



JUNIOR CONSTRUCTION MORTGAGE

Prepared by and after recording return to:

For Recorder's Use Only:

Steven J. Holler  
Assistant Corporation Counsel  
Department of Law  
City of Chicago  
121 N. LaSalle Street  
Chicago, Illinois 60602

Handwritten initials/signature

Handwritten: Gault

Handwritten: D2

Handwritten: 28-13-337

JUNIOR CONSTRUCTION MORTGAGE

THIS JUNIOR CONSTRUCTION MORTGAGE ("Mortgage") is made and given as of this 11th day June, 1999, by 243 South Dearborn II, L.L.C., an Illinois limited liability company, having an address c/o Kenard Corporation, 4242 N. Sheridan Rd., Chicago, Illinois 60613 ("Mortgagor"), to the CITY OF CHICAGO, an Illinois municipal corporation, having its principal office at 121 N. LaSalle Street, Chicago, Illinois 60602 ("City" or "Mortgagee").

RECITALS

WHEREAS, the City Council of the City, by ordinance adopted May 12, 1999, authorized the execution by Mortgagor and the City of that certain Fisher Building Redevelopment Agreement dated as the date hereof, a copy of which has been recorded prior to the recording of this Mortgage (such agreement, as amended, supplemented or modified, the "Redevelopment Agreement"); and

WHEREAS, all terms, unless defined herein, shall have the meaning given to them in the Redevelopment Agreement; and

BOX 333-CT1

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WHEREAS, the Redevelopment Agreement provides inter alia for the Mortgagor to acquire and renovate the building commonly known as The Fisher Building, 343 S. Dearborn Street, Chicago, Illinois located on the real property legally described in Exhibit A attached hereto (the "Land"); and

WHEREAS, the Project will be financed in part with City Funds, up to a maximum aggregate amount of \$6,600,000, to pay for or reimburse the Mortgagor (or its managing member) for certain Redevelopment Project Costs, as are further described in the Redevelopment Agreement; and

WHEREAS, the City Funds have been derived from the proceeds of the City's Tax Increment Allocation Bonds (Central Loop Redevelopment Project) Series 1997, Taxable Series 1997 B Bonds and must be used in accordance with any laws, regulations and ordinances governing the use of such funds, including, without limitation, the Illinois Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4-1 et seq; and

WHEREAS, as consideration for the use of the City Funds, the Mortgagor has agreed to acquire, renovate and operate the Project in accordance with the terms and conditions of the Redevelopment Agreement, and, until the expiration of the Term of the Agreement, abide by the covenants running with and affecting the Land set forth in Sections 8.01(o), 8.02, 8.19 and 8.20 of the Redevelopment Agreement (collectively, the "Performance Covenants"); and

WHEREAS, the Mortgagor is also obligated to comply with, among other things, the following sections of the Redevelopment Agreement: the transfer restrictions in Sections 8.01(d), (l), (m) and (o) and Section 18.15; the prevailing wage requirements in Section 8.09; the employment opportunity, City resident employment and MBE/WBE utilization requirements in Section 8.07 and Sections 10.01, 10.02 and 10.03; and the financing restrictions inherent in the definition of Lender Financing and in Sections 8.01(d), (j) and (n) and Section 16 (collectively, the "Other Covenants");

WHEREAS, the failure of the Mortgagor to comply with the Performance Covenants or the Other Covenants shall entitle the City to recover the City Funds if such failure constitutes an

Event of Default under the Redevelopment Agreement; and

WHEREAS, the parties intend that this Mortgage secure the Mortgagor's performance of the Performance Covenants, the Other Covenants, its obligations under this Mortgage and the repayment of the City Funds in the event of an Event of Default;

NOW, THEREFORE, to secure the performance by Mortgagor of such covenants and obligations, and in order to charge the properties, interests and rights hereinafter described with such mortgage lien, Mortgagor has executed and delivered the Mortgage and does hereby grant, convey, assign, mortgage, warrant, grant a security interest in, and confirm unto, Mortgagee and its successors and assigns forever, all of the following rights, interests, claims and property (collectively, the "Mortgaged Property"), subject to the title matters, liens and encumbrances set forth in Exhibit P attached hereto:

(A) The Land, together with all easements, water rights, hereditaments, mineral rights and other claims, rights and interests appurtenant thereto;

(B) All buildings, structures and other improvements of every nature whatsoever now or hereafter situated on the Land, including, without limitation, the Project, all fixtures or attachments of every kind and nature whatsoever now or hereafter owned by Mortgagor which are or shall be attached to, located in or on, forming a part of, used or intended to be used in connection with or incorporated in the Land or such buildings, structures and other improvements, including all extensions, additions, improvements, betterments, renewals and replacements of any of the foregoing ("Improvements");

(C) All tenements, easements, rights-of-way and rights used as a means of access to the Land and Improvements and appurtenances thereto now or hereafter belonging or pertaining thereto;

(D) All rents and issues of the Land and Improvements from time to time and all of the estate, right, title, interest, property, possession, claim and demand at law, as well as in equity of Mortgagor, in and to the same;

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(E) all right, title and interest of Mortgagor in and to all fixtures, personal property of any kind or character now or hereafter attached to, contained in and used or useful in connection with the Land or the Improvements, together with all furniture, floor covering, fittings, furnishings, apparatus, goods, systems, fixtures and other items of personal property of every kind and nature, now or hereafter located in, upon or affixed to the Land or the Improvements, or used or useful in connection with any present or future operation of the Land or the Improvements, including, but not limited to, all apparatus and equipment used to supply heat, gas, air conditioning, water, light, power, refrigeration, electricity, plumbing and ventilation including all renewals, additions and accessories to and replacements of and substitutions for each and all of the foregoing, and all proceeds therefrom (the "Equipment");

(F) all of the estate, interest, right, title or other claim or demand which Mortgagor now has or may acquire with respect to (i) proceeds of insurance in effect with respect to the Land, the Improvements or the Equipment, and (ii) any and all awards, claims for damages, judgments, settlements and other compensation made for or consequent upon the taking by condemnation, eminent domain or any like proceeding of all or any portion of the Land, the Improvements or the Equipment;

(G) all intangible personal property, accounts, licenses, permits, instruments, contract rights, and chattel paper of Mortgagor, including, but not limited to cash, accounts receivable, bank accounts, certificates of deposit, rights (if any) to amounts held in escrow, deposits, judgments, liens and causes of action, warranties and guarantees, relating to the Land, the Equipment or the Improvements;

(H) all other property rights of Mortgagor of any kind or character related to all or any portion of the Land, the Improvements or the Equipment; and

(I) the proceeds from the sale, transfer, pledge or other disposition of any or all of the property described in the preceding clauses.

All of the Land, Improvements, estate and property hereinabove described, real, personal and mixed, whether or not

affixed or annexed, and all rights hereby conveyed and mortgaged are intended so to be as a unit and are hereby understood, agreed and declared, to the maximum extent permitted by law, to form a part and parcel of the Land and Improvements and to be appropriated to the use thereof, and shall for the purposes of the Mortgage deemed to be conveyed and mortgaged hereby; provided, however, as to any property, aforesaid which does not so form a part and parcel of the Land and Improvements, the Mortgage is hereby deemed also to be a Security Agreement under the Uniform Commercial Code of the State of Illinois (the "Code") for the purposes of granting a security interest in such property, which Mortgagor hereby grants to Mortgagee as secured party (as defined in the Code) and as also contemplated and provided for in Section 6.10 hereof.

TO HAVE AND TO HOLD the Mortgaged Property and all parts thereof unto Mortgagee, its successors and assigns, to its own proper use, benefit and advantage forever, subject, however, to the terms, covenants and conditions herein;

WITHOUT limitation of the foregoing, Mortgagor hereby further grants unto Mortgagee, pursuant to the provisions of the Code, a security interest in all of the above-described property which are or are to become fixtures.

THIS MORTGAGE IS GIVEN TO SECURE: (a) the performance by the Mortgagor of the Performance Covenants, the Other Covenants and its obligations under this Mortgage, and (b) the repayment of City funds upon the occurrence of an Event of Default.

## SECTION I

### INCORPORATION OF RECITALS

The Mortgagor acknowledges and agrees that the recitals set forth above constitute an integral part of the Mortgage and are hereby incorporated herein by this reference.

## SECTION II

### INCORPORATION OF REDEVELOPMENT AGREEMENT PROVISIONS

The Mortgagor acknowledges and agrees that all of the

sections of the Redevelopment Agreement cited in the Recitals to this Mortgage, along with all defined terms used in such sections and all other defined terms from the Redevelopment Agreement that are used in this Mortgage, together with such other provisions of the Redevelopment Agreement as may be necessary to reasonably construe such sections and defined terms, are incorporated herein by reference as if fully written out and included as definitions and independent covenants in this Mortgage.

SECTION III

COVENANTS

The Mortgagor covenants, represents and warrants and the Trust represents to Mortgagee that:

3.1 Redevelopment Agreement Covenants. Mortgagor shall comply with the Performance Covenants and the Other Covenants.

3.2 Maintenance of the Mortgaged Property. (a) Mortgagor shall preserve and maintain the Mortgaged Property in good condition and repair, shall not commit or suffer any waste thereof, and shall keep the same in a clean, orderly and attractive condition. Mortgagor shall not do or suffer to be done anything which will increase the risk of fire or other hazard to the Mortgaged Property or any part thereof.

(b) If the Mortgaged Property or any part thereof is damaged by fire or any other cause, Mortgagor will immediately give written notice of the same to Mortgagee.

(c) Mortgagor shall comply with, and cause the Mortgaged Property to comply with, all present and future laws, ordinances, orders, rules, regulations and requirements of any governmental authority applicable to the Mortgaged Property, or any part thereof, and with all recorded restrictions and encumbrances affecting the Mortgaged Property, or any part thereof.

3.3 Subordination. Mortgagee acknowledges that the lien of this Mortgage shall be subject and subordinate to any mortgage lien granted by Mortgagor in favor of a Lender providing Lender Financing including specifically, but without limitation, that certain \_\_\_\_\_



\_\_\_\_\_ dated June \_\_\_\_\_, 1999 executed by the  
Mortgagor in favor of LaSalle Bank National Association.

SECTION IV

REPAYMENT OBLIGATION

4.1 Generally. If, during the period of time from the execution date of the Mortgage until the expiration of the term of the Redevelopment Agreement (the "Enforceability Period"), the Mortgagor fails to comply with the Performance Covenants, the Other Covenants or its obligations under this Agreement, and such failure constitutes an Event of Default, the Mortgagor shall, without further notice or cure period, automatically and immediately become obligated to repay to the City an amount equal to the City Funds previously paid to the Mortgagor, plus all Protective Advances (as hereinafter defined) and other amounts payable under this Mortgage (whether then owing, or thereafter accruing), less such amounts as the City may recover as a result of a draw on either the Construction L/C or the Payment L/C, or both. The Mortgagee may proceed to foreclose this Mortgage and to exercise any other rights and remedies available to Mortgagee under this Mortgage and the Redevelopment Agreement and at law, in equity or otherwise

4.2 Release of Mortgage. Upon the expiration of the Enforceability Period, if Mortgagor has complied with the Performance Covenants, the Other Covenants and its obligations under this Mortgage, then the Mortgagee shall, within thirty (30) days of receipt of a written request from Mortgagor, execute a release of this Mortgage in recordable form.

SECTION V

DEFAULT

5.1 Events of Default. As used in this Mortgage, the term "Event of Default" shall include (a) the failure by Mortgagor to comply with (a) a Performance Covenant or Other Covenant, which failure constitutes a default under the Redevelopment Agreement, and/or (b) the failure by Mortgagor to comply with its obligations under Section 2.2 of this Mortgage, which remains unremedied for 30 days after notice thereof from Mortgagee to

Mortgagor, provided, however, that if any such default cannot reasonably be remedied within said 30-day period and if Mortgagor shall have commenced to remedy such default within said 30-day period and shall thereafter continue diligently to effect such remedy, then said 30-day period shall be extended to 60 days upon written request from Mortgagor to Mortgagee delivered during such 30-day period, and upon further written request from Mortgagor to Mortgagee delivered during said 60-day period, said 60-day period shall be extended to 90 days (provided, however, that Mortgagee shall not be precluded during any such periods from exercising any remedies available under any of this Mortgage if its security becomes or is about to become materially jeopardized by any failure to cure a default within such period).

5.2 Mortgagee's Options; Subrogation. (a) In case of an Event of Default, Mortgagee may make any payment or perform any act required of Mortgagor and may make full or partial payments of principal or interest on any Lender Financing or prior encumbrances, if any, and purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof, or redeem the Mortgaged Property from any tax sale or forfeiture affecting the Mortgaged Property or contest any tax or assessment thereon. All monies paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including attorneys' fees, and any other monies advanced by Mortgagee to protect the Mortgaged Property and the lien hereof, shall be deemed additional indebtedness secured hereby. Inaction of Mortgagee shall never be considered as a waiver of any right accruing to it on account of any default on the part of Mortgagor.

(b) To the extent that Mortgagee, on or after the date hereof, pays any sum under any provision of law or any instrument or document creating any lien or other interest prior or superior to the lien of this Mortgage, or Mortgagor or any other person or entity pays any such sum with the proceeds of the indebtedness secured hereby, Mortgagee shall have and be entitled to a lien or other interest on the Mortgaged Property equal in priority to the lien or other interest discharged and Mortgagee shall be subrogated to, and receive and enjoy all rights and liens possessed, held or enjoyed by, the holder of such lien, which shall remain in existence and benefit Mortgagee in securing the indebtedness



secured hereby; provided however Mortgagee shall not be entitled to a lien or other interest in the Mortgaged Property pursuant to any lien created by the Lender Financing documents.

5.3 Remedies. Mortgagee's remedies as provided in this Mortgage and the Redevelopment Agreement shall be cumulative and concurrent and may be pursued singularly, successively or together, at the sole discretion of Mortgagee and may be exercised as often as occasion therefor shall arise, and shall not be exclusive but shall be in addition to every other remedy now or hereafter existing at law, in equity or by statute.

5.4 Additional Indebtedness. In the event that the Mortgagee retains an attorney to: (a) assist in collecting amounts owed or enforcing the Mortgagee's rights under this Mortgage or the Redevelopment Agreement; (b) represent Mortgagee in any bankruptcy, reorganization, receivership or other proceedings affecting creditors' rights and involving a claim under this Mortgage or the Redevelopment Agreement; (c) protect or enforce the lien of this Mortgage; or (d) represent Mortgagee in any other proceedings whatsoever in connection with this Mortgage, the Redevelopment Agreement or the Mortgaged Property, then Mortgagor shall pay to Mortgagee all reasonable attorneys' fees, and all costs and expenses incurred in connection therewith.

5.5 No Waiver. Failure of Mortgagee, for any period of time or on more than one occasion, to exercise any such remedy shall not constitute a waiver of the right to exercise the same at any time thereafter or in the event of any subsequent Event of Default. No act of omission or commission of Mortgagee, including specifically any failure to exercise any right or remedy, shall be deemed to be a waiver or release of the same; any such waiver or release is to be effected only through a written document executed by Mortgagee and then only to the extent specifically recited therein. A waiver or release with reference to any one event shall not be construed as a waiver or release of any subsequent event or as a bar to any subsequent exercise of Mortgagee's rights or remedies hereunder. Except as otherwise specifically required herein, notice of the exercise of any right or remedy granted to Mortgagee is not required to be given.

5.6 Right of Possession. To the extent permitted by law, in any case in which, under the provisions of this Mortgage, Mortgagee has a right to institute foreclosure proceedings, whether before or after the institution of such proceedings or before or after sale thereunder, Mortgagor shall, at the option of Mortgagee, surrender to Mortgagee, and Mortgagee shall be entitled to take, actual possession of all or any portion of the Mortgaged Property personally or by its agents or attorneys, and Mortgagee, in its sole discretion, may enter upon, take and maintain possession of all or any portion of the Mortgaged Property.

Upon taking possession of the Mortgaged Property, Mortgagee may make all necessary or proper repairs, decoration, renewals, replacements, alterations, additions, betterments and improvements in connection with the Mortgaged Property as it may deem judicious to insure, protect and maintain the Mortgaged Property against all risks incidental to Mortgagee's possession, operation and management thereof, and may receive all rents, issues and profits therefrom.

5.7 Foreclosure Sale. The Mortgaged Property or any interest or estate therein sold pursuant to any court order or decree obtained under this Mortgage shall be sold in one parcel, as an entirety, or in such parcels and in such manner or order as Mortgagee, in its sole discretion, may elect, to the maximum extent permitted by Illinois law. At any such sale, Mortgagee may bid for and acquire, as purchaser, all or any portion of the Mortgaged Property and, in lieu of paying cash therefor, may make settlement for the purchase price by crediting upon the indebtedness due the amount of Mortgagee's bid.

5.8 Application of Proceeds from Foreclosure Sale. Proceeds of any foreclosure sale of the Mortgaged Property shall be distributed and applied in the following order of priority: (i) on account of all costs and expenses incident to the foreclosure proceedings, (ii) the amounts owed pursuant to Section 4.1 of this Mortgage, and otherwise due and payable under this Mortgage, with interest thereon at the rate of fifteen percent (15%) per annum (the "Interest Rate"), and (iii) any surplus or remaining funds to Mortgagor, its successors or assigns, as their rights may appear.

5.9 Insurance Upon Foreclosure. Wherever provision is made in the Redevelopment Agreement for insurance policies to bear mortgage 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. In case of an insured loss after foreclosure proceedings have been instituted, the proceeds of any insurance policy or policies, if not applied in restoring the Mortgaged Property, shall be used to pay the amount due in accordance with any foreclosure decree that may be entered in any such proceedings, and the balance, if any, shall be paid as the court may direct.

5.10 Waiver of Statutory Rights. To the extent permitted by law, Mortgagor shall not apply for or avail itself of any appraisal, valuation, redemption, reinstatement, stay, extension or exemption laws or any so-called "Moratorium Laws" now existing or hereafter enacted, in order to prevent or hinder the enforcement of foreclosure of this Mortgage and 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 Property marshalled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Mortgaged Property sold as an entirety. To the extent permitted by law, Mortgagor hereby expressly waives any and all rights of redemption and rein-statement, on its own behalf and on behalf of each and every person having a beneficial interest in Mortgagor, it being the intent hereof that any and all such rights of redemption or rein-statement of Mortgagor and of all other persons are and shall be deemed to be hereby waived. Mortgagor acknowledges that the Mortgaged Property do not constitute agricultural real estate, as said term is defined in Section 5/15-1201 of the Illinois Mortgage Foreclosure Law, 735 ILCS 5/15-1101, et seq. (the "Act") or residential real estate as defined in Section 5/15-1219 of the Act.

5.11 Partial Payments. Acceptance by Mortgagee of any payment which is less than payment in full of all amounts due and payable at the time of such payment shall not constitute a waiver of Mortgagee's right to exercise its option to declare the whole of the sum then remaining unpaid, together with all interest thereon at the Interest Rate, immediately due and payable without notice, or any other rights of Mortgagee at that time or any subsequent time, without its express written consent, except and to the extent otherwise provided by law.

5.12 Rescission of Election. The obligation to make immediate payment of the City Funds, once such payment becomes due under the terms of this Mortgage, may at the option of Mortgagee be rescinded, and any proceedings brought to enforce any rights or remedies hereunder may, at Mortgagee's option, be discontinued or dismissed. In either of such events, Mortgagor and Mortgagee shall be restored to their former positions, and the rights, remedies and powers of Mortgagee shall continue as if such obligation to make immediate payment had not been made or such proceedings had not been commenced, as the case may be.

5.13 Protective Advances: Maximum Amount of Indebtedness. All 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 to: (i) preserve or maintain, repair, restore or rebuild the improvements upon the Mortgaged Property; (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 the documents evidencing and securing the Lender Financing, if any, or other prior lien or 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 Property 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 any 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 Sections 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 or payments of installments of taxes and assessments and insurance premiums;

(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: (i) if the Mortgaged Property or any portion thereof constitutes one or more units under a condominium declaration, assessments imposed upon the unit owner thereof; (ii) if any interest in the Mortgaged Property is a leasehold estate under a lease or sublease, rentals or other payments required to be made by the lessee under the terms of the lease or sublease; (iii) premiums for casualty and liability insurance paid by Mortgagee whether or not Mortgagee or a receiver is in possession, if reasonably required, in

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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 Property imposed by Subsection (c) (1) of Section 5/15-1704 of the Act; (iv) repair or restoration of damage or destruction in excess of available insurance proceeds or condemnation awards; (v) payments required or deemed by Mortgagee to be for the benefit of the Mortgaged Property or required to be made by the owner of the Mortgaged Property 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 Property; (vi) shared or common expense assessments payable to any association or corporation in which the owner of the Mortgaged Property is a member in any way affecting the Mortgaged Property; (vii) if the loan secured hereby is a construction loan, costs incurred by Mortgagee for demolition, preparation for and completion of construction, as may be authorized by the applicable commitment or loan agreement; (viii) pursuant to any lease or other agreement for occupancy of the Mortgaged Property; and (ix) if this Mortgage is insured, payments of FHA or private mortgage insurance.

All Protective Advances shall be so much additional indebtedness secured by this Mortgage.

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) (1) of Section 5/15-1302 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:

(1) the determination of the amount of indebtedness secured by this Mortgage at any time;

(2) 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



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court may reserve jurisdiction for such purpose;

(3) if the right of redemption has not been waived by this Mortgage, computation of amount required to redeem, pursuant to Subsections (d)(2) and (e) of Section 5/15-1603 of the Act;

(4) the determination of amounts deductible from sale proceeds pursuant to Section 5/15-1512 of the Act;

(5) the application of income in the hands of any receiver or mortgagee in possession; and

(6) the 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.

The maximum principal amount of indebtedness secured by this Mortgage shall be \$13,200,000, plus any Protective Advances, with interest on such sum at the Interest Rate.

## SECTION VI

### MISCELLANEOUS PROVISIONS

6.1 Notice. Unless otherwise specified, any notice, demand or request required hereunder shall be given in the same manner as in Section 17 of the Redevelopment Agreement.

6.2 Time. Time is of the essence with respect to this Mortgage and the performance of the covenants contained herein.

6.3 Modifications. This Mortgage may not be altered, amended, modified, canceled, changed or discharged except by written instrument signed by Mortgagor and Mortgagee or their respective permitted successors and permitted assigns.

6.4 Headings. The headings of articles, sections, paragraphs and subparagraphs in this Mortgage are for convenience of reference only and shall not be construed in any way to limit or define the content, scope or intent of the provisions hereof.

6.5 Governing Law; Venue; Jurisdiction. This Mortgage shall be construed and enforced according to the internal laws of the

State of Illinois without regard to its conflict of laws principles. If there is a lawsuit under this Mortgage, each party agrees to submit to the jurisdiction of the courts of Cook County, the State of Illinois, or the United States District Court for the Northern District of Illinois.

6.6 Severability. If any provision of this Mortgage, or any paragraph, sentence, clause, phrase or word, or the application thereof, in any circumstance, is held invalid, the remainder of this Mortgage shall be construed as if such invalid part were never included herein and this Mortgage shall be and remain valid and enforceable to the fullest extent permitted by law.

6.7 Grammar. As used in this Mortgage, the singular shall include the plural, and masculine, feminine and neuter pronouns shall be fully interchangeable, where the context so requires.

6.8 Successors and Assigns. This Mortgage and each and every covenant, agreement and other provision hereof shall be binding upon Mortgagor and its successors and assigns (including, without limitation, each and every record owner of the Mortgaged Property or any other person having an interest therein), and shall inure to the benefit of Mortgagee and its successors and assigns. Nothing in this Section 6.8 shall be construed to modify the transfer and assignment limitations set forth in the Redevelopment Agreement.

6.9 Further Assurances. Mortgagor will perform, execute, acknowledge and deliver every act, deed, conveyance, transfer and assurance necessary or proper, in the sole judgment of Mortgagee, for assuring, conveying, mortgaging, assigning and confirming to Mortgagee all property mortgaged hereby or property intended so to be, whether now owned or hereafter acquired by Mortgagor, and for creating, maintaining and preserving the lien and security interest created hereby on the Mortgaged Property. Upon any failure by Mortgagor to do so, Mortgagee may make, execute and record any and all such documents for and in the name of Mortgagor, and Mortgagor hereby irrevocably appoints Mortgagee and its agents as attorney-in-fact for that purpose. Mortgagor will reimburse Mortgagee for any sums expended by Mortgagee in making, executing and recording such documents including attorneys' fees and court costs.

6.10 Security Agreement. This Mortgage shall be construed as a "security agreement" within the meaning of and shall create a security interest under the Uniform Commercial Code as adopted by the State of Illinois with respect to any part of the Mortgaged Property which constitutes fixtures or personal property. Mortgagee shall have all the rights with respect to such fixtures or personal property afforded to it by said Uniform Commercial Code in addition to, but not in limitation of, the other rights afforded Mortgagee by this Mortgage or any other agreement. Upon the recording hereof, this Mortgage shall constitute a financing statement under the Uniform Commercial Code, with Mortgagor being the Debtor, Mortgagee being the Secured Party, and the parties having the addresses set forth in the recitals. This Mortgage is a "construction mortgage" as that term is defined in Section 9-313(1)(c) of said Uniform Commercial Code.

6.11 No Merger. It being the desire and intention of the parties hereto that this Mortgage and the lien thereof do not merge in fee simple title, it is hereby understood and agreed that should Mortgagee acquire any additional or other interests in or to the Mortgaged Property or the ownership thereof, then, unless a contrary interest is manifested by Mortgagee, as evidenced by an appropriate document duly recorded, this Mortgage and the lien thereof 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.

[Signatures Appear On Next Page]

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

MORTGAGOR:

343 SOUTH DEARBORN II, L.L.C., an Illinois limited liability company

BY: 343 SOUTH DEARBORN I, L.L.C., an Illinois limited liability company

By: \_\_\_\_\_  
Its: \_\_\_\_\_

For purposes of Section 3.3:

MORTGAGEE:

CITY OF CHICAGO, acting by and through its Department of Planning and Development

\_\_\_\_\_  
Christopher E. Hill  
Commissioner

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

MORTGAGOR:

343 SOUTH DEARBORN II, L.L.C., an Illinois limited liability company

BY: 343 SOUTH DEARBORN I, L.L.C., an Illinois limited liability company

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_

For purposes of Section 3.3:

MORTGAGEE:

CITY OF CHICAGO, acting by and through its Department of Planning and Development


  
\_\_\_\_\_  
Christopher R. Hill  
Commissioner

EXHIBIT A

PROPERTY LEGAL DESCRIPTION

LOTS 18, 19 AND 24 (EXCEPT THAT PART OF SAID LOTS TAKEN FOR DEARBORN STREET) IN GEORGE W. SNOW'S SUBDIVISION OF BLOCK 139 IN SCHOOL SECTION ADDITION TO CHICAGO IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Commonly known as 343 South Dearborn Street, Chicago, Illinois

PINs: 17-16-234-005  
17-16-234-006

Property of Cook County Clerk's Office



Exhibit B

PERMITTED EXCEPTIONS

1. General Real Estate Taxes for the year 1998 second installment and subsequent years not yet due and payable.
2. The premises lying within the boundaries of a special service area as disclosed by Ordinance recorded as Document 91075841.
3. Agreement dated November 1, 1871 and recorded February 27, 1875 in Book 495, Page 211 as Document 15792 between Benjamin Lombard and Anna Maire Bailey and Henry Bailey, her husband for a party wall between Lot 18 and Lot 13, North of adjoining to said lot. (Affects Lot 18)
4. Agreement dated December 19, 1905 and recorded January 12, 1906 as Document 3807384 between Lucius G. Fisher and Hiram B. Peabody relating to a party wall on the North line of Lot 18. (Affects Lot 18)
5. Agreement between the Northern Trust Company as Trustee under the last will and testament of Hiram B. Peabody, deceased and The Standard Club leasing premises not now in question dated December 21, 1923 and recorded October 23, 1924 as Document 8642058 relating to party walls and egressions that may affect Lot 18.
6. By ordinance passed September 20, 1978 a copy of which was recorded October 17, 1978 as Document 24674440 the Commission on Chicago Historical and Architectural Landmarks has declared that the building is designated "A Chicago Landmark".
7. Covenants and Restrictions contained in the Redevelopment Agreement, Agreement Document recorded on \_\_\_\_\_, 1999 as Document No. \_\_\_\_\_ which does not contain a reversionary or forfeiture clause.
8. Encroachments as shown on Survey dated April 23, 1999 last revised May 25, 1999 prepared by Guarantee Survey Company as Order No. 9904017.
9. Liens in favor of LaSalle National Banking Association securing that certain loan in the maximum principal amount of \$29,500,000.
10. Redevelopment Subordination Agreement.
11. Subordination Agreement.

# UNOFFICIAL COPY

99566731

STATE OF ILLINOIS     )  
                                  ) SS  
COUNTY OF COOK        )

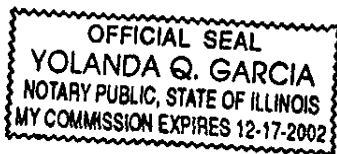
I, the undersigned, a notary public in and for the County and State aforesaid, DO HEREBY CERTIFY THAT Christopher R. Hill, personally known to me to be the Commissioner of the Department of Planning and Development of the City of Chicago, Illinois (the "City") and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such Commissioner, he signed and delivered the said instrument pursuant to authority, as his free and voluntary act, and as the free and voluntary act and deed of said City, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 10 day of June, 1999.

Yolanda Q. Garcia  
Notary Public

My Commission Expires: Dec-17, 2002

(SEAL)



UNOFFICIAL COPY

99566731

STATE OF ILLINOIS )  
 ) SS  
COUNTY OF COOK )

I, Joyce R. Landau, a notary public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY THAT Harold Lichterman, personally known to me to be the managing member of 343 South Dearborn I, L.L.C., an Illinois limited liability company (the "Managing Member"), on its behalf and in its capacity as the managing member of 343 South Dearborn II, L.L.C., an Illinois limited liability company (the "Developer"), and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he/she signed, sealed and delivered said instrument, pursuant to the authority given to him/her by the Managing Member and the Developer, as his/her free and voluntary act and as the free and voluntary act of the Managing Member and the Developer, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 10<sup>th</sup> day of June, 1999.

Joyce R. Landau  
Notary Public

My Commission Expires \_\_\_\_\_



(SEAL)