

73-R-99

**A RESOLUTION**

**Authorizing City Manager to Negotiate  
a \$25,000,000.00 Payment Guaranty in Favor of  
Harris Trust and Savings Bank to enable  
AHC Evanston, LLC to borrow \$25,000,000.00 for the  
Construction of the Church/Maple Parking Garage**

WHEREAS, the City of Evanston has determined that the southern portion of the Research Park should be redeveloped with commercial activities; and

WHEREAS, the Northwestern University Evanston Research Park Board issued Requests For Proposals for the redevelopment of the southern portion of the Research Park; and

WHEREAS, said Requests For Proposals set forth a desired development project to include a multi-screen cinema, a hotel, retail, commercial, a senior center and public parking garage; and

WHEREAS, AHC Evanston, LLC, an Illinois LLC, was designated as the developer pursuant to 96-R-97 and 16-R-98; and

WHEREAS, pursuant to Resolution 68-R-98 the City entered into a Redevelopment Agreement with AHC Evanston, LLC, an Illinois LLC, for the Research Park; and

WHEREAS, pursuant to 75-R-98 a First Amendment was made to the Redevelopment Agreement; and

WHEREAS, pursuant to 30-R-99, a Second Amendment was made to the Redevelopment Agreement; and

WHEREAS, pursuant to the Redevelopment Agreement as amended AHC Evanston, LLC, is to build as part of the Public Development a Parking Garage known as the Church/Maple Parking Garage; and

WHEREAS, the City Council pursuant to Resolution 34-R-99 did authorize the City Manager to enter into a Construction Agreement with AHC Evanston, LLC for the aforesaid parking garage; and

WHEREAS, AHC Evanston, LLC has requested the Harris Trust and Savings Bank to make a credit facility available in the aggregate amount not to exceed \$25,000,000.00 in order to construct the Church/Maple Parking Garage; and

WHEREAS, Harris Trust and Savings Bank is unwilling to make such credit facility available and enter into a loan agreement with AHC Evanston, LLC unless the City of Evanston executes and delivers a Payment Guaranty to the Bank; and

WHEREAS, the Payment Guaranty in the amount of \$25,000,000.00 is essential to the availability of the \$25,000,000.00 construction loan for the Church/Maple Parking Garage Construction Project; and

WHEREAS, the Church/Maple Parking Garage is essential to the success of the Development as proposed in the Redevelopment Agreement as Amended from time to time; and

WHEREAS, the Church/Maple Parking Garage is necessary to provide off street

parking for the aforesaid Development and for various office buildings and proposed Hotel in the Research Park; and

WHEREAS, pursuant to the terms of the Redevelopment Agreement the City will purchase Church/Maple Parking Garage; and

WHEREAS, it is imperative that construction on the Church/Maple Parking Garage commence forthwith in order that the City fulfill its obligations under the Redevelopment Agreement,

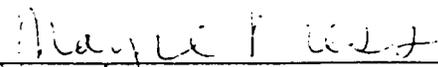
NOW, THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EVANSTON, COOK COUNTY, ILLINOIS:

**SECTION 1:** That the City Manager is hereby authorized and directed to negotiate a \$25,000,000.00 Payment Guaranty with Harris Trust and Savings Bank to enable AHC Evanston, LLC to borrow \$25,000,000.00 for the construction of the Church/Maple Parking Garage.

**SECTION 2:** That this Resolution shall be in full force and effect from and after its passage and approval in the manner provided by law.

  
\_\_\_\_\_  
Mayor

ATTEST:

  
\_\_\_\_\_  
Deputy City Clerk

Adopted: October 24, 1999

EXHIBIT A

PAYMENT GUARANTY

This Payment Guaranty (this "*Guaranty*" is made as of the \_\_\_\_ day of October, 1999, by the CITY OF EVANSTON, a municipal corporation (the "*Guarantor*"), in favor of HARRIS TRUST AND SAVINGS BANK, an Illinois banking corporation (the "*Bank*"). All capitalized terms appearing herein and not defined herein shall have the meanings set forth in that certain Construction Loan Agreement dated of even date herewith between Borrower and the Bank (such Construction Loan Agreement, as it may be from time to time amended, modified or supplemented is hereinafter referred to as the "*Loan Agreement*").

WHEREAS, AHC Evanston, L.L.C., a \_\_\_\_\_ limited liability company (the "*Borrower*") is the owner of certain property located in Evanston, Illinois, more particularly described in the Mortgage, together with any improvements now existing or to be constructed thereon (collectively, the "*Mortgaged Premises*");

WHEREAS, the Borrower has requested the Bank to make a credit facility available to the Borrower in the aggregate not to exceed \$25,000,000 (the "*Loan*"), which Loan will be evidenced by that certain term promissory note made by the Borrower dated as of the date hereof and payable to the Bank in the principal amount of \$25,000,000 (as the same may be from time to time amended, modified or restated and any notes issued in renewal, replacement or substitution therefor, hereinafter referred to as the "*Note*");

WHEREAS, the Bank is unwilling to make the Loan and enter into the Loan Agreement unless the Guarantor executes and delivers this Guaranty to the Bank;

NOW, THEREFORE, for value received and in consideration of advances made or to be made or credit given or assumed or to be given to the Borrower by the Bank from time to time under the Loan Agreement, the Guarantor hereby absolutely, irrevocably and unconditionally guarantees to the Bank the full and prompt payment to the Bank at maturity and at all times thereafter of any and all principal, interest, indebtedness, obligations and liabilities of every kind and nature of the Borrower to the Bank, howsoever evidenced, whether now existing or hereafter created or arising, whether direct or indirect, absolute or contingent, or joint or several, and howsoever owned, held or acquired, in respect of the Loan Agreement (collectively herein referred to as the "*Obligations*"). The Guarantor further agrees to pay all reasonable expenses, legal and/or otherwise (including court costs and reasonable attorney's fees) paid or incurred by the Bank in endeavoring to collect or enforce the Obligations, or any part thereof, and in protecting, defending or enforcing this Guaranty in any litigation, bankruptcy or insolvency proceedings or otherwise.

This Guaranty is given on and subject to the following additional terms and conditions:

SECTION I. DEFINITIONS.

All capitalized terms used in this Guaranty without definition shall have the meanings ascribed to them in the Loan Agreement.

## SECTION 2. REPRESENTATIONS OF GUARANTOR.

*Section 2.1.* Guarantor is a duly organized and validly existing municipal corporation under the laws of the State of Illinois and this Guaranty does not, and the performance or observance by the Guarantor of any of the matters and things herein provided for will not, contravene any provision of law or constitute an event of default or an event which, with the lapse of time, the giving of notice or both would constitute an event of default under any indenture, loan agreement, mortgage, lease, guaranty or other agreement to which Guarantor is a party or by which it is bound.

*Section 2.2.* Guarantor has all necessary power to carry on its business and has full right, power and authority to enter into this Guaranty and perform the transactions contemplated hereby.

*Section 2.3.* All financial statements of the Guarantor heretofore delivered to Bank in connection with the loan are true and correct in all material respects and truly and accurately reflect in all material respects the financial condition of Guarantor as of the date thereof and for the periods covered thereby.

*Section 2.4.* Except as heretofore disclosed in writing to the Bank, there is no litigation or governmental proceedings pending, or, to the best knowledge and belief of the Guarantor, threatened, against the Guarantor which, if adversely determined, would result in any material adverse change in the financial condition or properties, business or operations of the Guarantor.

## SECTION 3. COVENANTS.

The Guarantor agrees that, so long as any or all of the Obligations are outstanding or the Note remains unsatisfied or any amount remains unpaid to the Bank under any of the provisions hereof, except to the extent compliance in any case is waived in writing by the Bank or to the extent noncompliance is immaterial to the performance of the Guarantor's obligations hereunder or the Guarantor pays to the Bank the Obligations:

*Section 3.1.* Guarantor will preserve and keep in full force and effect its existence as a municipal corporation under the laws of the State of Illinois and will not amend or modify its [charter] in any manner which might materially adversely affect the interests of the Bank hereunder. Guarantor will preserve and keep in force and effect all licenses, permits and franchises required for the proper conduct of its business. Guarantor shall maintain no subsidiaries.

*Section 3.2.* Guarantor will duly pay and discharge all taxes, rates, assessments, fees and governmental charges upon or against it, or against its properties, in each case before penalties accrue thereon, unless and to the extent that the same are being contested in good faith and by appropriate proceedings.

SECTION 4. LIABILITY ABSOLUTE AND UNCONDITIONAL.

*Section 4.1.* This Guaranty shall be a continuing, absolute and unconditional Guaranty, and shall remain in full force and effect, until the Note shall have been paid in full and any and all Obligations shall be fully paid or the Obligations shall have been satisfied. In the event that any payment on account of the Obligations is ever required to be returned by the Bank for any reason (including, without limitation bankruptcy or reorganization of the Borrower, of the Guarantor or any other obligor) or is set aside, recovered or rescinded the Obligations to which such payment was applied shall for the purposes of this Guaranty be deemed to have continued in existence, notwithstanding such application, and this Guaranty shall be enforceable as to such of the Obligations as fully as if such application had never been made. The bankruptcy or insolvency of Guarantor shall not terminate this Guaranty. This is a guaranty of payment.

*Section 4.2.* The Guarantor shall remain liable as principal, notwithstanding any act or thing which might otherwise operate as a legal or equitable discharge of the Guarantor, until any commitment of the Bank to extend credit under the Note pursuant to the Loan Agreement shall have expired, the Note shall have been paid in full and any and all obligations of the Borrower under the Loan Agreement shall be fully paid or the Obligations shall have been satisfied.

*Section 4.3.* The liability of Guarantor hereunder shall in no way be affected or impaired by (and the Bank is hereby expressly authorized to make from time to time, without notice to the Guarantor, but upon written agreement of the Borrower), any sale, pledge, surrender, compromise, settlement, release, renewal, extension, indulgence, alteration, substitution, exchange, change in, amendment, modification or other disposition of the Obligations, either express or implied, or of the Note, Loan Agreement, Mortgage or Additional Collateral Documents. The Guarantor hereby waives receipt of notice of the creation and existence of the Obligations. The liability hereunder shall in no wise be affected or impaired by any acceptance by the Bank of any security for or other guarantors of the Obligations, or by any failure, neglect or omission on the part of the Bank to realize upon or protect any of the Obligations or any collateral or security therefor, or to exercise any lien upon or right of appropriation of any moneys, credits or property of Borrower, possessed by the Bank toward the liquidation of the Obligations, or by any application of payments or credits thereon. The Bank shall have the exclusive right, in accordance with the Loan Agreement, to determine how, when and what application of payments and credits, if any, shall be made on the Obligations or any part of it. All dividends or other payments received from the Borrower, or on account of the Obligations from whatsoever source, shall be taken and applied as payment in gross, and this Guaranty shall apply to and secure any ultimate balance that shall remain owing to the Bank. This is a guaranty of payment and in order to hold Guarantor liable hereunder, there shall be no obligation on the part of the Bank, at any time, to resort for payment to the Borrower or to any other person, their properties or estates, or to resort to any collateral security, property, liens or other rights or remedies whatsoever, and the Bank shall have the right to enforce this Guaranty irrespective of whether or not other proceedings or steps are pending seeking to resort to or realization upon or from any of the foregoing.

*Section 4.4.* The liability of the Guarantor hereunder shall not be affected or impaired by any invalidity or unenforceability of the Note, Loan Agreement, Mortgage or Additional

Collateral Documents or by any other circumstance which might otherwise constitute a legal or equitable discharge or defense of a guarantor.

*Section 4.5.* All diligence in collection, protection or enforcement and all presentment, demand, protest and/or notice, as to anyone and everyone, whether or not the Borrower or the Guarantor, or others, of dishonor and of default and of non-payment and of the creation and existence of the Obligations and of any security and collateral therefor, and of the acceptance of this Guaranty, and of any and all extensions of credit and indulgence hereunder, are hereby expressly waived. Unless and until the full amount owing to the Bank on the Loan has been paid, the Guarantor hereby irrevocably waives any claim or other right which it may now or hereafter acquire against the Borrower that arises from the existence, payment, performance or enforcement of the Guarantor's obligations hereunder, including, without limitation, any right of subrogation, reimbursement, exoneration, contribution, indemnification, or any right to participate in any claim or remedy of the Bank against the Borrower whether or not such claim, remedy or right arises in equity, or under contract, statute or common law, including without limitation, the right to take or receive from the Borrower directly or indirectly, in cash or other property or by set-off or in any other manner, payment or security on account of such claim or other rights. No act of commission or omission of any kind or at any time, upon the part of the Bank in respect to any matter whatsoever, shall in any way affect or impair this Guaranty.

*Section 4.6.* If an Event of Default occurs and is continuing under the Loan Agreement and the Bank so elects by written notice to the Guarantor, the full amount of the Obligations shall be and become immediately due and payable from the Guarantor (and the Guarantor hereby agrees to immediately pay the same) whether or not the Loan has become immediately due and payable from the Borrower and without regard to any constraints on or impediments to the ability of the Bank to accelerate the maturity of such indebtedness after the occurrence and continuance of an Event of Default or any agreements by the Bank limiting recourse to assets of the Borrower. Repeated and successive demands may be made on the Guarantor hereunder.

*Section 4.7.* The Guarantor will not exercise or enforce any right of exoneration, contribution, reimbursement, recourse or subrogation available to the Guarantor against any person liable for payment of the Loan, or as to any security therefor, unless and until the full amount owing to the Bank on the Loan has been paid, and the payment by the Guarantor of any amount pursuant to this Guaranty shall not in any wise entitle the Guarantor to any right, title or interest (whether by way of subrogation or otherwise) in and to the Loan or any proceeds thereof or any security therefor unless and until the full amount owing to the Bank on the Loan has been paid.

*Section 4.8.* Guarantor hereby waives any and all defenses, claims and discharges of the Borrower, or any other obligor, pertaining to the Obligations, except the defense of discharge by payment in full. Without limiting the generality of the foregoing, to the extent permitted by applicable law, the Guarantor will not assert, plead or enforce against the Bank any defense of waiver, release, discharge in bankruptcy, statute of limitations, *res judicata*, statute of frauds, anti-deficiency statute, fraud, incapacity, minority, usury, illegality or unenforceability which may be available to the Borrower or any other person liable in respect of any of the Obligations, or any setoff available against the Bank to the Borrower or any such other person, whether or not

on account of a related transaction. Upon the occurrence and continuance of an Event of Default (as defined in the Loan Agreement), the Bank may elect, at its option and in its sole discretion, to non-judicially or judicially foreclose against any real or personal property security it holds for the Loan or any part thereof or exercise any other remedy against the Borrower or any security. Guarantor acknowledges that if the Bank elects to foreclose non-judicially upon real property constituting security for the Loan, Guarantor would, but for the waiver contained herein, have a defense to liability under this Guaranty because such action would destroy Guarantor's subrogation rights against the Borrower. Guarantor hereby knowingly, expressly and specifically waives such defense and agrees that neither the non-judicial nor judicial foreclosure by the Bank will release or limit the liability of Guarantor to the Bank, even if the effect of that action is to deprive Guarantor of the right to collect reimbursement from the Borrower for any sums paid to the Bank. Guarantor further agrees that Guarantor shall be and remain liable for any deficiency in the payment of the Obligations remaining after foreclosure of the Mortgage or any other action thereunder or under any Additional Collateral Document.

#### SECTION 5. REINSTATEMENT.

*Section 5.1.* In the event that a bankruptcy or similar proceeding is instituted by or against Borrower or Guarantor within one year of the date of the satisfaction of this Guaranty, and the foreclosure deed, deed in lieu of foreclosure or any amount paid on account of the Loan or this Guaranty is set aside, recovered or rescinded, this Guaranty shall be reinstated and shall guarantee payment of any Obligations set aside, recovered or rescinded until such amount is paid in full.

#### SECTION 6. MISCELLANEOUS.

*Section 6.1.* This Guaranty and every part hereof shall be binding upon Guarantor and upon the successors and assigns of Guarantor and shall inure to the benefit of the Bank and its successors and permitted assigns including any subsequent holder of the Loan or any part thereof. This Guaranty may only be changed by an instrument in writing signed by the party against whom enforcement hereof is sought. If any provision hereof is unenforceable, such provision shall be ineffective to the extent of such unenforceability without invalidating the remaining provisions hereof.

*Section 6.2.* THIS GUARANTY SHALL BE CONSTRUED AND ENFORCED UNDER THE LAWS OF THE STATE OF ILLINOIS WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW.

*Section 6.3.* The Guarantor authorizes the Bank at any time in its discretion to alter any of the terms of the Loan with the written agreement of the Borrower, to take and hold any security for the Loan and to accept additional or substituted security, to subordinate, compromise any security, to release, substitute or add any one or more guarantors or endorsers, and to assign this Guaranty in whole or in part. The Bank may take any of the foregoing actions upon any terms and conditions as the Bank may elect, without giving notice to the Guarantor or obtaining the consent of the Guarantor and without affecting the liability of the Guarantor to the Bank.

*Section 6.4.* Guarantor assumes full responsibility for keeping fully informed of the financial condition of the Borrower and all other circumstances affecting the Borrower's ability to perform its obligations to the Bank and agrees that the Bank will have no duty to report to the Guarantor any information which the Bank receives about the Borrower's financial condition or any circumstances bearing on its ability to perform.

*Section 6.5.* Upon the occurrence and during the continuance of an Event of Default, the Bank may elect to foreclose or exercise other remedies against any real or personal property security it holds for the Obligations or any part thereof or exercise any other remedy against the Borrower or any such collateral security. No such action by the Bank will release or limit the liability of Guarantor to the Bank, even if the effect of that action is to deprive Guarantor of the right to collect reimbursement from the Borrower for any sums paid to the Bank.

*Section 6.6.* Any notice which the Guarantor or the Bank desires, or are required to give hereunder, shall be given in accordance with the Loan Agreement. Any notice to the Guarantor shall be sufficient if sent to the Guarantor in care of the Borrower at the address set forth in the Loan Agreement.

*Section 6.7.* This Guaranty, together with the Note, Mortgage, Loan Agreement and the Additional Collateral Documents, constitutes the entire understanding of the parties with respect to the transactions contemplated hereby and all prior understandings with respect thereto, whether written or oral, shall be of no force and effect.

*Section 6.8.* The descriptive headings of the various sections or parts of this Guaranty are for convenience only and shall not affect the meaning or construction of any of the provisions hereof.

*Section 6.9.* Time is of the essence of this Guaranty.

*Section 6.10.* All references herein to monetary amounts are references to U.S. Dollars.

*Section 6.11.* This Guaranty shall be in addition to and not in substitution for any other guaranty issued by the Guarantor in connection with the Loan Agreement and the rights and remedies of the Bank shall be unaffected by the existence of another guaranty.

IN WITNESS WHEREOF, this Agreement has been executed by the Guarantor as of the date first above written.

CITY OF EVANSTON, a municipal corporation

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

Printed Name: \_\_\_\_\_

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

October 21, 1999

**VIA ELECTRONIC MAIL**

Eugene F. Reardon  
Arthur Hill & Co., L.L.C.  
Five Revere Drive  
Suite 300  
Northbrook, Illinois 60062

Max Rubin  
City of Evanston  
2100 Ridge Avenue  
Evanston, Illinois 60201

Herbert D. Hill, Esq.  
City of Evanston  
2100 Ridge Avenue – Suite 4500  
Evanston, Illinois 60201

Re: Harris Trust and Savings Bank  
\$25,000,000 Credit Facility to  
AHC Evanston, L.L.C.

Gentlemen:

We enclose for your comment and review drafts of the following documents:

1. Construction Loan Agreement;
2. Payment Guaranty;
3. Completion Guaranty; and
4. Closing Checklist.

Since the enclosed have yet to be reviewed by the Bank, they remain subject to further modifications by the Bank. Please direct all questions and comments to the undersigned at 312.845.3485.

Very truly yours,

CHAPMAN AND CUTLER

Eric M. Roberson

EMR:pk

Enclosures

cc: Dennis W. Rourke (w/encls. – via messenger)  
James R. Theiss, Jr. (w/encls.)

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CONSTRUCTION LOAN AGREEMENT

by and between

AHC EVANSTON, L.L.C.

and

HARRIS TRUST AND SAVINGS BANK

dated as of October \_\_\_\_, 1999

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**CONSTRUCTION LOAN AGREEMENT  
AHC EVANSTON, L.L.C.**

Harris Trust and Savings Bank  
111 West Monroe Street  
Chicago, Illinois 60603

Ladies and Gentlemen:

The undersigned, AHC Evanston, L.L.C., a \_\_\_\_\_ limited liability company (the "*Borrower*"), has applied to you for your commitment to extend credit to the Borrower in the amount and for the uses and purposes hereinafter set forth (the "*Loan*"). This Construction Loan Agreement ("*Agreement*") is executed and delivered by you and by the Borrower to set forth the terms and conditions to be applicable to said extension of credit and the representations and warranties to be made to you in connection therewith. You are hereinafter referred to as the "*Bank*."

SECTION 1. DEFINITIONS.

Unless the context otherwise requires, the following terms shall for all purposes of this Agreement have the meanings herein specified and the following definitions shall be equally applicable to both the singular and plural forms of any of the terms herein defined.

"*ADA Requirements*" is defined in Section 2.12 hereof.

"*Additional Collateral Documents*" shall mean (in each case, as amended from time to time) an Assignment of Leases and Rents on the Mortgaged Premises executed by the Borrower, an Environmental Indemnity Agreement of the Guarantor and the Borrower in favor of the Bank, an ADA Indemnity Agreement of the Guarantor and the Borrower in favor of the Bank, a Security Agreement executed by the Borrower, a Collateral Assignment of Permits, Licenses and Authorizations executed by the Borrower, a Collateral Assignment of Plans and Specifications executed by the Borrower, a Collateral Assignment of Construction Contracts executed by the Borrower, a Collateral Assignment of Management, Maintenance and Other Contracts executed by Borrower, [a Collateral Assignment of [Architect's] Agreement executed by Borrower], a Collateral Assignment of Engineer's Agreement executed by Borrower, a Completion Guaranty executed by the Guarantor, (the "*Completion Guaranty*") and a Payment Guaranty executed by Guarantor (the "*Payment Guaranty*") each of which shall be satisfactory to the Bank in form and substance.

"*Adjusted LIBOR*" shall mean a rate per annum determined by the Bank in accordance with the following formula:

$$\text{Adjusted LIBOR} = \frac{\text{LIBOR}}{100\% - \text{Reserve Percentage}}$$

*"Reserve Percentage"* shall mean, for the purpose of computing the Adjusted LIBOR, the maximum rate of all reserve requirements (including, without limitation, any marginal emergency, supplemental or other special reserves) imposed by the Board of Governors of the Federal Reserve System (or any successor) under Regulation D on Eurocurrency liabilities (as such term is defined in Regulation D) for the applicable Interest Period as of the first day of such Interest Period, but subject to any amendments to such reserve requirement by such Board or its successor, and taking into account any transitional adjustments thereto becoming effective during such Interest Period. For purposes of this definition, LIBOR Portions shall be deemed to be Eurocurrency liabilities as defined in Regulation D without benefit of or credit for prorations, exemptions or offsets under Regulation D.

*"LIBOR"* shall mean, for each Interest Period, (a) the LIBOR Index Rate for such Interest Period, if such rate is available, and (b) if the LIBOR Index Rate cannot be determined, the arithmetic average of the rates of interest per annum (rounded upwards, if necessary, to nearest 1/100 of 1%) at which deposits in U.S. Dollars in immediately available funds are offered to the Bank at 11:00 a.m. (London, England time) two (2) Business Days before the beginning of such Interest Period by three (3) or more major banks in the interbank eurodollar market reasonably selected by the Bank for a period equal to such Interest Period and in an amount equal or comparable to the applicable LIBOR Portion scheduled to be outstanding from the Bank during such Interest Period.

*"LIBOR Index Rate"* shall mean, for any Interest Period, the rate per annum (rounded upwards, if necessary, to the next higher one hundred-thousandth of a percentage point) for deposits in U.S. Dollars for a period equal to such Interest Period, which appears on the Telerate Page 3750 as of 11:00 a.m. (London, England time) on the day two (2) Business Days before the commencement of such Interest Period.

*"Telerate Page 3750"* shall mean the display designated as *"Page 3750"* on the Telerate Service (or such other page as may replace Page 3750 on that service or such other service as may be nominated by the British Bankers' Association as the information vendor for the purpose of displaying British Bankers' Association Interest Settlement Rates for U.S. Dollar deposits).

*"Affiliate"* shall mean any person, firm, corporation or entity (herein collectively called a *"Person"*) directly or indirectly controlling or controlled by, or under direct or indirect common control with, another Person. A Person shall be deemed to control another Person for the purposes of this definition if such first Person possesses, directly or indirectly, the power to direct, or cause the direction of, the management and policies of the second Person, whether through the ownership of voting securities, common directors, trustees or officers, by contract or otherwise.

*"Applicable Margin"* shall mean 0% with respect to Domestic Rate Portions and 1.125% with respect to LIBOR Portions.

**["Architect" shall mean \_\_\_\_\_, or such [Architect] as reasonably acceptable to the Bank and the Guarantor.]**

"Arthur Hill" shall mean Arthur Hill & Co., L.L.C., a \_\_\_\_\_ limited liability company.

"Business Day" shall mean any day other than a Saturday or Sunday on which the Bank is not authorized or required to close in Chicago, Illinois and, when used with respect to LIBOR Portions, a day on which the Bank is also dealing in United States Dollar deposits in London, England.

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §§9601 *et seq.*, and any future amendments.

**["Change of Control" shall occur when any one of the following has occurred: (i) Arthur Hill ceases to be the principal member of the Borrower; or (ii) any portion of the interest of any member of Arthur Hill is sold, transferred, encumbered or conveyed without the consent of Bank.]**

"Change Order" shall mean any amendments or modifications to the Plans, including as such any acceptance or approval of any extra cost alternate or option included in any of such.

"Code" shall mean the Internal Revenue Code of 1986, and any successor statute thereto.

**["Completion Date" shall mean \_\_\_\_\_.]**

"Completion of Improvements" shall mean (i) subject to Section 3.8 hereof, lien free completion of all work to be done on the Improvements pursuant to the Plans, as evidenced by receipt by the Bank of a certificate to that effect from the [Architect] and the Consultant, (ii) payment of substantially all costs incurred in connection therewith, and (iii) the issuance of certificates of occupancy for all space then constructed.

**["Construction Commencement Date" shall have the definition set forth in the Garage Construction Agreement.]**

"Construction Costs" shall mean the costs of all labor and materials necessary to complete the physical construction of the Improvements in accordance with the Plans and any Change Orders permitted hereunder.

"Consultant" shall mean \_\_\_\_\_ or such other consultant as may be mutually agreed upon by the Bank and the Borrower.

"Damages" shall mean all damages including, without limitation, punitive damages, liabilities, costs, expenses, losses, diminutions in value, fines, penalties, demands, claims, cost recovery actions, lawsuits, administrative proceedings, orders, response action, removal and

remedial costs, compliance costs, investigation expenses, consultant fees, attorneys' and paralegals' fees and litigation expenses.

"*Default*" shall mean any event or condition the occurrence of which would, with the passage of time or the giving of notice, or both, constitute an Event of Default.

"*Default Rate*" shall mean for each Portion the rate per annum determined by adding 3.0% to the Domestic Rate as from time to time in effect.

"*Domestic Rate*" shall mean for any day the greater of:

(i) the rate of interest announced by the Bank from time to time as its prime commercial rate, or equivalent, as in effect on such day, with any change in the Domestic Rate resulting from a change in said prime commercial rate to be effective as of the date of the relevant change in said prime commercial rate; and

(ii) the sum of (x) the rate determined by the Bank to be the average (rounded upwards, if necessary, to the next higher 1/100 of 1%) of the rates per annum quoted to the Bank at approximately 10:00 a.m. (Chicago time) (or as soon thereafter as is practicable) on such day (or, if such day is not a Business Day, on the immediately preceding Business Day) by two or more Federal funds brokers selected by the Bank for the sale to the Bank at face value of Federal funds in an amount equal or comparable to the principal amount owed to the Bank for which such rate is being determined, plus (y) 1/2 of 1% (.50%).

"*Domestic Rate Portion*" is defined in Section 4.1 hereof.

"*Engineer*" shall mean Walker Parking Consultants/Engineers, Inc.

"*Environmental Claim*" shall mean any investigation, notice, violation, demand, allegation, action, suit, injunction, judgment, order, consent decree, penalty, fine, lien, proceeding or claim (whether administrative, judicial or private in nature) arising (a) pursuant to, or in connection with an actual or alleged violation of, any Environmental Law, (b) in connection with any Hazardous Material, (c) from any abatement, removal, remedial, corrective or response action in connection with a Hazardous Material, Environmental Law or order of a governmental authority or (d) from any actual or alleged damage, injury, threat or harm to health, safety, natural resources or the environment.

"*Environmental Law*" shall mean any current or future Legal Requirement pertaining to (a) the protection of health, safety and the indoor or outdoor environment, (b) the conservation, management or use of natural resources and wildlife, (c) the protection or use of surface water or groundwater, (d) the management, manufacture, possession, presence, use, generation, transportation, treatment, storage, disposal, Release, threatened Release, abatement, removal, remediation or handling of, or exposure to, any Hazardous Material or (e) pollution (including any Release to air, land, surface water or groundwater), and any amendment, rule, regulation, order or directive issued thereunder.

"ERISA" shall mean the Employee Retirement Income Security Act of 1974, as amended, or any successor statute thereto.

"Estimated Total Cost of Completing the Improvements" shall mean as of any given date, the then total cost of completing construction of the Improvements pursuant to the Plans and any Change Orders permitted under the terms of this Agreement, including the then estimated Other Project Costs which remain unpaid. The Estimated Total Cost of Completing the Improvements shall be determined by the Bank in good faith in the exercise of its reasonable judgment.

"Events of Default" shall mean those events set forth in Section 9.1 hereof.

"GAAP" shall mean generally accepted accounting principles as in effect from time to time, applied by the Borrower on a basis consistent with the preparation of the Borrower's most recent financial statements furnished to the Bank pursuant to Section 3.3 hereof.

"Garage Construction Agreement" shall mean that certain Public Parking Garage Construction Agreement dated as of August 4, 1999 between the Borrower and the Guarantor.

"General Contractor" shall mean \_\_\_\_\_ and "General Contract" shall mean the contract with the General Contractor for the construction of the Improvements.

"Governmental Body" shall mean the United States, the State of Illinois and any political subdivision thereof and any agency, department, commission, board, bureau or instrumentality of any of them which exercises jurisdiction over the Mortgaged Premises, the construction thereon, the use of improvements thereon, the availability of ingress or egress thereto or the use of gas, water, electricity or sewerage facilities therefor.

"Governmental Requirements" shall mean any material law, ordinance, order, rule or regulation of a Governmental Body.

"Guarantor" shall mean the City of Evanston, a municipal corporation.

"Hazardous Material" shall mean any substance, chemical, compound, product, solid, gas, liquid, waste, byproduct, pollutant, contaminant or material which is hazardous or toxic, and includes, without limitation, (a) asbestos, polychlorinated biphenyls and petroleum (including crude oil or any fraction thereof) and (b) any material classified or regulated as "hazardous" or "toxic" or words of like import pursuant to an Environmental Law.

"Hazardous Material Activity" shall mean any activity, event or occurrence involving a Hazardous Material, except any activity, event or occurrence in the normal course of business that is in strict compliance with the applicable Environmental Laws, including, without limitation, the manufacture, possession, presence, use, generation, transportation, treatment, storage, disposal, Release, threatened Release, abatement, removal, remediation, handling of or corrective or response action to any Hazardous Material.

"*Improvements*" shall mean the work to be performed pursuant to the Plans consisting of the construction of a five-level 1,392 stall parking structure of approximately 501,300 square feet, together with storm water detention facilities, grading, road pavement, landscaping, curbs, gutters, sidewalks, electrical, telephone and any other utility equipment, lines, pipes and facilities to be located on the Real Property.

"*Interest Period*" shall mean, with respect to any LIBOR Portion, the period commencing on, as the case may be, the creation, continuation or conversion date with respect to such LIBOR Portion and ending [1, 2, 3, 4, 5 or 6,] months thereafter as selected by the Borrower in its notice as provided herein *provided* that all of the foregoing provisions relating to Interest Periods are subject to the following:

(i) if any Interest Period would otherwise end on a day which is not a Business Day, that Interest Period shall be extended to the next succeeding Business Day, unless the result of such extension would be to carry such Interest Period into another calendar month in which event such Interest Period shall end on the immediately preceding Business Day;

(ii) no Interest Period may extend beyond the Termination Date; and

(iii) the interest rate to be applicable to each Portion for each Interest Period shall apply from and including the first day of such Interest Period to but excluding the last day thereof.

For purposes of determining an Interest Period, a month means a period starting on one day in a calendar month and ending on a numerically corresponding day in the next calendar month, *provided, however*, if an Interest Period begins on the last day of a month or if there is no numerically corresponding day in the month in which an Interest Period is to end, then such Interest Period shall end on the last Business Day of such month.

"*Legal Requirement*" shall mean any treaty, convention, statute, law, regulation, ordinance, license, permit, governmental approval, injunction, judgment, order, consent decree or other requirement of any governmental authority, whether federal, state, or local.

"*LIBOR Portion*" is defined in Section 4.1 hereof.

"*Loan Amount*" shall mean [\$25,000,000.]

"*Loan Documents*" shall mean this Agreement, the Note, the Mortgage, the Additional Collateral Documents and each other instrument or document to be delivered hereunder or thereunder or otherwise in connection therewith.

["*Major Subcontracts*" is defined in Section 3.9 hereof.]

"*Mortgage*" shall mean the Construction Mortgage and Security Agreement with Assignment of Rents bearing even date herewith, as amended from time to time, made by the

Borrower, securing the Loan and encumbering the fee simple interest of the Borrower in the Mortgaged Premises.

"*Mortgaged Premises*" shall mean the property pledged to the Bank as security for the Loan consisting of that parcel of land described in the Mortgage (the "*Real Property*"), located in Evanston, Illinois, and all improvements thereto and all income therefrom, all built or to be built in accordance with the Plans.

"*Note*" shall mean the promissory note of the Borrower, the form of which is attached hereto as *Exhibit A*, payable to the order of the Bank.

"*Other Project Costs*" shall mean and include all of the costs to be incurred in connection with the construction of the Improvements or as expenses of holding and maintaining the Mortgaged Premises during the period from the date hereof to the maturity date of the Note and which are identified with dollar amounts appearing opposite them on the Project Budget, other than the entries thereon identified as Construction Costs.

"*PBGC*" shall mean the Pension Benefit Guaranty Corporation.

"*Permitted Delays*" shall have the meaning set forth in the Garage Construction Agreement.

"*Phase I Site Assessment*" shall mean that certain Phase I Environmental Site Assessment, dated \_\_\_\_\_ prepared by \_\_\_\_\_.

"*Plans*" shall mean the final plans and specifications for the construction of the Improvements on the Mortgaged Premises prepared by the [Engineer] and approved as required herein and all amendments and modifications thereof made in accordance with this Agreement.

"*Portions*" is defined in Section 4.1 hereof.

"*Project Budget*" shall mean the budget attached hereto as *Exhibit C*, as may be amended from time to time in accordance with this Agreement.

"*RCRA*" shall mean the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 and Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. §§6901 *et seq.*, and any future amendments.

["*Redevelopment Agreement*" shall mean that certain Redevelopment Agreement between the Borrower and the Guarantor dated October 23, 1998, as amended by that certain First Amendment to Redevelopment Agreement dated November 23, 1998, as further amended by that certain Second Amendment to Redevelopment Agreement dated June 7, 1999.]

"*Release*" shall mean any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, migration, dumping, or disposing into the indoor or

outdoor environment, including, without limitation, the abandonment or discarding of barrels, drums, containers, tanks or other receptacles containing or previously containing any Hazardous Material.

"*Termination Date*" shall mean \_\_\_\_\_, 2002.

"*Title Company*" shall mean Chicago Title Insurance Company, or any other title insurance company mutually acceptable to the Bank and the Borrower.

"*Year 2000 Problem*" means any significant risk that computer hardware, software, or equipment containing embedded microchips essential to the business or operations of the Borrower or any of its subsidiaries will not, in the case of dates or time periods occurring after December 31, 1999, function at least as efficiently and reliably as in the case of times or time periods occurring before January 1, 2000, including the making of accurate leap year calculations.

## SECTION 2. REPRESENTATION AND WARRANTIES.

The Borrower represents and warrants as follows:

*Section 2.1. Organization and Existence.* The Borrower is a duly organized and validly existing limited liability company under the laws of the State of \_\_\_\_\_, is authorized to conduct business in the State of Illinois, and this Agreement does not, and the performance or observance by the Borrower of any matters and things herein provided for will not, contravene any provision of law, any covenant, indenture or agreement of or affecting the Borrower or its property, or of its articles of organization or operating agreement. The copies of the articles of organization and operating agreement under which the Borrower is organized heretofore delivered to the Bank are true and correct, are in all respects what they purport to be, and are in full force and effect and have not been amended or modified in any respect, except for such amendments and modifications as have been heretofore furnished to the Bank. [The members of Arthur Hill are \_\_\_\_\_.]

*Section 2.2. Power and Authority.* The Borrower has all necessary right, power and authority to carry on its present business and has full right, power and authority to enter into this Agreement, make the borrowings herein provided for, issue the Note, execute and deliver the Mortgage and those Additional Collateral Documents to be executed by it, and to pledge the Mortgaged Premises and otherwise perform and consummate the transactions contemplated hereby and this Agreement does not, and the performance or observance by the Borrower of any of the matters and things herein provided for will not, constitute an event of default or event which with the lapse of time, the giving of notice or both would constitute an event of default under any indenture, loan agreement, mortgage, lease, guaranty or other agreement to which the Borrower is a party or by which it is bound.

*Section 2.3. Contracts and Agreements; No Default.* All contracts, agreements, consents, waivers, documents and writings of every kind or character to which the Borrower is a party relating to the Mortgaged Premises or which have at any time been delivered to the Bank

pursuant to any of the provisions of this Agreement are valid and enforceable against the Borrower and to the Borrower's knowledge are enforceable against all other parties thereto, and to the Borrower's knowledge in all respects are what they purport to be and to the Borrower's knowledge to the extent that any such writing shall impose any obligation or duty on the Borrower or constitute a waiver of any rights which the Borrower might otherwise have, said writing shall be valid and enforceable against the Borrower in accordance with its terms. To the Borrower's knowledge, the Borrower is in full compliance with all of the terms and conditions of this Agreement, the Note, the Mortgage, and the Additional Collateral Documents and no Event of Default has occurred and is continuing with respect thereto and no event has occurred and is continuing which with the lapse of time or the giving of notice, or both would constitute such an Event of Default.

*Section 2.4. Financial Statements.* All financial statements and data heretofore delivered to the Bank by the Borrower and Guarantor in connection with the Loan are true and correct and in all material respects truly and accurately reflect the financial condition of the Borrower and Guarantor as of the dates thereof and for the periods covered thereby. Since the date of the latest of such financial statements delivered to the Bank there has been no material adverse change in the condition (financial or otherwise) of the Borrower or Guarantor, nor any changes to the Borrower or Guarantor except those occurring in the ordinary course of business. There is no litigation or governmental proceeding pending or to the Borrower's knowledge threatened against the Borrower or Guarantor which if adversely determined would result in any material adverse change in the financial condition or properties, business or operations of the Borrower or Guarantor or would affect the right or ability of the Borrower to construct the Improvements.

*Section 2.5. Plans.* The Plans have been approved to the extent required by applicable law given the applicable stage of construction or any restrictive covenant on the Mortgaged Premises by all Governmental Bodies and the beneficiary of any such covenant, respectively.

*Section 2.6. Construction.* All construction, if any, heretofore performed on the Improvements has been performed in a fit and workmanlike manner and substantially in accordance with the Plans, all such construction is free from structural defects and no violation of any Governmental Requirement exists with respect thereto.

*Section 2.7. Governmental Requirements and Use.* The construction of the Improvements in accordance with the Plans and the Improvements themselves when so constructed will not violate any Governmental Requirement with respect thereto. The anticipated use of the Improvements, complies in all material respects, with all applicable ordinances, regulations and restrictive covenants affecting the Mortgaged Premises and the Improvements and all requirements of such use which can be satisfied prior to completion of construction and are within the Borrower's control have been satisfied.

*Section 2.8. Permits.* All permits, consents, approvals or authorizations by, or registrations, declarations, withholdings of objection or filings with any Governmental Body necessary in connection with the valid execution, delivery and performance of this Agreement, the Note, the Mortgage and the Additional Collateral Documents or presently necessary for the

construction of the Improvements have been obtained, are valid, adequate and in full force and effect or will be obtained prior to the commencement of construction of the applicable stage of the Improvements.

*Section 2.9. Utilities.* All utility services necessary for construction and for the operation of the Improvements (including water supply, storm and sanitary sewer facilities, gas and/or electric and telephone facilities) for their intended purpose are provided for in the Plans and will be located in a dedicated street/right-of-way or easement appurtenant to the Real Property, and to the Borrower's knowledge the providing of all such utility services necessary for the construction and operation of the Improvements is not subject to the consent or withholding of objection of any Governmental Body or, if so subject, such consent or withholding of objection will have been obtained prior to commencement of construction.

*Section 2.10. Access.* All roads, easements and other necessary modes of ingress or egress to the Mortgaged Premises necessary for the full utilization of the Improvements for their intended purpose have been completed or obtained or the necessary rights-of-way therefor have been acquired or will be acquired prior to the first disbursement of Loan proceeds hereunder and all necessary steps have been taken, or prior to the first disbursement of Loan proceeds hereunder will be taken, by the Borrower or the appropriate Governmental Body to ensure the complete construction and installation thereof.

*Section 2.11. Environmental Representations and Warranties.* The Borrower represents and warrants that: (i) except as set forth in the Phase I Site Assessment, to the Borrower's knowledge, the Borrower and the Mortgaged Premises comply with all applicable Environmental Laws; (ii) the Borrower has obtained all governmental approvals required for its operations and the Mortgaged Premises by any applicable Environmental Law; (iii) the Borrower has not, and has no knowledge of any other person who has, caused any Release, threatened Release or disposal of any Hazardous Material at, on or about the Mortgaged Premises and, to the knowledge of the Borrower, the Mortgaged Premises is not adversely affected by any Release, threatened Release or disposal of a Hazardous Material originating or emanating from any other property except as set forth in the Phase I Site Assessment; (iv) to the Borrower's knowledge, the Mortgaged Premises does not contain and has not contained any: (1) underground storage tank, (2) amounts of asbestos containing building material, (3) any landfills or dumps, (4) hazardous waste management facility as defined pursuant to RCRA or any comparable state law, or (5) site on or nominated for the National Priority List promulgated pursuant to CERCLA or any state remedial priority list promulgated or published pursuant to any comparable state law; (v) the Borrower has conducted no Hazardous Material Activity at the Mortgaged Premises; (vi) to the Borrower's knowledge, the Borrower has no liability for response or corrective action, natural resource damage or other harm pursuant to CERCLA, RCRA or any comparable state law with respect to the Mortgaged Premises; (vii) to the Borrower's knowledge, the Borrower is not subject to, has no notice or knowledge of and is not required to give any notice of any Environmental Claim involving the Borrower or the Mortgaged Premises, and there are no conditions or occurrences at the Mortgaged Premises which could reasonably be anticipated to form the basis for an Environmental Claim against the Borrower or the Mortgaged Premises; and (viii) to the Borrower's knowledge, the Mortgaged Premises is not subject to any imminent restriction on the ownership, occupancy, use or transferability of the Mortgaged Premises in

connection with any (1) Environmental Law or (2) Release, threatened Release or disposal of a Hazardous Material.

*Section 2.12. Americans with Disabilities Act.* The Improvements, pursuant to the Plans, comply in all material respects with the Americans with Disabilities Act and any rules or regulations issued under or pursuant thereto and any laws, rules or regulations of the State of Illinois covering the same or similar subject matter (the "ADA Requirements").

*Section 2.13. Margin Stock.* The Borrower is not engaged in the business of extending credit for the purpose of purchasing or carrying margin stock (within the meaning of Regulation U of the Board of Governors of the Federal Reserve System), and no part of the proceeds of the Loan will be used to purchase or carry any margin stock or extend credit to others for the purpose of purchasing or carrying any margin stock.

*Section 2.14. ERISA.* The Borrower is in compliance in all material respects with ERISA to the extent applicable to it and has received no notice to the contrary from the PBGC or any other governmental entity or agency, and no reportable event (as defined in ERISA) which could result in a material accumulated deficiency under ERISA or a material liability to the PBGC has occurred and is continuing.

*Section 2.15. Title.* The Borrower has good and marketable title to the Mortgaged Premises subject only to the Permitted Exceptions (as defined in the Mortgage).

*Section 2.16. Purpose.* The Loan is being made for the purpose of carrying on a business, professional or commercial activity.

**[Section 2.17. Single Purpose, Sole Asset. The Borrower is a single purpose entity whose sole purpose is the ownership of the Mortgaged Premises and construction of the Improvements and whose sole asset is the Mortgaged Premises.]**

*Section 2.18. Year 2000 Compliance.* The Borrower has conducted a comprehensive review and assessment of the computer applications of the Borrower and its subsidiaries and has made inquiry of their material suppliers, service vendors (including data processors) and customers, with respect to any defect in computer software, data bases, hardware, controls and peripherals related to the occurrence of the year 2000 or the use at any time of any date which is before, on and after December 31, 1999, in connection therewith. Based on the foregoing review, assessment and inquiry, the Borrower believes that no such defect could reasonably be expected to have a material adverse effect on the business or financial affairs of the Borrower (or of the Borrower and its subsidiaries taken on a consolidated basis).

*Section 2.19. Litigation.* There is no litigation or governmental proceeding pending or, to the best knowledge of the Borrower, threatened against the Borrower or the Guarantor and which if adversely determined would result in any material adverse change in the financial condition or properties, business or operations, of the Borrower or Guarantor or would affect the right or ability of Borrower to construct the Improvements.

The foregoing representations and warranties shall survive the execution and delivery of this Agreement and shall continue in full force and effect until the indebtedness evidenced by the Note has been fully paid and satisfied. The Bank has no further commitment to advance funds hereunder and the Mortgage is to be released of record by the Bank. All representations, warranties and covenants made by the Borrower herein and in all certificates or other documents delivered pursuant hereto are material and shall conclusively be deemed to have been relied upon by the Bank notwithstanding any prior or subsequent investigation by the Bank and the right to any action thereon shall survive all advances hereunder and the fulfillment of all other transactions and deliveries contemplated hereby as long as any amount or obligation shall remain outstanding hereunder. The request for any advance under this Agreement by the Borrower or on its behalf shall constitute a certification that the aforesaid representations and warranties are true and correct as of the date of such request, except to the extent any such representation or warranty shall relate solely to an earlier date.

### SECTION 3. COVENANTS.

From and after the date hereof and so long as any amount remains unpaid on the Note or any commitment remains outstanding hereunder, the Borrower covenants and agrees that:

*Section 3.1. Preservation of Existence.* The Borrower will preserve and maintain its existence as a limited liability company under the laws of the State of \_\_\_\_\_ and will not amend or modify the agreements under which the Borrower is formed without the prior written consent of the Bank. The Borrower will not permit any change to occur in the ownership or management of the Mortgaged Premises or the ownership of member interests in the Borrower without the prior written consent of Bank.

*Section 3.2. Taxes.* The Borrower will pay, or cause to be paid, when due and before any penalty attaches all general taxes and all special taxes, special assessments, water charges, drainage and sewer charges and all other charges of any kind whatsoever, ordinary or extraordinary, which may be levied, assessed, imposed or charged on or against the Mortgaged Premises and will, upon written request, exhibit to the Bank official receipts evidencing such payments. The Borrower may contest any such tax or assessment pursuant to and in accordance with the terms of the Mortgage.

*Section 3.3. Financial Reports.* The Borrower will maintain a standard system of accounting in accordance with GAAP and shall furnish to the Bank and its duly authorized representatives such information respecting the financial condition, business affairs and operations of the Borrower and Guarantor as the Bank may reasonably request; and without any request, shall furnish or cause to be furnished to the Bank:

(a) as soon as available, and in any event within ninety (90) days after the close of fiscal year of the Borrower and the Guarantor a copy of the consolidated and consolidating unaudited financial statements of the Borrower and the Guarantor certified to by an officer of each and one hundred twenty (120) days after the close of the fiscal year of the Borrower and Guarantor, a copy of the consolidated and consolidating unaudited financial statements of the Borrower statement of operations and accumulated

net revenues and a statement of cash flows of the Borrower and the Guarantor for such period and accompanying notes thereto and full disclosure of all contingent liabilities, all in reasonable detail showing in comparative form the figures for the previous fiscal year, accompanied by a certificate from an officer of each to the effect that the financial statements have been prepared in accordance with GAAP on a tax basis consistently applied and present fairly, in accordance with GAAP on a tax basis, the consolidated financial condition of the Borrower and Guarantor, as of the close of each party's fiscal year and the results of operations for the fiscal year then ended and that an examination of such accounts in connection with such financial statements has been made in accordance with generally accepted auditing standards on a tax basis and, accordingly, such examination included such tests of the accounting records and such other auditing procedures as were considered necessary under the circumstances;

(b) as soon as available, and in any event within fifteen (15) days after the end of each month, a construction progress report on the Improvements; and

(c) promptly after knowledge thereof shall have come to the attention of any responsible officer of the Borrower or the Guarantor, written notice of any threatened or pending litigation or governmental proceeding against the Borrower or the Guarantor which, if adversely determined, would materially adversely affect the financial condition, properties, assets, business or operations of the Borrower or the Guarantor or of the occurrence of any Default or Event of Default hereunder.

*Section 3.4. Insurance.* The Borrower will, at its expense, maintain or cause to be maintained the following insurance with good and responsible insurance companies reasonably satisfactory to the Bank:

(a) *Builders' Risk.* The Borrower will insure, or cause to be insured, the Improvements, all property (whether real, personal or mixed) incorporated therein and all materials and supplies delivered to the Mortgaged Premises for use in connection with construction of the Improvements and all equipment to be used for that purpose under insurance policies in builders' risk form with standard non-contributory mortgage clauses providing that any loss is to be adjusted with, and any recovery payable to, Bank as its interest may appear. Following completion of the Improvements, said builder's risk policy shall be replaced with all-perils property acceptable to the Bank in an amount at least equal to the full replacement value of the Improvements. All such policies shall be in such amounts, contain such coverages and insure against such risks as shall be reasonably satisfactory to Bank. Without limiting the generality of the foregoing, the Improvements and all materials, supplies and equipment shall be insured to an amount equal to 100% of the full insurable value thereof (actual replacement value without deduction for depreciation) at all times against loss or damage by fire, lightning, windstorm, explosion, theft and such other risks as are usually included under extended coverage. The Borrower shall exhibit to the Bank from time to time upon request (and, in addition thereto, without request no less frequently than annually) evidence that the amount of said builders risk policy is sufficient to provide coverage in the amount of the

full insurable value of all Improvements, materials, supplies and equipment then in place on the Mortgaged Premises.

(b) *Liability and Other Insurance.* The Borrower will procure and maintain insurance against such perils and risks (exclusive of the perils and risks insured against under the coverage provided in subpart (a) of this Section 3.4) as the Bank shall reasonably request and, without any such request, will procure and maintain comprehensive general liability insurance, contractor liability insurance, statutory workmen's compensation and occupational disease insurance, insurance against statutory structural work act liability and flood insurance (if any improvements on the Mortgaged Premises consisting of building or parking facilities are in an area designated by a Governmental Body as having special flood hazards). All such insurance shall be maintained under policies containing such provisions and coverages and being in such amounts as are reasonably approved by the Bank, which policies shall name the Bank as an additional insured thereunder. The Borrower shall cause the General Contractor, the Engineer and the [Architect] to procure professional liability insurance covering the design and construction of the Improvements in such amounts and with such coverages as shall be reasonably satisfactory to the Bank.

(c) *Policy Provisions.* All insurance maintained or caused to be maintained by the Borrower shall be maintained with good and responsible insurance companies, shall provide that no cancellation, material change or reduction thereof shall be effective until at least thirty (30) days after receipt by the Bank of written notice thereof, shall provide that losses are payable notwithstanding any acts or omissions of the Borrower, shall contain no deductible provisions which have not been reasonably approved by the Bank and shall be reasonably satisfactory to the Bank in all other respects.

(d) *Renewal Policies.* The Borrower will deliver to the Bank an original certificate and a photocopy of any policy required under the provisions of this Section 3.4 (or, if coverage is provided under a master policy, a photocopy of such policy and an assigned certificate of insurance) and will cause renewal certificates to be delivered thereto promptly following renewal of any such policies.

(e) *Adjustment of Loss.* Borrower hereby authorizes the Bank, at the Bank's option, to adjust and compromise any losses under any insurance afforded, but unless the Bank elects to adjust the losses as aforesaid, said adjustment and/or compromise shall be made by the Borrower, subject to the final reasonable approval of the Bank in the case of losses exceeding \$50,000.

(f) *Additional Policies.* The Borrower shall not take out or maintain separate insurance concurrent in kind or form or contributing in the event of loss with any insurance required hereinabove.

(g) *Notice Regarding Insurance.* Unless Borrower provides the Bank with evidence of the insurance coverage required by this Agreement, the Bank may purchase insurance from an unaffiliated insurance company licensed to do business in Illinois at

Borrower's expense to protect its interests in the collateral for the Loan. This insurance may, but need not, protect Borrower's interests. The coverage that the Bank purchases may not pay any claim that Borrower makes or any claim that is made against Borrower in connection with such collateral. Borrower may later cancel any insurance purchased by the Bank, but only after providing the Bank with evidence that Borrower has obtained insurance as required by this Agreement. If the Bank purchases insurance for the collateral, Borrower will be responsible for the costs of such insurance, including interest and any other charges the Bank may impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to Borrower's total outstanding Loan balance or obligation. The cost of the insurance may be more than the cost of insurance Borrower may be able to obtain on its own.

*Section 3.5. Damage to and Destruction of the Improvements.*

(a) *Notice.* In the case of any material damage to or destruction of all or part of the Improvements, the Borrower shall promptly give notice thereof to the Bank generally describing the nature and extent of such damage or destruction.

(b) *Restoration.* Upon the occurrence of any such damage to or destruction of the Improvements, the Borrower shall, upon demand by the Bank, cause same to be restored, replaced or rebuilt as nearly as possible to their value, condition and character immediately prior to such damage or destruction. Such restoration, replacement or rebuilding shall be effected promptly and, if the Improvements are not yet completed, the Borrower shall notify the Bank if it appears that such restoration, replacement or rebuilding may delay completion of the Improvements beyond the Completion Date.

(c) *Application of Insurance Proceeds.* Net insurance proceeds received by the Bank under the provisions of this Agreement or any instrument supplemental hereto or thereto or any policy or policies of insurance covering the Improvements or any part thereof shall be applied by the Bank at the option of the Bank as and for a prepayment on the Note (whether or not the same is then due or otherwise adequately secured) or to restoring the Improvements (in which event the Bank shall not be obligated to see to the proper application thereof nor shall the amount so released or used be deemed a payment of the indebtedness evidenced by the Note). If the Bank elects to use or the Borrower is permitted to use insurance proceeds to restore the Improvements the Bank may do all necessary acts to accomplish that purpose including using funds deposited by the Borrower with it and advancing additional funds, all such additional funds to constitute part of the indebtedness secured by the Mortgage. If the Bank elects to restore the Improvements or elects to make the insurance proceeds available to the Borrower or the Borrower is entitled to use the insurance proceeds pursuant to the provisions of this Section 3.5(c) for the purpose of effecting such a restoration, any excess of insurance proceeds above the amount necessary to complete such restoration shall be applied as and for a prepayment on the Note. Notwithstanding the foregoing provisions, the Bank agrees that net insurance proceeds shall be made available to the Borrower for the restoration of the portion of the Mortgaged Premises damaged or destroyed if the Bank requires the Mortgaged Premises to be rebuilt and written application for such use is made within thirty (30) days of receipt of such proceeds and the following conditions are

satisfied: (i) the Borrower has in effect business interruption insurance covering the income to be lost during the restoration period as a result of the damage or destruction to the Mortgaged Premises or provides the Bank with other evidence reasonably satisfactory to it that the Borrower has cash resources sufficient to pay its obligations during the restoration period (including its obligation to pay interest on the Loan during the period of restoration); (ii) no Default or Event of Default shall have occurred and be continuing (and if such an event shall occur during restoration the Bank may, at its election, apply any insurance proceeds then remaining in Bank's hands to the reduction of the indebtedness evidenced by the Note and the other indebtedness secured by the Mortgage), (iii) the Borrower shall have submitted to the Bank plans and specifications for the restoration which shall be reasonably satisfactory to the Bank; (iv) the Borrower shall have submitted to the Bank fixed price contracts with good and responsible contractors and materialmen covering all work and materials necessary to complete restoration and providing for a total completion price not in excess of the amount of insurance proceeds available for restoration, or, if a deficiency shall exist, the Borrower shall have deposited the amount of such deficiency with the Bank; (v) the restoration will, in the reasonable judgment of the Bank, be completed not later than the Termination Date; (vi) the effect of the damage to or destruction of the Mortgaged Premises giving rise to receipt of the insurance proceeds is not to terminate or give the Borrower the option to terminate the Garage Construction Agreement; and (vii) the Borrower shall have obtained a waiver of the right of subrogation from any insurer under such policies of insurance who at that time claims that no liability exists as to the Borrower or the insured under such policies. Any insurance proceeds to be released pursuant to the foregoing provisions shall at the option of the Bank be disbursed from time to time at reasonable intervals as restoration progresses to pay for restoration work completed and in place and such disbursements may at the Bank's option be made directly to the Borrower or to or through any contractor or materialman to whom payment is due or to or through a construction escrow to be maintained by the Title Insurer acceptable to the Bank. The Bank may impose such further conditions upon the release of insurance proceeds (including the receipt of title insurance) as are customarily imposed by prudent construction lenders to insure the completion of the restoration work free and clear of all liens or claims for lien. All title insurance charges and other reasonable costs and expenses in connection with the release of such insurance proceeds shall be promptly paid by Borrower and if not so paid shall constitute so much additional indebtedness secured by the Mortgage to be payable upon demand with interest at the Default Rate. The Bank may deduct any such costs and expenses from insurance proceeds at any time standing in its hands.

*Section 3.6. Eminent Domain.*

(a) *Notice.* The Borrower will give the Bank prompt written notice of the actual or threatened commencement of any proceedings by any Governmental Body for the purpose of taking or otherwise affecting by condemnation, eminent domain or otherwise (a "Taking") all or any part of the Mortgaged Premises, including any easement therein or appurtenance thereto or severance of any part thereof and change in grade of streets and will deliver to the Bank copies of any and all papers served in connection with any such proceedings.

(b) *Assignment of Claim, Power of Attorney to Collect, Etc.* Any and all awards heretofore or hereafter made or to be made to the present and all subsequent owners of the

Mortgaged Premises, by any Governmental Body for taking or affecting the whole or any part of the Mortgaged Premises, the Improvements, or any easement therein or appurtenance thereto (including any award from the United States Government at any time after the allowance of the claim therefor, the ascertainment of the amount thereof and the issuance of the award for payment thereof) are hereby collaterally assigned by the Borrower to the Bank and the Borrower hereby irrevocably constitutes and appoints the Bank its true and lawful attorney in fact with full power of substitution for it and in its name, place and stead to collect and receive the proceeds of any such award granted by virtue of any such Taking, to hold the same as such collateral and to give proper receipts and acquittances therefor.

(c) *Effect of Condemnation and Application of Awards.* In the event that any material adverse condemnation proceedings are commenced by any Governmental Body or other person to take or otherwise affect a material portion of the Mortgaged Premises, the Improvements or any easement therein or appurtenance thereto, the Bank's commitment to make further advances hereunder shall, at its option, cease and the Bank shall apply the proceeds of any award made in such proceedings as and for a prepayment on the indebtedness evidenced by the Note, notwithstanding the fact that said indebtedness may not then be due and payable or is otherwise adequately secured. Notwithstanding the foregoing, the proceeds of such award shall be made available to the Borrower upon compliance by the Borrower with the same requirements as set forth in Section 3.5(c) hereof. In the event that any proceeds of such award shall be made available to the Borrower for restoring the portion of the Mortgaged Premises remaining after a Taking, the Borrower hereby covenants to restore the remaining portion of the Mortgaged Premises to be of at least equal value and of substantially the same character as prior to such Taking, all to be effected in accordance with plans and specifications to be first submitted to and approved by the Bank.

*Section 3.7. Payment of Expenses.* The Borrower will pay all costs, expenses and fees incurred by the Bank in connection with the preparation and enforcement of this Agreement and the other instruments and documents contemplated hereby or arising out of or incurred in connection with any of the transactions contemplated hereby or in connection with any proceedings (including probate and bankruptcy proceedings) to which the Bank becomes a party or in which it intervenes which may affect or relate to the Loan, security or the collateral security therefor and, without limiting the generality of the foregoing, will pay all taxes, filing, registration and recording expenses (including stamp taxes, if any), all title insurance and survey charges, all escrow fees and expenses, the reasonable fees and expenses of the Consultant and any other consultants or appraisers hired by the Bank to perform services described in this Agreement, the Bank's attorneys' fees (which attorneys may be employees of the Bank or special counsel to the Bank) and court costs incurred by the Bank in connection with this transaction, including other fees and costs incurred in connection with the enforcement of this Agreement, the Note, the Mortgage and the Additional Collateral Documents or arising out of claims or actions brought or filed by or against the Bank arising out of the transactions contemplated by this Agreement and the Borrower hereby indemnifies and saves the Bank harmless from and against any and all costs, expenses, judgments, awards and liabilities incurred by it in connection with the transactions contemplated hereby unless caused by the Bank's willful misconduct or gross negligence.

*Section 3.8. Mechanics' Lien Claims.* The Borrower will not suffer or permit to exist any mechanics' lien claims asserted against the Mortgaged Premises or the Improvements and will promptly discharge same in the event of the filing thereof: *provided however*, that nothing herein contained shall prohibit the Borrower from contesting any such liens or claims for lien in good faith if it shall have furnished the Title Company with such security or indemnity as the Title Company requires in order to insure the Bank over and against such contested lien.

*Section 3.9. Contractors and Subcontractors.* The Borrower will, if the Bank at any time so demands, submit copies of contracts of or a list of any or all proposed contractors, subcontractors, contracts and subcontracts with persons who are to perform services or furnish labor and materials for items included in the Improvements or as Other Project Costs with a value in excess of [\$500,000] ("*Major Subcontracts*") to the Bank for its reasonable approval.

*Section 3.10. Diligent Prosecution of Construction.* The Borrower will cause the construction of the Improvements to be prosecuted with diligence and continuity in a good and workmanlike manner in accordance with the Plans and in accordance with sound building and engineering practices, applicable Governmental Requirements, ADA Requirements and the requirements of this Agreement and to substantially complete same on or before the Completion Date (subject to Permitted Delays), free and clear of all liens or claims for liens for material supplied or labor or services furnished in connection with the construction of the Improvements, subject to its right to contest same pursuant to and in accordance with the Mortgage and this Agreement.

*Section 3.11. Change Orders.* The Borrower will not execute or authorize the execution of or permit the execution of any Change Order without the prior written approval of the Bank not to be unreasonably withheld: *provided, however*, that such Change Orders may be made without such prior written consent if (i) the Change Order does not exceed [\$\_\_\_\_\_] and the aggregate cost of all unapproved Change Orders does not exceed [\$\_\_\_\_\_], (ii) the Change Orders will not result in a material change in the size, appearance or usefulness of the Improvements for their intended purposes or reduce the overall quality of the Improvements, (iii) in the case of Change Orders increasing Construction Costs, the increased costs resulting therefrom, when taken together with the increased costs resulting from all other Change Orders theretofore entered into increasing Construction Costs will not exceed the amount shown on the Project Budget for construction contingencies, or an amount equal to the increased cost resulting therefrom has been deposited with the Bank pursuant to Section 6.3 hereof or Guarantor has agreed to pay the cost of such Change Order and (iv) said Change Order will not cause the then Estimated Total Cost of Completing the Improvements to exceed the then undisbursed portion of the Loan Amount plus the amount of the Borrower's funds then on deposit with the Bank pursuant to Section 6.3 hereof or Guarantor has agreed to pay the cost of such Change Order. The foregoing to the contrary notwithstanding, no Change Order shall be executed without the prior written consent of the Bank if the same would materially alter the basis for computing payments due the General Contractor or would materially reduce the scope of the work to be performed by the General Contractor or contractors. The authorization of any such Change Order by or on behalf of the Borrower shall constitute a representation from the Borrower to the Bank that the foregoing conditions have been satisfied. The Bank shall have the right at any time to require receipt of evidence reasonably satisfactory to it showing compliance with the

conditions precedent to Change Orders permitted by this Section 3.11 as a condition precedent to the making of any such Change Order. The Borrower shall promptly notify the Bank of all extra and increased costs as soon as the same are known or reasonably anticipated. The Consultant shall promptly receive copies of all Change Orders.

*Section 3.12. Correction of Defects in Construction.* The Borrower will, upon demand by the Bank, commence and diligently correct any structural defect in the Improvements of a material nature or any material departure from the Plans not approved by the Bank or authorized by any other provisions of this Agreement. The disbursement of funds hereunder shall not constitute a waiver of the Bank's right to require compliance with this covenant with respect to any such defects or departures from the Plans not theretofore objected to by the Bank.

*Section 3.13. Other Contracts.* The Borrower will, if the Bank so requests, provide the Bank with copies of any and all contracts and agreements for the performance of work included within the Project Budget and will not enter into any contracts or agreements for the performance of any such work if the contract price therefor would cause the total cost for such work to exceed the amount budgeted therefor in the Project Budget unless the amount of such excess shall have been deposited with the Bank pursuant to Section 6.3 hereof.

*Section 3.14. Inspection and Cooperation.* The Borrower will permit the Bank or its representatives at all reasonable times and as often as the Bank may reasonably request to inspect the Improvements and the materials to be used in the construction thereof, to examine all detailed plans and drawings which relate to construction of the Improvements and to examine and copy all books and account records and other papers relating to the Mortgaged Premises and the construction of the Improvements and will cause the General Contractor to cooperate with the Bank to enable it to exercise its rights hereunder.

*Section 3.15. Further Assurances.* The Borrower will at any time and from time to time upon request of the Bank take or cause to be taken any action and execute, acknowledge, deliver or record any further documents, opinions, mortgages, deeds of trust, security agreements or other instruments which the Bank in its reasonable discretion deems necessary or appropriate to carry out the purposes of this Agreement and to preserve, protect and perfect the security intended to be created and preserved in the Mortgaged Premises and to establish, preserve and protect the security interest of the Bank in and to any personal property owned by the Borrower installed in, furnished to or used or intended to be used in connection with the construction of the Improvements or the operation thereof.

*Section 3.16. Burdensome Contracts with Affiliates.* The Borrower will not, without the Bank's written consent, enter into any contract, agreement or business arrangement with an Affiliate on terms and conditions which are less favorable to them than would be usual and customary in similar contracts, agreements or business arrangements between persons not affiliated with each other.

*Section 3.17. Easements.* Borrower shall not terminate or release, and shall remain in compliance with, all easements and common use agreements benefiting the Mortgaged Premises.

*Section 3.18. Independent Consultant.* The Bank shall have the right to appoint an independent Consultant at the reasonable expense of the Borrower to assist the Bank in analyzing the Plans, the Project Budget and construction schedule, to conduct monthly compliance inspections, approve requests for advances of the Loan, perform such other services as may, from time to time, be reasonably required by the Bank, and to prepare reports regarding all of the above for the Bank.

*Section 3.19. Americans with Disabilities Act.* The Mortgaged Premises, pursuant to the Plans, do, and at all times shall, comply in all material respects with the ADA Requirements. The Borrower hereby indemnifies and saves harmless the Bank, its officers, directors, employees, agents, successors or assigns from and against any and all losses, claims, discharges, penalties, costs and/or expenses (including attorneys' fees and court costs), fines, injuries and penalties they may incur as a result of the failure of the Mortgaged Premises to so comply with the ADA Requirements.

*Section 3.20. Environmental Covenants.* The Borrower shall at all times do or cause to be done the following: (i) comply with, and maintain the Mortgaged Premises in material compliance with, all applicable Environmental Laws; (ii) require that each tenant and subtenant, if any, of the Mortgaged Premises or any part thereof comply with all applicable Environmental Laws; (iii) obtain and maintain in full force and effect all governmental approvals required by any applicable Environmental Law for operations at the Mortgaged Premises; (iv) cure any violation by it or at the Mortgaged Premises of applicable Environmental Laws; (v) not allow the presence or operation at the Mortgaged Premises of any (1) landfill or dump or (2) hazardous waste management facility or solid waste disposal facility as defined pursuant to RCRA or any comparable state law; (vi) not manufacture, use, generate, transport, treat, store, release, dispose or handle any Hazardous Material at the Mortgaged Premises except such Hazardous Material used in the ordinary course of business that is in strict compliance with the applicable Environmental Laws; (vii) within 10 business days notify the Bank in writing of and provide any requested documents upon learning of any of the following in connection with the Borrower or the Mortgaged Premises: (1) any liability for response or corrective action, natural resource damage or other harm pursuant to CERCLA, RCRA or any comparable state law; (2) any Environmental Claim; (3) any violation of an Environmental Law or Release, threatened Release or disposal of a Hazardous Material; (4) any restriction on the ownership, occupancy, use or transferability arising pursuant to any (x) Release, threatened Release or disposal of a Hazardous Substance or (y) Environmental Law; or (5) any environmental, natural resource, health or safety condition; (viii) conduct at its expense any investigation, study, sampling, testing, abatement, cleanup, removal, remediation or other response action necessary to remove, remediate, clean up or abate any Release, threatened Release or disposal of a Hazardous Material as required by any applicable Environmental Law with respect to the Mortgaged Premises; (ix) abide by and observe any restrictions on the use of Mortgaged Premises imposed by any governmental authority as set forth in a deed or other instrument affecting the Borrower's interest therein; (x) promptly provide or otherwise make available to the Bank any requested environmental record concerning the Mortgaged Premises which the Borrower possesses or can reasonably obtain; (xi) perform, satisfy, and implement any operation or maintenance actions required by any governmental authority or Environmental Law with respect to the Mortgaged Premises, or included in any no further action letter or covenant not to sue issued by any governmental

authority under any Environmental Law with respect to the Mortgaged Premises; and (xii) from time to time upon the written request of the Bank, timely provide at the Borrower's expense a report of an environmental assessment of scope, form and depth (including, where appropriate, invasive soil or groundwater sampling) by a consultant reasonably acceptable to the Bank as to any matter for which notice is provided pursuant to the above requirements or which may be reasonably believed by the Bank to form the basis of an Environmental Claim in connection with the Mortgaged Premises. If such a requested environmental report is not delivered within 75 days after receipt of the Bank's request, then the Bank may arrange for the same, and the Borrower hereby grants to the Bank and its representatives access to the Mortgaged Premises and a license to undertake such an assessment (including, where appropriate, invasive soil or groundwater sampling). The costs of any assessment arranged for by the Bank pursuant to this provision shall be payable by the Borrower on demand.

*Section 3.21 Compliance with Agreements.* The Borrower will fully and completely comply with all of the conditions of the Garage Construction Agreement and the Redevelopment Agreement and will not suffer or permit to exist any conditions which would constitute grounds for the termination of the Garage Construction Agreement or the Redevelopment Agreement and, without limiting the generality of the foregoing, it is agreed that any provision of this Agreement or the Mortgage authorizing the Borrower to take any action or permitting any such action to be taken whether with or without the prior approval of Bank shall be subject to the condition precedent that the taking of such action will not violate the terms of the Garage Construction Agreement or the Redevelopment Agreement and the Borrower by taking any such action or requesting approval from the Bank to the taking of any such action shall be deemed to have warranted to the Bank that such action will not violate the terms of the Garage Construction Agreement or the Redevelopment Agreement. Except as otherwise provided herein, the Borrower agrees that it will not consent to the termination or material amendment or modification of the Garage Construction Agreement or the Redevelopment Agreement or any provisions thereof without the prior written consent of the Bank and will not waive compliance with any of the terms and conditions thereof. The Borrower has delivered to the Bank certified copies of the Garage Construction Agreement or the Redevelopment Agreement.

*Section 3.22. ERISA.* The Borrower shall promptly pay and discharge all obligations and liabilities arising under ERISA of a character which if unpaid or unperformed might result in the imposition of a lien against any of this property or assets. The Borrower shall promptly notify the Bank of the occurrence of any Reportable Event (as defined in ERISA) which might result in the termination by PBGC of any employee benefit plan covering any officers or employees of the Borrower, any benefits of which are, or are required to be, guaranteed by PBGC (a "Plan") or of receipt of any notice from PBGC of its intention to seek termination of any such Plan or appointment of a trustee therefor. The Borrower shall notify the Bank of the Borrower's intention to terminate or withdraw from any Plan and shall not terminate any such Plan or withdraw therefrom unless it shall be in compliance with all of the terms and conditions of this Agreement after giving effect to any liability to PBGC resulting from such termination or withdrawal.

*Section 3.23. Distributions.* The Borrower will not make any distributions (whether of cash or property), including without limitation a return of equity capital, profits or cash flow, or

any other payments of any kind or character to its members or any Affiliate of the Borrower or its members without the prior written consent of the Bank; *provided, however*, that the foregoing shall not be deemed to restrict or prevent payment of property management, leasing, development, construction administration, loan placement, and brokers' fees which do not exceed market costs as set forth in the Project Budget at the times permitted by Section 6.1 hereof.

*Section 3.24. Year 2000 Assessment.* The Borrower shall make all reasonable efforts to complete substantially all programming required to permit the proper function, in and following the year 2000, of computer systems and equipment containing embedded microchips that are (i) operated directly by Borrower or its agents or supplied by others, and (ii) necessary to permit the Borrower to conduct its business without material adverse effect. The cost to the Borrower of such reprogramming and testing and of the reasonably foreseeable consequences of a Year 2000 Problem will not result in an Event of Default or a material adverse effect on the Borrower or the operation of the Mortgage Premises. The computer and management information systems operated directly by the Borrower are and, with ordinary course upgrading and maintenance, will continue for the term of this Agreement to be sufficient to permit the Borrower to conduct its business without material adverse effect.

*Section 3.25. Indebtedness.* The Borrower will not incur, issue, assume, create or have outstanding any Indebtedness other than trade payables, deferred taxes, equipment leases and the Loan. The term "*Indebtedness*" shall mean all indebtedness created, assumed or incurred in any manner by the Borrower representing money borrowed and all obligations of the Borrower with respect to letters of credit, banker's acceptances and other extensions of credit whether or not representing obligations for borrowed money.

*Section 3.26. Liens.* The Borrower will not pledge, mortgage or otherwise encumber, or subject to or permit to exist upon or be subjected to any lien or charge, the Mortgaged Premises or any assets or property of any kind or character at any time owned by the Borrower other than:

(a) liens, pledges or deposits in connection with workmen's compensation, unemployment insurance, old-age benefits or social security obligations, taxes, assessments, statutory obligations or other similar charges, good faith deposits in connection with contracts or leases to which the Borrower is a party or other deposits required to be made in the ordinary course of business, inchoate liens of mechanics and materialmen, and interests of lessors under capitalized equipment leases; provided in each case, that the obligation secured is not overdue or, if overdue, is being contested in good faith by appropriate proceedings which prevent enforcement of the matter under contest, and that the obligation is not for borrowed money and further provided that if the lien is on the Mortgaged Premises, the same is permitted by the Mortgage;

(b) the Mortgage and Additional Collateral Documents in favor of the Bank;

(c) other liens expressly permitted by the Mortgage;

(d) liens being contested in accordance with Section 3.8 hereof.

Section 3.27. *Construction Commencement Dates.* The Construction Commencement Date shall be not later than \_\_\_\_\_.

#### SECTION 4. INTEREST.

Section 4.1. *Interest Rate Options.* Subject to all of the terms and conditions of this Section 4 portions of the principal indebtedness evidenced by the Note ("*Portions*") shall, at the option of the Borrower, bear interest with reference to the Domestic Rate (the "*Domestic Rate Portion*") or with reference to the Adjusted LIBOR applicable to an Interest Period ("*LIBOR Portion*"). Portions may be converted from time to time from one basis to another. All of the indebtedness evidenced by the Note which is not a LIBOR Portion shall constitute a single Domestic Rate Portion. Anything contained herein to the contrary notwithstanding, there shall not be more than five (5) LIBOR Portions outstanding at any one time. The Borrower hereby promises to pay interest on each Portion at the rates and times specified in this Section 4.

#### Section 4.2. *Applicable Interest Rates.*

(a) *Domestic Rate Portion.* The Domestic Rate Portion shall bear interest at a rate per annum determined by adding the Applicable Margin to the Domestic Rate as in effect from time to time. *provided* that if a Domestic Rate Portion or any part thereof is not paid when due (whether by lapse of time, acceleration or otherwise) such Portion shall bear interest, whether before or after judgment, until payment in full thereof at the Default Rate. Interest on the Domestic Rate Portion shall be payable monthly in arrears on the last day of each month in each year (commencing with the month during which the first advance is made hereunder) and on the Termination Date. Any change in the interest rate on the Domestic Rate Portion resulting from a change in the Domestic Rate shall be effective on the date of the relevant change in the Domestic Rate.

(b) *LIBOR Portions.* Each LIBOR Portion shall bear interest for each Interest Period selected therefor at a rate per annum determined by adding the Applicable Margin to the Adjusted LIBOR for such Interest Period, *provided* that if any LIBOR Portion is not paid when due (whether by lapse of time, acceleration or otherwise) such Portion shall bear interest, whether before or after judgment, until payment in full thereof through the end of the Interest Period then applicable thereto at the rate per annum determined by adding 3.0% to the interest rate which would otherwise be applicable thereto, and effective at the end of such Interest Period such LIBOR Portion shall automatically be converted into and added to the applicable Domestic Rate Portion and shall thereafter bear interest at the interest rate applicable to such Domestic Rate Portion after default. Interest on each LIBOR Portion shall be due and payable monthly in arrears, on the last day of any Interest Period applicable thereto and, if an Interest Period is longer than three (3) months, then at the end of each three (3) month period and at the end of such Interest Period, and upon full payment of the Note. Interest after maturity (whether by lapse of time, acceleration or otherwise) shall be due and payable upon demand. The Borrower shall notify the Bank on or before 11:00 a.m. (Chicago time) on the third Business Day preceding the end of an Interest Period applicable to a LIBOR Portion whether such LIBOR Portion is to continue as a LIBOR Portion, in which event the Borrower shall notify the Bank of the new Interest Period selected therefor, and in the event the Borrower shall fail to so

notify the Bank, such LIBOR Portion shall automatically be converted into and added to the applicable Domestic Rate Portion as of and on the last day of such Interest Period.

*Section 4.3. Minimum LIBOR Portion Amounts.* Each LIBOR Portion shall be in an amount equal to \$500,000 or such greater amount which is an integral multiple of \$100,000.

*Section 4.4. Computation of Interest.* All interest on the Note shall be computed on the basis of a year of 360 days for the actual number of days elapsed.

*Section 4.5. Manner of Rate Selection.* The Borrower shall notify the Bank by 11:00 a.m. (Chicago time) at least three (3) Business Days prior to the date upon which the Borrower requests that any LIBOR Portion be created or that any part of the applicable Domestic Rate Portion be converted into a LIBOR Portion (such notice to specify in each instance the amount thereof and the Interest Period selected therefor). If any request is made to convert a LIBOR Portion into a Domestic Rate Portion or into a different LIBOR Portion, such conversion shall only be made so as to become effective as of the last day of the Interest Period applicable thereto. In the event that the Borrower shall fail to so notify the Bank to convert a LIBOR Portion, such LIBOR Portion shall automatically be converted into and added to the Domestic Rate Portion as of and on the last day of the relevant Interest Period. All requests for the creation, continuance and conversion of Portions under this Agreement shall be irrevocable. Such requests may be written or oral and the Bank is hereby authorized to honor telephonic requests for creations, continuances and conversions received by it from any person the Bank in good faith believes to be an authorized representative without the necessity of independent investigation, the Borrower hereby indemnifying the Bank from any liability or loss ensuing from so acting.

*Section 4.6. Change of Law.* Notwithstanding any other provisions of this Agreement or the Note, if at any time the Bank shall determine in good faith that any change in applicable laws, treaties or regulations or in the interpretation thereof makes it unlawful for the Bank to create or continue to maintain any LIBOR Portion, it shall promptly so notify the Borrower and the obligation of the Bank to create, continue or maintain any such LIBOR Portion under this Agreement shall terminate until it is no longer unlawful for the Bank to create, continue or maintain such LIBOR Portion. The Borrower, on demand, shall, if the continued maintenance of any such LIBOR Portion is unlawful, thereupon prepay the outstanding principal amount of the affected LIBOR Portion, together with all interest accrued thereon and all other amounts payable to the Bank with respect thereto under this Agreement; *provided, however,* that the Borrower may elect to convert the principal amount of the affected Portion into another type of Portion available hereunder, subject to the terms and conditions of this Agreement.

*Section 4.7. Unavailability of Deposits or Inability to Ascertain Adjusted LIBOR.* Notwithstanding any other provision of this Agreement or the Note, if prior to the commencement of any Interest Period, the Bank shall determine in good faith that deposits in the amount of any LIBOR Portion scheduled to be outstanding during such Interest Period are not readily available to the Bank in the relevant market or, by reason of circumstances affecting the relevant market, adequate and reasonable means do not exist for ascertaining Adjusted LIBOR, then the Bank shall promptly give notice thereof to the Borrower and the obligations of the Bank

to create, continue or effect by conversion any such LIBOR Portion in such amount and for such Interest Period shall terminate until deposits in such amount and for the Interest Period selected by the Borrower shall again be readily available in the relevant market and adequate and reasonable means exist for ascertaining Adjusted LIBOR.

*Section 4.8. Taxes and Increased Costs.* With respect to any LIBOR Portion, if the Bank shall determine in good faith that any change in any applicable law, treaty, regulation or guideline (including, without limitation, Regulation D of the Board of Governors of the Federal Reserve System) or any new law, treaty, regulation or guideline, or any interpretation of any of the foregoing by any governmental authority charged with the administration thereof or any central bank or other fiscal, monetary or other authority having jurisdiction over the Bank or its lending branch or the LIBOR Portions contemplated by this Agreement (whether or not having the force of law), shall:

(i) impose, increase, or deem applicable any reserve, special deposit or similar requirement against assets held by, or deposits in or for the account of, or loans by, or any other acquisition of funds or disbursements by, the Bank which is not in any instance already accounted for in computing the interest rate applicable to such LIBOR Portion:

(ii) subject the Bank, any LIBOR Portion or the Note to the extent it evidences such a Portion to any tax (including, without limitation, any United States interest equalization tax or similar tax however named applicable to the acquisition or holding of debt obligations and any interest or penalties with respect thereto), duty, charge, stamp tax, fee, deduction or withholding in respect of this Agreement, any LIBOR Portion or the Note to the extent it evidences such a Portion, except such taxes as may be measured by the overall net income or gross receipts of the Bank or its lending branches and imposed by the jurisdiction, or any political subdivision or taxing authority thereof, in which the Bank's principal executive office or its lending branch is located:

(iii) change the basis of taxation of payments of principal and interest due from the Borrower to the Bank hereunder or under the Note to the extent it evidences any LIBOR Portion (other than by a change in taxation of the overall net income or gross receipts of the Bank); or

(iv) impose on the Bank any penalty with respect to the foregoing or any other condition regarding this Agreement, any LIBOR Portion, or its disbursement, or the Note to the extent it evidences any LIBOR Portion:

and the Bank shall determine in good faith that the result of any of the foregoing is to increase the cost (whether by incurring a cost or adding to a cost) to the Bank of creating or maintaining any LIBOR Portion hereunder or to reduce the amount of principal or interest received or receivable by the Bank (without benefit of, or credit for, any proration, exemption, credits or other offsets available under any such laws, treaties, regulations, guidelines or interpretations thereof), then the Borrower shall pay on demand to the Bank from time to time as specified by the Bank such additional amounts as the Bank shall reasonably determine are sufficient to

compensate and indemnify it for such increased cost or reduced amount. If the Bank makes such a claim for compensation, it shall provide to the Borrower a certificate setting forth the computation of the increased cost or reduced amount as a result of any event mentioned herein in reasonable detail and such certificate shall be conclusive if reasonably determined.

*Section 4.9. Change in Capital Adequacy Requirements.* If the Bank shall determine that the adoption after the date hereof of any applicable law, rule or regulation regarding capital adequacy, or any change in any existing law, rule or regulation regarding capital adequacy, or any change in the interpretation or administration thereof by any governmental authority, central bank or comparable agency charged with the interpretation or administration of any such law, rule or regulation regarding capital adequacy, or compliance by the Bank (or any of its branches) with any request or directive regarding capital adequacy (whether or not having the force of law) of any such authority, central bank or comparable agency, has or would have the effect of reducing the rate of return on the Bank's capital as a consequence of its obligations hereunder or for the credit which is the subject matter hereof to a level below that which the Bank could have achieved but for such adoption, change or compliance (taking into consideration the Bank's policies with respect to liquidity and capital adequacy) by an amount deemed by the Bank to be material, then from time to time, within fifteen (15) days after demand by the Bank, the Borrower shall pay to the Bank such additional amount or amounts reasonably determined by the Bank as will compensate the Bank for such reduction.

*Section 4.10. Funding Indemnity.* In the event the Bank shall incur any loss, cost or expense (including, without limitation, any loss (including loss of profit), cost or expense incurred by reason of the liquidation or reemployment of deposits or other funds acquired or contracted to be acquired by the Bank to fund or maintain any LIBOR Portion or the relending or reinvesting of such deposits or other funds or amounts paid or prepaid to the Bank) as a result of:

(i) any payment of a LIBOR Portion on a date other than the last day of the then applicable Interest Period for any reason, whether before or after default, and whether or not such payment is required by any provisions of this Agreement; or

(ii) any failure by the Borrower to create, borrow, continue or effect by conversion a LIBOR Portion on the date specified in a notice given pursuant to this Agreement;

then upon the demand of the Bank, the Borrower shall pay to the Bank such amount as will reimburse the Bank for such loss, cost or expense. If the Bank requests such a reimbursement, it shall provide to the Borrower a certificate setting forth the computation of the loss, cost or expense giving rise to the request for reimbursement in reasonable detail and such certificate shall be conclusive if reasonably determined.

*Section 4.11. Lending Branch.* The Bank may, at its option, elect to make, fund or maintain LIBOR Portions hereunder at such of its branches or offices as the Bank may from time to time elect.

*Section 4.12. Discretion of Bank as to Manner of Funding.* Notwithstanding any provision of this Agreement to the contrary, the Bank shall be entitled to fund and maintain its funding of all or any part of the Note in any manner it sees fit, it being understood, however, that for the purposes of this Agreement all determinations hereunder shall be made as if the Bank had actually funded and maintained each LIBOR Portion during each Interest Period applicable thereto through the purchase of deposits in the relevant market in the amount of such LIBOR Portion, having a maturity corresponding to such Interest Period, and, in the case of any LIBOR Portion, bearing an interest rate equal to the LIBOR for such Interest Period.

## SECTION 5. PAYMENTS.

*Section 5.1. Place and Application.* All payments of principal, interest and fees shall be made to the Bank at its office at 111 West Monroe Street, Chicago, Illinois 60603 (or at such other place for the account of the Bank as the Bank may from time to time in writing specify to the Borrower) in immediately available and freely transferable funds at the place of payment on or before 12:00 Noon (Chicago time) on the date of payment. All payments shall be paid in full without setoff or counterclaim and without reduction for and free from any and all taxes, levies, imposts, duties, fees, charges, deductions, withholdings, restrictions or conditions of any nature imposed by any government or any political subdivision or taxing authority thereof.

*Section 5.2. Voluntary Prepayments.* The Borrower shall have the privilege of prepaying the Note in whole or in part (but if in part, then in a minimum amount of \$100,000 or such greater amount which is an integral multiple of \$100,000) at any time upon three (3) Business Days' prior notice to the Bank (such notice if received subsequent to 11:00 a.m. (Chicago time) on a given day to be treated as though received at the opening of business on the next Business Day), by paying to the Bank the principal amount to be prepaid and (i) accrued interest on the Note to the date of prepayment, and (ii) any amounts due to the Bank under Section 4.10 hereof. Prepayments shall be applied first to the Domestic Rate Portion and then to LIBOR Portions in order of their maturity. Any amounts prepaid may not be reborrowed.

*Section 5.3. Notations and Requests.* All advances made against the Note, and the rates of interest applicable to the Loan shall be recorded by the Bank on its books or at its option endorsed on the reverse side of the Note by the Bank and the unpaid principal balance and rates so recorded or endorsed by the Bank shall, absent manifest error, be prima facie evidence in any court or other proceedings brought to enforce the Note of the principal amount remaining unpaid thereon and the interest rates applicable thereto.

*Section 5.4. Upfront Fee.* The Borrower shall pay to the Bank (i) the sum of \$31,250 at closing as and for a non-refundable fee for the Loan which shall be deemed earned and payable upon execution of this Agreement; and (ii) the sum of .125% of the Loan Amount (whether or not outstanding) on each seven (7) month anniversary of the Loan closing until the earlier of (a) the Loan repayment and cancellation or (b) the Termination Date.

## SECTION 6. DISBURSEMENT OF THE LOAN.

*Section 6.1. Amount of Advances.* Subject to the terms and conditions hereof, the Bank shall, from time to time (but not more often than once per month), advance the Loan Amount to the Borrower in accordance with the Project Budget upon ten (10) Business Days' prior written notice. No advances of the Loan shall be made on or after the Termination Date. All advances of the Loan Amount shall be made against and evidenced by the promissory note of the Borrower in the form attached hereto as *Exhibit A* (the "Note"). The Note shall be dated the date hereof and be expressed to bear interest as set forth in Section 4 hereof. The Borrower agrees that the amount showing on the Note from time to time on the books and records of the Bank shall be *prima facie* correct, absent manifest error. The Bank agrees that it will not transfer or assign the Note without first endorsing thereon a reference to the unpaid principal balance thereof as of the time of transfer and concurrently advising the Borrower in writing of such unpaid principal amount.

The Bank's obligation to advance Loan proceeds shall be subject to the satisfaction of the appropriate conditions to such disbursements contained in Sections 7.1 and 8.1 of this Agreement and, if applicable, the Bank's approval of any reallocation by the Borrower in favor of costs savings among Project Budget line items or from contingency to line items.

In no event shall any advance to pay Construction Costs exceed the amount then due contractors or subcontractors for work completed and in place plus materials stored on site in which the Bank has a perfected first security interest (less the retainage provided in the General Contract which retainage shall not be paid until completion of all work by the relevant contractor or subcontractor to the reasonable satisfaction of the Bank and receipt of a final lien waiver therefrom). The Bank shall have no obligation to advance for materials not yet incorporated into the Improvements. The amount of each advance for Other Project Costs shall in no event exceed the amount of Other Project Costs then due and unpaid. Unless the Bank has approved a reallocation based on cost savings or disbursement of contingencies, no advance for any line item shall be made if it will cause the total advance for such item to exceed the amount shown therefor on the Project Budget. Development fees shall be paid over the term of the Loan consistent with the Project Budget.

*Section 6.2. Method of Disbursement.* Advances to be made hereunder shall be made directly to and through a construction escrow to be established and maintained with the Title Company containing terms and conditions reasonably satisfactory to the Bank. The Borrower irrevocably authorizes the Bank at any time or from time to time, upon notice to the Borrower, to advance funds to itself for the purpose of paying any sums then due the Bank from the Borrower in respect of the Loan.

*Section 6.3. Insufficient Capital to Complete.* If at any time the Bank reasonably determines that (a) the then Estimated Total Cost of Completing the Improvements is more than the sum of (i) the undisbursed portion of the Loan, plus (ii) the amount of any funds of the Borrower then on deposit with the Bank pursuant to this Section or (b) the Loan is not "in balance" on a line item by line item basis, then the Bank shall have no obligation to make any further advances hereunder and the Borrower covenants and agrees that within ten (10) days of

the mailing of written notice of such deficiency it will deposit funds with the Bank in an amount sufficient to cure the deficiency, all funds so deposited with the Bank to be held by it as collateral security for the Loan and disbursed for the payment of costs for which Loan proceeds may be requested under Section 6.1 hereof prior to the disbursement of any further proceeds of the Loan.

*Section 6.4. Final Construction Disbursement.* Prior to the final Loan disbursement with respect to construction work, Completion of Improvements shall have occurred and the following documents and items shall be submitted to Bank and approved by Consultant, as necessary:

(a) *As Built Survey:* Three (3) copies of a survey prepared by a registered surveyor in accordance with current ALTA/ASCM standards showing all of the Improvements in place. The survey shall also include a narrative metes and bounds description of the boundary of the Real Property, the areas of the Real Property and of the Improvements, the location and dimensions of any easements, and the dimensions of the Improvements. The surveyor must include on the survey a signed narrative statement in certification of the existence or non-existence of any encroachments from, or onto, the Real Property and must include the date of the survey, the surveyor's registration number and seal and be certified to the Bank and the Title Company.

(b) *Certifications:* A certification from the Engineer and [Architect] that all on-site and off-site improvements required to be constructed have been completed in accordance with the approved Plans.

(c) *Plans and Specifications:* Two (2) sets of detailed Plans plus all Change Orders must be submitted to Bank. They must be approved and identified as such in writing by Borrower, the [Architect] and the Engineer. The two (2) sets must include plans and specifications for architectural, structural, mechanical, plumbing, electrical and site development (including storm drainage, utility lines and landscaping) work.

(d) *Lien Waivers:* Subject to Section 3.8 hereof, a final affidavit from the General Contractor; and final lien releases or waivers (substantially in a form approved by Bank) by the [Architect], General Contractor, and all subcontractors, materialmen, and other parties who have supplied labor, materials, or services for the construction of the Improvements, or who otherwise might be entitled to claim contractual, statutory or constitutional lien against the Mortgaged Premises.

## SECTION 7. CONDITIONS PRECEDENT TO FIRST ADVANCE OF THE LOAN.

*Section 7.1.* The Bank shall not be obligated to make the first advance hereunder unless it has received the following, all in form and substance reasonably satisfactory to the Bank and its counsel, at least five (5) Business Days prior to the requested disbursement date for the first advance:

(a) the Note;

- (b) the Mortgage;
- (c) the Additional Collateral Documents;
- (d) any UCC financing statements requested by the Bank;
- (e) opinions of Borrower's counsel and Guarantor's counsel;
- (f) certified articles of agreement and operating agreement of the Borrower;
- (g) copies of the certified resolutions, incumbency certificate and good standing certificate of the Borrower and Guarantor;

(h) such documents, opinions, acknowledgments, consents and assurances, including certified articles of formation, good standing certificates, resolutions, members' consents, trust agreements, partnership agreements and opinions of counsel, as the Bank shall deem reasonably necessary or appropriate to evidence the capacity and authority of the Borrower and Guarantor and their constituents and all other parties to the transactions contemplated hereby to enter into said transactions and be bound by the terms and conditions of this Agreement and all other agreements delivered to the Bank in connection with the transactions contemplated hereby and evidencing the fact that all such documents shall be the valid and binding obligations of the parties thereto, enforceable in accordance with their terms;

(i) such documents, opinions, withholdings of objection and assurances as the Bank shall reasonably deem necessary or appropriate to evidence the truthfulness of the representations and warranties contained in Section 2 hereof and the observance and performance of the covenants contained in Section 3 hereof, including without limitation such evidence as the Bank deems reasonably necessary to indicate complete compliance with all Governmental Requirements with respect to the construction of the Improvements and the use thereof for their intended purposes and entered into in accordance with the terms of this Agreement to the extent that such consents or withholdings of objection may be obtained prior to completion of construction and such evidence as the Bank may deem necessary or appropriate to evidence the availability of all utilities, including water, sewers, gas and electricity, as may be necessary to construct the Improvements in accordance with the Plans and to use said Improvements in accordance with their intended purposes;

(j) a commitment from the Title Company stating that it is prepared to issue its standard 1992 form of ALTA mortgagee's construction loan title policy in the Loan Amount with a pending disbursements endorsement, such policy (i) showing title to the Mortgaged Premises in the Borrower, (ii) insuring the Mortgage as a first lien without encroachments or prior rights of others on the Mortgaged Premises, subject only to current general real estate taxes and assessments not yet due and payable, the disbursement of the Loan, standard objections which cannot be cured until completion of the Improvements *provided* that no exception for matters of survey or mechanics' or

materialmen's liens or rights to liens shall appear, subject to Section 3.8 hereof), the Permitted Exceptions (as defined in the Mortgage) and such other exceptions and objections as are satisfactory to the Bank in its discretion (or which have been fully insured by the Borrower) and (iii) containing such endorsements as the Bank may reasonably require, including, without limitation, an ALTA Endorsement Form 3.0, a Comprehensive Endorsement 1 and an endorsement deleting the creditor's rights exclusions from coverage;

(k) such additional documents, opinions, comments or withholdings of objection as may be required by the Title Company in order to provide the insurance to be afforded to the Bank pursuant to subsection (j) of this Section 7.1;

(l) such Uniform Commercial Code searches as the Bank may require;

(m) a complete and current ALTA survey of the Mortgaged Premises (not older than six (6) months) certified to the Bank and the Title Company prepared by an independent registered Illinois land surveyor in accordance with 1997 ALTA/ACSM Minimum Standard Detail Requirement and reasonably satisfactory to the Bank and showing thereon the location of the perimeter of the Mortgaged Premises by courses and distances, the lines of the streets abutting the Mortgaged Premises and the width thereof, the on-site Improvements to the extent constructed and the relation of the on-site Improvements by distance to the perimeter of the Mortgaged Premises, and the established building lines and the street lines, all encroachments and the extent thereof in feet and inches upon the Mortgaged Premises indicating that the on site Improvements to the extent constructed are within the lot and building lines of the Mortgaged Premises and indicating whether the Mortgaged Premises are in a flood plain;

(n) original certificates and copies of policies of insurance required by the Bank under Section 3.4 hereof;

(o) evidence of the availability of utilities to the Mortgaged Premises;

(p) a soil test report and a certification from a registered engineer or surveyor that the portion of the Mortgaged Premises on which any of the Improvements will be situated is not in a flood plain or designated as flood prone by any Governmental Body or, alternatively, evidence of appropriate flood insurance;

(q) a site plan for the Mortgaged Premises;

(r) an environmental, hazardous waste and toxicity report reasonably acceptable to the Bank showing the absence of any hazardous material or toxic waste on the Mortgaged Premises;

(s) one copy of the Plans and any Change Orders with respect thereto with evidence of appropriate governmental approvals thereon given the applicable stage of construction (certified by the [Architect] that the Plans conform to all applicable building

and zoning laws and with the requirements of any covenants, conditions or restrictions of record) together with an agreement executed by the [Architect] that the Plans may be used by the Bank, without cost to the Bank or additional fees to the [Architect] and as and when necessary in the construction of the Improvements:

(t) certified copies of all building and other permits, licenses, leases, franchises, agreements and authorizations currently required in connection with the construction and intended use of the Mortgaged Premises;

(u) executed copies of the fixed price construction contract with the General Contractor and all contracts with the [Architect] and Engineer together with agreements from the General Contractor, [Architect] and Engineer to perform under such contracts for the benefit of the Bank and containing such other agreements as the Bank may reasonably request;

(v) a list of the architects, engineers, major contractors and major subcontractors for the Mortgaged Premises as well as such financial information regarding the General Contractor, [Architect], Engineer and such other architects, engineers, contractors and major subcontractors as the Bank reasonably requests;

(w) certified copies of all annexation agreements, management agreements, development agreements, leasing agreements, or other agreements to which the Borrower is a party executed in connection with the construction, operation, use or occupancy of the Mortgaged Premises;

(x) the Project Budget, approved by the Consultant;

(y) a detailed construction schedule, approved by the Consultant, showing a trade-by-trade breakdown of the estimated periods of commencement and completion of construction of the Improvements;

(z) construction loan escrow agreement;

(aa) the commitment fee referred to in Section 5.4 hereof;

(bb) acceptable financial statements of the Guarantor and the Borrower; and

(cc) a certificate from the [Architect] and Engineer and a letter from the appropriate Governmental Bodies certifying that the intended use of the Mortgaged Premises is permitted under the current zoning ordinance applicable to the Mortgaged Premises.

SECTION 8. CONDITIONS PRECEDENT TO SUBSEQUENT ADVANCES.

*Section 8.1.* The Bank's obligation to make each advance of the Loan, including the first advance, shall also be subject to the satisfaction of the following conditions (*provided*, that advances shall be made no more frequently than once per month):

(a) No Default or Event of Default shall have occurred and be continuing under this Agreement, the Note, the Mortgage or any Additional Collateral Document;

(b) The Bank shall have received at least ten (10) Business Days prior to the requested date of disbursement a Request for Advance executed by the Borrower in the form attached hereto as *Exhibit B* and all representations and certifications contained therein shall be true and correct;

(c) The Bank shall have received contractors' sworn statements and subcontractors' sworn statements requested by the Bank (which statements shall include a statement of changed or extra construction costs) and waivers of lien covering all work for which the previous advance has been made to a date specified therein, all in compliance with the mechanics' lien laws of Illinois, together with such invoices, contracts or other supporting data as the Bank may reasonably require to justify the advance, including disclaimers from suppliers of fixtures and equipment of any purchase money security interest therein; *provided, however*, that if the Loan is to be advanced through an escrow, such information shall be furnished to the escrow agent with a copy thereof to the Bank;

(d) The Bank shall have received from the Consultant a report authorizing payment of the amount requested for Construction Costs and any other construction items, indicating that construction has progressed to the point indicated, that all work completed to date has been done in a fit and workmanlike manner and in accordance with the Plans and any Change Orders permitted hereby, and, if requested by the Bank, certifications from the [Architect] and/or the Engineer to such matters as the Bank may require;

(e) The Bank shall have received a sworn statement from the Borrower stating the amount of Other Project Costs to be included in the requested advance, a "*disbursement request summary*," and copies of invoices and such other documents as the Bank may require to support the full amount of Other Project Costs to be included in the requested advance;

(f) The Bank shall have received from the Title Company an endorsement to the title insurance commitment to be furnished pursuant to subsection (j) of Section 7.1 hereof indicating that since the last advance there has been no change in the state of title, no defects, liens or encumbrances and no survey exceptions not theretofore approved by the Bank and which shall have the effect of increasing the amount of the commitment by the amount of the advance being made;

(g) The Bank shall have received certified copies of (i) General Contract and, if requested Major Subcontracts and (ii) all items required by this Agreement to be obtained prior to the construction of any Improvements for which the advance is requested, as of the date of such request for advance; and

(h) If the Bank shall have received written notice of the Construction Commencement Date.

## SECTION 9. EVENTS OF DEFAULT AND REMEDIES.

*Section 9.1. Defaults.* Any one or more of the following shall constitute an "Event of Default":

(a) Default in the payment when due of principal of or interest on the Note (whether at the stated maturity thereof or at any other time provided for in this Agreement); or

(b) Default in the payment for a period of five (5) days following written notice of the failure to pay when due of all or any fee or amount payable by the Borrower to the Bank hereunder or under the Note, the Mortgage or any Additional Collateral Document; or

(c) Default in the observance or performance of any covenants set forth in Sections 3.4, 3.27 or 6.3 hereof; or

(d) Default in the observance or performance of any other covenant, condition, agreement or provision hereof or of the Note, Mortgage or any Additional Collateral Document which is not remedied within thirty (30) days after the earlier of (i) the date on which such failure first became known to any officer of the Borrower or (ii) written notice thereof to the Borrower by the Bank or, if such default is incapable of being cured within such thirty (30) day period, the Borrower shall have undertaken, within such period, and shall be diligently carrying forward, all steps which are necessary or desirable to remedy such condition as are approved by the Bank in its sole discretion and shall have cured such default within an additional sixty (60) days; or

(e) Any representation or warranty made by the Borrower or the Guarantor herein or in the Note, Mortgage or any Additional Collateral Documents or in any statement or certificate furnished pursuant hereto or thereto, or in connection with any extension of credit made hereunder, proves untrue in any material respect as of the date of the issuance or making thereof and shall not be made good within thirty (30) days after notice thereof to Borrower by Bank or, if such default is incapable of being cured within such thirty (30) day period, the Borrower shall have undertaken, within such period, and shall be diligently carrying forward, all steps which are necessary or desirable to remedy such condition as are approved by the Bank in its sole discretion and shall have cured such default within an additional sixty (60) days; or

(f) The Improvements in the reasonable judgment of the Bank are not or cannot be completed on or before the Completion Date subject to Permitted Delays; or

(g) The Borrower is unable to satisfy any condition of its right to the receipt of an advance hereunder for a period in excess of thirty (30) days other than as a result of Permitted Delays; or

(h) Work on the Improvements shall have been abandoned or work on the Improvements shall have ceased for a period of thirty (30) consecutive days unless such cessation is a result of Permitted Delays which do not extend for more than sixty (60) days; or

(i) The Title Company refuses to issue the endorsement provided for in Section 8.1(f) hereof because of a change in the state of title or a survey exception and the Borrower is unable to correct the condition giving rise to the refusal and procure issuance of the endorsement within thirty (30) days of notice of any such refusal given to the Borrower by the Bank or, if such default is incapable of being cured within such thirty (30) day period, the Borrower shall have undertaken, within such period, and shall be diligently carrying forward, all steps which are necessary or desirable to remedy such condition as are approved by the Bank in its sole discretion and shall have cured such default within an additional sixty (60) days; or

(j) The Borrower or the Bank is notified by any Governmental Body or official that the Improvements do not or will not comply with any Governmental Requirements and the deficiency is not corrected within sixty (60) days after such notification; or

(k) The Mortgaged Premises or any portion thereof is sold, transferred, encumbered or conveyed in any manner whatsoever without the prior written consent of the Bank or a Change of Control has occurred; or

(l) Any event occurs or condition exists which is specified as an event of default under the Note, the Mortgage or any Additional Collateral Document; or

(m) Work on the Improvements shall not have been commenced by sixty (60) days after the first disbursement of the Loan; or

(n) Any judgment or judgments, writ or writs or warrant or warrants of attachment or any similar process or processes in an aggregate amount in excess of [\$250,000] shall be entered or filed against the Borrower or Guarantor or against any of their respective property or assets and remains unsatisfied, unvacated, unbonded or unstayed for a period of sixty (60) days; or

(p) dissolution or termination of the existence of the Borrower or the Guarantor; or

(q) the Borrower or the Guarantor shall (i) have entered involuntarily against it an order for relief under the United States Bankruptcy Code, as amended, and if instituted against the Borrower or the Guarantor are consented to or are not dismissed within sixty (60) days after such institution, (ii) not pay without contest, or admit in writing its inability to pay, its debts generally as they become due, (iii) make an assignment for the benefit of creditors, (iv) apply for, seek, consent to, or acquiesce in, the appointment of a receiver, custodian, trustee, examiner, liquidator or similar official for it or any substantial part of its property or assets, (v) institute any proceeding seeking to have entered against it an order for relief under the United States Bankruptcy Code, as amended, to adjudicate it insolvent, or seeking dissolution, winding up, liquidation, reorganization, arrangement, adjustment or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors or fail to file an answer or other pleading denying the material allegations of any such proceeding filed against it, (vi) take any action in furtherance of any matter described in parts (i) through (v) above, or (vii) fail to contest in good faith any appointment or proceeding described in Section 9.1(r) hereof;

(r) a custodian, receiver, trustee, examiner, liquidator or similar official shall be appointed for the Borrower or the Guarantor or any substantial part of any of their respective property or assets, or a proceeding described in Section 9.1(q)(v) shall be instituted against the Borrower or the Guarantor, and such appointment continues undischarged or such proceeding continues undismissed or unstayed for a period of sixty (60) days;

(s) an event of default occurs under the Redevelopment Agreement or the Garage Construction Agreement.

*Section 9.2. Non-Bankruptcy Defaults.* When any Event of Default described in subsection (a) through (p), both inclusive, of Section 9.1 has occurred and is continuing:

(a) The Bank's commitment to make any additional advances hereunder shall, at its option, terminate.

(b) The Bank may, by notice in writing to the Borrower, declare the principal of and interest on the Note to be forthwith due and payable and thereupon the Note, including both principal and interest, and all fees, charges and other amounts payable hereunder, under the Note, the Mortgage and the Additional Collateral Documents, shall be and become immediately due and payable without presentment, demand or further notice of any kind.

(c) The Bank may offset any indebtedness, obligations or liabilities owed to the Borrower against any indebtedness, obligations or liabilities of the Borrower to the Bank.

(d) the Bank may enforce any and all rights and remedies available to it under the Note, the Mortgage or the Additional Collateral Documents or under applicable law.

(e) The Bank shall have the right, but not the obligation, to take possession of the Mortgaged Premises, together with all materials, equipment and improvements thereon, whether affixed or not, and perform any and all work and labor necessary to complete the Improvements substantially in accordance with the Plans or with such changes therein as the Bank deems appropriate to complete the work or protect and preserve the Improvements and for that purpose, the Bank shall have the right to expend sums in addition to the Loan Amount and all such additional sums shall constitute indebtedness of the Borrower to the Bank and shall be entitled to the benefit of the security afforded by the Mortgage and the Additional Collateral Documents. The Borrower, to implement the rights of the Bank hereunder, irrevocably constitutes and appoints the Bank its true and lawful attorney in fact with full power of substitution for it and in its name, place and stead to take any and all actions the Bank deems necessary or appropriate to complete construction of the Improvements and to protect and preserve same and, without limiting the generality of the foregoing, irrevocably authorizes the Bank as follows: to use the funds of the Borrower at any time coming into its hands, any funds which may remain unadvanced hereunder and any funds or other collateral then on deposit with the Bank pursuant to Section 6.3 hereof, for the purpose of completing the Improvements in the manner contemplated hereby or in such manner as the Bank deems reasonably appropriate to enhance the value of the Mortgaged Premises; to employ such contractors, subcontractors, agents, architects and inspectors as shall be necessary or appropriate for said purposes; to enter into, alter, amend or modify any and all contracts, agreements or documents in connection with the construction of the Improvements or the furnishing of labor and materials in connection therewith; to pay, settle, compromise or collect all existing accounts or claims arising in connection with the construction of the Improvements, including all claims which are or may become liens against the Mortgaged Premises; to take all actions it may reasonably deem necessary or appropriate in connection with title to the Mortgaged Premises; to execute all applications, certificates or instruments which may be requested or required under any contract or by any Governmental Body; to prosecute and defend all actions or proceedings in connection with the construction of the Improvements; and to do any and every act with respect to construction of the Improvements and the operation, use and maintenance thereof which the Borrower may do in its own behalf; *provided, however,* that the Bank agrees, as a personal covenant available only to the Borrower, not to use the power of attorney granted hereunder until after the occurrence of an Event of Default as set forth herein.

*Section 9.3. Bankruptcy Defaults.* When any Event of Default described in subsection (q) or (r) of Section 9.1 has occurred and is continuing, then the Note, including both principal and interest, and all fees, charges and other amounts payable hereunder, under the Note, the Mortgage and the Additional Collateral Documents, shall immediately become due and payable without presentment, demand, protest or notice of any kind, and the obligations of the Bank to extend further credit pursuant to any of the terms hereof shall immediately terminate. In addition, the Bank may exercise any and all remedies available to it hereunder, under the Note, the Mortgage or the Additional Collateral Documents or under applicable law.

SECTION 10. GENERAL CONDITIONS.

*Section 10.1. No Waiver, Rights Are Cumulative.* The rights and remedies granted to the Bank and the holder of the Note hereunder shall be in addition to and cumulative of any other rights or remedies any of them may otherwise have under the Note, Mortgage and Additional Collateral Documents, or any document or documents executed in connection therewith or available under applicable law. All of the covenants, warranties and representations of the Borrower herein shall be in addition to and cumulative of all other covenants, representations and warranties of the Borrower contained in, or provided for in, any other instrument or document now or hereafter executed and delivered by the Borrower to or in favor of the Bank. No delay or failure on the part of the Bank or on the part of the holder of the Note in the exercise of any power or right shall operate as a waiver thereof nor as an acquiescence in any default nor shall any single or partial exercise of any power or right preclude any other or further exercise thereof or the exercise of any other power or right.

*Section 10.2. Waivers, Modifications and Amendments.* Neither this Agreement nor any provision hereof may be changed, waived, terminated or discharged orally, but only by an instrument in writing signed by the party against whom enforcement of the change, waiver, termination or discharge is sought and, without limiting the generality of the foregoing, no advance of loan proceeds hereunder shall constitute a waiver of any of the conditions of the Bank's obligation to make further advances nor in the event the Borrower is unable to satisfy any such condition shall any such waiver have the effect of precluding the Bank from thereafter declaring such inability to be an Event of Default hereunder. No notice to or demand on the Borrower in any case shall entitle the Borrower to any other or further notice or demand in similar or other circumstances.

*Section 10.3. Limited Benefit to Third Parties.* This Agreement is for the sole and exclusive benefit of the Borrower and the Bank and all conditions of the obligation of the Bank to make advances hereunder are imposed solely and exclusively for the benefit of the Bank, its successors and its assigns and no other person shall have standing to require satisfaction of such conditions in accordance with their terms or be entitled to assume that the Bank will refuse to make advances in the absence of strict compliance with any and all thereof and no other person shall under any circumstances be deemed to be a beneficiary of such conditions, any or all of which may be freely waived in whole or in part by the Bank at any time if it in its sole discretion deems it advisable to do so. Without limiting the generality of the foregoing, the Bank shall not have any duty or obligation to anyone to ascertain that funds advanced hereunder are used to pay the cost of constructing the Improvements or to acquire materials and supplies to be used in connection therewith or to pay costs of owning, operating and maintaining same.

*Section 10.4. Time Is of the Essence.* Time is of the essence of this Agreement.

*Section 10.5. Non-Business Days.* If any payment required to be made hereunder or in respect of the Note becomes due and payable on a day which is not a Business Day, the due date of such payment shall be extended to the next succeeding bank Business Day on which date such payment shall be due and payable. In the case of any payment of principal falling due on a day which is not a Business Day, interest on such principal shall continue to accrue during such

extension at the rate per annum then in effect, which accrued amount shall be due and payable on the next scheduled date for the payment of interest.

*Section 10.6. Notices.* Except as otherwise specified herein, all notices hereunder shall be in writing (including, without limitation, notice by telecopy) and shall be given to the relevant party at its address or telecopier number set forth below, or such other address or telecopier number as such party may hereafter specify by notice to the other given by United States certified or registered mail, by telecopy or by other telecommunication device capable of creating a written record of such notice and its receipt. Notices hereunder shall be addressed:

to the Borrower at:

AHC Evanston, L.L.C.  
c/o Arthur Hill & Co., L.L.C.  
Five Revere Drive  
Suite 300  
Northbrook, Illinois 60062  
Attention: Eugene Reardon, Vice President  
Telephone: \_\_\_\_\_  
Telecopy: \_\_\_\_\_

With a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Telecopy: \_\_\_\_\_

to the Bank at:

Harris Trust and Savings Bank  
111 West Monroe Street  
Chicago, Illinois 60603  
Attention: Dennis W. Rourke  
Telephone: (312) 461-6762  
Telecopy: (312) 461-2968

With a copy to:

Chapman and Cutler  
111 West Monroe Street  
Chicago, Illinois 60603  
Attention: James R. Theiss, Jr.  
Telephone: (312) 845-3891  
Telecopy: (312) 701-2361

Each such notice, request or other communication shall be effective (i) if given by telecopier, when such telecopy is transmitted to the telecopier number specified in this Section and a confirmation of such telecopy has been received by the sender, (ii) if given by mail, five (5) days after such communication is deposited in the mail, certified or registered with return receipt requested, addressed as aforesaid or (iii) if given by any other means, when delivered at the addresses specified in this Section; *provided* that any notice given pursuant to Section 4 hereof shall be effective only upon receipt.

*Section 10.7. Governing Law.* This Agreement and the rights and duties of the parties hereto shall be construed and determined in accordance with the laws of the State of Illinois.

*Section 10.8. Successors and Assigns.* This Agreement shall be binding upon the Borrower and its successors and assigns and shall inure to the benefit of the Bank and its successors and assigns, including any subsequent holder of the Note. Any party hereto may assign its rights hereunder to any other party; *provided, however*, that the Borrower may not assign its rights hereunder without the prior written consent of the Bank. The Bank may syndicate, sell portions, but not all, of the Loan by assignment (including all rights and duties of the Bank) or sell participations in the Loan to other financial institutions; *provided* that the Bank shall retain full responsibility for administration of the Loan and any assignee shall be subject to the reasonable approval of the Borrower and shall be a financial institution with a credit rating equal to or better than the Bank.

*Section 10.9. Counterparts.* This Agreement may be executed in any number of counterparts, and by different parties hereto on separate counterpart signature pages, and all such counterparts taken together shall be deemed to constitute one and the same instrument.

*Section 10.10. Entire Understanding.* This Agreement, together with the Note, Mortgage and the Additional Collateral Documents, constitutes the entire understanding of the parties with respect to the transactions contemplated hereby, and all prior understandings with respect thereto, whether written or oral, shall be of no force and effect.

*Section 10.11. Survival of Covenants, Indemnities, Etc.* All covenants, representations and warranties made herein or in any statement or certificate delivered to the Bank pursuant to any of the provisions hereof as well as all indemnities and other provisions relative to reimbursement to the Bank of amounts sufficient to protect the yield of the Bank with respect to the Loan including, but not limited to, Sections 4.9 and 4.10 hereof, shall survive the making of the Loan

and shall continue in full force and effect until the obligations of the Borrower hereunder and the indebtedness evidenced by the Note have been fully paid and satisfied, the Bank has no further commitment to advance funds hereunder and the Mortgage has been released of record by the Bank.

*Section 10.12. Partial Invalidity.* If any term of this Agreement shall be held to be invalid or unenforceable, such term shall be deemed to be severable and the validity of the other terms of this Agreement shall in no way be affected thereby.

*Section 10.13. Headings.* The descriptive headings of the various Sections or parts of this Agreement are for convenience only and are not a part of this Agreement for any other purpose.

*Section 10.14. Severability of Provisions.* Any provision of this Agreement which is unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction. All rights, remedies and powers provided in this Agreement, the Note, the Mortgage and the Additional Collateral Documents may be exercised only to the extent that the exercise thereof does not violate any applicable mandatory provisions of law, and all the provisions of this Agreement, the Note, the Mortgage and the Additional Collateral Documents are intended to be subject to all applicable mandatory provisions of law which may be controlling and to be limited to the extent necessary so that they will not render this Agreement, the Note, the Mortgage or the Additional Collateral Documents invalid or unenforceable.

*Section 10.15. Construction.* The parties hereto acknowledge and agree that this Agreement, the Note, the Mortgage and the Additional Collateral Documents shall not be construed more favorably in favor of one than the other based upon which party drafted the same, it being acknowledged that all parties hereto contributed substantially to the negotiation of this Agreement, the Note, the Mortgage and the Additional Collateral Documents. Nothing contained herein shall be deemed or construed to permit any act or omission which is prohibited by the terms of the Note, the Mortgage or the Additional Collateral Documents, the covenants and agreements contained herein being in addition to and not in substitution for the covenants and agreements contained in the Note, the Mortgage and the Additional Collateral Documents.

*Section 10.16. Brokers.* The Borrower and the Bank hereby represent and warrant that no brokers or finders were used in connection with procuring the financing contemplated hereby and the Borrower hereby agrees to indemnify and save the Bank harmless from and against any and all liabilities, losses, costs and expenses (including attorneys' fees or court costs) suffered or incurred by the Bank as a result of any claim or assertion by any party that it is entitled to compensation in connection with the financing contemplated hereby.

*Section 10.17. Controlling Document.* In the event of a conflict between the provisions of this Agreement and the Note, Mortgage or Additional Collateral Documents, the provisions of this Agreement shall control and govern the conflicting provisions of the Note, Mortgage or Additional Collateral Documents.

*Section 10.18. No Joint Venture.* Notwithstanding anything to the contrary herein contained, the Bank by entering into this Agreement or by taking any action pursuant hereto, will not be deemed a partner or joint venturer with the Borrower and the Borrower agrees to hold the Bank harmless from any damages and expenses resulting from such a construction of the relationship of the parties hereto or any assertion thereof.

Executed and delivered at Chicago, Illinois as of this \_\_\_\_\_ day of October, 1999.

AHC EVANSTON, L.L.C., a \_\_\_\_\_ limited  
liability company

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Its: \_\_\_\_\_

Accepted and agreed to as of the date last above written.

HARRIS TRUST AND SAVINGS BANK

By: \_\_\_\_\_  
Printed Name: Dennis W. Rourke  
Its: Vice President

EXHIBIT A

PROMISSORY NOTE

\$25,000,000.00

Chicago, Illinois  
October \_\_, 1999

FOR VALUE RECEIVED, the undersigned, AHC EVANSTON, L.L.C., a \_\_\_\_\_ limited liability company (the "*Borrower*"), hereby promises to pay to the order of HARRIS TRUST AND SAVINGS BANK (the "*Bank*"), at its office at 111 West Monroe Street, Chicago, Illinois, the principal sum of U.S. Twenty Five Million and No/100 Dollars (U.S. \$25,000,000.00) (or so much thereof as may be advanced by the Bank) on the Termination Date (as defined in the Loan Agreement).

The Borrower promises to pay interest (computed on the basis of a year of 360 days for the actual number of days elapsed) at said office on the balance of principal from time to time outstanding and unpaid hereon from the date hereof until the maturity thereof (whether by lapse of time, acceleration or otherwise) at the rates and times specified in the Loan Agreement hereinafter identified.

The Borrower promises to pay interest to the holder hereof on overdue principal for the period after the date on which such principal becomes due and payable until payment in full thereof, at the Default Rate (as defined in the Loan Agreement).

This Note is issued under the terms and provisions of a Construction Loan Agreement bearing even date herewith, as amended from time to time (the "*Loan Agreement*") between the Borrower and the Bank, and this Note and the holder hereof are entitled to all of the benefits provided for by said Loan Agreement or referred to therein. Voluntary prepayments may be made hereon only at the times, in the events, on the terms and in the manner provided in said Loan Agreement.

Payment of this Note is secured by, *inter alia*, that certain Construction Mortgage and Security Agreement with Assignment of Rents bearing even date herewith, as amended from time to time (the "*Mortgage*") from the Borrower pledging certain real estate in Evanston, Illinois as security for Harris Trust and Savings Bank. This Note may become or be declared due prior to its expressed maturity upon the occurrence of an Event of Default as specified in said Loan Agreement or Mortgage.

The Borrower hereby waives presentment for payment, notice of dishonor, protest and notice of protest.

This Note shall be governed and construed in accordance with the internal laws of the State of Illinois without regard to principles of conflicts of laws.

AHC EVANSTON, L.L.C., a \_\_\_\_\_ limited liability company

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**EXHIBIT B**

**REQUEST FOR ADVANCE  
(AHC Evanston, L.L.C.)**

Harris Trust and Savings Bank  
111 West Monroe Street  
Chicago, Illinois 60603

Ladies and Gentlemen:

We refer to that certain Construction Loan Agreement dated as of October \_\_, 1999 between us and you (the "*Loan Agreement*"). This certificate is delivered to you as one of the inducements for an advance of loan proceeds in the amount of \$\_\_\_\_\_ which will bring the total unpaid principal balance of the Note to \$\_\_\_\_\_.

In order to induce you to make this advance, we hereby represent and certify as follows:

1. No Default or Event of Default, has occurred or is continuing under the Loan Agreement, Note, Mortgage or any Additional Collateral Document.
2. The proceeds of the requested advance will be used solely for the purposes indicated on the attached schedule, all of which are permitted under the terms of the Loan Agreement and such proceeds shall be used to pay for costs or payments due for services or materials actually rendered or furnished in connection with the design and construction of the Improvements.
3. The portion of the Loan remaining to be disbursed is sufficient to pay the presently Estimated Total Cost of Completing the Improvements.
4. The Project Budget remains accurate as of this date, except for such changes as have been previously reported to you or as are described on an attachment to this certificate.
5. All work performed to date on the Improvements has been performed in a fit and workmanlike manner and, except to the extent deviations therefrom are permitted by the Loan Agreement, in accordance with the Plans.

All capitalized terms used herein shall have the same meanings herein as they have in the Loan Agreement.

AHC EVANSTON, L.L.C., a \_\_\_\_\_ limited liability company

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

Printed Name: \_\_\_\_\_

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

**EXHIBIT C**

**THE PROJECT BUDGET**

## COMPLETION GUARANTY

This Completion Guaranty (this "*Guaranty*") is made as of the \_\_\_\_ day of October, 1999, by the CITY OF EVANSTON, a municipal corporation (the "*Guarantor*"), in favor of HARRIS TRUST AND SAVINGS BANK, an Illinois banking corporation (the "*Bank*"). All capitalized terms appearing herein and not defined herein shall have the meanings set forth in that certain Construction Loan Agreement dated of even date herewith between Borrower and the Bank (such Construction Loan Agreement, as it may be from time to time amended, modified or supplemented is hereinafter referred to as the "*Loan Agreement*").

WHEREAS, AHC Evanston, L.L.C., a \_\_\_\_\_ limited liability company (the "*Borrower*"), is the owner of certain property located in Evanston, Illinois, more particularly described in the Mortgage, together with any improvements now existing or to be constructed thereon (collectively, the "*Mortgaged Premises*");

WHEREAS, the Borrower has requested the Bank to make a credit facility available to the Borrower in the aggregate sum not to exceed \$25,000,000 (the "*Loan*"), which Loan will be evidenced by that certain term promissory note made by the Borrower dated as of the date hereof and payable to the Bank in the principal amount of \$25,000,000 (as the same may be from time to time amended, modified or restated and any notes issued in renewal, replacement or substitution therefor, hereinafter referred to as the "*Note*");

WHEREAS, the Bank is unwilling to make the Loan and enter into the Loan Agreement unless the Guarantor executes and delivers this Guaranty to the Bank;

NOW, THEREFORE, for value received and in consideration of advances made or to be made or credit given or assumed or to be given to the Borrower by the Bank from time to time, the Guarantor, hereby absolutely, irrevocably and unconditionally guarantees to the Bank (i) satisfactory and timely completion of the Improvements in a good and workmanlike manner prior to the Completion Date in substantial accordance with the Plans and the Loan Agreement free and clear of all mechanic's and materialmen's liens and claims (the obligation of the Guarantor set forth in this clause (i) is herein called the "*Completion Obligation*") and (ii) payment by Borrower of all amounts necessary to balance the Project Budget pursuant to the Loan Agreement, including without limitation, the payment of all interest due and unpaid on the Note and the replenishment of any interest line item set forth in the Project Budget (the obligation of Guarantor set forth in this clause (ii) is called the "*Balancing Obligation*"). The Completion Obligation and Balancing Obligation are herein together called the "*Obligations*". The Guarantor further agrees to pay all reasonable expenses, legal and/or otherwise (including court costs and attorney's fees) paid or incurred by the Bank in endeavoring to collect or enforce the Obligations, or any part thereof, and in protecting, defending or enforcing this Guaranty in any litigation, bankruptcy or insolvency proceedings or otherwise.

This Guaranty is given on and subject to the following additional terms and conditions:

SECTION 1. DEFINITIONS.

All capitalized terms used in the Guaranty without definition shall have the meanings ascribed to them in the Loan Agreement.

SECTION 2. REPRESENTATIONS OF GUARANTOR.

*Section 2.1.* Guarantor is a duly organized and validly existing municipal corporation under the laws of the State of Illinois and this Guaranty does not, and the performance or observance by the Guarantor of any of the matters and things herein provided for will not, contravene any provision of law or constitute an event of default or an event which, with the lapse of time, the giving of notice or both would constitute an event of default under any indenture, loan agreement, mortgage, lease, guaranty or other agreement to which Guarantor is a party or by which it is bound.

*Section 2.2.* Guarantor has all necessary power to carry on its business and has full right, power and authority to enter into this Guaranty and perform the transactions contemplated hereby.

*Section 2.3.* All financial statements of the Guarantor heretofore delivered to Bank in connection with the loan are true and correct in all material respects and truly and accurately reflect in all material respects the financial condition of Guarantor as of the date thereof and for the periods covered thereby.

*Section 2.4.* Except as heretofore disclosed in writing to the Bank, there is no litigation or governmental proceedings pending, or, to the best knowledge and belief of the Guarantor, threatened, against the Guarantor which, if adversely determined, would result in any material adverse change in the financial condition or properties, business or operations of the Guarantor.

SECTION 3. COVENANTS.

The Guarantor agrees that, so long as any or all of the Obligations are outstanding or the Note remains unsatisfied or any amount remains unpaid to the Bank under any of the provisions hereof, except to the extent compliance in any case is waived in writing by the Bank or to the extent noncompliance is immaterial to the performance of the Guarantor's obligations hereunder or the Guarantor pays to the Bank the Obligations:

*Section 3.1.* Guarantor will preserve and keep in full force and effect its existence as a municipal corporation under the laws of the State of Illinois and will not amend or modify its [charter] in any manner which might materially adversely affect the interests of the Bank hereunder. Guarantor will preserve and keep in force and effect all licenses, permits and franchises required for the proper conduct of its business. Guarantor shall maintain no subsidiaries.

*Section 3.2.* Guarantor will duly pay and discharge all taxes, rates, assessments, fees and governmental charges upon or against it, or against its properties, in each case before penalties accrue thereon, unless and to the extent that the same are being contested in good faith and by appropriate proceedings.

#### SECTION 4. LIABILITY ABSOLUTE AND UNCONDITIONAL.

*Section 4.1.* This Guaranty shall be a continuing, absolute and unconditional Guaranty, and shall remain in full force and effect, until the Note shall have been paid in full and any and all Obligations shall be fully paid or the Obligations shall have been satisfied. In the event that any payment on account of the Obligations is ever required to be returned by the Bank for any reason (including, without limitation bankruptcy or reorganization of the Borrower, of the Guarantor or any other obligor) or is set aside, recovered or rescinded the Obligations to which such payment was applied shall for the purposes of this Guaranty be deemed to have continued in existence, notwithstanding such application, and this Guaranty shall be enforceable as to such of the Obligations as fully as if such application had never been made. The bankruptcy or insolvency of the Guarantor shall not terminate this Guaranty. This is a guaranty of payment and performance.

*Section 4.2.* The Guarantor shall remain liable as principal, notwithstanding any act or thing which might otherwise operate as a legal or equitable discharge of the Guarantor, until any commitment of the Bank to extend credit under the Note pursuant to the Loan Agreement shall have expired, the Note shall have been paid in full and any and all obligations of the Borrower under the Loan Agreement shall be fully paid or the Obligations shall have been satisfied, and without regard to increases in the cost of labor and materials, changes in the Plans, delays in construction resulting from any cause whatsoever whether or not foreseeable and the Guarantor hereby agrees to indemnify and save the Bank harmless from and against any and all liabilities, losses, costs or expenses which the Bank may suffer or incur as a result of the Improvements not being timely completed as herein above required.

*Section 4.3.* The liability of the Guarantor hereunder shall in no way be affected or impaired by (and the Bank is hereby expressly authorized to make from time to time, without notice to the Guarantor, but upon written agreement of the Borrower), any sale, pledge, surrender, compromise, settlement, release, renewal, extension, indulgence, alteration, substitution, exchange, change in, amendment, modification or other disposition of the Obligations, either express or implied, or of the Note, Loan Agreement, Mortgage or Additional Collateral Documents. The Guarantor hereby waives receipt of notice of the creation and existence of the Obligations. The liability hereunder shall in no wise be affected or impaired by any acceptance by the Bank of any security for or other guarantors of the Obligations, or by any failure, neglect or omission on the part of the Bank to realize upon or protect any of the Obligations or any collateral or security therefor, or to exercise any lien upon or right of appropriation of any moneys, credits or property of Borrower, possessed by the Bank toward the liquidation of the Obligations, or by any application of payments or credits thereon. The Bank shall have the exclusive right, in accordance with the Loan Agreement, to determine how, when and what application of payments and credits, if any, shall be made on the Obligations or any part of it. All dividends or other payments received from the Borrower, or on account of the

Obligations from whatsoever source, shall be taken and applied as payment in gross, and this Guaranty shall apply to and secure any ultimate balance that shall remain owing to the Bank. This is a guaranty of payment and performance and in order to hold the Guarantor liable hereunder, there shall be no obligation on the part of the Bank, at any time, to resort for payment to the Borrower or to any other person, their properties or estates, or to resort to any collateral security, property, liens or other rights or remedies whatsoever, and the Bank shall have the right to enforce this Guaranty irrespective of whether or not other proceedings or steps are pending seeking to resort to or realization upon or from any of the foregoing.

*Section 4.4.* The liability of the Guarantor hereunder shall not be affected or impaired by any invalidity or unenforceability of the Note, Loan Agreement, Mortgage or Additional Collateral Documents or by any other circumstance which might otherwise constitute a legal or equitable discharge or defense of a guarantor.

*Section 4.5.* All diligence in collection, protection or enforcement and all presentment, demand, protest and/or notice, as to anyone and everyone, whether or not the Borrower or the Guarantor, or others, of dishonor and of default and of non-payment and of the creation and existence of the Obligations and of any security and collateral therefor, and of the acceptance of this Guaranty, and of any and all extensions of credit and indulgence hereunder, are hereby expressly waived. The Guarantor hereby irrevocably waives any claim or other right which it may now or hereafter acquire against the Borrower that arises from the existence, payment, performance or enforcement of the Guarantor's obligations hereunder, including, without limitation, any right of subrogation, reimbursement, exoneration, contribution, indemnification, or any right to participate in any claim or remedy of the Bank against the Borrower whether or not such claim, remedy or right arises in equity, or under contract, statute or common law, including without limitation, the right to take or receive from the Borrower directly or indirectly, in cash or other property or by set-off or in any other manner, payment or security on account of such claim or other rights. No act of commission or omission of any kind or at any time, upon the part of the Bank in respect to any matter whatsoever, shall in any way affect or impair this Guaranty.

*Section 4.6.* If an Event of Default occurs and is continuing under the Loan Agreement, the full amount of the Balancing Obligation (after credit for the undisbursed portion of the Loan) shall be and become immediately due and payable from the Guarantor (and the Guarantor hereby agrees to immediately pay the same) whether or not the Loan has become immediately due and payable from the Borrower and without regard to any constraints on or impediments to the ability of the Bank to accelerate the maturity of such indebtedness after the occurrence of an Event of Default or any agreements by the Bank limiting recourse to assets of the Borrower and the Guarantor. Repeated and successive demands may be made on the Guarantor hereunder.

*Section 4.7.* The Guarantor will not exercise or enforce any right of exoneration, contribution, reimbursement, recourse or subrogation available to the Guarantor against any person liable for payment of the Loan, or as to any security therefor, unless and until the full amount owing to the Bank on the Loan has been paid, and the payment by the Guarantor of any amount pursuant to this Guaranty shall not in any wise entitle the Guarantor to any right, title or interest (whether by way of subrogation or otherwise) in and to the Loan or any proceeds thereof

or any security therefor unless and until the full amount owing to the Bank on the Loan has been paid.

*Section 4.8.* The Guarantor hereby waives any and all defenses, claims and discharges of the Borrower, or any other obligor, pertaining to the Obligations, except the defense of discharge by payment in full. Without limiting the generality of the foregoing, to the extent permitted by applicable law, the Guarantor will not assert, plead or enforce against the Bank any defense of waiver, release, discharge in bankruptcy, statute of limitations, *res judicata*, statute of frauds, anti-deficiency statute, fraud, incapacity, minority, usury, illegality or unenforceability which may be available to the Borrower or any other person liable in respect of any of the Obligations, or any setoff available against the Bank to the Borrower or any such other person, whether or not on account of a related transaction. The Guarantor agrees, that the Guarantor shall be and remain liable for any deficiency in the payment of the Obligations remaining after foreclosure of the Mortgage or any other action thereunder or under any Additional Collateral Document.

#### SECTION 5. GUARANTOR'S OBLIGATIONS.

*Section 5.1.* If for any reason: (a) the Borrower shall abandon construction of the Improvements for thirty (30) days; (b) the Borrower shall fail to complete the Improvements within the maximum time allowed under the Loan Agreement and in the manner and in accordance with the terms of the Loan Agreement and pay all costs thereof; (c) the Bank or its nominee takes possession of the Mortgaged Premises prior to the completion of the Improvements by reason of any Event of Default under the Loan Agreement; or (d) the right of Borrower to receive any other or further disbursements or advances under the Loan Agreement shall be terminated; then, in any such event, the Guarantor agrees to promptly (upon receipt of notice from the Bank) assume all responsibility for the completion of the Improvements and, at the Guarantor's own cost and expense, except as hereafter provided in its Section 5.1: (i) cause the Improvements to be completed in a good and workmanlike manner and in accordance with the Loan Agreement and the Plans and/or plans and specifications submitted to the Bank free and clear of all mechanic's and materialmen's liens and claims (provided that the Guarantor may, in accordance with the Loan Agreement, obtain satisfactory title insurance coverage over any such liens or claims); and (ii) pay all costs and expenses, except as hereafter provided in its Section 5.1 in connection with the construction of the Improvements. The Bank shall, if requested by the Guarantor, make available to the Guarantor all Loan funds not subject to stop notice or other legal impairment which have not at such time been disbursed by the Bank and which have been designated for payment of construction costs and other construction-related costs in the Loan Agreement, subject to conditions precedent to such disbursement set forth therein (other than the absence of a default), it being understood that no disbursement shall be made to the Guarantor if such disbursement would cause an imbalance in any line item in the Project Budget and such funds shall only be made available if the Guarantor has cured all defaults under the Loan Agreement capable of being cured by the Guarantor and the Loan is in balance on a line item basis. No amount of the Loan shall be advanced to the Guarantor hereunder out of undisbursed amounts allocated to interest or for the payment of costs not paid by Guarantor and no disbursement of the Loan shall be made unless repayment of the same will be secured by a first lien on the Mortgaged Premises and the other security covered by the Mortgage and Additional Collateral Documents and the Title Company shall have insured the

amounts so disbursed as a first lien on the Mortgaged Premises with no exception for mechanic's liens or other exceptions not permitted by the Loan Agreement unless the Bank has at the time obtained title to the Mortgaged Premises and other collateral covered by the Mortgage and Additional Collateral Documents in which event the condition to disbursement shall be receipt of title insurance over mechanic's liens and claims for lien arising out of the completion of the Improvements. Notwithstanding anything to the contrary set forth herein, the Bank shall have the right, but not the obligation, to complete construction of the Improvements in accordance with the Loan Agreement.

*Section 5.2.* In the event that a bankruptcy or similar proceeding is instituted by or against Borrower or the Guarantor within one year of the date of the satisfaction of this Guaranty, and the foreclosure deed, deed in lieu of foreclosure or any amount paid on account of the Loan or this Guaranty is set aside, recovered or rescinded, this Guaranty shall be reinstated and shall guarantee payment of any Obligations set aside, recovered or rescinded until such amount is paid in full.

#### SECTION 6. MISCELLANEOUS

*Section 6.1.* This Guaranty and every part hereof shall be binding upon the Guarantor and upon the successors and assigns of the Guarantor and shall inure to the benefit of the Bank and its successors and assigns including any subsequent holder of the Loan or any part thereof. This Guaranty may only be changed by an instrument in writing signed by the party against whom enforcement hereof is sought. If any provision hereof is unenforceable, such provision shall be ineffective to the extent of such unenforceability without invalidating the remaining provisions hereof.

*Section 6.2.* THIS GUARANTY SHALL BE CONSTRUED AND ENFORCED UNDER THE LAWS OF ILLINOIS WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW.

*Section 6.3.* The Guarantor authorizes the Bank at any time in its discretion to alter any of the terms of the Loan with the written agreement of the Borrower, to take and hold any security for the Loan and to accept additional or substituted security, to subordinate, compromise any security, to release, substitute or add any one or more guarantors or endorsers, and to assign this Guaranty in whole or in part. The Bank may take any of the foregoing actions upon any terms and conditions as the Bank may elect, without giving notice to the Guarantor or obtaining the consent of the Guarantor and without affecting the liability of the Guarantor to the Bank.

*Section 6.4.* The Guarantor assumes full responsibility for keeping fully informed of the financial condition of the Borrower and all other circumstances affecting the Borrower's ability to perform its obligations to the Bank and agrees that the Bank will have no duty to report to the Guarantor any information which the Bank receives about the Borrower's financial condition or any circumstances bearing on its ability to perform.

*Section 6.5.* Upon the occurrence and during the continuance of an Event of Default, the Bank may elect to foreclose or exercise other remedies against any real or personal property security it holds for the Obligations or any part thereof or exercise any other remedy against the

Borrower or any such collateral security. No such action by the Bank will release or limit the liability of the Guarantor to the Bank, even if the effect of that action is to deprive the Guarantor of the right to collect reimbursement from the Borrower for any sums paid to the Bank.

*Section 6.6.* Any notice which the Guarantor or the Bank desire, or are required to give hereunder, shall be given in accordance with the Loan Agreement. Any notice to the Guarantor shall be sufficient if sent to the Guarantor in care of the Borrower at the address set forth in the Loan Agreement.

*Section 6.7.* This Guaranty, together with the Note, Mortgage, Loan Agreement and the Additional Collateral Documents, constitutes the entire understanding of the parties with respect to the transactions contemplated hereby and all prior understandings with respect thereto, whether written or oral, shall be of no force and effect.

*Section 6.8.* The descriptive headings of the various sections or parts of this Guaranty are for convenience only and shall not affect the meaning or construction of any of the provisions hereof.

*Section 6.9.* Time is of the essence of this Guaranty.

*Section 6.10.* All references herein to monetary amounts are references to U.S. Dollars.

*Section 6.11.* Subject to the Liability Amount limitation, this Guaranty shall be in addition to and not in substitution for any other guaranty issued by the Guarantor in connection with the Loan Agreement and the rights and remedies of the Bank shall be unaffected by the existence of another guaranty.

IN WITNESS WHEREOF, this Agreement has been executed by the undersigned as of the date first above written.

CITY OF EVANSTON, a municipal corporation

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

Printed Name: \_\_\_\_\_

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

**CLOSING CHECKLIST**

**HARRIS TRUST AND SAVINGS BANK  
\$25,000,000 CONSTRUCTION LOAN TO  
AHC EVANSTON, L.L.C.**

| DOCUMENT  | PARTY RESPONSIBLE | STATUS                          |
|---|-------------------|---------------------------------|
| 1. Construction Loan Agreement [979771]   | C&C               |                                 |
| 2. Promissory Note  | C&C               | See Exhibit A to Loan Agreement |
| 3. Construction Mortgage and Security Agreement with Assignment of Rents [979826]     | C&C               |                                 |
| 4. Assignment of Leases and Rents [979821]  | C&C               |                                 |
| 5. Completion Guaranty of the City of Evanston ("City") [979816]                      | C&C               |                                 |
| 6. Environmental Indemnity Agreement<br>(a) Borrower [_____]<br>(b) Guarantor [_____] | C&C               |                                 |
| 7. ADA Indemnity Agreement<br>(a) Borrower [_____]<br>(b) Guarantor [_____]           | C&C               |                                 |
| 8. Security Agreement [_____]   | C&C               |                                 |
| 9. Collateral Assignment of Permits, Licenses and Approvals [_____]                   | C&C               |                                 |
| 10. Collateral Assignment of Plans and Specifications [_____]                         | C&C               |                                 |
| 11. Collateral Assignment of Construction Contracts [_____]                           | C&C               |                                 |
| 12. Collateral Assignment of Architect's Agreement [_____]                            | C&C               |                                 |
| 13. Payment Guaranty of City [979814]   | C&C               |                                 |
| 14. UCC Financing Statements/Exhibit A [_____]  | C&C               |                                 |
| 15. Opinion of Counsel  | Borrower          |                                 |
| 16. Collateral Assignment of Management, Maintenance and Other Contracts [_____]      | C&C               |                                 |

|     |   |     |  |
|-----|---|-----|--|
| 17. | Collateral Assignment of Engineer's Agreement | C&C |  |
|-----|---|-----|--|

II. CERTIFICATES, AUTHORIZATIONS AND ORGANIZATIONAL DOCUMENTS

|    | DOCUMENT  | PARTY RESPONSIBLE | STATUS |
|----|---|-------------------|--------|
| 1. | Certified copy of Operating Agreement of Borrower                           | Borrower          |        |
| 2. | Certified copy of Articles of Organization of Borrower/Charter of Guarantor | Borrower          |        |
| 3. | Good Standing Certificate of Borrower                                       | Borrower          |        |
| 4. | Certified copy of Resolution of Borrower                                    | Borrower          |        |
| 5. | Guarantor Authorization (Ordinance)   | Borrower          |        |
| 6. | Certificate of Existence of Borrower  | Borrower          |        |
| 7. | UCC/Judgment Lien Searches (Borrower)                                       | HTSB              |        |

III. ADDITIONAL REAL ESTATE DOCUMENTATION AND SHOWINGS

|     | DOCUMENT  | PARTY RESPONSIBLE | STATUS           |
|-----|---|-------------------|------------------|
| 1.  | ALTA Title Insurance Policy with Endorsements (Zoning 3.0, Comprehensive, Tax Parcel, Revolving Credit and Last Dollar) | Borrower          |                  |
| 2.  | ALTA Survey   | Borrower          |                  |
| 3.  | Casualty, Builder's Risk and Liability Insurance  | Borrower          |                  |
| 4.  | Flood Certification   | Borrower          |                  |
| 5.  | Phase I Environmental Reports (with reliance letter)  | Borrower          |                  |
| 6.  | Market/Feasibility Studies  | Borrower          |                  |
| 7.  | Evidence of Proper Zoning   | Borrower          | See Title Policy |
| 8.  | Evidence of Availability of Utilities   | Borrower          |                  |
| 9.  | Permits, Licenses and Authorizations  | Borrower          |                  |
| 10. | Architect's Agreement/Contractor's/ Engineer's Agreements   | Borrower          |                  |
| 11. | Agreements with Contractor, Architect and Engineer to honor contractual obligations for benefit of Bank [_____]         | C&C/Borrower      |                  |
| 12. | Final Project Budget  | Borrower          |                  |
| 13. | Project Schedule  | Borrower          |                  |

|     |  |          |  |
|-----|--|----------|--|
| 14. | Plans and Specifications                                       | Borrower |  |
| 15. | Site Plan  | Borrower |  |
| 16. | Certified copy of Redevelopment Agreement                      | Borrower |  |
| 17. | Consultant's Reports   | HTSB     |  |
| 18. | Financial Statements of Borrower and Guarantor                 | Borrower |  |
| 19. | Certified copy of Public Parking Garage Construction Agreement | Borrower |  |

IV. ADDITIONAL SHOWINGS

|    | DOCUMENT                             | PARTY RESPONSIBLE | STATUS |
|----|--------------------------------------|-------------------|--------|
| 1. | Payment of Commitment Fee (\$31,250) | Borrower          |        |
| 2. | C&C Legal Fees                       | Borrower          |        |

**Borrower:**

AHC Evanston, L.L.C.  
c/o Arthur Hill & Co., L.L.C.  
Five Revere Drive  
Suite 300  
Northbrook, Illinois 60062  
Attention: Eugene Reardon, Vice President  
Phone: \_\_\_\_\_  
FAX: \_\_\_\_\_  
E-mail: ahcrseftr@aol.com

**Borrower's:**

**Counsel:**

Herbert D. Hill, Esq.  
City of Evanston  
2100 Ridge Avenue  
Suite 4500  
Evanston, Illinois 60201  
Phone: 847-866-2937  
Fax: 847-328-2980  
E-mail: herbhill@aol.com

**HTSB:**

Harris Trust and Savings Bank  
111 West Monroe Street  
Chicago, Illinois 60603  
Attention: Dennis W. Rourke, Vice President  
Phone: 312.461.6762  
Fax: 312.461.2968

**C&C:**

Chapman and Cutler  
111 West Monroe Street  
Chicago, Illinois 60603  
Attention: Eric M. Roberson  
Phone: 312.845.3485  
Fax: 312.701.2361 (General)  
312.516.1485 (Desktop Fax)  
E-mail: roberson@chapman.com

Guarantor:

City of Evanston  
2100 Ridge Avenue  
Evanston, Illinois 60201  
Attention: Max Rubin  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
E-mail: vp60@aol.com