

Attachment 4

Promissory Note

**PROMISSORY NOTE**  
**[Insert Type of Loan] Loan**

\$ \_\_\_\_\_

Miami, Florida

**FOR VALUE RECEIVED** the undersigned \_\_\_\_\_, a Florida \_\_\_\_\_ ("Maker"), promises to pay to the order of **MIAMI-DADE COUNTY**, Florida, a political subdivision of the State of Florida, together with any other holder hereof ("Holder"), at 111 N.W. 1st Street, Miami, Florida 33128, Attention: County Manager, or such other place as Holder may from time to time designate in writing, the principal sum of and \_\_\_\_\_ NO/100 DOLLARS(\$ \_\_\_\_\_) (the "Principal"), plus interest on the outstanding principal balance at the rate of \_\_\_\_\_ percent ( \_\_\_\_\_ %) per annum ("Interest or Interest Rate"), to be paid in lawful money of the United States of America in accordance with the terms of this Promissory Note.

**This Promissory Note is made to evidence the loan made to the undersigned by DHCD to provide Community Development Block Grant ("CDBG") funds to the Borrower as reflected in the \_\_\_\_\_ Contract between the parties dated \_\_\_\_\_, 2010 (hereinafter "Contract"). Stated monthly principal payments of \$ \_\_\_\_\_ are to begin on the 1<sup>st</sup> day of the month following the execution of this Note, for a period of three (3) years. If Borrower complies strictly with all terms of the Contract, interest shall accrue at zero (0%) for the term of this Note and the aforementioned monthly principal payments shall be waived and the principal sum shall be forgiven. Pursuant to the Contract, in the event the Property tied to the Activity is sold during the contract period or if the construction has not been completed within three (3) years of the date of execution of this Note, or if the requirements set forth in the Contract are not strictly complied with or Borrower fails to properly perform under said Contract, Miami-Dade County shall be entitled to the reimbursement of its \$ \_\_\_\_\_ contribution to the project, plus twelve percent (12%) compound interest until the County's principal is fully repaid.**

Pursuant to 24 C.F.R. 570.503(b)(7)(i) or to 24 C.F.R. 570.505, as applicable, funds in excess of \$25,000 used by Maker to improve or acquire real property shall be used to meet a national objective (as defined in 24 C.F.R. § 570.208) until five (5) years after expiration of the Contract or Project Completion, whichever is later. **IN NO EVENT SHALL THIS NOTE BE FORGIVEN BEFORE MAKER COMPLIES WITH THIS REQUIREMENT.** In the event this provision conflicts with any provision of any other Contract or Loan Document, this provision shall prevail.

This Note is secured by a Mortgage and Security Agreement (the "Mortgage") encumbering certain real property located in Miami-Dade County, Florida (the "Premises"). The foregoing, the Contract, and all other agreements, instruments and documents delivered in connection with this Note are collectively referred to as the "Loan Documents."

This Note has been executed and delivered in, and is to be governed by and construed under the laws of, the State of Florida, as amended, except as modified by the laws and regulations of the United States of America.

Maker shall have no obligation to pay interest or payments in the nature of interest in excess of the maximum rate of interest allowed to be contracted for by law, as changed from time to time, applicable to this Note (the "Maximum Rate"). Any interest in excess of the Maximum Rate paid by Maker ("Excess Sum") shall be credited as a payment of principal, or, if Maker so requests in writing, returned to Maker, or, if the indebtedness and other obligations evidenced by this Note have been paid in full, returned to Maker together with interest at the same rate as was paid by Maker during such period. Any Excess Sum credited to Principal shall be credited as of the date paid to Holder. The Maximum Rate varies from time to time and from time to time there may be no specific maximum rate. Holder may, without such action constituting a breach of any obligations to Maker, seek judicial determination of the Maximum Rate of interest, and its obligation to pay or credit any proposed excess sum to Maker.

The "Default Interest Rate" and, in the event no specific maximum rate is applicable, the Maximum Rate shall be eighteen percent (18%) per annum.

Holder shall have the right to declare the total unpaid balance of this Note to be immediately due and payable in advance of the Maturity Date upon the failure of Maker to pay when due, taking into account applicable grace periods, any payment of Principal or Interest or other amount due under the Loan Documents; or upon the occurrence of an event of default, which is not cured prior to the expiration of any applicable cure periods, pursuant to any other Loan Documents now or hereafter evidencing, securing or guarantying payment of this Note. Exercise of this right shall be without notice to Maker or to any other person liable for payment hereof, notice of such exercise being hereby expressly waived.

Any payment under this Note or the Loan Documents not paid when due (at maturity, upon acceleration or otherwise) taking into account applicable grace periods shall bear interest at the Default Interest Rate from the due date until paid.

Provided Holder has not accelerated this Note, Maker shall pay Holder a late charge of five percent (5%) of any required payment which is not received by Holder within ten (10) days of the due date of said payment. The parties agree that said charge is a fair and reasonable charge for the late payment and shall not be deemed a penalty.

Time is of the essence. In the event that this Note is collected by law or through attorneys at law, or under their advice, Maker agrees, to pay all reasonable costs of collection, including reasonable attorneys' fees, whether or not suit is brought, and whether incurred in connection with collection, trial, appeal, bankruptcy or other creditors proceedings or otherwise.

This Note may be paid in whole or in part at any time by Maker without penalty. Acceptance of partial payments or payments marked "payment in full" or "in satisfaction" or words to similar effect shall not affect the duty of Maker to pay all obligations due, and shall not affect the right of Holder to pursue all remedies available to it under any Loan Documents.

Maker agrees to assign any proceeds to the county from any contract between the county, its agencies or instrumentalities and the Maker or any firm, corporation, partnership or joint venture in which the Maker has a controlling financial interest in order to secure repayment of the loan. "Controlling financial interest" shall mean ownership, directly or indirectly to ten percent or more of the outstanding capital stock in any corporation or a direct or indirect interest of ten percent or more in a firm, partnership or other business entity.

The remedies of Holder shall be cumulative and concurrent, and may be pursued singularly, successively or together, at the sole discretion of Holder, and may be exercised as often as occasion therefor shall arise. No action or omission of Holder, including specifically any failure to exercise or forbearance in the exercise of any remedy, shall be deemed to be a waiver or release of the same, such waiver or release to be effected only through a written document executed by Holder and then only to the extent specifically recited therein. A waiver or release with reference to any one event shall not be construed as continuing or as constituting a course of dealing, nor shall it be construed as a bar to, or as a waiver or release of, any subsequent remedy as to a subsequent event.

Any notice to be given or to be served upon any party in connection with this Note, whether required or otherwise, may be given in any manner permitted under the Loan Documents.

The term "other person liable for payment of this Note" shall include any endorser, guarantor, surety or other person now or subsequently primarily or secondarily liable for the payment of this Note, whether by signing this Note or any other instrument.

This Note is a full recourse Note and Holder shall have all remedies available to it at law and at equity.

Whenever the context so requires, the neuter gender includes the feminine and/or masculine, as the case may be, and the singular number includes the plural, and the plural number includes the singular.

This Note shall be the joint and several obligation of all makers, endorsers, co-signers, guarantors, and sureties, and shall be binding upon them and their successors and assigns. All makers, endorsers, co-signers, guarantors, and sureties hereof agree jointly and severally to pay all costs of collection and of suit and foreclosure, including reasonable attorneys' fees. The Note Holder may enforce its rights under this Note against each party individually or jointly, and may enforce its rights against any party in any order. Any party under this Note may be required to pay all amounts owed.

Maker and any other person liable for the payment of this Note respectively, hereby (a) expressly waive any valuation and appraisal, presentment, demand for payment, notice of dishonor, protest, notice of nonpayment or protest, all other forms of notice whatsoever, and diligence in collection; (b) consent that Holder may, from time to time and without notice to any of them or demand, (i) extend, rearrange, renew or postpone any or all payments, (ii) release, exchange, add to or substitute all or any part of the collateral for this Note, and/or (iii) release Maker (or any co-maker) or any other person liable for payment of this Note, without in any way modifying,

altering, releasing, affecting or limiting their respective liability or the lien of any security instrument; and (c) agree that Holder, in order to enforce payment of this Note against any of them, shall not be required first to institute any suit or to exhaust any of its remedies against Maker (or any co-maker) or against any other person liable for payment of this Note or to attempt to realize on any collateral for this Note.

**BY EXECUTING THIS NOTE, MAKER KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ITS RIGHTS OR THE RIGHTS OF ITS HEIRS, ASSIGNS, SUCCESSORS OR PERSONAL REPRESENTATIVES TO A TRIAL BY JURY, IF ANY, IN ANY ACTION, PROCEEDING OR SUIT, WHETHER ARISING IN CONTRACT, TORT OR OTHERWISE, AND WHETHER ASSERTED BY WAY OF COMPLAINT, ANSWER, CROSSCLAIM, COUNTERCLAIM, AFFIRMATIVE DEFENSE OR OTHERWISE, BASED ON, ARISING OUT OF, UNDER OR IN CONNECTION WITH, THIS NOTE OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT TO BE EXECUTED IN CONNECTION HEREWITH OR WITH THE INDEBTEDNESS OR THE RENEWAL, MODIFICATION OR EXTENSION OF ANY OF THE FOREGOING OR ANY FUTURE ADVANCE THEREUNDER. THIS PROVISION IS A MATERIAL INDUCEMENT FOR LENDER'S EXTENDING CREDIT TO A BORROWER AND NO WAIVER OR LIMITATION OF LENDER'S RIGHTS HEREUNDER SHALL BE EFFECTIVE UNLESS IN WRITING AND MANUALLY SIGNED ON LENDER'S BEHALF.**

Maker acknowledges that the above paragraph has been expressly bargained for by Miami-Dade County, Florida as part of the transaction with Borrower and that, but for Maker's agreement, Miami-Dade County, Florida would not have agreed to lend the Borrower the Principal on the terms and at the Interest Rate.

**WHEREFORE**, Maker has executed this Note on the [redacted] day of [redacted], 200[redacted].

a Florida

By:

a Florida

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

President

By:

a Florida

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

President

THIS INSTRUMENT WAS PREPARED BY:

\_\_\_\_\_, ESQ.  
Assistant County Attorney  
Miami-Dade County, Florida  
111 N.W. First Street, Suite 2810  
Miami, Florida 33128

## MORTGAGE AND SECURITY AGREEMENT AND ASSIGNMENT OF LEASES, RENTS AND PROFITS

**THIS MORTGAGE AND SECURITY AGREEMENT AND ASSIGNMENT OF LEASES, RENTS AND PROFITS** ("the "Mortgage"), dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by \_\_\_\_\_, a Florida \_\_\_\_\_ with an address of \_\_\_\_\_, Florida 33\_\_\_\_ ("Mortgagor") in favor of MIAMI-DADE COUNTY, a political subdivision of the State of Florida with an address of 111 N.W. First Street, Miami, FL 33128, Attn: County Manager ("Mortgagee").

### WITNESSETH

That for good and valuable consideration, and to secure the payment of the Promissory Note executed by the Mortgagor in favor of the Mortgagee in the original principal amount of \_\_\_\_\_ DOLLARS and no/100 (U.S. \$\_\_\_\_\_.00), as the same may be renewed, extended or amended, from time to time, and together with all accrual interest, including, without limitation, such interest as may be added to the principal amount under the terms of such instrument (referred to as the "Note" or the "Promissory Note"), the final payment of which is due on or before the due date provided in the Promissory Note and to secure any other indebtedness owed by Mortgagor to Mortgagee, now or hereafter arising under the terms of this Mortgage or in any other instrument constituting additional security for the Note, and all other sums of money secured as provided under this Mortgage, the Mortgagor does grant, bargain, sell, remise, release, and convey unto the Mortgagee, its successors and assigns, the real estate described in Exhibit A, which is attached and made a part of this Mortgage, which, together with the property hereinafter described, is referred to herein as the "Property";

### TOGETHER WITH:

(a) All buildings and improvements, now or hereafter located on the Property, all privileges and other rights now or hereafter made appurtenant thereto, including, without limitation, all right, title and interest of Mortgagor in and to all streets, roads and public places, opened or proposed, and all easements and rights-of-way, public or private, now or hereafter used in connection with the Property; and

(b) All fixtures, fittings, furnishings, appliances, apparatus, goods, equipment, and machinery, including, without limitation, all gas and electric fixtures, radiators, heaters, engines

and machinery, boilers, ranges, ovens, elevators and motors, escalators, bathtubs, sinks, water closets, basins, pipes, faucets and other ventilating and air-conditioning, plumbing, lighting and heating fixtures, mirrors, mantels, refrigerating plants, refrigerators, iceboxes, dishwashers, carpeting, furniture, laundry equipment, cooking apparatus and appurtenances, washing machines, dryers, trash compactors, TV antennas, phone systems, incinerators, trash receptacles, sprinklers and fire extinguishing systems, smoke detectors and other fire alarm devices, door bell and alarm systems, screens, awnings, doors, storm and other detachable doors and windows, built-in cases, counters, trees, hardy shrubs and perennial flowers, interior and exterior cleaning, plowing, lawn care, maintenance and repair machinery, vehicles or equipment, and all building material, supplies and equipment now or hereafter delivered to the Property and installed or used in the Property, all other fixtures and personal property of whatever kind and nature owned by the Mortgagor on the date of this Mortgage contained in or hereafter placed in any building standing on the Property; such other goods, equipment, chattels and personal property as are usually furnished by landlords in letting premises of the character hereby conveyed, and all renewals or replacements thereof or articles in substitution thereof, all of the estate, right, title and interest of the Mortgagor in and to all property of any nature whatsoever, now or hereafter situated on the Premises or intended to be used in connection with the operation thereof, all of which shall be deemed to be fixtures and accessions to the freehold and a part of the realty as between the parties hereto, and all persons claiming by, through or under them, and shall be deemed to be a portion of the security for the indebtedness herein mentioned and secured by the Mortgage. If the lien of this Mortgage on any fixtures or personal property is or becomes subject to a lease agreement, conditional sale agreement or chattel mortgage of the Mortgagor, any and all deposits made thereof or therefor are hereby assigned to the Mortgagee, together with the benefit of any payments now or hereafter made thereon. There is also transferred, set over, and assigned hereby Mortgage to Mortgagee, its successors and assigns, all leases and use agreements of machinery, equipment and other personal property of Mortgagor in the categories hereinabove set forth, under which Mortgagor is the lessee of, or entitled to use, such items, and Mortgagor agrees to execute and deliver to Mortgagee specific separate assignments to Mortgagee of such leases and agreements when requested by Mortgagee, but nothing herein constitutes Mortgagee's consent to any financing of any fixture or personal property, and nothing herein shall obligate Mortgagee to perform any obligations of Mortgagor under any such leases or agreements unless it so chooses, which obligations Mortgagor hereby covenants and agrees to well and punctually perform. The items set forth in this paragraph (b) are sometimes hereinafter separately referred to as "Collateral"; and

(c) All rents, royalties, issues, profits, revenue, income and other benefits from the property described in paragraph (a) and (b) hereof to be applied against the indebtedness and other sums secured hereby, provided, however, that permission is hereby given to Mortgagor so long as no default has occurred hereunder, to collect, receive, take, use and enjoy such rents, royalties, issues, profits, revenue, income and other benefits as they become due and payable, but not in advance thereof. The foregoing assignment shall be fully operative without any further action on the part of either party and specifically Mortgagee shall be entitled, at its option upon the occurrence of a default hereunder, to all rents, royalties, issues, profits, revenue, income and other benefits from the property described in paragraphs (a) and (b) hereof whether or not

Mortgagee takes possession of such property. Upon any such default hereunder, the permission hereby given to Mortgagor to collect such rents, royalties, issues, profits, revenue, income and other benefits from the property described in paragraphs (a) and (b) hereof shall terminate and such permission shall be reinstated upon a cure of the default upon Mortgagee's specific consent. Neither the exercise of any rights under this paragraph by Mortgagee nor the application of any such rents, royalties, issues, profits, revenue, income or other benefits to the indebtedness and other sums secured hereby, shall cure or waive any default or notice of default hereunder or invalidate any act done pursuant hereto or to any such notice, but shall be cumulative of all other rights and remedies.

(d) All right, title and interest of Mortgagor in and to all leases now or hereafter on or affecting the property described in paragraphs (a) and (b) hereof, together with all security therefor and all monies payable thereunder, subject, however, to the conditional permission hereinabove given to Mortgagor to collect the rentals under any such lease. The foregoing assignment of any lease shall not be deemed to impose upon Mortgagee any of the obligations or duties of Mortgagor provided in any such lease, and, Mortgagor agrees to fully perform all obligations of the lessor under all such leases. Upon Mortgagee's request, Mortgagor agrees to send to Mortgagee a list of all leases covered by the foregoing assignment and as any such lease shall expire or terminate or as any new lease shall be made, Mortgagor shall so notify Mortgagee in order that at all times Mortgagee shall have a current list of all leases affecting the property described in paragraphs (a) and (b) hereof. Mortgagee shall have the right, at any time and from time to time, to notify any lessee of the rights of Mortgagee as provided by this paragraph. From time to time, upon request of Mortgagee, Mortgagor shall specifically assign to Mortgagee as additional security hereunder, by an instrument in writing in such form as may be approved by Mortgagee, all right, title and interest of Mortgagor in and to any and all leases now or hereafter on or affecting the Premises, together with all security therefor and all monies payable hereunder, subject to the conditional permission hereinabove given to Mortgagor to collect the rentals under any such lease. Mortgagor shall execute and deliver to Mortgagee any notification, financing statement or other document reasonably required by Mortgagee to perfect the foregoing assignment as to any such lease.

(e) To the extent of the indebtedness secured herein, all judgments, awards of damages and settlements hereafter made as a result of or in lieu of any taking of the Property or any part thereof or interest therein under the power of eminent domain, or for any damage (whether caused by such taking or otherwise) to the Property or the improvements thereon or any part thereof or interest therein, including any award for change of grade of streets.

(f) To the extent of the indebtedness secured herein, all insurance policies covering all or any portion of the Property and all blueprints, plans, maps, documents, books and records relating to the Property.

(g) To the extent of the indebtedness secured herein, all proceeds of the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims.

**TO HAVE AND TO HOLD** the above granted Property, with all the privileges and appurtenances to the same belonging to the said Mortgagee, its successors and assigns, to its and their use and behoof forever.

**PROVIDED, HOWEVER**, that if the Mortgagor shall pay or cause to be paid to the Holder of the Note principal and interest under the Note, at the time and in the manner stipulated therein, and shall pay or cause to be paid all other sums payable hereunder and all indebtedness hereby secured, then, in such case, the estate, right, title and interest of the Mortgagee in the Property shall cease, determine and become void and the Mortgagee shall, cancel, release and discharge this Mortgage.

## ARTICLE ONE

### Mortgagor's Covenants

Mortgagor covenants and agrees with Mortgagee that:

#### 1.01 Title.

a. The Mortgagor warrants that: it has good and marketable title to an indefeasible fee simple estate in the Property, subject to no liens, charges or encumbrances other than the lien of this Mortgage and of any encumbrances, if any, described on Exhibit B hereto ("Permitted Encumbrances"); that it has good right and lawful authority to mortgage the Property in the manner and form herein provided; that Mortgagor has full power and authority to mortgage the Property in the manner and form herein done or intended hereafter to be done; that this Mortgage is and shall remain a valid and enforceable lien on the Property, subject only to those of the Permitted Encumbrances which are stated on Exhibit B hereto to constitute "Prior Encumbrances"; that Mortgagor and its successors and assigns shall warrant and defend the same and priority of this lien forever against the lawful claims and demands of all persons whomsoever (other than the Prior Encumbrances); and, that this covenant shall not be extinguished by any foreclosure hereof but shall run with the land.

b. Mortgagor shall maintain the property free of all security interests, liens and encumbrances, other than Permitted Encumbrances, the security interest hereunder or any lien or encumbrance disclosed to and approved by Mortgagee in writing.

c. The Mortgagor shall do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, mortgages, assignments, notices of assignments, transfers and assurances as the Mortgagee shall from time to time require, for the better assuring, conveying, assigning, transferring and confirming unto the Mortgagee the property and rights hereby conveyed or assigned or intended now or hereafter so to be, or which the Mortgagor may be or may hereafter become bound to convey or assign to the Mortgagee, or for carrying out the intention of facilitating the performance of the terms of this Mortgage, or for filing, registering or recording this Mortgage and, on demand, shall execute and deliver, and hereby authorizes the

Mortgagee to execute in the name of the Mortgagor to the extent it may lawfully do so, one or more financing statements, chattel mortgages or comparable security instruments, to evidence more effectively the lien hereof upon the Collateral.

d. The Mortgagor shall, upon the execution of this Mortgage, the Rental Regulatory Agreement, and the Note (the "Loan Documents"), cause all recordable Loan Documents, to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect the lien hereof upon, and the interest of the Mortgagee in the Property.

e. The Mortgagor shall pay for all filing, registration or recording fees, and all expenses incident to the preparation, execution and acknowledgment of this Mortgage, any mortgage supplemental hereto, any security instrument with respect to the Collateral, and any instrument of further assurance, and all federal, state, county and municipal stamp taxes and other taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of the Note, this Mortgage, any mortgage supplemental hereto, any security instrument with respect to the Collateral or any instrument of further assurance.

f. The Mortgagor, so long as all or part of the indebtedness secured hereby is outstanding shall preserve in its present form and keep in full force and effect its existence, as a legal entity under the laws of the state of its formation and shall comply with all regulations, rules, ordinances, statutes, orders and decrees of any governmental authority or court applicable to the Premises or any part thereof.

#### 1.02 Payment of Note and Escrow Account.

a. The Mortgagor shall promptly and punctually pay principal, interest, and all other sums due or to become due pursuant to the terms of the Note, in the time and manner set forth therein. On the first day of each month until said Note is fully paid, a sum, as estimated by the Mortgagee, equal to the total rental payments due under any ground leases which have not been subordinated to this Mortgage, if any, and the taxes and special assessments next due on the Property encumbered by this Mortgage, plus the premiums that will next become due and payable on insurance policies as may be required under section 1.05 hereof, less all sums already paid for each divided by the number of months to elapse before one (1) month prior to the date when such ground rents, premiums, taxes and special assessments will become delinquent, shall be segregated by the Mortgagor to pay said ground rents, taxes, special assessments and insurance premiums. Such segregated sums shall be held by Mortgagor in interest bearing accounts and shall be kept separate and apart from other funds of the Mortgagor. Mortgagor shall, at the written request of the Mortgagee, furnish any information requested by Mortgagee concerning such accounts. The Mortgagor shall pay the ground rents, taxes, special assessments and insurance premiums when each is due (the "Reserve Payments") and before they become delinquent. In the event the Mortgagor is late in making any of the Reserve Payments, the Mortgagee may require the Mortgagor to deposit the Reserve Payments with the Mortgagee on the first of each month until the Note is paid in full. The Reserve Payments should

be held by the Mortgagee without any allowance of interest to the Mortgagor and need not be kept separate and apart of other funds of the Mortgagee. All payments mentioned in this paragraph and all payments to be made under the Note secured hereby shall be added together and the aggregate amount thereof shall be paid by the Mortgagee to the following items in the order set forth: (i) said ground rents, if any, taxes, special assessments, fire and other hazard insurance premiums, (ii) interest on the Note secured hereby; and (iii) amortization of the principal of said Note. Notwithstanding the foregoing escrow requirements, the Mortgagor shall not be obligated to segregate, or to pay to the Mortgagee, ground rents, if any, taxes, special assessments, fire and other hazard insurance premiums if the Mortgagor is required to pay such sums to the Holder of a Permitted Encumbrance.

b. The arrangement provided for in the section 1.02 is solely for the added protection of the Mortgagee and entails no responsibility on the Mortgagee's part beyond the allowing of due credit, without interest, for the sums actually received by it. Upon assignment of the Mortgage by the Mortgagee, any funds on hand shall be turned over to the new mortgagee and any responsibility of the Mortgagee for such funds shall terminate.

c. If the total of any Reserves described in section 1.02(a) hereof shall exceed the amount of payments actually applied by Mortgagee as set forth in section 1.02(a) any excess Escrow Funds may be credited by Mortgagee to subsequent Escrow payments coming due or, at the option of the Mortgagee, refunded to the Mortgagor. Any deficiency in the Escrow Account shall be paid by the Mortgagor within five (5) business days from receipt of written notification from the Mortgagee that the deficiency has occurred. If there shall be a default under any of the provisions of this Mortgage, the Mortgagee may apply any excess Escrowed Funds against the amounts due and payable under the Loan Documents.

1.03 Maintenance and Repair. The Mortgagor shall keep the Property in good condition and operating order and shall not commit or permit any waste thereof. Mortgagor shall diligently maintain the Property and make any needed repairs, replacements, renewals, additions and improvements, and complete and restore promptly and in a good workmanlike manner. Mortgagor shall not remove any part of the Collateral from the Property or demolish any part of the Property or materially alter any part of the Property without the prior written consent of the Mortgagee. Mortgagor shall permit Mortgagee or its agents the opportunity to inspect the Property, including the interior of any structures, at any reasonable time.

1.04 Compliance with Laws. The Mortgagor shall comply with all laws, ordinances, regulations, covenants, conditions and restrictions affecting the Property or the operation thereof, and shall pay all fees or charges of any kind in connection therewith.

1.05 Insurance.

a. The Mortgagor shall keep all buildings and improvements now or hereafter situated on the Property insured against loss or damage by fire and other hazards as may reasonably be required by Mortgagee, including, without limitation: (i) rent loss or business interruption insurance whenever in the opinion of Mortgagee such protection reasonably is necessary; and (ii) flood and earthquake insurance whenever in the opinion of Mortgagee such protection is reasonably necessary. Mortgagor shall also provide liability insurance with such limits for personal injury and death and property damage as Mortgagee may require.

b. The Mortgagor shall initially maintain, until Mortgagee shall otherwise indicate in writing, fire and extended coverage insurance in an amount of not less than the full replacement cost of the Property in accordance with HUD's requirements. The policy shall be written by a company or companies having a Best's rating of at least A. Public liability insurance shall be provided on a comprehensive basis in an amount of Five Hundred Thousand and 00/100 Dollars (\$500,000.00) per occurrence for bodily injury and property damage and rental or business interruption insurance in an amount sufficient to cover any loss of rents or income for the Property suffered by the Mortgagor for a period of up to six (6) months.

c. All policies of insurance to be furnished hereunder shall be in a form satisfactory to Mortgagee, with Standard Mortgagee Clauses attached to all policies in favor of the Mortgagee, including a provision requiring that the coverage evidenced thereby shall not be terminated or materially modified without thirty (30) days' prior written notice to the Mortgagee. Mortgagor shall deliver all policies, including additional and renewal policies, to Mortgagee and shall deliver renewal policies not less than ten (10) days prior to their expiration date except that if the originals of such policies are at any time held by the holder of a Prior Encumbrance, then Mortgagor shall deliver to Mortgagee certified copies of such policies together with original certificates hereof. The Mortgagee shall be shown as additional insured with respect to this coverage.

d. No separate insurance shall be taken out by the Mortgagor without the prior written approval of the Mortgagee. In the event the Mortgagee approves additional insurance, the Mortgagor shall immediately notify Mortgagee whenever any separate insurance is issued and shall promptly deliver to Mortgagee certified copies of the policy or policies of such insurance. All additional insurance policies shall be in the form required by Paragraph (c) above. In the event of a foreclosure, or other transfer of title to the Property in lieu of foreclosure or by purchase at the foreclosure sale all interest in any insurance policies in force shall pass to Mortgagee, transferee or purchaser as the case may be, and to the holders of the Permitted Encumbrances as their interests may appear.

1.06 Casualty. Mortgagor shall promptly notify Mortgagee of any loss whether covered by insurance or not. In case of loss or damage by fire or other casualty, Mortgagee shall have the

right to approve the settlement of any claim made under insurance policies covering the Property or to allow Mortgagor to agree with the insurance company or companies on the amount to be paid in regard to such loss. Provided that there is no default hereunder, such insurance proceeds shall be paid to the Mortgagee to the extent of the indebtedness held by the Mortgagee without any allowance of rebuilding or restoration of buildings or improvements on said Property. Such proceeds shall be used to retire the indebtedness unless the Mortgagor demonstrates to the satisfaction of the Mortgagee that the Property may be restored to at least equal value and substantially the same character in which case the proceeds shall be made available to the Mortgagor for rebuilding or restoration of buildings or improvements on said Property. In that event, such proceeds shall be made available in the manner and under the conditions that the Mortgagee may require, including without limitation: (i) approval of plans and specifications of such work before such work shall be commenced; (ii) suitable completion or performance bonds and Builder's All Risk insurance; and (iii) no insurer claims any rights of participation and/or assignment of rights with respect to the indebtedness secured hereby. The buildings and improvements shall be so restored or rebuilt so as to be of at least equal value and substantially the same character as prior to such damage or destruction. Any surplus which may remain out of said insurance proceeds after payment of such cost of rebuilding or restoration shall, at the sole option of the Mortgagee, be applied on account of the indebtedness secured hereby or be paid to Mortgagor. Any insurance proceeds received by Mortgagor pursuant to the provisions of this section 1.06 shall remain subject to the lien of this Mortgage, and no holder of any Permitted Encumbrance shall attach, garnish, execute or otherwise attempt to compel payment or delivery of such sums to it or to any other person so long as such sums are used or are to be used for the purposes set forth in this paragraph 1.06.

1.07 Condemnation. The Mortgagor, immediately upon obtaining knowledge of the institution of any proceeding for the condemnation of the Property or any portion thereof, shall notify Mortgagee in writing of the pendency thereof. The Mortgagor hereby assigns, transfers and sets over unto the Mortgagee to the extent of the indebtedness secured herein, all compensation, rights of action, proceeds of any award and any claim for damages for any of the Property taken or damaged under the power of eminent domain or by condemnation or by sale of the Property in lieu thereof. Mortgagee may, at its option, commence, appear in and prosecute, in its own name, and for its own account, any action or proceeding, or make any compromise or settlement, in connection with the condemnation, taking under the power of eminent domain, or sale in lieu thereof. After deducting therefrom all of its reasonable expenses, including attorneys' fees, the Mortgagee shall apply the proceeds of the award to the reduction of the indebtedness secured by this Mortgage unless Mortgagor demonstrates to the satisfaction of the Mortgagee that the value and character of the Property shall be maintained, in which case, the Mortgagee shall hold said proceeds without any allowance of interest and make them available for restoration or rebuilding of the Property. In the event that the Mortgagee elects to make said proceeds available to reimburse Mortgagor for the cost of the rebuilding or restoration of the buildings or improvements on said Property, such proceeds shall be made available in the manner and under the conditions that the Mortgagee may require provided under Section 1.06 above. If the proceeds are made available by the Mortgagee to reimburse the Mortgagor for the cost of said rebuilding or restoration, any surplus which may remain out of said award after payment of such cost of

rebuilding or restoration shall at the option of the Mortgagee be applied on account of the indebtedness secured hereby or be paid to Mortgagor. Mortgagor agrees to execute such further assignments of any compensation, award, damages, right of action and proceeds, as Mortgagee may require. Any sums received by Mortgagor pursuant to the provisions of this paragraph 1.07 shall remain subject to the lien of this Mortgage, and no holder of any Permitted Encumbrance shall attach, garnish, execute or otherwise attempt to compel payment or delivery of such sums to it or to any other person so long as such sums are used or are to be used for the purposes set forth in this paragraph 1.07.

1.08 Liens and Encumbrances. The Mortgagor shall not, without the Mortgagee's express written consent, permit the creation of any liens or encumbrances on the Property other than the lien of this Mortgage and of any Permitted Encumbrances, and shall pay when due all obligations, lawful claims or demands of any person, which, if unpaid, might result in, or permit the creation of, a lien or encumbrance on the Property or on the rents, issues, income and profits arising therefrom, whether such lien would be senior or subordinate hereto, including all claims of mechanics, materialmen, laborers and others for work or labor performed, or materials or supplies furnished in connection with any work done in and to the Property and the Mortgagor will do or cause to be done everything necessary so that the lien of this Mortgage is fully preserved, at no cost to the Mortgagee.

1.09 Taxes and Assessments. The Mortgagor shall pay in full when due, and in any event before any penalty or interest attaches, all general taxes and assessments, special taxes, special assessments, water charges, sewer service charges, and all other charges against the Property and shall furnish to Mortgagee official receipts evidencing the payment thereof.

1.10 Indemnification. Mortgagor shall indemnify and hold harmless the Lender from any liability, claims or losses incurred by Lender in favor of third parties resulting from the disbursement of the Loan proceeds to Mortgagor or from the condition of the Premises, whether arising during or after the term of the Loan, whether as a result of a claim made under this Agreement, by the Lender under the Contracts or otherwise. The Mortgagor shall indemnify and hold harmless the County and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the County or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Contract by the Mortgagor or its employees, agents, servants, partners principals or subcontractors. Mortgagor shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the County, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. Mortgagor expressly understands and agrees that any insurance protection required by this Contract or otherwise provided by Mortgagor shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County or its officers, employees, agents and instrumentalities as herein provided. This provision shall survive the repayment of the Loan and shall continue in full force and effect so long as the possibility of

such liability, claims, or losses exists.

#### 1.11 Sale of Property.

a. In order to induce Mortgagee to make the loan evidenced by the Note, Mortgagor agrees that if the Property or any part thereof or interest therein is sold, assigned, transferred, conveyed, further mortgaged, encumbered, or otherwise alienated by Mortgagor, whether voluntarily, involuntarily or by operation of law, or that if the person(s) managing the Property is replaced, in either or any case without the prior written consent of Mortgagee, Mortgagee, at its option, may declare the Note secured hereby and all other obligations hereunder to be forthwith due and payable within fifteen (15) days of written notice, provided, however, Mortgagee shall not withhold its consent unless such mortgaging or encumbering of the Property, or change to its ownership or management will have a material adverse affect on the Mortgagee's security for the indebtedness secured by this Mortgage. The Mortgagee may condition its consent upon an increase in the interest rate of the Note to the then current market rate for new loans secured by property similar to the Property, and the Mortgagor shall pay all costs incurred thereby, including any costs of amending the Note and Mortgage and of obtaining a title insurance endorsement. In addition, the Mortgagee may charge a fee for processing any application seeking the consent of Mortgagee.

b. Any change in the legal or equitable title of the Property or in the beneficial ownership of the Property, whether or not of record and whether or not for consideration, or sale or other disposition of the stock of the borrowing entity except by devise or descent, shall be deemed a transfer of an interest in the Property. In connection herewith, the financial stability and managerial and operational ability of Mortgagor are a substantial and material consideration to Mortgagee in its agreement to make the loan to Mortgagor secured the Mortgage. The Mortgagor acknowledges that the transfer of an interest in the Property or change in the person or entity operating and managing the Property may significantly or materially alter and reduce Mortgagee's security for the indebtedness secured hereby.

c. In the event that ownership of the Property, or any part thereof, becomes vested in any person or persons other than Mortgagor, without the prior written approval of Mortgagee, the Mortgagee may waive such default and substitute the Mortgagor with the Mortgagor's successor or successors in interest in the same manner as with Mortgagor, without in any way releasing, discharging or otherwise affecting the liability of Mortgagor hereunder, or the Mortgage indebtedness hereby secured. No sale of the Property, no forbearance on the part of Mortgagee, no extension of the time for the payment of the Mortgage indebtedness or any change in the terms thereof consented to by Mortgagee shall in any way whatsoever operate to release, discharge, modify, change or affect the original liability of Mortgagor herein, either in whole or in part, nor shall the full force and effect of this lien be altered thereby. Any deed conveying the Property, or any part thereof, shall provide that the grantee thereunder assumes all of the grantor's obligations under this Mortgage, the Note and all other instruments or agreements evidencing or securing the repayment of the Mortgage indebtedness. In the event such deed shall not contain such provisions, the grantee under such deed shall be deemed to assume, by its

acquisitions of the Property all the obligations established by the Loan Documents.

d. Mortgagor shall not sell, assign, transfer or otherwise dispose of the Collateral or any interest therein and shall not do or permit anything to be done that may impair the Collateral without the prior consent of the Mortgagee, unless the Mortgagor is not in default under the terms of this Mortgage and the Collateral which is to be disposed is fully depreciated or unnecessary for use in the operation of the Property.

1.12 Management. The Mortgagor agrees that the Mortgagee shall have the right to employ professional management for the Property at any time that the Mortgagor is in default under any provision of this Mortgage for a period of more than forty-five (45) days. Such employment shall be at the sole discretion of the Mortgagee and NOTHING herein shall obligate the Mortgagee to exercise its right to install professional management. The cost of such management shall be borne by Mortgagor and shall be treated as an advance under Section 1.13.

1.13 Advances. If Mortgagor shall fail to perform any of the covenants herein contained or contained in any instrument constituting additional security for the Note, the Mortgagee may, without creating an obligation to do so, make advances on its behalf. Any and all sums so advanced shall be a lien upon the Property and shall become secured by this Mortgage. The Mortgagor shall repay on demand all sums so advanced in its behalf with interest at the rate of eightenn (18%) percent per annum in excess of the rate of the Note at the time of such advance. Nothing herein contained shall prevent any such failure to perform on the part of Mortgagor from constituting an event of default as defined below.

1.14 Financial Statements. The Mortgagor shall deliver to Mortgagee, within ninety (90) days after the end of each of Mortgagor's fiscal years, a balance sheet and statement of profit and loss with respect to the operation of the Property for the fiscal year just completed and beginning with the second such fiscal year after the recordation of the Loan Documents, a comparison of the just completed fiscal year with the preceding fiscal year's balance sheet and statement of profit and loss, all in reasonable detail and certified as complete and correct, by the Mortgagor and a Certified Public Accountant.

1.15 Time. The Mortgagor agrees that time is of the essence hereof in connection with all obligations of the Mortgagor herein or in said Note or any other instruments constituting additional security for said Note.

1.16 Estoppel Certificates. The Mortgagor within ten (10) days from receipt of written request, shall furnish a duly acknowledged written statement setting forth the amount of the debt secured by this Mortgage, and stating either that no set-offs or defenses exist against the Mortgage debt, or if any such setoffs or defenses are alleged to exist, the nature thereof.

1.17 Records. The Mortgagor agrees to keep adequate books and records of account in accordance with generally accepted accounting principles and shall permit the Mortgagee, and

its agents, accountants and attorneys, to visit and inspect the Property and examine its books and records of account, and to discuss its affairs, finances and accounts with the Mortgagor, at such reasonable times as Mortgagee may request.

1.18 Assignment of Rents and Leases. Mortgagor agrees to execute and deliver to Mortgagee such assignments of the leases and rents applicable to the Property as the Mortgagee may from time to time request while this Mortgage and the Note and indebtedness secured by this Mortgage are outstanding.

1.19 Subordination to Prior Encumbrances. Notwithstanding anything herein which is or which may appear to be to the contrary, the lien of this Mortgage and Mortgagee's rights hereunder are subordinate and inferior to the lien of those Permitted Encumbrances (if any) whether now existing or hereafter created which are stated on Exhibit B. Mortgagee agrees, by its acceptance hereof, that no action required to be taken by Mortgagor under the express terms of any Prior Encumbrance shall constitute a default or any Event of Default hereunder, provided however, that such actions are not inconsistent with Mortgagor's obligations set forth in the Note or in paragraph 1.20(c) below.

1.20 Leases Affecting Mortgaged Property.

a. Mortgagor shall comply with and observe its obligations as landlord under all leases affecting the Property or any part thereof. Upon request, Mortgagor shall furnish promptly to Mortgagee executed copies of all such leases now existing or hereafter created. Mortgagor shall not, without the express written consent of Mortgagee, enter any lease except upon forms approved by Mortgagee. Mortgagor shall not accept payment of rent more than one (1) month in advance without prior written consent of Mortgagee. Nothing contained in this Section 1.20 or elsewhere in this Mortgage shall be construed to make Mortgagee a mortgagee in possession unless and until Mortgagee actually takes possession of the Mortgaged Property either in person or through an agent or receiver.

b. To the extent allowable by applicable law, each lease of the Mortgaged Property, shall be entered into in a form provided by the Mortgagee and shall provide that, in the event of the enforcement by Mortgagee of the remedies provided for by law or by this Mortgage, the lessee thereunder will, if requested by Mortgagee or by any person succeeding to the interest of Mortgagor as the result of said enforcement, automatically become the lessee of Mortgagee or any such successor in interest, without any change in the terms or other provisions of the respective lease, provided, however, that Mortgagee or said successor in interest shall not be bound by (i) any payment of rent or additional rent for more than one (1) month in advance, except prepayments in the nature of security for the performance by said lessee of its obligations under said lease, or (ii) any amendment or modification in the lease made without the consent of Mortgagee or any successor in interest. Each lease shall also provide that, upon request by said successor in interest, the lessee shall execute and deliver an instrument or instruments confirming its attornment.

c. Mortgagor covenants and agrees that, until the Note and the other obligations secured hereby are satisfied in full, Mortgagor shall comply with the terms of that certain Rental Regulatory Agreement (if applicable) executed simultaneously herewith by and among Mortgagor and the Mortgagee, which Rental Regulatory Agreement is by this reference made a part hereof to the same extent as if set out in full herein.

1.21 Reserved

1.22 Incorporation of Contract. Mortgagor agrees and covenants to abide by all the terms and conditions of the CDBG Contract. The CDBG Contract is incorporated herein by reference as if fully set forth herein. A default of any provision of the CDBG Contract shall be deemed an Event of Default under this Mortgage.

## ARTICLE TWO

### Default

2.01 Events of Default. The following shall be deemed to be Events of Default hereunder:

a. Failure to make any payment when due in accordance with the terms of the Note secured by this Mortgage or failure to make any additional payments required by this Mortgage within fifteen days (15 ) of the date on which such payments were due.

b. Failure to keep or perform any of the other terms, covenants and conditions in this Mortgage provided that such failure shall have continued for a period of thirty (30) days after written notice of such failure from the Mortgagee.

c. After written notice from Mortgagee and an opportunity to cure of thirty (30) days from such written notice, continued breach of any warranties or representations given by Mortgagor to Mortgagee in connection with the Loan Documents.

d. An event of default under or institution of foreclosure or other proceedings to enforce any Permitted Encumbrance or any other mortgage or security interest, lien or encumbrance of any kind upon the Property or any portion thereof.

e. The Mortgagor, or any successor or assign including, without limitation, the current owners of any interest in the Property shall:

(i) file a petition under the Federal Bankruptcy Code or any similar law, state or federal, whether now or hereafter existing (hereafter referred to as a "Bankruptcy Proceeding"); or

(ii) file any answer admitting insolvency or inability to pay debts, or

(iii) fail to obtain a vacation or stay of any Insolvency Bankruptcy Proceeding within forty-five (45) days, as hereinafter provided; or

(iv) be the subject of an order for relief against it in any Bankruptcy Proceeding; or

(v) have a custodian or a trustee or receiver appointed for or have any court take jurisdiction of its property, or the major part thereof, in any involuntary proceeding for the purpose of reorganization, arrangement, dissolution, or liquidation if such receiver or trustee shall not be discharged or if such jurisdiction relinquished, vacated or stayed on appeal or otherwise within forty-five (45) days; or

(vi) make an assignment for the benefit of its creditors; or

(vii) admit in writing its inability to pay its debts generally as they become due; or

(viii) consent to an appointment of custodian or receiver or trustee of all of its property, or the major part thereof.

f. Failure without good cause of the Mortgagor to accept any referral from Miami-Dade County of eligible applicants for housing if space is available at the time of the referral.

g. Failure of the Mortgagor to comply with the requirements of the OCED Contract.

h. After the applicable grace periods have expired, failure to comply with the terms of the Loan Agreement between the Mortgagor, as Borrower, and Miami-Dade County as Lender; the Rental Regulatory Agreement (if applicable) between the Owner and Miami-Dade County, the Note, and any other instruments, now or hereafter executed by Owner in favor of Miami-Dade County, which in any manner constitute additional security for the Note.

i. The event of any default on any other Contract, Note or Mortgage between Mortgagor and Mortgagee.

j. The institution of any proceeding for foreclosure on any property where the County is also Mortgagee.

## 2.02 Remedies.

a. Upon and after any such Event of Default, the Mortgagee, by written notice

given to the Mortgagor, may declare the entire principal of the Note then outstanding (if not then due and payable), and all accrued and unpaid interest thereon, all premium payable thereunder, and all other obligations of Mortgagor hereunder, to be due and payable immediately, and upon any such declaration the principal of the Note and said accrued and unpaid interest shall become and be immediately due and payable, anything in the Note or in this Mortgage to the contrary notwithstanding.

b. Upon and after any such Event of Default, the Mortgagee or by its agents or attorneys, may enter into and upon all or any part of the Property, and each and every part thereof, and may exclude the Mortgagor, its agents and servants wholly therefrom; and having and holding the same, may use, operate, manage and control the Property and conduct the business thereof, either personally or by its superintendents, managers, agents, servants, attorneys or receivers and upon every such entry, the Mortgagee, at the expense of the Property, from time to time, either by purchase, repairs or construction, may maintain and restore the Property, whereof it shall become possessed as aforesaid, and, from time to time, at the expense of the Property, the Mortgagee may make all necessary or proper repairs, renewals and replacements and such useful alterations, additions, betterments and improvements thereto and thereon as to it may seem advisable, and in every such case the Mortgagee shall have the right to manage and operate the Property and to carry on the business thereof and exercise all rights and powers of the Mortgagor with respect thereto either in the name of the Mortgagor or otherwise as it shall deem best, and the Mortgagee shall be entitled to collect and receive all earnings, revenues, rents, issues, profits and income of the Property and every part thereof, all of which shall for all purposes constitute property of the Mortgagor; and after deducting the expenses of conducting the business thereof and of all maintenance, repairs, renewals, replacements, alterations, additions, betterments and improvements and amounts necessary to pay for taxes, assessments, insurance and prior or other proper charges upon the Property or any part thereof, as well as just and reasonable compensation for the services of the Mortgagee its attorneys, counsel, agents, clerks, servants and other employees by it properly and reasonably engaged and employed, the Mortgagee shall apply the moneys arising as aforesaid, first, to the payment of the principal of the Note and the interest thereon, when and as the same shall become payable, and second, to the payment of any other sums required to be paid by the Mortgagor under this Mortgage.

c. Upon and after any such Event of Default, the Mortgagee shall have all of the remedies of a Secured Party under the Uniform Commercial Code of Florida, Sec. 671-689 et al. F.S., as amended from time to time, including without limitation the right and power to sell, or otherwise dispose of the Collateral or any part thereof, and for that purpose may take immediate and exclusive possession of the Collateral, or any part thereof, and with or without judicial process, enter upon any Property on which the Collateral, or any part thereof, may be situated and remove the same therefrom without being deemed guilty of trespass and without liability for damages thereby occasioned, or at Mortgagee's option Mortgagor shall assemble the Collateral and make it available to the Mortgagee at the place and at the time designated in the demand. Mortgagee shall be entitled to hold, maintain, preserve and prepare the Collateral for sale. Mortgagee without removal may render the Collateral unusable and dispose of the Collateral on

the Property. To the extent permitted by law, Mortgagor expressly waives any notice of sale or other disposition of the Collateral and any other right or remedy of Mortgagee existing after default hereunder, and to the extent any such notice is required and cannot be waived, Mortgagor agrees that, as it relates to, this paragraph c. only, if such notice is marked, postage prepaid, to the Mortgagor at the above address with copies of said notice mailed in the same fashion to the president of the Mortgagor, at least fifteen (15) days before the time of the sale or disposition, such notice shall be deemed reasonable and shall fully satisfy any requirement for giving of said notice.

d. Upon and after any such Event of Default, the Mortgagee, with or without entry, or by its agents or attorneys, insofar as applicable, may:

(i) sell the Property to the extent permitted and pursuant to the procedures provided by law, and all estate, right, title and interest, claim and demand therein, and right of redemption thereof, at one or more sales as an entity or in parcels, and at such time and place upon such terms and after such terms and after such notice thereof as may be required, or

(ii) institute proceedings for the complete or partial foreclosure of this Mortgage, or

(iii) apply to any court of competent jurisdiction for the appointment of a receiver or receivers for the Property and of all the earnings, revenues, rents, issues, profits and income thereof, or

(iv) take such steps to protect and enforce its rights whether by action, suit or proceeding in equity or at law for the specific performance of any covenant, condition or agreement in the Note, or in this Mortgage, or in aid of the execution of any power herein granted, or for any foreclosure hereunder, or for the enforcement of any other appropriate legal or equitable remedy or otherwise as the Mortgagee shall elect.

e. The Mortgagee may adjourn from time to time any sale by it to be made under or by virtue of this Mortgage by announcement at the time and place appointed for such sale or for such adjourned sale or sales; and, except as otherwise provided by any applicable provision of law, the Mortgagee, without further notice or publication, other than that provided in sub-paragraph 2.02(c) above may make such sale at the time and place to which the same shall be so adjourned.

f. Upon the completion of any sale or sales made by the Mortgagee under or by virtue of this Section, the Mortgagor, or an officer of any court empowered to do so, shall execute and deliver to the accepted purchaser or purchasers a good and sufficient instrument, or good and sufficient instruments, conveying, assigning and transferring, all estate, right, title and interest in and to the property and rights sold. The Mortgagee is hereby appointed the true and lawful attorney irrevocable of the Mortgagor, in its name and stead, to make all necessary conveyances, assignments, transfers and deliveries of the Property and rights so sold, and for

that purpose the Mortgagee may execute all necessary instruments of conveyance, assignment and transfer, and may substitute one or more persons with like power, the Mortgagor hereby ratifying and confirming all that its said attorney or such substitute or substitutes shall lawfully do by virtue hereof. This power of attorney shall be deemed to be a power coupled with an interest and not subject to revocation. Nevertheless, the Mortgagor, if so requested by the Mortgagee, shall ratify and confirm any such sale or sales by executing and delivering to the Mortgagee or to such purchaser or purchasers all such instruments as may be advisable, in the judgment of the Mortgagee, for the purpose, and as may be designated in such request. Any such sale or sales made under or by virtue of this Section whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, shall operate to divest all the estate, right, title, interest, claim and demand whatsoever, whether at law or in equity, of the Mortgagor in and to the properties and rights so sold, and shall be a perpetual bar both at law and in equity against the Mortgagor and against any and all persons claiming or who may claim the same, or any part thereof from, through or under the Mortgagor.

g. In the event of any sale made under or by virtue of this Section (whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale), the entire principal of, and interest on, the Note, if not previously due and payable, and all other sums required to be paid by the Mortgagor pursuant to this Mortgage, immediately thereupon shall, anything in the Note or in this Mortgage to the contrary notwithstanding, become due and payable.

h. The purchase money proceeds or avails of any sale made under or by virtue of this Section, together with any other sums which then may be held by the Mortgagee under the provisions of this Section or otherwise, shall be applied as follows:

First: To the payment of the costs and expenses of such sale, including reasonable compensation to the Mortgagee, its agents and counsel, and of any judicial proceedings wherein the same may be made, and of all expenses, liabilities and advances made or incurred by the Mortgagee under this Mortgage, together with interest at the rate for advances hereunder in Section 1. 13.

Second: To the payment of any other sums required to be paid by the Mortgagor pursuant to any provisions of this Mortgage or of the Note.

Third: To the payment of the whole amount then due, owing or unpaid upon the Note for principal and interest, with interest on the unpaid principal and accrued interest at the rate specified in the Note, from and after the happening of any Event of Default described above from the due date of any such payment of principal until the same is paid.

Fourth: To the payment of the surplus, if any, to the Mortgagor or whomsoever is lawfully entitled to receive the same, subject to federal law which may prohibit such payment. In the event that payment of surplus to Mortgagor is prohibited by federal law or a determination by U.S. HUD, Mortgagee shall follow the direction of U.S. HUD and shall use the

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surplus as required by U.S. HUD and federal law.

Subject to federal law and U.S. HUD, upon any sale made under or by virtue of this Section, whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, the Mortgagee may bid for and acquire the Property or any part thereof and in lieu of paying cash therefor may make settlement for the purchase price by crediting upon the indebtedness of the Mortgagor secured by this Mortgage the net sales price after deducting therefrom the expenses of the sale and the cost of the action and any other sums which the Mortgagee is authorized to deduct under this Mortgage. The Mortgagee, upon so acquiring the Property, or any part thereof shall be entitled to hold, lease, rent, operate, manage and sell the same in any manner provided by applicable laws.

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## ARTICLE THREE

### Miscellaneous Terms and Conditions

3.01 Leases. In the event the Mortgagee shall institute judicial proceedings to foreclose the lien hereof, and shall be appointed as a mortgagee in possession of the Property, the Mortgagee during such time as it shall be the Mortgagee in possession of the Property pursuant to an order or decree entered in such judicial proceedings, shall have, and the Mortgagor hereby gives and grants to the Mortgagee, the right, power and authority to make and enter into leases of the Property or the portions thereof for such rents and for such periods of occupancy and upon such conditions and provisions as mortgagee in possession may deem desirable, and Mortgagor expressly acknowledges and agrees that the term of any such lease may extend beyond the date of any sale of the Property pursuant to a decree rendered in such judicial proceedings; it being the intention of the Mortgagor that while the Mortgagee is a Mortgagee in possession of the Property pursuant to an order or decree entered in such judicial proceedings, such Mortgagee shall be deemed to be and shall be the attorney-in-fact of the Mortgagor for the purpose of making and entering into leases of parts or portions of the Property for the rents and upon the terms, conditions and provisions deemed desirable to such Mortgagee and with like effect as if such leases had been made by the Mortgagor as the owner in fee simple of the Property free and clear of any conditions or limitations established by this Mortgage. The power and authority hereby given and granted by the Mortgagor to Mortgagee shall be deemed to be coupled with an interest and shall not be revocable by Mortgagor. Nothing herein shall be construed to affect the Mortgagee's rights under Section 2.02(b) above.

3.02 Taxation of Note and Mortgage. If at any time before the debt hereby secured is fully paid, any law be enacted, deducting from the value of said real estate, for the purposes of taxation, any lien thereon, or revising or changing in any way the laws now in force for the taxation of mortgages or bonds, or the debts secured thereby, for state or local purposes, or the manner of collection of such taxes, so as to affect adversely this Mortgage or the debt hereby secured, or the owner and holder thereof in respect thereto, then this Mortgage and the Note hereby secured shall, at the option of Mortgagee and without notice to any party, become immediately due and payable. If any law should be enacted and to the extent permitted by such law, Mortgagor shall have the opportunity of paying to the Mortgagee the amount of any additional cost or taxes to the Mortgagee from such law.

3.03 Marshalling of Assets. Mortgagor on its own behalf and on behalf of its successors and assigns hereby expressly waives all rights to require a marshalling of assets by Mortgagee or to require Mortgagee, upon a foreclosure, to first resort to the sale of any portion of the Property which might have been retained by Mortgagor before foreclosing upon and selling any other portion as may be conveyed by Mortgagor subject to this Mortgage.

3.04 Partial Release. Without affecting the liability of any other person for the payment of an indebtedness herein mentioned (including Mortgagor should it convey said Property) and without affecting the priority of the lien hereof upon any property not released, Mortgagee may,

without notice, release any person so liable, extend the maturity or modify the terms of any such obligation, or grant other indulgences, release or reconvey or cause to be released or reconveyed at any time all or any part of the Property described herein, or take or release any other security or make compositions or other arrangements with debtors. Mortgagee may also accept additional security, either concurrently herewith or hereafter, and sell the same or otherwise realized thereon either before, concurrently with, or after sale hereunder.

3.05 Non-Waiver.

a. By accepting payment of any sum secured hereby after its due date or altered performance of any obligation secured hereby, Mortgagee shall not waive its right against any person obligated directly or indirectly hereunder or with respect to any indebtedness hereby secured, either to require prompt payment when due of all other sums so secured or take remedy for failure to make such prompt payment or full performance. No exercise of any right or remedy by Mortgagee hereunder shall constitute a waiver of any other right or remedy herein contained or provided by law.

b. No delay or omission of the Mortgagee in the exercise of any right, power or remedy accruing hereunder or arising otherwise shall impair any such right, power or remedy, or be construed to be a waiver of any default or acquiescence therein.

c. Receipt of rents, awards, and any other monies or evidences thereof, pursuant to the provisions of this Mortgage and any disposition of the same by Mortgagee shall not constitute a waiver of the right of foreclosure by Mortgagee in the event of default or failure of performance by Mortgagor of any covenant or agreement contained herein or in any note secured hereby.

3.06 Protection of Security. Should Mortgagor fail to make any payment or to perform any covenant as herein provided, Mortgagee (but without obligation so to do and without notice to or demand upon Mortgagor and without releasing Mortgagor from any obligation hereof) may make or do the same in the manner and to such extent as Mortgagee may deem reasonably necessary to protect the security hereof, Mortgagee being authorized to enter upon the Property for such purposes, commence, appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Mortgagee; pay, purchase, contest, or compromise any encumbrance, charge or lien which in the judgment of Mortgagee is prior or superior hereto; and, in exercising any such power, incur any liability and expend whatever amounts in its absolute discretion it may deem necessary therefor, including cost of evidence of title and reasonable counsel fee. Any expenditures in connection herewith shall constitute an advance hereunder.

3.07 Rules of Construction. When the identity of the parties hereto or other circumstances make it appropriate, the masculine gender shall include the feminine and/or neuter, plural and the singular number shall include the plural. The headings of each paragraph are for information and convenience only and do not limit or construe the contents of any provision hereof

3.08 Severability. If any term of this Mortgage, or the application thereof to any person or circumstances, shall, to any extent, be invalid or unenforceable, the remainder of this Mortgage, or the application of such term to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term of this Mortgage shall be valid and enforceable to the fullest extent permitted by law.

3.09 Successors in Interest. This Mortgage applies to, inures to the benefit of, and is binding not only on the parties hereto, but on their heirs, executors, administrators, successors and assigns. All obligations of Mortgagor hereunder are joint and several. The term "Mortgagee" shall mean the holder and owner, including pledges, of the Note secured hereby, whether or not named as Mortgagee herein.

3.10 Notices. All notices to be given pursuant to this Mortgage shall be sufficient if mailed postage prepaid, certified or registered mail, return receipt requested, to the above described addresses of the parties hereto, or to such other address as a party may request in writing. All notices to Mortgagor shall be sent to the attention of the Executive Director. All notices to the Mortgagee shall be sent to the attention of the County Manager. Any time period provided in the giving of any notice shall commence upon the date such notice is deposited in the mail.

3.11 Modifications. This Mortgage may not be amended, modified or changed, nor shall any waiver of any provision be effective, except only by an instrument in writing and signed by the party against whom enforcement of any waiver, amendment, change, modification or discharge is sought.

3.12 Governing Law. This Mortgage shall be construed according to and governed by the laws of the State of Florida, provided, however, that nothing herein shall limit or impair any right which Holder has under applicable federal laws of the United States of America to charge a rate of interest on the sums evidenced hereby at a rate which exceeds the maximum rate allowed under the laws of Florida.

## ARTICLE FOUR

### Lending Provisions

4.01 Breach of Loan Agreement and Other Documents. Notwithstanding anything to the contrary contained in this Mortgage, in the Note, or in any other instrument securing the loan evidenced by the Note, Mortgagee may at its option declare the entire indebtedness secured hereby, and all interest thereon and all advances made by Mortgagee hereunder, immediately due and payable and/or exercise all additional rights accruing to it under this Mortgage upon an Event of Default, or in the event of a breach by Mortgagor of any covenant contained in this Mortgage following expiration of all notice and cure periods set forth therein.

4.02 Future Advances. This Mortgage is given to secure not only existing

indebtedness, but also such future advances, whether such advances are obligatory or are to be made at the option of the Mortgagee, or otherwise, as are made within twenty years from the date hereof, to the same extent as if such future advances were made on the date of the execution of this Mortgage. The total amount of indebtedness that may be so secured may decrease or increase from time to time, but the total unpaid balance so secured at one time shall not exceed four times the face amount of the Note, plus interest thereon, and any disbursements made for the payment of taxes, levies or insurance on the Property with interest on such disbursements at the rate designated in the Note to apply following a default thereunder. Mortgagor hereby agrees that it shall not execute or file for record any notice limiting the maximum principal amount that may be so secured, and that no such notice shall be of any force and effect whatsoever unless Mortgagee shall have consented thereto in writing signed by Mortgagee and recorded in the public records of Miami-Dade County, Florida.

#### 4.03 Rights under Prior Encumbrances.

a. Mortgagor hereby covenants and agrees (i) to promptly observe and perform all of the covenants and conditions contained in any Permitted Encumbrance or any other lien upon the Property, and which are required to be observed or performed by Mortgagor and to do all things necessary to preserve and keep unimpaired its rights thereunder; (ii) to promptly notify Mortgagee in writing of any default by the Mortgagor in the performance and the observance of any of the terms, covenants or conditions on part of Mortgagor to be performed or observed under such instrument or of the occurrence of any event which, regardless of the lapse of time, would constitute a default under such instrument and promptly to cause a copy of each such notice given by the Mortgagee thereunder to the Mortgagor to be delivered to Mortgagee.

b. In the event Mortgagor fails to make any payment required under such a Permitted Encumbrance or any other lien upon the Property or to do any act set forth in the preceding subparagraph herein provided, then Mortgagee may, but without obligation, and without notice to or demand upon Mortgagor, and without releasing Mortgagor from any obligation hereof, make or do the same in such manner and to such extent as Mortgagee may deem necessary to protect its interest under this Mortgage. Mortgagee's rights hereunder shall specifically include, but without limitation thereof, the right to pay any and all payments of interest and principal, insurance premiums, taxes and assessments and other sums due or to become due thereunder.

c. In the event Mortgagor fails to perform any of the terms, covenants and conditions required to be performed or observed by Mortgagor under such a Permitted Encumbrance or any other lien upon the Property, then Mortgagee may, but without obligation, and without notice or demand upon Mortgagor and without relieving Mortgagor from any obligation hereof, take any action Mortgagee deems necessary or desirable to prevent or cure any such default by Mortgagor. Upon receipt by Mortgagee from Mortgagor of any written notice of default by Mortgagor under such instrument, Mortgagee may rely thereon and take any action it deems necessary to cure such default event though the existence of such default or the nature thereof may be questioned or denied by the Mortgagor or by any party on behalf of the Mortgagor. Mortgagor hereby expressly grants to Mortgagee, and agrees that Mortgagee shall have, the

absolute and immediate right to enter upon the Property or any part thereof to such extent and as often as the Mortgagee in its sole discretion deems necessary or desirable in order to prevent or cure any such default by the Mortgagor. Mortgagee may pay and expend such sums of money as Mortgagee in its sole discretion deems necessary for any such purpose and may pay expenses, employ counsel and pay reasonable attorney's fees. All costs, charges and expenses so incurred or paid by Mortgagee shall become due and payable immediately, whether or not there by notice, demand, attempt to collect or suit pending. The amount so incurred or paid by Mortgagee, together with interest thereon at the rate of interest set forth in the Note to accrue following default thereunder, from the date incurred until paid by Mortgagor, shall be added to the indebtedness secured by the lien of this Mortgage to the same extent as if paid or expended on the date hereof.

d. Mortgagor agrees that it will not surrender any of its rights under such a Permitted Encumbrance or other lien upon the Property, and will not, without the prior written consent of Mortgagee, consent to any modification, change or any alteration or amendment of such instrument of the obligations secured thereby, either orally or in writing, and no release or forbearance of any of Mortgagor's obligations under such instrument whether pursuant to such instrument or otherwise, shall release Mortgagor from any of its obligations under this Mortgage.

e. Any default by Mortgagor or any event of default under a Permitted Encumbrance or other lien upon the Property, to which this Mortgage may be subject shall constitute an Event of Default under this Mortgage.

4.04 Limitation of Interest. All agreements between Mortgagor and Mortgagee are expressly limited so that in no contingency or event whatsoever, whether by reason of advancement of the principal amount of the Note, acceleration of maturity of the unpaid principal amount of the Note, acceleration of maturity of the unpaid principal balance thereof, or otherwise, or advancement of any sums under the provisions of this Mortgage, shall the amount paid or agreed to be paid to the holder of the Note for the use, forbearance or detention of the money to be advanced thereunder or hereunder exceed the highest lawful rate permissible. If, from any circumstances whatsoever, fulfillment of any provisions of this Mortgage or the Note or any other agreement referred to herein, at the time performance of such provision shall be due, shall involve transcending the limit of validity prescribed by law which a court of competent jurisdiction may deem applicable thereto or hereto, then ipso facto, the obligations to be fulfilled shall be reduced to the limit of such validity, and if from any circumstances the holder of the Note or Mortgage shall ever receive as interest an amount which would exceed the highest lawful rate, such amount which would be excessive interest shall be applied to the reduction of the unpaid principal balance due hereunder and not the payment of interest. These provisions shall control every other provision of all agreements between Mortgagor and Mortgagee.

4.05 Waiver of Jury Trial: **MORTGAGOR WAIVES ITS RIGHTS TO A TRIAL BY JURY IN ANY ACTION, WHETHER ARISING IN CONTRACT OR TORT, BY STATUTE OR OTHERWISE, IN ANY WAY RELATED TO THE TERMS OF THIS MORTGAGE. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE MORTGAGEE'S EXTENDING CREDIT TO MORTGAGOR AND NO WAIVER OF LIMITATION OF THE MORTGAGEE'S RIGHTS**

UNDER THIS PARAGRAPH SHALL BE EFFECTIVE UNLESS IN WRITING AND MANUALLY SIGNED ON THE LENDER'S BEHALF.

IN WITNESS WHEREOF, the said Mortgagor caused this instrument to be signed and sealed as of the date first above written.

Witnesses:

Mortgagor:

\_\_\_\_\_, a Florida

\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

(SEAL)

STATE OF FLORIDA     )  
                                  ) SS.  
COUNTY OF MIAMI-DADE )

I HEREBY CERTIFY that on this day, before me, a Notary Public duly authorized in the State and County named above to take acknowledgments, personally appeared \_\_\_\_\_ as \_\_\_\_\_ of \_\_\_\_\_, a Florida \_\_\_\_\_, ( ) who is personally known to me or ( ) who presented \_\_\_\_\_ as identification, to me known to be a representative of the person described as the Mortgagor in and who executed the foregoing Mortgage and Security Agreement and Assignment of Leases, Rents and Profits, and acknowledged before me that said person executed that Mortgage and Security Agreement and Assignment of Leases, Rents and Profits and who ( ) did ( ) did not take an oath.

WITNESSETH my hand and official seal in the State and County above, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
NOTARY PUBLIC, State of Florida

My Commission Expires:

|

**EXHIBIT A**

**LEGAL DESCRIPTION**

(Insert legal description here)

DRAFT

|  
**EXHIBIT B**

**PERMITTED ENCUMBRANCES**

DRAFT