mortgagor shall deposit with Mortgagee an amount of money which, together with the aggregate of the monthly deposits made or to be made pursuant to (i) above as of one month prior to the date on which the total annual taxes and assessments for the current calendar year become due shall be sufficient to pay in full the total annual taxes and assessments estimated by Mortgagee to become due and payable with respect to the Mortgaged Premises for the current calendar year, and an amount of money which, together with the aggregate deposits made or to be made pursuant to (ii) above as of one month prior to the date on which the next annual insurance premium becomes due, shall be sufficient to pay in full the total annual insurance premium estimated by Mortgagee to next become due and payable with respect to the Mortgaged Premises. Such deposits are to be held without any allowance of interest and are to be used solely for the payment of taxes and assessments (general and special) and insurance premiums, respectively, on the Mortgaged Premises next due and payable when they become due. If Mortgagor is required to make such deposits, Mortgagee may, at its option, itself pay such taxes, assessments and insurance premiums when the same become due and payable (upon submission of appropriate bills therefor from Mortgagor) or shall release sufficient funds to Mortgagor for payment of such taxes, assessments and insurance premiums. If the funds so deposited are insufficient to pay any such taxes, assessments (general or special) and premiums for any year when the same shall become due and payable, Mortgagor shall within ten (10) days after receipt of, demand therefor, deposit additional funds as may be necessary to pay such taxes, assessments (general and special) and premiums in full. If the funds so deposited exceed the amount required to pay such taxes, assessments (general and special) and premiums for any year, the excess shall be applied on a subsequent deposit or deposits. Said deposits need not be kept separate and apart from any other funds off Mortgagee. Anything in this Paragraph 8 to the contrary notwithstanding, if the funds so deposited are insufficient to pay any such taxes, assessments (general or special) or premiums or any installment thereof, Mortgagor will, not later than the thirtieth (30th) day prior to the last day on which the same may be paid without penalty or interest, deposit with Mortgagee the full amount of any such deficiency.

9. Mortgagee's Interest in and Use of Deposits. Upon the occurrence of an Event of Default under this Mortgage, the Reimbursement Agreement, the Note, the Letter of Credit or any



other document securing draws under the Letter of Credit or the Note, Mortgagee may at its option, without being required so to do, apply any monies at the time on deposit pursuant to Paragraph 8 hereof to the performance of any of Mortgagor's obligations hereunder, under the Reimbursement Agreement, under the Note or under the Letter of Credit in such order and manner as Mortgagee may elect. When the indebtedness hereby secured has been fully paid, any remaining deposits shall be paid to Mortgagor. Such deposits are hereby pledged as additional security for the indebtedness hereby secured and shall be irrevocably applied by Mortgagee for the purposes for which made hereunder and shall not be subject to the direction or control of Mortgagor; provided, however, that Mortgagee shall not be liable for any failure to apply to the payment of taxes, assessments and insurance premiums any amount so deposited unless Mortgagor, while not in default hereunder, shall have requested Mortgagee in writing to make application of such funds to the payment for which they were deposited, accompanied by the bills for such taxes, assessments and insurance premiums. Mortgagee shall not be liable for any act or omission taken in good faith or pursuant to the instruction of any party.

10. Recordation and Payment of Taxes and Expenses Incident Thereto. Mortgagor will cause this Mortgage, all mortgages supplemental hereto and any financing statement or other notices of a security interest required by Mortgagee at all times to be kept, recorded and filed at its own expense in such manner and in such places as may be required by law for the recording and filing or for the rerecording and refiling of a mortgage, security interest, assignment or other lien or charge upon the Mortgaged Premises, or any part thereof, in order fully to preserve and protect the rights of Mortgagee hereunder, and, without limiting the foregoing, Mortgagor will pay or reimburse Mortgagee for the payment of any and all taxes, fees or other charges incurred in connection with any such recordation or re-recordation, including any documentary stamp tax or tax imposed upon the privilege of having this instrument or any instrument issued pursuant hereto recorded.

11. Insurance.

(a) Mortgagor will, at its expense, maintain or cause to be maintained the following insurance with good and responsible insurance companies reasonably satisfactory to Mortgagee:

- (i) All risk broad form insurance with standard non-contributory mortgage clauses providing that any loss is to be adjusted with, and any recovery payable to, Mortgagee as its interest may appear. All such policies shall be in such amounts, containing such coverages and insure against such risks as shall be reasonably satisfactory to Mortgagee. Without limiting the generality of the foregoing, the improvements shall be insured to an

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amount equal to 100% of the full replacement value without deduction for depreciation at all times against loss or damage by fire, lightning, windstorm, explosion, theft and such other risks as are usually intended under extended coverage with an agreed upon insurance against business interruption and loss of rentals for such occurrences and in such amounts as the Mortgagee may require;

- (ii) comprehensive general liability insurance, in form and amount satisfactory to Mortgagee, but in any event not less than one Million and No/100 Dollars (\$1,000,000.00) with respect to each person, and not less than Two Million and No/100 Dollars (\$2,000,000.00) with respect to any one occurrence causing injury or death and not less than Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00) with respect to property damage, insuring Mortgagor, Mortgagee and such other persons as Mortgagee may designate, as their interests may appear, against any loss or damage for personal injury, death and property damage occasioned by an accident or casualty occurring in, upon or about the Mortgaged Premises or the sidewalks, alleys or other property adjacent thereto;
- (iii) Boiler and machinery insurance inclusive of coverage for all steam boilers, pressure vessels and other such apparatus, including piping, with such limits as Mortgagee may require from time to time;
- (iv) In the event that Mortgagor contracts with or employs any person or persons upon the Mortgaged Premises, worker's compensation insurance and employer's liability insurance to the extent of the minimum required statutory limits, insuring Mortgagor and such other persons as Mortgagee may designate, as their interests may appear, against loss or damages resulting from any accident or casualty within the purview of the Illinois Worker's Compensation Law and shall provide Mortgagee with certificates evidencing same; and
- (v) Insurance against flood if required by the Federal Disaster Protection Act of 1973, as amended and regulations issued thereunder;
- (vi) During construction, builder's completed value risk insurance against "all risks of physical loss" (including collapse and transit coverage); and

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(vii) Such other insurance (including, without limitation, business interruption insurance) against other insurance hazards that Mortgagee may require or which are commonly insured against in the case of property similarly situated in such amount as may from time to time be reasonably required by Mortgagee.

(b) Policy Provisions. All insurance maintained by Mortgagor shall be maintained with good and responsible insurance companies, shall provide that no cancellation thereof shall be effective until at least thirty (30) days after receipt by Mortgagee of written notice thereof, shall provide that losses are payable notwithstanding any acts or omissions of Mortgagor, shall contain no deductible provisions in excess of \$5,000.00, shall show Mortgagee as an additional insured and as a loss payee, and shall be satisfactory to Mortgagee in all other respects.

(c) Renewal Policies. Mortgagor will deliver to Mortgagee the original of any policy required under the provisions of this Paragraph 11 (or if coverage is provided under a master policy, a photocopy of such policy and an assigned certificate of insurance) and will cause renewal policies to be delivered thereto at least fifteen (15) days prior to the expiration of any such policies.

(d) Additional Policies. Mortgagor shall not take out or maintain separate insurance concurrent in kind or form or contributing in the event of loss with any insurance required hereinabove unless Mortgagee shall be named as an additional insured and loss payee.

The proceeds of such insurance shall be applied as provided in Paragraph 12 hereof. In the event of foreclosure, Mortgagor authorizes and empowers Mortgagee to effect insurance upon the Mortgaged Premises in the amounts required by Mortgagee, for a period covering the time of redemption from foreclosure sale provided by law, and if necessary therefor, to cancel any or all existing insurance policies.

## 12. Damage to and Destruction of the Improvements.

(a) Notice. In the case of any damage to or destruction of any improvements which are or will be constructed on the Mortgaged Premises or any part thereof, Mortgagor shall promptly give notice thereof to Mortgagee generally describing the nature and extent of such damage or destruction. Mortgagee is authorized to (i) settle and adjust any claim under insurance policies which insure against such risks, or (ii) allow Mortgagor to agree with the insurance companies on the amount to be paid in regard to such loss. In either case, the

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Mortgagee is authorized to collect and issue a receipt for any such insurance money.

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(b) Restoration. Upon the occurrence of any damage to or Destruction of any improvements on the Mortgaged Premises, provided Mortgagee permits the proceeds of insurance to be used for repairs, Mortgagor shall cause same to be restored, replaced or rebuilt as nearly as possible to their value, condition and character immediately prior to such damage or destruction. Such restoration, replacement or rebuilding shall be effected promptly and Mortgagor shall notify Mortgagee if it appears that such restoration, replacement or rebuilding may unduly delay completion of such improvements. Any amounts required for repairs in excess of insurance proceeds shall be paid by Mortgagor.

(c) Application of Insurance Proceeds Net insurance proceeds received by Mortgagee under the provisions of this Mortgage or any instrument supplemental hereto or thereto or any policy or policies of insurance covering any improvements on the Mortgaged Premises or any part thereof shall be applied by Mortgagee at its option as and for a prepayment on a draw under the Letter of Credit or on the Note (whether or not the same is then due or otherwise adequately secured) or shall be disbursed for restoration of such improvements (in which event Mortgagee shall not be obligated to supervise restoration work nor shall the amount so released or used be deemed a payment of the indebtedness evidenced by the Letter of Credit or the Note). If Mortgagee elects to permit the use of insurance proceeds to restore such improvements, it may do all necessary acts to accomplish, that purpose, including using funds deposited by Mortgagor with it for any purpose and advancing additional funds, all such additional funds to constitute part of the indebtedness hereby secured. If Mortgagee elects to make the insurance proceeds available to Mortgagor for the purpose of effecting such a restoration, or, following an Event of Default, elects to restore such improvements, any excess of insurance proceeds above the amount necessary to complete such restoration shall be applied as and for a prepayment on draws under the Letter of Credit or on the Note. Notwithstanding the foregoing provision, Mortgagee agrees that net insurance proceeds shall be made available for the restoration of the portion of the Mortgaged Premises damaged or destroyed if written application for such use is made within thirty (30) days after receipt of such proceeds and the following conditions are satisfied: (i) no Event of Default, or event which if uncured within any applicable cure period, would constitute an Event of Default, shall have occurred or be continuing (and if an Event of Default shall occur during restoration Mortgagee may, at its election, apply any insurance proceeds then remaining in its hands to the reduction of the indebtedness evidenced by the Letter of

Credit, the Note and the other indebtedness hereby secured), (ii) Mortgagor shall have submitted to Mortgagee plans and specifications for the restoration which shall be satisfactory to it in Mortgagee's reasonable judgment, (iii) Mortgagor shall have submitted to Mortgagee evidence satisfactory to Mortgagee (including, at Mortgagee's election, fixed price contracts with good and responsible contractors and materialmen covering all work and materials necessary to complete restoration), that the cost to complete restoration is not in excess of the amount of insurance proceeds available for restoration, or, if a deficiency shall exist, Mortgagor shall have deposited the amount of such deficiency with Mortgagee, (iv) Mortgagor shall have obtained a waiver of the right of subrogation from any insurer under such policies of insurance, (v) in Mortgagee's reasonable judgment, all restoration can be completed prior to the Expiration Date of the Letter of Credit and the maturity date of the Note, and (vi) no leases of the Mortgaged Premises are terminated as a result of such casualty. Any insurance proceeds to be released pursuant to the foregoing provisions may at the option of Mortgagee be disbursed from time to time as restoration progresses to pay for restoration work completed and in place and such disbursements shall be disbursed in such manner as Mortgagee may determine. Mortgagee may impose such further conditions upon the release of insurance proceeds (including the receipt of title insurance) as are customarily imposed by prudent construction lenders to insure the completion of the restoration work free and clear of all liens or claims for lien. All necessary and reasonable title insurance charges and other costs and expenses paid to or for the account of Mortgagee in connection with the release of such insurance proceeds shall constitute so much additional indebtedness hereby secured to be payable upon demand and if not paid upon demand shall bear interest at the rate per annum of eighteen percent (18%) ("Default Interest Rate"). Mortgagee may deduct any such costs and expenses from insurance proceeds at any time held by Mortgagee. No interest shall be payable to Mortgagor upon insurance proceeds held by Mortgagee.

### 13. Eminent Domain.

(a) Notice. Mortgagor covenants and agrees that Mortgagor will give Mortgagee immediate notice of the actual or threatened commencement of any proceedings under condemnation or eminent domain affecting all or any part of the Mortgaged Premises including any easement therein or appurtenance thereof or severance and consequential damage and change in grade of streets, and will deliver to Mortgagee copies of any and all papers served in connection with any such proceedings.

(b) Assignment of Claim, Power of Attorney to Collect, etc. Any and all awards heretofore or hereafter made or to be made

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to the present and all subsequent owners of the Mortgaged Premises by any governmental body for taking or affecting the whole or any part of said Mortgaged Premises, the improvements on the Mortgaged Premises or any easement therein or appurtenance thereto (including any award from the United States Government at any time after the allowance of the claim therefor, the ascertainment of the amount thereof and the issuance of the award for payment thereof) are hereby assigned by Mortgagor to Mortgagee to the extent of the existing principal balance, interest thereon and other outstanding charges owed by Mortgagor to Mortgagee and Mortgagor hereby irrevocably constitutes and appoints Mortgagee its true and lawful attorney in fact with full power of substitution for it and in its name, place and stead to collect and receive the proceeds of any such award granted by virtue of any such taking and to give proper receipts and acquittances therefor. Mortgagee shall not settle any condemnation award with the condemning party without the consent of Mortgagor. Mortgagor shall have the right to participate in any proceedings which determine the award to be granted.

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(c) Effect of Condemnation and Application of Awards. In the event that any proceedings are commenced by any governmental body or other person to take or otherwise affect the Mortgaged Premises, the improvements thereon or any easement therein or appurtenance thereto, Mortgagee may, at its option, apply the proceeds of any award made in such proceedings as and for a prepayment on the indebtedness evidenced by the Letter of Credit and the Note, notwithstanding the fact that said indebtedness may not then be due and payable or is otherwise adequately secured. Notwithstanding the foregoing, Mortgagee agrees that Mortgagee shall not apply the proceeds of any award made at such proceedings as and for prepayment on the indebtedness evidenced by the Letter of Credit and the Note if the following conditions are satisfied: (i) the effect of such proceedings will not materially interfere with the ability of Mortgagor to utilize the Mortgaged Premises for its intended purpose; (ii) the proceedings do not cause a default under any of the leases or one or more tenants to terminate their leases; (iii) no Event of Default, or event which if uncured within any applicable cure period, would constitute an Event of Default, shall have occurred or be continuing; and (iv) if the proceedings will result in a need to perform repairs upon the Mortgaged Premises, the requirements listed in subparagraphs (ii) (iii) and (v) of Section 12(c) of this Mortgage concerning the application of insurance proceeds are satisfied.

14. Construction, Repair, Waste, Etc. After construction, except for improvements on the Mortgaged Premises acceptable to Mortgagee, Mortgagor covenants and agrees (i) that no building or other improvement on the Mortgaged Premises and constituting a part thereof shall be materially altered, removed or demolished, nor

shall any fixtures or appliances on, in or about said Buildings be severed, removed, sold or mortgaged, without the consent of Mortgagee, such consent not to be unreasonably withheld; and in the event of the demolition or destruction in whole or in part of any of the fixtures, chattels or articles of personal property covered hereby, the same will be replaced promptly by similar fixtures, chattels and articles of personal property at least equal in quality and condition to those replaced, free from any security interest in or encumbrance thereon or reservation of title thereto; (ii) not to permit, commit or suffer any waste, impairment or deterioration of the Mortgaged Premises or any part thereof; (iii) to keep and maintain said Mortgaged Premises and every part thereof in good and first class repair and condition (ordinary wear and tear excepted); (iv) to effect such repairs as Mortgagee may reasonably require and from time to time to make all needful and proper replacements and additions so that said buildings, fixtures, machinery and appurtenances will, at all times, be in good and first class condition, fit and proper for the respective purposes for which they were originally erected or installed; (v) to comply with all statutes, orders, requirements or decrees relating to said Mortgaged Premises by any Federal, State or Municipal authority; (vi) to observe and comply with all conditions and requirements necessary to preserve and extend any and all rights, licenses, permits (including, but not limited to, zoning variances, special exceptions and nonconforming uses), privileges, franchises and concessions which are applicable to the Mortgaged Premises or which have been granted to or contracted for by Mortgagor in connection with any existing or presently contemplated use of the Mortgaged Premises or any part hereof and not to initiate or acquiesce in any changes to or terminations of any of the foregoing or of zoning classifications affecting the use to which the Mortgaged Premises or any part thereof may be put without the prior written consent of Mortgagee; (vii) to pay all utility charges incurred in connection with the Mortgaged Premises and maintain all utility services available for use at the Mortgaged Premises; and (viii) to make no alterations in or improvements or additions to the Mortgaged Premises without Mortgagee's written permission.

15. Liens and Encumbrances. Mortgagor will not, without the prior written consent of Mortgagee, directly or indirectly, create or suffer to be created, or to remain, and will discharge or promptly cause to be discharged any mortgage, lien, encumbrance or charge on, pledge or conditional sale or other title retention agreement with respect to the Mortgaged Premises or any part thereof, whether superior or subordinate to the lien hereof, except for this instrument and the lien of all other documents given to secure the indebtedness hereby secured; provided, however, that Mortgagor may contest the validity of any mechanic's lien, charge or encumbrance (other than the lien of this Mortgage or of any other document securing payment of the Letter of Credit or the Note) upon giving Mortgagee timely notice of its intention to contest the same and either (a) maintaining with Mortgagee a

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deposit of cash or negotiable securities satisfactory to Mortgagee in an amount sufficient in the opinion of Mortgagee to pay and discharge or to assure compliance with the matter under contest in the event of a final determination thereof adversely to Mortgagor or (b) obtaining title insurance coverage over such lien on Mortgagee's title insurance policy. Mortgagor agrees to prosecute and contest such lien diligently and by appropriate legal proceedings which will prevent the enforcement of the matter under contest and will not impair the lien of this Mortgage or interfere with the normal conduct of business on the Mortgaged Premises. On final disposition of such contest, any cash or securities in Mortgagee's possession not required to pay or discharge or assure compliance with the matter contested shall be returned to Mortgagor without interest.

16. Right of Mortgagee to Perform Mortgagor's Covenants, etc. If Mortgagor shall fail to make any payment or perform any act required to be made or performed hereunder, Mortgagee, without waiving or releasing any obligation or default, may (but shall be under no obligation to) at any time thereafter upon prior written notice to Mortgagor and failure of Mortgagor to make such payment or perform such act within any applicable cure period provided herein make such payment or perform such act for the account and at the expense of Mortgagor, and may enter upon the Mortgaged Premises or any part thereof for such purpose and take all such action thereon as, in the opinion of Mortgagee, may be necessary or appropriate therefor. All reasonable sums so paid by Mortgagee and all costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) so incurred, together with interest thereon from the date of payment or incurrence at the Default Interest Rate, shall constitute so much additional indebtedness hereby secured and shall be paid by Mortgagor to Mortgagee on demand. Mortgagee in making any payment authorized under this Section relating to taxes or assessments may do so according to any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax assessment, sale, forfeiture, tax lien or title or claim thereof.

17. After Acquired Property. Any and all property hereafter acquired which is of the kind or nature herein provided and related to the Real Estate or intended to be and become subject to the lien hereof, shall ipso facto, and without any further conveyance, assignment or act on the part of Mortgagor, become and be subject to the lien of this Mortgage as fully and completely as though specifically described herein; but nevertheless Mortgagor shall from time to time, if requested by Mortgagee, execute and deliver any and all such further assurances, conveyances and assignments as Mortgagee may reasonably require for the purpose of expressly and specifically subjecting to the lien of this Mortgage all such property.



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18. Inspection by Mortgagee. Mortgagee and its agents shall have the right to inspect the Mortgaged Premises at all reasonable times, and access thereto shall be permitted for that purpose.

19. Subrogation. Mortgagor acknowledges and agrees that Mortgagee shall be subrogated to any lien discharged out of the proceeds of the loan evidenced by the Note or out of any advance by Mortgagee hereunder irrespective of whether or not any such lien may have been released of record.

## 20. Environmental Matters

(a) Definitions. As used herein, the following terms shall have the following meanings:

- (i) "Environmental Laws" means all federal, state and local statutes laws, rules, regulations, ordinances, requirements, or rules of common law, including but not limited to those listed or referred to in subparagraph 20(a)(ii) below, any judicial or administrative interpretations thereof, and any judicial and administrative consent decrees, orders or judgments, whether now existing or hereinafter promulgated, relating to public health and safety and protection of the environment.
- (ii) "Hazardous Material" means without limitation, above or underground storage tanks, flammables, explosives, radioactive materials, radon, asbestos, urea formaldehyde foam insulation, methane, lead-based paint, polychlorinated biphenyl compounds, hydrocarbons or like substances and their additives or constituents, pesticides and toxic or hazardous substances on materials of any kind, including without limitation, substances now or hereafter defined as "hazardous substances," "hazardous materials," "toxic substances" or "hazardous wastes" in the following statutes, as amended: the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. §9601, et. seq., "CERCLA") as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. §9671 et. seq., "SARA"); the Hazardous Materials Transportation Act (49 U.S.C. §1801, et. seq., "HMTA"); the Toxic Substances Control Act (15 U.S.C. §2601, at "TSCA"); the Resource Conservation and Recovery Act (42 U.S.C. §6901, et. seq., "RCRA"); the Clean Air Act (42 U.S.C. §7401 et. seq., "CAA"); the Clean Water Act (33 U.S.C. §1251, et. seq., "CWA"); the Rivers and Harbors Act, (33 U.S.C. 5401 et. seq., "RHA"); the Illinois Environmental Protection Act (415 ILCS, 5/1 et. seq., "IEPA") and any

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so-called "Superlien law"; and in the regulations promulgated pursuant thereto, and any other applicable federal, state or local law, common law, code, rule, regulation, order, policy or ordinance, presently in effect or hereafter <sup>98319064</sup> promulgated or implemented.

- (iii) "Environmental Liability" means any losses, liabilities, obligations, penalties, charges, fees, claims, litigation demands, defenses, costs, judgments, suits, proceedings, response costs, damages (including consequential damages), disbursements or expenses of any kind or nature whatsoever (including reasonable attorneys' fees at trial and appellate levels and experts' fees and disbursements and expenses incurred in investigating defending against or prosecuting any litigation, claim or proceeding) which may at any time be imposed upon, incurred by or asserted or awarded against Mortgagee or any of Mortgagee's parent or subsidiary corporations, and their affiliates, shareholders, directors, officers, employees, and agents (collectively "Affiliates") in connection with or arising from:
- (1) any Hazardous Material on, in, under or affecting all or any portion of the Mortgaged Premises, the groundwater, or any surrounding areas;
  - (2) any misrepresentation, inaccuracy or breach of any warranty, covenant and agreement contained or referred to in this Section;
  - (3) any violation or claim of violation by Mortgagor of any Environmental Laws;
  - (4) the imposition of any lien for damages caused by, or the recovery of any costs for, the cleanup, release or threatened release of Hazardous Material;
  - (5) the costs of removal of any and all Hazardous Materials from all or any portion of the Mortgaged Premises or any surrounding areas;
  - (6) costs incurred to comply, in connection with all or any portion of the Mortgaged Premises or any surrounding areas, with all Environmental Laws with respect to Hazardous Materials;

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(2) all civil penalties, damages, costs, expenses and attorneys' fees incurred by reason of any violation of the Illinois Responsible Property Transfer Act of 1988, 765 ILCS 90/1 et. seq., ("IRPTA") including, but not limited to, the production and recording and filing of a disclosure document in connection with the execution and delivery of the Mortgage to Mortgagee or the transactions evidenced or secured by the Reimbursement Agreement, the Note, the Letter of Credit and this Mortgage.

(b) Representations and Warranties. Except as disclosed in that certain Phase I Environmental Site Assessment dated January 16, 1997, prepared by Landtech Consultants, Ltd. (the "Phase I Assessment"). Mortgagor hereby represents and warrants to Mortgagee that:

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(i) Compliance. The Mortgaged Premises (including underlying groundwater and areas leased to tenants, if any), and the use and operation thereof, are currently in compliance with all applicable Environmental Laws. All required governmental permits and licenses are in effect, and Mortgagor is in compliance therewith. To the best of Mortgagor's knowledge, all Hazardous Material generated or handled on the Mortgaged Premises prior to the date of this Mortgage, if any, have been disposed of in a lawful manner.

(ii) Absence of Hazardous Material. To the best of Mortgagor's knowledge, no generation, manufacture storage, treatment, transportation or disposal of Hazardous Material has occurred on or from the Mortgaged Premises prior to the date of this Mortgage. No generation, manufacture storage, treatment, transportation or disposal of Hazardous Material is occurring on or from the Mortgaged Premises. No environmental or public health or safety hazards currently exist with respect to the Mortgaged Premises or the business or operations conducted thereon. No underground storage tanks (including petroleum storage tanks) are present on or under the Mortgaged Premises.

(iii) Proceedings and Actions. To the best of Mortgagor's knowledge, there are no pending or threatened: (a) actions or proceedings by any governmental agency or any other entity regarding public health risks or the environmental condition of the Mortgaged Premises, or the disposal or presence of Hazardous Material, or regarding any Environ-

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mental Laws; or (b) liens or governmental actions, notices of violations, notices of noncompliance or other proceedings of any kind that could impair the value of the Mortgaged Premises, or the priority of this Mortgage lien or of any of the other documents or instruments now or hereafter given as security for the indebtedness hereby secured.

(iv) Illinois Responsible Property Transfer Act. In reliance upon the Phase I Assessment, the Mortgaged Premises are not "real property" within the meaning of Section 90/3(e) of the IRPTA and the granting of this Mortgage does not require the delivery or recording of a disclosure document pursuant to IRPTA.

(c) Mortgagor's Covenants. Mortgagor hereby covenants and agrees with Mortgagee as follows:

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- (i) Compliance. The Mortgaged Premises and the use and operation thereof shall comply with all Environmental Laws. All required governmental permits and licenses shall remain in effect, and Mortgagor shall comply therewith. All Hazardous Material present, handled or generated on the Mortgaged Premises will be disposed in a lawful manner. Mortgagor will satisfy all requirements of applicable Environmental Laws for the maintenance and removal of all under-ground storage tanks on the Mortgaged Premises, if any. Without limiting the foregoing, all Hazardous Material shall be handled in compliance with all applicable Environmental Laws.
- (ii) Absence of Hazardous Material. No Hazardous Material shall be introduced to or handled on the Mortgaged Premises.
- (iii) Proceedings and Actions. Mortgagor shall immediately notify Mortgagee and provide copies upon receipt of all written complaints, claims, citations demands, inquiries, reports or notices relating to the condition of the Mortgaged Premises or compliance with Environmental Laws. Mortgagor shall promptly cure and have dismissed any such actions and proceedings to the satisfaction of Mortgagee. Mortgagor shall keep the Mortgaged Premises free of any lien imposed pursuant to any Environmental Laws.
- (iv) Environmental Audit. Mortgagor shall provide such information and certifications which Mortgagee may reasonably request from time to time to insure

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Mortgagor's compliance with this Section. To investigate Mortgagor's compliance with Environmental Laws and with this Section, Mortgagee shall have the right, but no obligation, at any time to enter upon the Mortgaged Premises, take samples, review Mortgagor's books and records, interview Mortgagor's employees and officers, and conduct similar activities. Mortgagor shall cooperate in the conduct of such an audit.

(d) Mortgagee's Right to Rely. Mortgagee is entitled to rely upon Mortgagor's representations and warranties contained in this Section despite any independent investigations by Mortgagee or its consultants. Mortgagor shall take reasonable actions to determine for itself, and to remain aware of, the environmental condition of the Mortgaged Premises, and shall have no right to rely upon any environmental investigation findings made by Mortgagee or its consultants. 98519064

(e) Indemnification. Mortgagor agrees to indemnify, defend (at trial and appellate levels and with counsel acceptable to Mortgagee and at Mortgagor's sole cost) and hold Mortgagee and its Affiliates free and harmless from and against Mortgagee's Environmental Liability. The foregoing indemnity shall survive the Expiration Date of the Letter of Credit, the maturity date of the Note and any transfer of the Mortgaged Premises to Mortgagee by voluntary transfer, foreclosure or by a deed in lieu of foreclosure. This indemnification shall not apply to any liability incurred by Mortgagee as a direct result of affirmative actions of Mortgagee as owner and operator of the Mortgaged Premises after Mortgagee, or its successors and/or assigns, has acquired title to the Mortgaged Premises and which actions are the sole and direct cause of damage resulting from the introduction and initial release of a Hazardous Material upon the Mortgaged Premises by Mortgagee; PROVIDED, HOWEVER, this indemnity shall otherwise remain in full force and effect, including, without limitation, with respect to Hazardous Material which is discovered at the Mortgaged Premises after Mortgagee acquires title to the Mortgaged Premises but which was not actually introduced at Mortgaged Premises by Mortgagee, with respect to the continuing migration or release of Hazardous Material previously introduced at or near the Mortgaged Premises and with respect to all substances which may be Hazardous Material and which are situated at the Mortgaged Premises prior to Mortgagee taking title but are removed by Mortgagee subsequent to such date.

(f) Waiver. Mortgagor, its successors and assigns, hereby waives, releases and agrees not to make any claim or bring any cost recovery action against Mortgagee under CERCLA or any state equivalent, or any similar law now existing or hereafter

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enacted. It is expressly understood and agreed that to the extent that Mortgagee is strictly liable under any Environmental Laws, Mortgagor's obligation to Mortgagee under this indemnity shall likewise be without regard to fault on the part of Mortgagor with respect to the violation or condition which results in liability to Mortgagee.

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## 21. Americans With Disabilities Act of 1990

(a) Definitions. As used herein the following terms shall have the following meanings:

- (i) "ADA" means the Americans with Disabilities Act of 1990, 42 U.S.C. §12101 et. seq., any judicial or administrative interpretations thereof, and any judicial and administrative consent decrees, orders or judgments, whether now existing or hereinafter promulgated relating thereto.
- (ii) "ADA Liability" means any losses, liabilities, obligations, penalties, charges, fees, claims, litigation demands, defenses, costs, judgments, suits, proceedings, response costs, damages (including consequential damages), disbursements or expenses of any kind or nature whatsoever (including attorneys' fees at trial and appellate levels and experts' fees and disbursements and expenses incurred in investigating, defending against or prosecuting any litigation, claim or proceeding) which may at any time be imposed upon, incurred by or asserted or awarded against Mortgagee or any of Mortgagee's parent or subsidiary corporations, and their affiliates, shareholders, directors, officers, employees, and agents (collectively "Affiliates") in connection with or arising from:
- (1) any misrepresentation, inaccuracy or breach of any warranty, covenant and agreement contained or referred to in this Section;
  - (2) any violation or claim of violation by Mortgagor of the ADA;
  - (3) the imposition of any lien for damages caused by, or the recovery of any costs for, any violation of the ADA;
  - (4) costs incurred to comply, in connection with all or any portion of the Mortgaged Premises or any surrounding areas, with the ADA;

(5) all civil penalties, damages, costs, expenses, and attorneys' fees incurred by reason of any violation of the ADA.

(b) Representations and Warranties. Mortgagor hereby represents and warrants to Mortgagee that:

(i) Compliance. The Mortgaged Premises (including the use and operation thereof, after completion of construction will be in compliance with the ADA as applicable. All required governmental permits and licenses are in effect, and Mortgagor is in compliance therewith.

(ii) Proceedings and Actions. There are no pending or, to the best knowledge of Mortgagor, threatened: (a) actions or proceedings by any governmental agency or any other entity regarding compliance with or violation of the ADA relating to the condition of the Mortgaged Premises; or (b) liens or governmental actions, notices of violations, notices of noncompliance or other proceedings of any kind that could impair the value of the Mortgaged Premises or the priority of this Mortgage lien or of any of the other documents or instruments now or hereafter given as security for the indebtedness hereby secured.

(c) Mortgagor's Covenants. Mortgagor hereby covenants and agrees with Mortgagee as follows:

(i) Compliance. After completion of construction thereon the Mortgaged Premises and the use and operation thereof shall comply with the ADA as applicable. All required governmental permits and licenses shall remain in effect, and Mortgagor shall comply therewith. Mortgagor will satisfy all requirements of the ADA.

(ii) Proceedings and Actions. Mortgagor shall immediately notify Mortgagee and provide copies upon receipt of all written complaints, claims, citations, demands, inquiries, reports or notices relating to the condition of the Mortgaged Premises or compliance with the ADA. Mortgagor shall promptly cure and have dismissed any such actions and proceedings to the satisfaction of Mortgagee.

(iii) ADA Audit. Mortgagor shall provide such information and certifications which Mortgagee may reasonably request from time to time to insure

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Mortgagor's compliance with this Section. To investigate Mortgagee's compliance with the ADA and with this Section, Mortgagee shall have the right, but no obligation, at any time to enter upon the Mortgaged Premises, review the Mortgaged Premises, review Mortgagor's books and records, interview Mortgagor's employees and officers, and conduct similar activities. Mortgagor shall cooperate in the conduct of such an audit.

(d) Mortgagee's Right to Rely. Mortgagee is entitled to rely upon Mortgagor's representations and warranties contained in this Section despite any independent investigations by Mortgagee or its consultants. Mortgagor shall take reasonable actions to determine for itself, and to remain aware of, the condition of the Mortgaged Premises and shall have no right to rely upon any investigations or findings made by Mortgagee or its consultants.

(e) Indemnification. Mortgagor agrees to indemnify, defend (at trial and appellate levels and with counsel acceptable to Mortgagee and at Mortgagor's sole cost) and hold Mortgagee and its Affiliates free and harmless from and against Mortgagee's ADA Liability. The foregoing indemnity shall survive the Expiration Date of the Letter of Credit, the maturity date of the Note and any transfer of the Mortgaged Premises to Mortgagee by voluntary transfer, foreclosure or by a deed in lieu of foreclosure; provided, however, such indemnification shall not apply to any ADA Liability which did not exist at the time of such transfer, foreclosure or deed in lieu of foreclosure.

(f) Waiver. Mortgagor, its successors and assigns, hereby waives, releases and agrees not to make any claim or bring any cost recovery action against Mortgagee under the ADA or any state equivalent, or any similar law now existing or hereafter enacted. It is expressly understood and agreed that to the extent that Mortgagee is strictly liable under the ADA, Mortgagor's obligation to Mortgagee under this indemnity shall likewise be without regard to fault on the part of Mortgagor with respect to the violation or condition which results in liability to Mortgagee.

## 22. Transfer of the Mortgaged Premises.

(a) Mortgagor was ably represented by a licensed attorney at law in the negotiation and documentation of the loan secured hereby and bargained at arm's length and without duress of any kind for all of the terms and conditions of the loan, including this provision. Mortgagor recognizes that Mortgagee is entitled to keep its loan portfolio at current interest rates by either making new loans at such rate or collecting



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assumption fees and/or increasing the interest rate on a loan in connection with a transfer of the security for the loan to a party other than the original Mortgagor. Mortgagor further recognizes that any secondary or junior financing placed upon the Mortgaged Premises, (a) may divert funds which would otherwise be used to reimburse draws under the Letter of Credit or to pay the Note secured hereby, (b) could result in acceleration and foreclosure by any such junior encumbrancer which would force Mortgagee to take measures and incur expenses to protect its security, (c) would detract from the value of the Mortgaged Premises should Mortgagee come into possession thereof with the intention of selling same; and (d) impair Mortgagee's right to accept a deed in lieu of foreclosure as a foreclosure by Mortgagee would be necessary to clear the title to the Mortgaged Premises. 98019004

(b) In accordance with the foregoing and for the purposes of (i) protecting Mortgagee's security, both of repayment by Mortgagor and in the value of the Mortgaged Premises; (ii) giving Mortgagee the full benefit of its bargain and contract with Mortgagor, (iii) allowing Mortgagee to raise the interest rate and/or collect assumption fees, but only in connection with a transfer of the Mortgaged Premises; and (iv) keeping the Mortgaged Premises free of subordinate financing liens, Mortgagor agrees that if this Paragraph be deemed a restraint on alienation, that it is a reasonable one, except for the Permitted Encumbrances set forth on Exhibit "B" attached hereto, Mortgagor shall not permit or suffer to occur any sale, assignment, conveyance, mortgage, lease, pledge, encumbrance or other transfer of, or the granting of any option in, or any contract for any of the foregoing (on an installment basis or otherwise) pertaining to:

- (i) the Mortgaged Premises, any part thereof or any interest therein without the prior written consent of the Bank which shall not be unreasonably withheld if the Mortgaged Premises are sold to the Customer's general partner; or
- (ii) any interest in Mortgagor; whether involuntary or by operation of law or otherwise, without the prior written consent of Mortgagee (which shall not be unreasonably withheld) having been obtained to such sale, assignment, conveyance, mortgage, lease, option, pledge, encumbrance or other transfer. Notwithstanding the other terms of this Section, Mortgagor's consent is not required for any sale of a limited partnership interest to an Affiliate (as that term is defined in the Reimbursement Agreement) of a limited partner of the Customer.

Mortgagor agrees that in the event the ownership of the

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Mortgaged Premises, any interest therein or any part thereof becomes vested in a person other than Mortgagor, Mortgagee may, without notice to Mortgagor, deal in any way with such successor or successors in interest with reference to this Mortgage, the Reimbursement Agreement, the Note, the Letter of Credit and any other document evidencing the indebtedness hereby secured. No sale of the Mortgaged Premises, forbearance to any person with respect to this Mortgage, or extension to any person of the time for repayment of draws under the Letter of Credit or for payment of the Note given by Mortgagee shall operate to release, discharge, modify, change or affect the liability of Mortgagor, either in whole or in part, except to the extent specifically agreed in writing by Mortgagee. Without limitation of the foregoing, in any event in which the written consent of Mortgagee is required in this Paragraph 22, Mortgagee may condition its consent upon any combination of (i) the payment of reasonable compensation to be determined by Mortgagee, (ii) the increase of the interest rate payable with respect to repayment of draws under the Letter of Credit or under the Note, (iii) the shortening of the Expiration Date of the Letter of Credit or the maturity of the Note, and (iv) other modifications of the terms of the Reimbursement Agreement, the Note, the Letter of Credit or the other instruments evidencing the indebtedness hereby secured.

(c) Without limitation of the foregoing, (i) in any event in which Mortgagee's consent is requested in accordance with the terms of this Paragraph 22, Mortgagor shall pay all expenses incurred by Mortgagee, including reasonable attorneys' fees, in connection with the processing of such request, and (ii) the consent of Mortgagee to any transfer of the Mortgaged Premises shall not operate to release, discharge, modify, change or affect the liability of Mortgagor, either in whole or in part.

23. Notify the Mortgagee of Default. The Mortgagor shall notify the Mortgagee in writing forthwith upon learning of the occurrence of any Event of Default hereunder, which notice shall describe such Event of Default and the steps being taken by the Mortgagor with respect thereto.

24. Events of Default. Any one or more of the following shall constitute an "Event of Default" hereunder:

(a) the failure, neglect or refusal of Mortgagor to promptly repay any drawing when due under the Letter of Credit or interest thereon, or to promptly pay any of the principal or interest when due under the Note or any other indebtedness hereby secured, and such failure, neglect or refusal shall continue for five (5) days thereafter; or

(b) Mortgagor shall fail to observe or perform any covenant or agreement contained in this Mortgage, or in any other document delivered pursuant to the Reimbursement Agreement (other than relating to monetary defaults as provided in Section 24 (a) above, for a period of thirty (30) days after written notice thereof shall have been given to Customer by the Bank, provided that no notice need be given with respect to any default relating to Section 8.10 of the Reimbursement Agreement and further provided that if any default cannot by its nature be cured within thirty (30) days, Mortgagor shall have commenced its cure within such period and is diligently pursuing same and causes same to be cured within ninety (90) days of notice from Bank, then it is not a default hereunder; or

(c) any representation or warranty made by Customer herein, in the Reimbursement Agreement, in the Note, in the Letter of Credit or in any additional collateral documents or in any statement or certificate furnished pursuant hereto or thereto proves untrue in any material respect as of the date of the issuance or making thereof; or

(d) Customer becomes insolvent or bankrupt or admits in writing its inability to pay its or their debts as they mature or makes an assignment for the benefit of creditors or applies for or consents to the appointment of a trustee, custodian or receiver for any of them or for the major part of the property of any of them; or

(e) bankruptcy, reorganization, arrangement insolvency or liquidation proceedings or other proceedings for relief under any bankruptcy laws or laws for the relief of debtors are instituted by or against Customer and if instituted are not dismissed within sixty (60) days after such institution; or

(f) Customer shall make an assignment for the benefit of creditors or shall admit in writing its liability to pay its debts generally as they become due, or shall consent to the appointment of a receiver or trustee or liquidator of a major part of its property;

(g) Customer is formally charged under a Federal or state law, for which forfeiture of the Mortgaged Premises is a potential penalty.

(h) any judgment or judgments, writ or writs or warrant or warrants of attachment or any similar process or processes shall be entered or filed against Mortgagor or a Related Party Customer, or against any of their respective property or assets and remains unsatisfied, unvacated, unbonded or unstayed for a period of sixty (60) days; or

(i) any Event of Default shall occur under the Reimbursement Agreement, the Note, the Letter of Credit or any other document evidencing or securing the indebtedness evidenced by the Letter of Credit or the Note.

25. Remedies. When any Event of Default has occurred and is continuing (regardless of the pendency of any proceeding which has or might have the effect of preventing Mortgagor from complying with the terms of this instrument) and in addition to such other rights as may be available under applicable law or under the Reimbursement Agreement, the Note or the Letter of Credit, but subject at all times to any mandatory legal requirements:

(a) Acceleration. Mortgagee may, at its option, (i) declare the Note and all unpaid indebtedness of Mortgagor hereby secured, including interest then accrued thereon, to be forthwith due and payable, without other notice or demand of any kind, or (ii) instruct Trustee to declare the entire principal of the Bonds and accrued interest to be immediately due and payable, whereupon the same shall become and be forthwith due and payable, without other notice or demand of any kind.

(b) Uniform Commercial Code. Mortgagee shall, with respect to any part of the Mortgaged Premises constituting property of the type in respect of which realization on a lien or security interest granted therein is governed by the Uniform Commercial Code of Illinois (the "Code"), have all the rights, options and remedies of a secured party under the Code, including without limitation, the right to the possession of any such property or any part thereof, and the right to enter with legal process any premises where any such property may be found. Any requirement of said Code for reasonable notification shall be met by mailing written notice to Mortgagor at its address above set forth at least ten (10) days prior to the sale or other event for which such notice is required. The expenses of retaking, selling and otherwise disposing of said property, including reasonable attorneys' fees and legal expenses incurred in connection therewith, shall constitute so much additional indebtedness hereby secured and shall be payable upon demand with interest at the Default Interest Rate.

(c) Foreclosure. Mortgagee may proceed to protect and enforce the rights of Mortgagee hereunder (i) by any action at law, suit in equity or other appropriate proceedings, whether for the specific performance of any agreement contained herein, or for an injunction against the violation of any of the terms hereof, or in aid of the exercise of any power granted hereby or by law, or (ii) by the foreclosure of this Mortgage. In any suit to foreclose the lien hereof, there shall be allowed and included as additional indebtedness hereby secured in the decree of sale, all expenditures and expenses authorized by the Illinois Mortgage Foreclosure Law, 735 ILCS 5/15-1101, et.

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seq. as amended from time to time (the "Act"), and all other reasonable expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for attorney's fees, appraiser's fees, outlays for documentary and expert evidence, stenographer's charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurance with respect to title as Mortgagee may deem reasonably necessary either to prosecute such suit or to evidence to bidders at sales which may be had pursuant to such decree the true conditions of the title to or the value of the Mortgaged Premises. All reasonable expenditures and expenses of the nature mentioned in this paragraph, and such other expenses and fees as may be incurred in the protection of the Mortgaged Premises and rents and income therefrom and the maintenance of the lien of this Mortgage, including the fees of any attorney employed by Mortgagee in any litigation or proceedings affecting this Mortgage, the Reimbursement Agreement, the Note, the Letter of Credit or the Mortgaged Premises, including bankruptcy proceedings, or in preparation of the commencement or defense of any proceedings or threatened suit or proceeding or otherwise in dealing specifically therewith, shall be so much additional indebtedness hereby secured and shall be immediately due and payable by Mortgagor, with interest thereon at the Default Interest Rate until paid.

(d) Appointment of Receiver. Mortgagee shall, as a matter of right, without notice and without giving bond to Mortgagor or anyone claiming by, under or through it, and without regard to the solvency or insolvency of Mortgagor or the then value of the Mortgaged Premises, be entitled to have a receiver appointed pursuant to the Act of all or any part of the Mortgaged Premises and the rents, issues and profits thereof, with such power as the court making such appointment shall confer, and Mortgagor hereby consents to the appointment of such receiver and shall not oppose any such appointment. Any such receiver may, to the extent permitted under applicable law, without notice, enter upon and take possession of the Mortgaged Premises or any part thereof by force, summary proceedings, ejectment or otherwise, and may remove Mortgagor or other persons and any and all property therefrom, and may hold, operate and manage the same and receive all earnings, income, rents, issues and proceeds accruing with respect thereto or any part thereof, whether during the pendency of any foreclosure or until any right of redemption shall expire or otherwise.

(e) Taking Possession, Collecting Rents, Etc. Upon demand by Mortgagee, Mortgagor shall surrender to Mortgagee and Mortgagee may enter and take possession of the Mortgaged Premises or any part thereof personally, by its agent or attorneys or

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be placed in possession pursuant to court order as mortgagee in possession or receiver as provided in the Act, and Mortgagee, in its discretion, personally, by its agents or attorneys or pursuant to court order as mortgagee in possession or receiver as provided in the Act may enter upon and take and maintain possession of all or any part of the Mortgaged Premises, together with all documents, books, records, papers, and accounts of Mortgagor relating thereto, and may exclude Mortgagor and any agents and servants thereof wholly therefrom and may, on behalf of Mortgagor, or in its own name as Mortgagee and under the powers herein granted: 98J19004

- Property of County Clerk's Office
- (i) Hold, operate, manage and control all or any part of the Mortgaged Premises and conduct the business, if any, thereof, either personally or by its agents, with full power to use such measures, legal or equitable, as in its discretion may be deemed proper or necessary to enforce the payment or security of the rents, issues, deposits, profits, and avails of the Mortgaged Premises, including without limitation actions for recovery of rent, actions in forcible detainer, and actions in distress for rent, all without notice to Mortgagor;
  - (ii) Cancel or terminate any lease or sublease of all or any part of the Mortgaged Premises for any cause or on any ground that would entitle Mortgagor to cancel the same;
  - (iii) Elect to disaffirm any lease or sublease of all or any part of the Mortgaged Premises made subsequent to this Mortgage without Mortgagee's prior written consent;
  - (iv) Extend or modify any then existing leases and make new leases of all or any part of the Mortgaged Premises, which extensions, modifications, and new leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the Expiration Date of the Letter of Credit and beyond the maturity date of the loan evidenced by the Note and the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases and the options or other such provisions to be contained therein, shall be binding upon Mortgagor, all persons whose interests in the Mortgaged Premises are subject to the lien hereof, and the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the indebtedness hereby secured, satisfaction of any foreclosure decree, or issuance of any certi-

ificate of sale or deed to any such purchaser;

(v) Make all necessary or proper repairs, decorations, renewals, replacements, alterations, additions, betterments, and improvements in connection with the Mortgaged Premises as may seem judicious to Mortgagee, to insure and reinsure the Mortgaged Premises and all risks incidental to Mortgagee's possession, operation and management thereof, and to receive all rents, issues, deposits, profits, and avails therefrom; and

(vi) Apply the net income, after allowing a reasonable fee for the collection thereof and for the management of the Mortgaged Premises to the payment of taxes, insurance premiums and other charges applicable to the Mortgaged Premises, or in reduction of the indebtedness hereby secured in such order and manner as Mortgagee shall select.

Nothing herein contained shall be construed as constituting Mortgagee a mortgagee in possession in the absence of the actual taking of possession of the Mortgaged Premises. The right to enter and take possession of the Mortgaged Premises and use any personal property therein, to manage, operate, conserve and improve the same, and to collect the rents, issues and profits thereof, shall be in addition to all other rights or remedies of Mortgagee hereunder or afforded by law, and may be exercised concurrently therewith or independently thereof. The reasonable expenses (including any receiver's fees, counsel fees, costs and agent's compensation) incurred pursuant to the powers herein contained shall be secured hereby which expenses Mortgagor promises to pay upon demand together with interest at the rate applicable to the Letter of Credit or the Note at the time such expenses are incurred. Mortgagee shall not be liable to account to Mortgagor for any action taken pursuant hereto other than to account for any rents actually received by Mortgagee. Without taking possession of the Mortgaged Premises, Mortgagee may, in the event the Mortgaged Premises become vacant or are abandoned, take such steps as it deems appropriate to protect and secure the Mortgaged Premises (including hiring watchmen therefor) and all costs incurred in so doing shall constitute so much additional indebtedness hereby secured payable upon demand with interest thereon at the Default Interest Rate.

26. Compliance with Illinois Mortgage Foreclosure Law.

(a) In the event that any provision in this Mortgage shall be inconsistent with any provision of the Act, the provisions of the Act shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any

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other provision of this Mortgage that can be construed in a manner consistent with the Act.

(b) If any provision of this Mortgage shall grant to Mortgagee any rights or remedies upon default of Mortgagor which are more limited than the rights that would otherwise be vested in Mortgagee under the Act in the absence of said provision, Mortgagee shall be vested with the rights granted in the Act to the full extent permitted by law.

(c) Without limiting the generality of the foregoing, all reasonable expenses incurred by Mortgagee to the extent reimbursable under Sections 5/15-1510 and 5/15-1512 of the Act, whether incurred before or after any decree or judgment of foreclosure, and whether enumerated in Sections 24(c) or 27 of this Mortgage, shall be added to the indebtedness hereby secured or by the judgment of foreclosure.

27. Waiver of Right to Redeem From Sale; Waiver of Appraisal, Valuation, Etc. Mortgagor 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," 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 Mortgaged Premises marshalled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Mortgaged Premises sold as an entirety. In the event of any sale made under or by virtue of this instrument, the whole of the Mortgaged Premises may be sold in one parcel as an entirety or in separate lots or parcels at the same or different times, all as Mortgagee may determine. Mortgagee shall have the right to become the purchaser at any sale made under or by virtue of this instrument and Mortgagee so purchasing at any such sale shall have the right to be credited upon the amount of the bid made therefor by Mortgagee with the amount payable to Mortgagee out of the net proceeds of such sale. In the event of any such sale, all sums due pursuant to the Letter of Credit and the Note and the other indebtedness hereby secured, if not previously due, shall be and become immediately due and payable without demand or notice of any kind. Mortgagor acknowledges that the Mortgaged Premises does not constitute agricultural real estate, as defined in Section 5/15-201 of the Act, or residential real estate, as defined in Section 5/15-1219 of the Act. To the fullest extent permitted by law, Mortgagor, pursuant to Section 5/15-1601(b) of the Act, hereby voluntarily and knowingly waives any and all rights of redemption on behalf of Mortgagor, and each and every person acquiring any interest in, or title to the Mortgaged Premises described herein subsequent to the date of this Mortgage, and on behalf of all other persons to the extent permitted by applicable law.



28. Costs of Expenses of Foreclosure. In any suit to foreclose the lien hereof there shall be allowed and included as additional indebtedness in the decree for sale all reasonable expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for attorneys' fees, appraiser's fees, outlays for documentary and expert evidence, stenographic charges, publication costs and costs (which may be estimated as to items to be expended after the entry of the decree) of procuring all such abstracts of title, title searches and examination, guarantee policies, Torrens certificates and similar data and assurances with respect to title as Mortgagee may deem to be reasonably necessary either to prosecute any foreclosure action or to evidence to the bidder at any sale pursuant thereto the true condition of the title to or the value of the Mortgaged Premises, and all of which expenditures shall become so much additional indebtedness hereby secured which Mortgagor agrees to pay and all of such shall be immediately due and payable with interest thereon from the date of expenditure until paid at the Default Interest Rate.

29. Insurance After Foreclosure. Wherever provision is made in the Mortgage or in the Reimbursement Agreement for insurance policies to bear mortgagee clauses or other loss payable clauses or endorsements in favor of Mortgagee, or to confer authority upon Mortgagee to settle or participate in the settlement of losses under policies of insurance or to hold and disburse or otherwise control use of insurance proceeds, from and after the entry of judgment of foreclosure, all such rights and powers of Mortgagee shall continue in mortgagee as judgment creditor or mortgagee until confirmation of sale. Upon confirmation of sale, Mortgagee shall be empowered to assign all policies of insurance to the purchaser at the sale.

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

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

b) payments by Mortgagee of: (i) when due installments of principal, interest or other obligations in accordance with the terms of any senior mortgage or other prior lien or

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encumbrance; (ii) when due installments of 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 mortgaged real estate or any part thereof; (iii) other obligations authorized by this 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 5/15-1505 of the Act;

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

(d) attorneys' fees and other costs incurred: (i) in connection with the foreclosure of this Mortgage as referred to in Section 5/15-1504 (d) (2) and 5/15-1510 of the Act; (ii) in connection with any action, suit or proceeding brought by or against Mortgagee for the enforcement of this Mortgage or arising from the interest of Mortgagee hereunder; or (iii) in the preparation for the commencement or defense of any such foreclosure or other action;

(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 (b) (1) of Section 5/15-1508 of the Act;

(f) advances of any amount required to make up a deficiency in deposits for installments of taxes and assessments and insurance premiums as may be authorized by this Mortgage;

(g) expenses deductible from proceeds of sale as referred to in Subsections (a) and (b) of Section 5/15-1512 of the Act;

(h) expenses incurred and expenditures made by Mortgagee for any one or more of the following: (a) 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 to maintaining of existing insurance in effect at the time any receiver or mortgagee takes possession of the Mortgaged Premises imposed by Subsection (c) (1) of Section 5/15-1704 of the Act; (b) repair or restoration of damage or destruction in excess of available insurance proceeds or condemnation awards; (c) payments required or deemed by Mortgagee to be for the benefit of the Mortgaged Premises 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 Mortgaged Premises; (d) shared or common expense assessments payable to any association or corporation in which the

owner of the Mortgaged Premises is a member in any way affecting the Mortgaged Premises; (e) pursuant to any lease or other agreement for occupancy of the Mortgaged Premises.

All Protective Advances shall be so much additional indebtedness secured by this Mortgage, and shall become immediately due and payable without notice and with interest thereon from the date of the advance until paid at the Default Interest Rate.

This Mortgage shall be a lien for all Protective Advances as to subsequent purchasers and judgment creditors from the time this Mortgage is recorded pursuant to Subsection (b)(10) of Section 5/15-1502 of the Act.

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 Act, apply to and be included in:

- (i) determination of the amount of indebtedness secured by this Mortgage at any time;
- (ii) 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;
- (iii) determination of amounts deductible from sale proceeds pursuant to Section 5/15-1512 of the Act;
- (iv) application of income in the hands of any receiver or mortgagee in possession, and
- (v) computation of any deficiency judgment pursuant to Subsections (b)(2) and (e) of Sections 5/15-1508 and Section 5/15-1511 of the Act.

31. Application of Proceeds. The proceeds of any foreclosure sale of the Mortgaged Premises or of any sale of property pursuant to Section 25(c) hereof shall be distributed in the following order of priority: first, on account of all reasonable costs and expenses incident to the foreclosure or other proceedings including all such items as are mentioned in Sections 25(b), 25(c) and 28 hereof; second, to all other items which under the terms hereof constitute indebtedness hereby secured in addition to that evidenced by the Letter of Credit and the Note with interest thereon as herein provided; third, to all interest on the Letter of Credit and the Note; and fourth, to all principal on the Letter of Credit and the Note with any overplus to whomsoever shall be lawfully entitled to same.

32. Mortgagee's Remedies Cumulative - No Waiver. No remedy or right of Mortgagee shall be exclusive but shall be cumulative and in addition to every other remedy or right now or hereafter existing at law or in equity or by statute or provided for in the Reimbursement Agreement or in the Note. No delay in the exercise or omission to exercise any remedy or right accruing on any default shall impair any such remedy or right or be construed to be a waiver of any such default or acquiescence therein, nor shall it affect any subsequent default of the same or different nature. Every such remedy or right may be exercised concurrently or independently, and when and as often as may be deemed expedient by Mortgagee.

33. Mortgagee Party to Suits. If Mortgagee shall be made a party to or shall intervene in any action or proceeding affecting the Mortgaged Premises or the title thereto or the interest of Mortgagee under this Mortgage (including probate and bankruptcy proceedings), or if Mortgagee employs an attorney to collect any or all of the indebtedness hereby secured or to enforce any of the terms hereof or realize hereupon or to protect the lien hereof, or if Mortgagee shall incur any costs or expenses in preparation for the commencement of any foreclosure proceeding or for the defense of any threatened suit or proceeding which might affect the Mortgaged Premises or the security hereof, whether or not any such foreclosure or other suit or proceeding shall be actually commenced, then in any such case, Mortgagor agrees to pay to Mortgagee, immediately and without demand, all reasonable costs, charges, expenses and attorneys' fees incurred by Mortgagee in any such case, and the same shall constitute so much additional indebtedness hereby secured payable upon demand with interest at the Default Interest Rate.

34. Modification Not to Affect Lien. Mortgagee, without notice to anyone, and without regard to the consideration, if any, paid therefor, or the presence of other liens on the Mortgaged Premises, may in its discretion release any part of the Mortgaged Premises or any person liable for any of the indebtedness hereby secured, may extend the time of payment of any of the indebtedness hereby secured and may grant waivers or other indulgences with respect hereto and thereto, without in any way affecting or impairing the liability of any party liable upon any of the indebtedness hereby secured or the priority of the lien of this Mortgage upon all of the Mortgaged Premises not expressly released, and may agree with Mortgagor to modifications to the terms and conditions contained herein or otherwise applicable to any of the indebtedness hereby secured (including modifications in the rates of interest applicable thereto).

35. Notices. Any and all notices given in connection with this Mortgage shall be deemed adequately given only if in writing and (i) personally delivered; or (ii) sent by a nationally recognized overnight courier service; or (iii) sent by registered

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or certified United States mail, postage prepaid, return receipt requested, to the party or parties for whom such notices are intended. A written notice shall be deemed received (i) when delivered in person; (ii) on the next business day immediately following the day sent by overnight courier; and (iii) on the third (3rd) business day following the day sent by registered or certified mail. A written notice shall also be deemed received on (i) The date delivery shall have been refused at the address required by this Mortgage; or (ii) with respect to notices sent by United States mail but not delivered, the date as of which the postal service shall have indicated such notice to be undeliverable at the address required by this Mortgage. Any and all notices referred to in this Mortgage or which any party desires to give to another shall be addressed as follows:

If to Mortgagee: Suburban Federal Savings, a Federal Savings Bank  
154th Street at Broadway  
Harvey, IL 60426

With a copy to: Arnold S. Newman, Esq.  
Newman & Boyer, Ltd.  
900 Maple Rd., 3rd Fl.  
Homewood, IL 60430

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If to Customer: Bethlehem Village Limited Partnership  
20 E. 147th Street  
Harvey, IL 60426

To Land Trustee: LaSalle National Bank  
135 South LaSalle Street  
Chicago, Illinois 60690

Copies of all notices to Customer and/or Land Trustee shall be given to the following addressed as follows.

Schiff, Hardin & Waite  
7200 Sears Tower  
Chicago, IL 60606  
Attention: Thomas Thorne Thomsen

KeyCorp Investment Limited Partnership IV  
c/o Key Affordable Housing Corp.  
Mailcode: OH-01-27-0408  
127 Public Square  
Cleveland, Ohio 44114  
Attention: David G. Carr, Vice President

Peabody & Brown  
1255 23rd Street, N.W.  
Suite 800  
Washington, D.C. 20037

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Attention: Kenneth G. Hance, Jr.

or in such other manner or to such other address, as such party shall designate in a written notice to the other party hereto.

36. Partial Invalidity. All rights, powers and remedies provided herein are intended to be limited to the extent necessary so that they will not render this Mortgage invalid, unenforceable or not entitled to be recorded, registered or filed under any applicable law. If any term of this Mortgage shall be held to be invalid or unenforceable, the validity and enforceability of the other terms of this Mortgage shall in no way be affected thereby.

37. Successors and Assigns. Whenever any of the parties hereto is referred to, such reference shall be deemed to include the successors and assigns of such party; and all the covenants, promises and agreements in this Mortgage contained by or on behalf of Mortgagor, or by or on behalf of Mortgagee, shall bind and inure to the benefit of the respective successors and assigns of such parties, whether so expressed or not.

38. Headings. The headings in this instrument are for convenience of reference only and shall not limit or otherwise affect the meaning of any provision hereof.

39. Changes, Etc. This instrument and the provisions hereof may be changed, waived, discharged or terminated only by an instrument in writing signed by the party against which enforcement of the change, waiver, discharge or termination is sought.

40. Governing Law. This Mortgage shall be governed by and construed under the laws of the State of Illinois.

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

42. Mortgagee Not a Joint Venturer or Partner. The Mortgagor and the Mortgagee acknowledge and agree that in no event shall the Mortgagee be deemed to be a partner or joint venturer with the Trust and the Customer or with either of them. Without limitation of the foregoing, the Mortgagee shall not be deemed to be such a partner or joint venturer on account of its become a mortgagee in possession or exercising any rights pursuant to this Mortgage or

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pursuant to any other instrument or document evidencing or securing any of the indebtedness hereby secured, or otherwise.

43. Future Advances. The Mortgagor covenants and agrees that, in accordance with the provisions Reimbursement Agreement, all of the funds advanced and to be advanced thereunder have been and will be used exclusively to pay the costs of the construction of improvements on the Property (including the acquisition cost of the Mortgaged Premises), and that this instrument constitutes a "Construction Mortgage" within the meaning of Section 9-313(1)(c) of the Illinois Uniform Commercial Code. All advances and indebtedness arising or accruing under the Reimbursement Agreement from time to time, whether or not the total amount thereof may exceed the amount of the Letter of Credit or the face amount of the Note, shall be secured hereby to the same extent as though said Reimbursement Agreement were fully incorporated in this Mortgage. If there shall be any inconsistency between provisions of this Mortgage and the Reimbursement Agreement or any other instrument or documents securing the Letter of Credit, the terms and provisions of this Mortgage shall prevail.

This Mortgage is granted to secure future advances and loans from the Mortgagee to or for the benefit of the Mortgagor or Mortgaged Premises, as provided in the Reimbursement Agreement, and costs and expenses of enforcing the Mortgagor's obligations under this Mortgage, the Reimbursement Agreement and the other the documents securing the Letter of Credit. All advances, disbursements or other payments required by the Reimbursement Agreement are obligatory advances up to the credit limits established therein and shall, to the fullest extent permitted by law, have priority over any and all mechanics' liens and other liens and encumbrances arising after this Mortgage is recorded. All future advances that may be subsequently made by Mortgagee shall be made within 20 years of the date hereof and have the same priority as advances made on the date hereof although there may be no advances made on the date hereof and although there may be no indebtedness outstanding at the time any future advance is made.

44. No Property Manager's Lien. Any property management agreement for or relating to all or any part of the Mortgaged Premises, whether now in effect or entered into hereafter by the Trust or the Customer or any agent of either of them, with a property manager shall contain a "no lien" provision whereby the property manager forever and unconditionally waives and releases any and all mechanics' lien rights and claims that it or anyone claiming through or under it may have at any time pursuant to any statute or law (including, without limitation, Chapter 82, Paragraph 1 et seq., Illinois Revised Statutes). Such property management agreement or a short form thereof including such waiver shall, at the Mortgagee's request, be recorded with the Office of the Recorder of Deeds for the county in which the Mortgaged Premises are located. In addition, the Mortgagor shall cause the

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property manager to enter into a subordination agreement with the Mortgagee, in recordable form, whereby the property manager subordinates its present and future lien rights and those of any party claiming by, through or under it, to the lien of this Mortgage. The Mortgagor's failure to cause any of the foregoing to occur shall constitute an Event of Default.

## 45. Land Trustee: Exculpation and Authority.

- (a) This Mortgage is executed by the Land Trustee not individually or personally, but solely as trustee as aforesaid, in the exercise of the power and authority conferred upon and vested in it as such trustee, and it is expressly understood and agreed that nothing herein contained shall be construed as creating any liability on the Land Trustee personally to pay the Note or any interest that may accrue thereof or any of the indebtedness arising or accruing under or pursuant hereto or to the Note, or to perform any covenant, undertaking, representation or agreement, either express or implied, contained herein or in the Note, all such personal liability of the Land Trustee, if any, being expressly waived by the Mortgagee and by each and every person now or hereafter claiming any right or security under this Mortgage; provided, however, that nothing herein contained shall in any way limit the liability of the Customer or other obligor (not including the Land Trustee) hereunder or under the Reimbursement Agreement, the Note or the other documents securing the Letter of Credit.
- (b) The Land Trustee hereby warrants that it possesses full power and authority to execute and deliver this instrument.

46. Nonrecourse Debt. Notwithstanding any other terms of this Mortgage, the obligation of the Customer hereunder is payable only out of the property specifically described in this Mortgage or Assignment of Rents between Mortgagor and Mortgagee or even date herewith, a Security Agreement between Customer and Mortgagee of even date herewith, a Pledge Agreement between Customer and Mortgagee of even date herewith and an Assignment of Beneficial Interest of even date herewith between Customer and Mortgagee.

No personal liability shall be enforced against the Customer or any of its partners because or in respect of this Mortgage or the Note or Reimbursement Agreement or the making issuing or transferring thereof, all such liability, if any, being expressly waived by the Mortgagee.

WITNESS the respective hands and seals of the Land Trustee and the Customer at Chicago, Illinois, on the day and year first above



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written, pursuant to proper authority duly granted.

LaSalle National Bank, not  
personally but as Trustee under Trust Agreement  
dated January 20, 1998 and known as Trust  
No. 121509.

By: *Francis Calce*  
Title: TRUSTEE

Attest:

*Alfred Berce*  
ASSISTANT SECRETARY

Bethlehem Village Limited Partnership  
By: Bethlehem Community Development Corporation,  
an Illinois not for profit corporation, its  
general partner.

By: *J. Smith*  
Title: \_\_\_\_\_

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## Land Trustee Acknowledgement

STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

98819064

I, KATHLEEN E. BYE, a notary public in and for said County, in the State aforesaid, DO HEREBY CERTIFY THAT ROSEMARY COLLINS, personally known to me to be the Vice President of LA SALLE NATIONAL BANK as Land Trustee as aforesaid and Deborah [unclear] personally known to me to the Assistant Secretary of said corporation, and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such Vice President and Assistant Secretary of said corporation, they signed and delivered the said instrument pursuant to proper authority duly given by the Board of Directors of said corporation as Land Trustee as aforesaid, as their free and voluntary act and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 22 day of April, 1998.

Kathleen E. Bye  
NOTARY PUBLIC

My Commission expires: 10/23/99





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EXHIBIT "A"

50019004

## LEGAL DESCRIPTION

Parcel 1: Lots 11, 12, 13 and 14 in Chase's Subdivision of Block 11 of South Lawn (now called Harvey) being a Subdivision in Section 17 and the South Half of Section 8, Township 36 North, Range 4 East of the Third Principal Meridian;

Parcel 2: The West 10 Feet of Lot 7, all of Lots 8 to 10, both inclusive, and Lots 15 to 34, both inclusive, in Chase's Subdivision of Block 11, all in South Lawn, a Subdivision of the South Half of Section 8 and the North Half of Section 17, Township 36 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois.

Parcel 3: The vacated East-West alley lying South of the South Line of Lots 8-14 inclusive and North of the North Line of Lot 15 and West of the East Line of Lot 15 (extended North) in Block 11 aforesaid.

Parcel 4: The vacated East-West alley lying South of the South Line of Lot 26 and North of the North Line of Lots 27-33 inclusive and West of the East Line of Lot 26 (extended South) in Block 11 aforesaid.

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