

Document prepared by: Thomas Warner, City of Davenport, 226 W. 4th Street, Davenport, IA 52801
Return to: Trudy Crane, City of Davenport, Office of Housing Rehabilitation, 226 W 4th St, Davenport IA 52801
563-326-7711

MORTGAGE

THIS MORTGAGE (Mortgage) is made between the City of Davenport (Lender) and Mississippi Retail Partners, LP (Mortgagor). This mortgage secures the payment of a loan of even date herewith made by Lender to Mississippi Housing Partners, LP ("Borrower") evidenced by a promissory note in the principal amount of \$495,000.00 (Note) which provides for three payment installments, with the full debt, if not paid earlier, due and payable in accordance with the Note. This Mortgage secures to Lender: (a) the repayment of the debt evidenced by the Note, with interest, and all renewals, extensions, modifications or refinancing thereof and any promissory note issued in substitution thereof; (b) the payment of all other sums, with interest, advanced under paragraph 5 of this document to protect the security of this Mortgage; and (c) the performance of Borrower's covenants and agreements under the Note and the mortgage given by Borrower to secure the Note and Mortgagor's covenants and agreements under this Mortgage. For this purpose, Mortgagor does hereby mortgage, grant a security interest in and convey to Lender the following described property (the Land) located in Scott County, Iowa:

Commercial Unit in Mississippi Lofts, a Condominium, in the City of Davenport, Scott County, Iowa, as shown and as legally described in Declaration of Submission of Property to Horizontal Property Regime of Mississippi Lofts, recorded as Document No. 2006-00003341 in the Office of the Recorder of Scott County, Iowa, on January 31, 2006, including an undivided interest in and to the general common elements and facilities of the Condominium Regime. Such Horizontal Property Regime affecting the real estate described as Lots 1, 2 and 3 in Block 57, in LeClaire's Second Addition to the Town (now City) of Davenport, Scott County, Iowa.

which has the address of 102 E 3rd St, Davenport IA 52801.

TOGETHER WITH:

- (a) **Buildings.** All buildings, structures and improvements now standing or hereafter constructed or placed on the Land (the Buildings, and all easements, appurtenances, riparian rights, mineral rights, water rights, rights in and to the lands lying in streets, alleys and roads adjoining the land, estates and other rights and interests now or hereafter belonging to or in any way pertaining to the land.
- (b) **Personal Property.** All fixtures and other personal property integrally belonging to, or hereafter becoming an integral part of the Land or Buildings, whether attached or detached, including but not limited to, light fixtures, shades, rods, blinds, venetian blinds, awnings, storm windows, screens, linoleum, water softeners, automatic heating and air conditioning equipment and all proceeds, products, increase, issue, accessions, attachments, accessories, parts, additions, repairs, replacements and substitutes of, to, and for the foregoing (the Personal Property).
- (c) **Cross-collateral.** It is understood and agreed that this Mortgage is given as additional security for repayment of the Note and that a default by Borrower under the terms of the Note or Borrower's mortgage to Lender

securing repayment of the Note shall also be a default under the terms of this Mortgage. No property pledged by the Mortgagor as security for the repayment of the debt evidenced by the Note will be released, nor any of the collateral or cross-collateral released, until all sums due and owing on the Note have been paid in full.

(d) **Revenues and Income.** All rents, issues, profits, leases, condemnation awards and insurance proceeds now or hereafter arising from the ownership, occupancy or use of the land, Buildings and Personal Property, or any part thereof (the Revenues and Income).

TO HAVE AND TO HOLD the Land, Buildings, Personal Property and Revenues and Income (collectively called the Mortgaged Property), together with all privileges, hereditaments thereunto now or hereafter belonging, or in any way appertaining and the products and proceeds thereof, unto Lender, its successors and assigns.

MORTGAGOR COVENANTS that Mortgagor holds clear title to the Mortgaged Property and title in fee simple in the Land and has the right, power and authority to execute this Mortgage, grant a security interest in and convey the Mortgaged Property and that the Mortgaged Property is free and clear of all encumbrances, except for encumbrances of record. Mortgagor will warrant and defend the title to the Mortgaged Property and the liens and priority of this Mortgage against all claims and demands whether existing or hereafter arising.

Mortgagor and Lender covenant and agree as follows:

1. Payment of Principal and Interest; Prepayment and Late Charges and Right to Cure. If Borrower does not promptly pay when due the principal of and interest on the debt evidenced by the Note and any prepayment and late charges due under the Note or timely perform all other obligations of Borrowers under the loan agreement and Note, then Lender shall give notice of the default to Mortgagor and Mortgagor shall have the right to cure the default.

2. Taxes. Mortgagor shall pay each installment of taxes and special assessments of every kind, now or hereafter levied against the Mortgaged Property before the same become delinquent, without notice or demand, and shall deliver to Lender proof of such payment fifteen (15) days after the day in which such tax or assessment becomes delinquent.

3. Liens. Mortgagor shall pay in a timely manner all taxes, assessments, charges, fines and impositions attributable to the Mortgaged Property which may attain priority over this Mortgage, and leasehold payments or ground rents, if any, Mortgagor shall promptly furnish to Lender receipts evidencing the payment.

Mortgagor shall not create, incur or suffer to exist any lien, encumbrance, security interest or charge on the Mortgaged Property or any part thereof which might or could be held to be equal or prior to the lien of this Mortgage, other than the lien of current real estate taxes and installments of special assessments with respect to which no penalty is yet payable. Mortgagor shall pay, when due, the claims of all persons supplying labor or materials in connection with the Mortgaged Property.

Mortgagor shall promptly discharge any lien which has, or may attain, priority over this Mortgage unless Mortgagor: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender; (b) contests in good faith the lien by or defends against enforcement of the lien in, legal proceedings which in the Lender's opinion operate to prevent the enforcement of the lien; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Mortgage. If Lender determines that any part of the Mortgaged Property is subject to a lien which may attain priority over this Mortgage, Lender may give Mortgagor a notice identifying the lien. Mortgagor shall satisfy the lien or take one or more of the actions set forth above within 10 days of the giving of notice.

4. Insurance.

- a. **Risks to be Insured.** Mortgagor, at their sole cost and expense, shall maintain insurance on the Buildings and other improvements now existing or hereafter erected on the Land and on the Personal Property included in the Mortgaged Property against loss by fire, extended coverage perils and such other hazards as Lender may from time to time require, such insurance to have a Replacement Cost endorsement attached thereto, with the amount of the insurance at least equal to the balance of amount owed under the Note. Mortgagor will at their sole cost and expense, from time to time, and at any time at the request of Lender, provide Lender with evidence satisfactory to Lender of the replacement cost of the Mortgaged Property. Mortgagor will maintain such other insurance as Lender may reasonably require.

- b. **Policy Provisions.** All insurance policies and renewals thereof maintained by Mortgagor pursuant to this Mortgage shall be written by an insurance carrier satisfactory to Lender, contain a mortgagee clause in favor and in form acceptable to Lender, contain an agreement of the insurer that it will not amend, modify or cancel the policy except after thirty (30) days prior written notice to Lender, and be reasonably satisfactory to Lender in all other respects.
- c. **Delivery of Policy or Certificate.** If requested by Lender, Mortgagor will deliver to Lender original policies satisfactory to Lender evidencing the insurance which is required under this Mortgage, and Mortgagor shall promptly furnish to Lender all renewal notices and, upon request of Lender, evidence of payment thereof. At least ten (10) days prior to the expiration date of a required policy, Mortgagor shall deliver to Lender a renewal policy in form satisfactory to Lender.
- d. **Assignment.** If the Mortgaged Property is sold at a foreclosure sale or if Lender shall acquire title to the Mortgaged Property, Lender shall have all of the right, title and interest of Mortgagor in and to any insurance policies required hereunder, and the unearned premiums thereon, and in and to the proceeds thereof resulting from any damage to the Mortgaged Property prior to sale or acquisition.
- e. **Notice of Damage or Destruction; Loss Adjustment.** If the Mortgaged Property or any part thereof shall be damaged or destroyed by fire or other casualty, Mortgagor will, within five (5) calendar days after the occurrence of the damage or destruction, give written notice thereof to the insurance carrier and to Lender and will not adjust any damage or loss which is estimated by Mortgagor in good faith to exceed \$25,000 unless Lender shall have joined in or concurred with such adjustment; but if there has been no adjustment of any such damage or loss within four (4) months from the date of occurrence thereof and if an Event of Default shall exist at the end of such four (4) month period or at any time thereafter, Lender may alone make proof of loss, adjust and compromise any claim under the policies, and appear in and prosecute any action arising from such policies. In connection therewith, Mortgagor do hereby irrevocably authorize, empower and appoint Lender as attorney-in-fact for Mortgagor (which appointment is coupled with an interest) to do any and all of the foregoing in the name and on behalf of Mortgagor.
- f. **Application of Insurance Proceeds.** All sums paid under any insurance policy required by this Mortgage shall be paid to Lender, which shall, at its option, apply the same (after first deducting therefrom Lender's expenses incurred in collecting the same including but not limited to reasonable attorneys' fees) to the reduction of amounts due under the Note or to the restoration, repair, replacement or rebuilding of the mortgaged property; provided, however, if funds are sufficient to restore, repair, or rebuild the mortgaged property, there is no default, and the Note is not within 6 months of Maturity, such funds shall be applied to the restoration, repair, replacement or rebuilding of Mortgaged Property and then secondly to the reduction of any further amounts due under the Note. Any application of insurance proceeds to principal of the Note shall not extend or postpone the due date of the installments payable under the Note or change the amount of such installments.
- g. **Expense Reimbursement.** Mortgagor shall promptly reimburse Lender upon demand for all of Lender's expenses incurred in connection with the collection of the insurance proceeds, including but not limited to reasonable attorneys' fees, and all such expenses shall be additional amounts secured by this Mortgage.

5. Protection of Lender's Rights in the Property. If Mortgagor fails to perform the covenants and agreements contained in this Mortgage, or there is a legal proceeding that may significantly affect Lender's rights in the Mortgaged Property (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture or to enforce laws or regulations), then Lender may do and pay for whatever is necessary to protect the value of the Mortgaged Property and Lender's rights in the Mortgaged Property. Lender's actions may include paying any sums secured by a lien which has priority over this Mortgage, appearing in court, paying reasonable attorneys' fees and entering on the Mortgaged Property to make repairs. Although Lender may take actions under this paragraph, Lender does not have to do so. Any amounts disbursed or incurred by Lender under this paragraph shall become additional debt of Mortgagor secured by this Mortgage. Unless Mortgagor and Lender agree to the other terms of payment, these amounts shall bear interest from the

date of disbursement at the Note rate and shall be immediately due and payable, with interest, upon notice from Lender to Mortgagor requesting payment.

6. Inspection. Lender or its agents shall have the right at reasonable times to enter upon the Mortgaged Property for the purpose of inspecting the Mortgaged Property. Lender shall have no duty to make such inspection. Nothing contained in this paragraph shall require Lender to incur any expense or do any act hereunder, and Lender shall not be liable to Mortgagor for any damage or claims arising out of action taken by Lender pursuant to this paragraph.

7. Condemnation. Mortgagor shall give Lender prompt notice of any action, actual or threatened, in condemnation or eminent domain and hereby assign, transfer and set over to Lender the entire proceeds of any award or claim for damages for all or any part of the Mortgaged Property taken or damaged under the power of eminent domain or condemnation. Lender is hereby authorized to intervene in any such action in the names of Mortgagor, to compromise and settle any such action or claim, and to collect and receive from the condemning authorities and give proper receipts and acquittance for such proceeds. Any expenses incurred by Lender in intervening in such action or compromising and settling such action or claim, or collecting such proceeds shall be reimbursed to Lender first out of the proceeds. The remaining proceeds or any part thereof shall be applied to reduction of amounts due under the Note or to the restoration or repair of the Mortgaged Property, the choice of application to be solely at the discretion of the Lender.

8. Events of Default. Each of the following occurrences shall constitute an event of default (Event of Default):

- a. Mortgagor shall default in the due observance or performance of or breach of its agreement contained in paragraph 1 hereof or shall default in the due observance or performance of or breach any other covenant, condition or agreement on its part to be observed or performed pursuant to the terms of this Mortgage.
- b. Mortgagor shall make an assignment for the benefit of its creditors, or a petition shall be filed by or against Mortgagor under the United States Bankruptcy Code or Mortgagor shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of a material part of its properties or of the Mortgaged Property or shall not, within thirty (30) days after the appointment of a trustee, receiver or liquidator of any material part of its properties or of the Mortgaged Property, have such appointment vacated.
- c. A judgment, writ or warrant of attachment or execution, or similar process shall be entered and become a lien on or be issued or levied against the Mortgaged Property or any part thereof which is not released, vacated or fully bonded within thirty (30) days after its entry, issue or levy.
- d. An event of default, however defined, shall occur under any other mortgage, assignment or other security document constituting a lien on the Mortgaged Property or any part thereof.
- e. If all or any part of the Mortgaged Property or any interest in it is sold or transferred (or if a beneficial interest in Mortgagor is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums due. Eligible transfers are as detailed in the Agreement for Covenants and Restrictions.

9. Acceleration; Foreclosure. Upon the occurrence of any Event of Default and at any time thereafter while such Event of Default exists, Lender may, at its option, exercise one or more of the following rights and remedies (and any other rights and remedies available to it):

- a. Lender may declare immediately due and payable all Notes secured by this Mortgage, and the same shall thereupon immediately be due and payable without further notice of demand.
- b. Mortgagor shall have and may exercise with respect to the Personal Property, all the rights and remedies accorded upon default of a secured part under the Iowa Uniform Commercial Code. If notice to Mortgagor of intended disposition of such property is required by law in a particular instance, such notice shall be deemed commercially reasonable if given to Mortgagor at least ten (10) days prior to the date of intended disposition.

- c. Lender may (and is hereby authorized and empowered to) foreclose this Mortgage in accordance with the law of the State of Iowa, and at any time after the commencement of an action in foreclosure, or during the period of redemption, the court having jurisdiction of the case shall at the request of Lender appoint a receiver to take immediate possession of the Mortgaged Property and of the Revenues and Income accruing therefrom, and to rent or cultivate the same as the trustee may deem best for the interest of all parties concerned, and such receiver shall be liable to account to Mortgagor only for the net profits, after application of rents, issues and profits upon the costs and expenses of the receivership and foreclosure and upon the Note.

10. Redemption. It is agreed that if this Mortgage covers less than ten (10) acres of land, and in the event of the foreclosure of this Mortgage and sale of the property by sheriff's sale in such foreclosure proceedings, the time of one year for redemption from said sale provided by the statutes of the State of Iowa shall be reduced to six (6) months provided the Lender, in such action files an election to waive any deficiency judgment against Mortgagor which may arise out of the foreclosure proceedings; all to be consistent with the provisions of Chapter 628 of the Iowa Code. If the redemption period is so reduced, for the first three (3) months after sale such right of redemption shall be exclusive to the Mortgagor, and the time periods in Sections 628.5, 628.15 and 628.16 of the Iowa Code shall be reduced to four (4) months.

It is agreed that the period of redemption after a foreclosure of this Mortgage shall be reduced to sixty (60) days if all three of the following contingencies develop: (1) The real estate is less than ten (10) acres in size; (2) the Court finds affirmatively that the real estate has been abandoned by the owners and those persons personally liable under this Mortgage at the time of foreclosure; and (3) Lender files an election to waive any deficiency judgment against Mortgagor or their successors in interest in such action. If the redemption period is so reduced, Mortgagor or their successors in interest or the owner shall have the exclusive right to redeem for the first thirty (30) days after such sale, and the time provided for redemption for creditors as provided in Sections 628.5, 628.15 and 628.16 of the Iowa Code shall be reduced to forty (40) days. Entry of appearance by pleading or docket entry by or on behalf of Mortgagor shall be presumption that the property is not abandoned. Any such redemption period shall be consistent with the provisions of Chapter 628 of the Iowa Code. This paragraph shall not be construed to limit or otherwise affect any redemption provisions contained in Chapter 628 of the Iowa Code.

11. Additional Instruments. At any time and from time to time until payment in full of the Note, Mortgagor, at Lender's request, will promptly execute and deliver to Lender such additional instruments as may be reasonably required to further evidence the lien of this Mortgage and to further protect the security interest of Lender in connection with the Mortgaged Property. Such instruments may include, but are not limited to, additional security agreements, financing statements, and continuation statements.

12. Mortgagor Not Released; Forbearance by Lender Not a Waiver. Extension of the time for payment or modification of amortization of the sums secured by this Mortgage granted by Lender to any successor in interest of Mortgagor shall not operate to release the liability of the original Mortgagor or Mortgagor's successors in interest. Lender shall not be required to commence proceedings against any successor in interest or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Mortgage by reason of any demand made by the original Mortgagor or Mortgagor's successors in interest. Any delay or forbearance by Lender in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy.

13. Fixture Filing. From the date of its recording, this Mortgage shall be effective as a financing statement filed as a fixture filing with respect to Personal Property and for this purpose the name and address of debtor is the name and address of Mortgagor as set forth in paragraph 17 herein and the name and address of the secured party is the name and address of the Lender as set forth in paragraph 17 herein.

14. Care of Property. Mortgagor shall take good care of the Mortgaged Property; shall keep the Buildings and the Personal Property now or later placed upon the Mortgaged Property in good and reasonable repair and shall not injure, destroy or remove either the Buildings or Personal Property during the term of this Mortgage. Mortgagor shall not make any material alteration in the Mortgaged Property without the prior written consent of Lender.

15. Successors and Assigns Bound; Joint and Several Liability; Co-signers. The covenants and agreements

of this Mortgage shall bind and benefit the successors and assigns of Lender and Mortgagor. Mortgagor's covenants and agreements shall be joint and several. Any Mortgagor who co-signs this Mortgage but does not execute the Note: (a) is co-signing this Mortgage only to mortgage, grant and convey that Mortgagor's interest in the Mortgaged Property under the terms of this Mortgage; (b) is not personally obligated to pay the sums secured by this Mortgage; and (c) agrees that Lender and any other borrower may agree to extend, modify, forbear or make any accommodations with regard to the terms of this Mortgage or the Note without the Mortgagor's consent.

16. Severability. In the event any portion of this Mortgage shall, for any reason, be held to be invalid, illegal or unenforceable in whole or in part, the remaining provisions shall not be affected thereby and shall continue to be valid and enforceable and if, for any reason, a court finds that any provision of this Mortgage is invalid, illegal, or unenforceable as written, but that by limiting such provision it would become valid, legal and enforceable then such provision shall be deemed to be written, construed and enforced as so limited.

17. Notices. All notices required to be given hereunder shall be in writing and deemed given when personally delivered or deposited in the United States mail, postage prepaid, sent certified or registered, addressed as follows:

- a. If to Lender, to: City of Davenport
Community & Economic Department
226 W. 4th Street
Davenport, IA 52801
Attention: Housing Rehabilitation Program
- b. If to Mortgagor, to: Mississippi Retail Partners, LP
10642 W 115th St
Overland Park KS 66210

18. Governing Law. This Mortgage shall be governed and construed in accordance with the laws of the State of Iowa.

19. Acknowledgment of Receipt of Copies of Mortgage and Note. Mortgagor hereby acknowledge the receipt of a copy of this Mortgage together with a copy of each promissory note secured hereby.

20. Release. Upon payment of all sums secured by this Mortgage, Lender shall release this Mortgage without charge to Mortgagor.

21. Waivers. Each of the undersigned relinquishes all rights of dower, waives all right of homestead and distributive share in and to the Mortgaged Property and waives any right to exemption as to the Mortgaged Property.

22. Additional Provisions. Mortgagor shall not be personally liable for the indebtedness represented by the Note. The parties enter into this agreement as of the date first written above.

SIGNATURES ON FOLLOWING PAGE

RETAIL JT
MISSISSIPPI HOUSING PARTNERS, L.P.

RETAIL JT
By: MISSISSIPPI HOUSING DEVELOPMENT, L.L.C.

Its General Partner

By: J&T Development, L.L.C., sole member

By: *[Signature]*
Jay Trevor, Sole Member

STATE OF *Iowa* COUNTY) SS: *Polk*

Retail This instrument was acknowledged before me on *February 10*, 2006 by Jay Trevor as Sole Member of J&T Development, L.L.C., the sole member of Mississippi *Retail* Housing Development, LLC, the general partner of Mississippi *Retail* Housing Partners, L. P., on behalf of Mississippi *Retail* Housing Partners, L. P.

[Signature]
Signature of Notarial Officer

Seal

