

UNOFFICIAL COPY



Doc#: 0518639057
Eugene "Gene" Moore Fee: \$66.50
Cook County Recorder of Deeds
Date: 07/05/2005 03:30 PM Pg: 1 of 22

10689308

1003

**MORTGAGE, SECURITY AGREEMENT AND FINANCING
STATEMENT**

MADE BY CIVF I - IL1M03, LLC a Delaware limited liability company

PREPARED BY:

Andrew Royce, Esquire
Sherin and Lodgen LLP
101 Federal Street
Boston, Massachusetts 02110

UNOFFICIAL COPY

PPM Loan No. 05-040-02

PREPARED BY AND
RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

Andrew Royce, Esquire
Sherin and Lodgen LLP
101 Federal Street
Boston, Massachusetts 02110

MORTGAGE, SECURITY AGREEMENT AND FINANCING STATEMENT

THIS **MORTGAGE** is made as of June 28, 2005, between CIVF I – IL1M03, LLC, a Delaware limited liability company, with an address c/o Cabot Industrial Value Fund, L.P., One Beacon Street, 17th Floor, Boston, Massachusetts 02108 (the "Mortgagor"), and **JACKSON NATIONAL LIFE INSURANCE COMPANY**, a Michigan corporation, with an address c/o PPM Finance, Inc., 225 West Wacker Drive, Suite 1200, Chicago, Illinois 60606 (the "Mortgagee").

RECITALS

- A. Mortgagee has made a loan (the "Loan") to Mortgagor and certain other borrowers affiliated with Mortgagor (the "Other Borrowers") repayment of which is guaranteed by one or more other entities affiliated with Mortgagor (the "Guarantors") pursuant to a Loan Agreement of even date herewith among Mortgagor, the Other Borrowers, the Guarantors and Mortgagee (the "Loan Agreement"). The Loan is evidenced by a promissory note of even date herewith from the Mortgagor and the Other Borrowers to the Mortgagee in the original principal amount of Sixty Two Million Seven Hundred Forty Thousand Dollars (\$62,740,000.00) (the "Note").
- B. In order to secure the Loan, the Other Borrowers and the Guarantors have concurrently herewith executed certain mortgages, deeds of trust or deeds to secure debt encumbering properties owned by the Other Borrowers and the Guarantors (the "Other Mortgages").
- C. The Loan Agreement permits, under certain conditions, the release of certain properties securing the Loan, as well as the addition of and substitution of properties to secure the Loan. Accordingly, the terms "Other Borrowers" and "Guarantors" as used herein shall refer to the Other Borrowers and Guarantors under the Loan as exist from time to time as identified in the Note and Loan Agreement, as they may be amended, and the term "Other Mortgages" as used herein shall refer to the other mortgages, deeds of trust or deeds to secure debt which secure the Loan from time to time as identified in the Loan Agreement, as it may be amended.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

1. MORTGAGE AND SECURED OBLIGATIONS.

1.1 Mortgage. For purposes of securing payment and performance of the Secured Obligations defined and described in Section 1.2, Mortgagor hereby irrevocably and unconditionally mortgages, grants, assigns, remises, releases, warrants and conveys to Mortgagee, its successors and assigns all estate, right, title and interest which Mortgagor now has or may later acquire in and to the following property (all or any part of such property, or any interest in all or any part of it, as the context may require, the "Project"):

(a) the real property located in the County of Cook, State of Illinois and more particularly described in Exhibit A attached hereto, together with all existing and future easements and rights affording access to it (the "Land");

(b) all buildings, structures and improvements now located or later to be constructed on the Land (the "Improvements");

(c) all existing and future appurtenances, privileges, easements, franchises and tenements of the Land, including all minerals, oil, gas, other hydrocarbons and associated substances, sulfur, nitrogen, carbon dioxide, helium and other commercially valuable substances which may be in, under or produced from any part of the Land, all development rights and credits, air rights, water, water rights (whether riparian, appropriative or otherwise, and whether or not appurtenant) and water stock, and any land lying in the streets, roads or avenues, open or proposed, in front of or adjoining the Land and improvements;

(d) all existing and future leases, subleases, subtenancies, licenses, occupancy agreements and concessions ("Leases", as defined in the Assignment of Leases and Rents described in Section 2 herein, executed and delivered to Lender contemporaneously herewith) relating to the use and enjoyment of all or any part of the Land and Improvements, and any and all guaranties and other agreements relating to or made in connection with any of the Leases;

(e) all goods, materials, supplies, chattels, furniture, fixtures, equipment and machinery now or later to be attached to, placed in or on, or used in connection with the use, enjoyment, occupancy or operation of all or any part of the Land and Improvements, whether stored on the Land or elsewhere, including all pumping plants, engines, pipes, ditches and flumes, and also all gas, electric, cooking, heating, cooling, air conditioning, lighting, refrigeration and plumbing fixtures and equipment, all of which shall be considered to the fullest extent of the law to be real property for purposes of this Mortgage;

(f) all building materials, equipment, work in process or other personal property of any kind, whether stored on the Land or elsewhere, which have been or later will be acquired for the purpose of being delivered to, incorporated into or installed in or about the Land or Improvements;

(g) all of Mortgagor's interest in and to the Escrow Accounts (as defined in Section 3.1 of the Loan Agreement);

(h) all rights to the payment of money, accounts, accounts receivable, reserves, deferred payments, refunds, cost savings, payments and deposits relating to real estate taxes,

UNOFFICIAL COPY

insurance policies, utilities, cleaning or maintenance, or other services provided to or regarding the Land and Improvements, whether now or later to be received from third parties (including all earnest money sales deposits) or deposited by Mortgagor with third parties (including all utility deposits), contract rights, development and use rights, governmental permits and licenses, applications, architectural and engineering plans, specifications and drawings, as-built drawings, chattel paper, instruments, documents, notes, drafts and letters of credit (other than letters of credit in favor of Mortgagee), in each case which arise from or relate to the Land and Improvements generally;

(i) all proceeds, including all claims to and demands for them, of the voluntary or involuntary conversion of any of the Land, Improvements or the other property described above into cash or liquidated claims, including proceeds of all present and future fire, hazard or casualty insurance policies and all condemnation awards or payments now or later to be made by any public body or decree by any court of competent jurisdiction for any taking or in connection with any condemnation or eminent domain proceeding, and all causes of action and their proceeds for any damage or injury to the Land, Improvements or the other property described above or any part of them, or breach of warranty in connection with the construction of the Improvements, including causes of action arising in tort, contract, fraud or concealment of a material fact;

(j) all books and records pertaining to any and all of the property described above located at the Land and Improvements ("Books and Records");

(k) (i) all agreements heretofore or hereafter entered into relating to the construction, ownership, operation, management, leasing or use of the Land or Improvements and any and all present and future amendments, modifications, supplements, and addenda thereto, (ii) any and all guarantees, warranties and other undertakings (including payment and performance bonds) heretofore or hereafter entered into or delivered with respect to any of the items described in clause (i) above; (iii) all trade names, trademarks, logos and other materials used to identify or advertise, or otherwise relating to the Land or Improvements; and (iv) all building permits, governmental permits, licenses, variances, conditional or special use permits, and other authorizations (collectively, the "Permits") now or hereafter issued in connection with the construction, development, ownership, operation, management, leasing or use of the Land or Improvements, to the fullest extent that the same or any interest therein may be legally assigned by Mortgagor; and

(l) all proceeds of, additions and accretions to, substitutions and replacements for, and changes in any of the property described above.

TO HAVE AND TO HOLD the Project unto Mortgagee, its successors and assigns, forever, for the purposes and upon the uses herein set forth, together with all right to possession of the Project after the occurrence of any Event of Default; Mortgagor hereby RELEASING AND WAIVING all rights under and by virtue of the homestead exemption laws of the State of Illinois.

Capitalized terms used above and elsewhere in this Mortgage without definition have the meanings given them in the Loan Agreement referred to in Section 1.2 below.

UNOFFICIAL COPY

1.2 Secured Obligations. This Mortgage is made for the purpose of securing the following obligations (the "Secured Obligations") in any order of priority that Mortgagee may choose:

- (a) Payment of all obligations at any time owing under the Note; and
- (b) Payment and performance of all obligations of Mortgagor and the Other Borrowers under the Loan Agreement; and
- (c) Payment and performance of all obligations of Mortgagor under this Mortgage; and
- (d) Payment and performance of any obligations of Mortgagor, the Other Borrowers and the Guarantors under any Loan Documents (as defined in the Loan Agreement) which are executed by Mortgagor, the Other Borrowers and/or the Guarantors, including, without limitation, the Environmental Indemnity; and
- (e) Payment and performance of all future advances and other obligations that Mortgagor, the Other Borrowers, the Guarantors or any successor in ownership of all or part of the Project may agree to pay and/or perform (whether as principal, surety or guarantor) for the benefit of Mortgagee, when a writing evidences the parties' agreement that the advance or obligation be secured by this Mortgage; and
- (f) Payment and performance of all modifications, amendments, extensions and renewals, however evidenced, of any of the Secured Obligations.

All persons who hereafter acquire an interest in all or any part of the Project will be considered to have notice of, and will be subordinate to, the terms of the Secured Obligations and each other agreement or instrument made or entered into in connection with each of the Secured Obligations. These terms include any provisions in the Note or the Loan Agreement which provide that the interest rate on one or more of the Secured Obligations may vary from time to time.

2. ASSIGNMENT OF RENTS. As an inducement to Mortgagee to make the loan evidenced by the Note and the Loan Agreement, Mortgagor has contemporaneously herewith executed and delivered to Mortgagee an Assignment of Leases and Rents with respect to the Project. The terms thereof are incorporated herein by reference, with the parties acknowledging that the assignment contained therein is a present and absolute assignment and not a collateral assignment of Mortgagor's interest in the Leases and Rents described therein.

3. GRANT OF SECURITY INTEREST.

3.1 Security Agreement. The parties acknowledge that some of the Project and some or all of the Rents (as defined in the Assignment of Leases and Rents) may be determined under applicable law to be personal property or fixtures. To the extent that any Project or Rents may be personal property, Mortgagor as debtor hereby grants Mortgagee as secured party a security interest in all such Project and Rents, to secure payment and performance of the Secured Obligations. This provision is not in derogation of the absolute assignment of the Leases and

UNOFFICIAL COPY

Rents contained in such Assignment of Leases and Rents and incorporated herein by reference in Section 2 above. This Mortgage constitutes a security agreement under the Uniform Commercial Code as in effect in the state in which the Project is located (the "Code), covering all such Project and Rents.

3.2 Financing Statements. Mortgagor shall execute one or more financing statements and such other documents as Mortgagee may from time to time require to perfect or continue the perfection of Mortgagee's security interest in any Project or Rents. Mortgagor shall pay all fees and costs that Mortgagee may incur in filing such documents in public offices and in obtaining such record searches as Mortgagee may reasonably require. In case Mortgagor fails to execute any financing statements or other documents for the perfection or continuation of any security interest, Mortgagor hereby appoints Mortgagee as its true and lawful attorney-in-fact to execute any such documents on its behalf.

3.3 Fixture Filing. This Mortgage constitutes a financing statement filed as a fixture filing under Section 9-502(b) of the Code, as amended or recodified from time to time, covering any of the Project which now is or later may become fixtures attached to the Land or the Improvements. The following addresses are the mailing addresses of Mortgagor, as debtor under the Code, and Mortgagee, as secured party under the Code, respectively:

Mortgagor: CIVFI – IL1M93, LLC
c/o Cabot Industrial Value Fund, L.P.
One Beacon Street, 17th Floor
Boston, Massachusetts 02108

Mortgagee: Jackson National Life Insurance Company
c/o PPM Finance, Inc.
225 West Wacker Drive, Suite 1200
Chicago, Illinois 60606
Attn: Commercial Mortgage Servicing Manager

3.4 Remedies of a Secured Party. Upon an Event of Default hereunder, Mortgagee shall have the remedies of a secured party under the Code, including, without limitation, the right to take immediate and exclusive possession of the Collateral, or any part thereof, and for that purpose, so far as Mortgagor can give authority therefor, with or without judicial process, may enter (if this can be done without breach of the peace) upon any place which the Collateral or any part thereof may be situated and remove the same therefrom (provided that if the Collateral is affixed to real estate, such removal shall be subject to the conditions stated in the Code); and Mortgagee shall be entitled to hold, maintain, preserve and prepare the Collateral for sale, until disposed of, or may propose to retain the Collateral subject to Mortgagor's right of redemption in satisfaction of Mortgagor's obligations, as provided in the Code. Mortgagee may render the Collateral unusable without removal and may dispose of the Collateral on the Project. Mortgagee may require Mortgagor to assemble the Collateral and make it available to Mortgagee for its possession at a place to be designated by Mortgagee which is reasonably convenient to both parties. Mortgagee will give Mortgagor at least ten (10) days' notice of the time and place of any public sale of the Collateral or of the time after which any private sale or any other intended disposition thereof is made. The requirements of reasonable notice shall be met if such

UNOFFICIAL COPY

notice is mailed, by certified United States mail or equivalent, postage prepaid, to the address of Mortgagor hereinafter set forth at least ten (10) days before the time of the sale or disposition. Mortgagee may buy at any public sale. Mortgagee may buy at private sale if the Collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations. Any such sale may be held in conjunction with any foreclosure sale of the Project. If Mortgagee so elects, the Project and the Collateral may be sold as one lot. The net proceeds realized upon any such disposition, after deduction for the expenses of retaking, holding, preparing for sale, selling and the reasonable attorneys' fees and legal expenses incurred by Mortgagee, shall be applied against the Secured Obligations in such order or manner as Mortgagee shall select. Mortgagee will account to Mortgagor for any surplus realized on such disposition.

3.5 Representations and Warranties. Mortgagor represents and warrants that:

- (a) Mortgagor is the record owner of the Project;
- (b) Mortgagor's chief executive office is located in the State of Massachusetts;
- (c) Mortgagor's state of formation is the State of Delaware;
- (d) Mortgagor's exact legal name is as set forth in the first paragraph of this Mortgage; and
- (e) Mortgagor's organizational identification number is 61-1437970.
- (f) Mortgagor agrees that:
 - (i) Where Collateral is in possession of a third party, Mortgagor will join with the Mortgagee in notifying the third party of the Mortgagee's interest and obtaining an acknowledgment from the third party that it is holding the Collateral for the benefit of Mortgagee;
 - (ii) Mortgagor will cooperate with the Mortgagee in obtaining control with respect to Collateral consisting of: deposit accounts, investment property, letter of credit rights and electronic chattel paper; and
 - (iii) Until the Secured Obligations are paid in full, Mortgagor will not change the state where it is located or change its company name without giving the Mortgagee at least thirty (30) days' prior written notice in each instance.

4. REPRESENTATIONS, COVENANTS AND AGREEMENTS.

4.1 Good Title. Mortgagor covenants that it is lawfully seized of the Project, that the Project is unencumbered except for the Permitted Exceptions (as defined in the Loan Agreement), and that it has good right, full power and lawful authority to convey and mortgage the same, and that it will warrant and forever defend the Project and the quiet and peaceful possession of the same against the lawful claims of all persons whomsoever.

UNOFFICIAL COPY

4.2 Insurance. In the event of any loss or damage to any portion of the Project due to fire or other casualty, or a taking of any portion of the Project by condemnation or under the power of eminent domain, the settlement of all insurance and condemnation claims and awards and the application of insurance and condemnation proceeds shall be governed by Section 5 of the Loan Agreement.

4.3 Stamp Tax. If, by the laws of the United States of America, or of any state or political subdivision having jurisdiction over Mortgagor, any tax is due or becomes due in respect of the issuance of the Note, or recording of this Mortgage, Mortgagor covenants and agrees to pay such tax in the manner required by any such law. Mortgagor further covenants to hold harmless and agrees to indemnify Mortgagee, its successors or assigns, against any liability incurred by reason of the imposition of any tax on the issuance of the Note or recording of this Mortgage.

4.4 Changes in Taxation. In the event of the enactment after this date of any law of the State in which the Project is located or any political subdivision thereof deducting from the value of land for the purpose of taxation any lien thereon, or imposing upon Mortgagee the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by Mortgagor, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or the Mortgagee's interest in the Project, or the manner of collection of taxes, so as to affect this Mortgage or the Secured Obligations, then Mortgagor, upon demand by Mortgagee, shall pay such taxes or assessments, or reimburse Mortgagee therefor; provided, however, that if in the opinion of counsel for Mortgagee (i) it might be unlawful to require Mortgagor to make such payment or (ii) the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then Mortgagee may elect, by notice in writing given to Mortgagor, to declare all of the Secured Obligations to be and become due and payable sixty (60) days from the giving of such notice.

4.5 Subrogation. Mortgagee shall be subrogated to the liens of all encumbrances, whether released of record or not, which are discharged in whole or in part by Mortgagee in accordance with this Mortgage or with the proceeds of any loan secured by this Mortgage.

4.6 Notice of Change. Mortgagor shall give Mortgagee prior written notice of any change in: (a) the location of its place of business or its chief executive office if it has more than one place of business; (b) the location of any of the Project, including the Books and Records; and (c) Mortgagor's name or business structure. Unless otherwise approved by Mortgagee in writing, all Project that consists of personal property (other than the Books and Records) will be located on the Land and all Books and Records will be located at Mortgagor's place of business or chief executive office if Mortgagor has more than one place of business.

4.7 Releases, Extensions, Modifications and Additional Security. From time to time, Mortgagee may perform any of the following acts without incurring any liability or giving notice to any person: (i) release any person liable for payment of any Secured Obligation; (ii) extend the time for payment, or otherwise alter the terms of payment, of any Secured Obligation; (iii) accept additional real or personal property of any kind as security for any Secured Obligation, whether evidenced by deeds of trust, mortgages, security agreements or any other instruments of security; (iv) alter, substitute or release any property securing the Secured Obligations; (v)

UNOFFICIAL COPY

consent to the making of any plat or map of the Project or any part of it; (vi) join in granting any easement or creating any restriction affecting the Project; or (vii) join in any subordination or other agreement affecting this Mortgage or the lien of it.

4.8 No Suretyship Defenses. Mortgagor acknowledges that this Mortgage secures the Secured Obligations of the Other Borrowers and the Guarantors in addition to the obligations of Mortgagor, and that to the extent this Mortgage secures the obligations of the Other Borrower and the Guarantors, Mortgagor may be deemed to be a guarantor or surety with respect to the Other Borrowers and the Guarantors. Insofar as Mortgagor may be such a guarantor or surety, Mortgagor agrees as follows:

(a) Warranties. Mortgagor warrants that: (i) to the extent this Mortgage secures the obligations of the Other Borrowers and the Guarantors, it is executed at the behest of the Other Borrowers and the Guarantors; (ii) this Mortgage complies with all agreements between Mortgagor, the Other Borrowers and the Guarantors regarding Mortgagor's execution hereof; (iii) Mortgagee has made no representation to Mortgagor as to the creditworthiness of the Other Borrowers and the Guarantors; (iv) Mortgagor has reviewed, is fully aware of, and approves of the content, terms and conditions set forth in all documentation relating to the obligations of the Other Borrowers and the Guarantors for which the lien of this Mortgage serves as security; and (v) Mortgagor has established adequate means of obtaining from the Other Borrowers and the Guarantors on a continuing basis financial and other information pertaining to the Other Borrowers' and the Guarantors' financial condition. Mortgagor further agrees that Mortgagee shall have no obligation to disclose to Mortgagor information or material acquired in the course of Mortgagee's relationship with the Other Borrowers and the Guarantors.

(b) Waivers.

(i) Mortgagor waives any right to require Mortgagee to: (a) proceed against any person, including any of the Other Borrowers, the Guarantors or any other guarantor; (b) proceed against or exhaust any collateral held by any of the Other Borrowers, the Guarantors or any other person; (c) give notice of the terms, time and place of any public or private sale of personal property security held by any of the Other Borrowers or the Guarantors; (d) pursue any remedy in Mortgagee's power; or (e) make any presentment, demand for performance, or give any notice of nonperformance, protest, notice of protest or notice of dishonor in connection with any obligation or evidence of indebtedness held by Mortgagee as security in connection with the Secured Obligations, or in connection with the creation of new or additional obligations.

(ii) Mortgagor waives any defense arising by reason of: (a) any bankruptcy, disability or other defense of any of the Other Borrowers, the Guarantors or any other person, including but not limited to the insolvency or bankruptcy of any of the Other Borrowers, the Guarantors or any other person, or any stay in connection with any such bankruptcy proceedings; (b) the cessation from any cause whatsoever, other than payment in full, of the Secured Obligations of any of the Other Borrowers, the Guarantors or any other person; (c) the application by any of the Other Borrowers or the Guarantors of the proceeds of any Secured Obligation secured hereby for purposes other than the purposes represented by the Other Borrowers or the Guarantors to Mortgagee or

UNOFFICIAL COPY

intended or understood by Mortgagee or Mortgagor; (d) any act or omission by Mortgagee which directly or indirectly results in or aids the discharge or release of any of the Other Borrowers, any of the Guarantors, any other person, any Secured Obligation secured hereby, or any collateral, by operation of law or otherwise; or (e) any modification of any Secured Obligation secured hereby, in any form whatsoever, including, without limitation, the renewal, extension, acceleration or other change in time for payment of such Secured Obligations, increase or decrease of the rate of interest thereon, or other change in the terms of such Secured Obligations or any part thereof.

(iii) Mortgagor waives all right which Mortgagor may have under: (a) any law which may limit the amount of a deficiency judgment based on any Secured Obligation secured hereby; (b) any bar to deficiency judgments, (c) any requirement of law that Mortgagee exhaust this or any other security for the Secured Obligations secured hereby, before proceeding against Mortgagor; (c) any law which may prohibit Mortgagee from enforcing its rights and remedies against Mortgagor by both a private trustee's sale and an action in court; or (d) any law which requires that a court action to enforce Mortgagee's rights be an action to foreclose this Mortgage.

(iv) Mortgagor waives all rights of subrogation as to Mortgagee, and Mortgagor further waives any right to enforce any remedy which Mortgagee now has or later may have against any of the Other Borrowers, any of the Guarantors, or any other person, and waives any benefit of, and any right to participate in, any security now or later held by Mortgagee.

(v) Without limiting any of the foregoing, Mortgagor waives all rights and defenses that Mortgagor may have because the Other Borrowers' or Guarantors' debts are secured by real property. This means, among other things: (a) Mortgagee may collect from Mortgagor without first foreclosing on any real or personal property collateral pledged by the Other Borrowers or the Guarantors; and (b) if Mortgagee forecloses on any real property collateral pledged by any of the Other Borrowers or any of the Guarantors, (1) the amount of the Secured Obligations may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price, and (2) Mortgagee may collect from Mortgagor even if Mortgagee, by foreclosing on the real property collateral pledged by any of the Other Borrowers or any of the Guarantors, has destroyed any right Mortgagor may have to collect from any of the Other Borrowers or any of the Guarantors. This is an unconditional and irrevocable waiver of any rights and defenses Mortgagor may have because the Other Borrowers' or the Guarantors' debts are secured by real property. In addition, Mortgagor waives all rights and defenses arising out of an election of remedies by Mortgagee, even if that election of remedies, such as a nonjudicial foreclosure with respect to security for a guaranteed obligation, has destroyed Mortgagor's rights of subrogation and reimbursement against the Other Borrowers or the Guarantors.

(c) Mortgagor's Understandings with Respect To Waivers. Mortgagor warrants and agrees that each of the waivers set forth above are made with Mortgagor's full knowledge of their significance and consequences, with the understanding that events giving rise to any defense waived may diminish, destroy or otherwise adversely affect rights which Mortgagor otherwise

UNOFFICIAL COPY

may have against the Other Borrowers or the Guarantors, Mortgagee or others, or against collateral, and that under the circumstances existing in connection herewith, the waivers are reasonable and not contrary to public policy or law. If any of the waivers are determined to be contrary to any applicable law or public policy, such waivers shall be effective to the maximum extent permitted by law.

(d) Subordination. All indebtedness of the Other Borrowers and the Guarantors to Mortgagor now or later existing is subordinated to the Secured Obligations secured hereby. All notes, documents, instruments, accounts, general intangibles and chattel paper now or later evidencing indebtedness of the Other Borrowers or the Guarantors to Mortgagor shall be marked with a legend that the indebtedness is subject to this Mortgage and, if Mortgagee so requests, shall be delivered to Mortgagee. Mortgagor will, and Mortgagee is authorized, in the name of Mortgagor from time to time to execute and file financing statements and continuation statements and execute such other documents and take such other action as Mortgagee deems necessary or appropriate to perfect, preserve and enforce its rights hereunder.

(e) Proceedings Affecting the Other Mortgagor. Mortgagor's interest in the Project shall not be discharged, released or exonerated from the lien or charge hereof by the voluntary or involuntary participation by any of the Other Borrowers or any of the Guarantors in any settlement or composition for the benefit of the creditors of Mortgagor, either in liquidation, readjustment, receivership, bankruptcy or otherwise.

5. DEFAULTS AND REMEDIES.

5.1 Events of Default. An "Event of Default" as defined in the Loan Agreement shall constitute an Event of Default hereunder.

5.2 Remedies. At any time after an Event of Default, Mortgagee shall be entitled to invoke any and all of the rights and remedies described below, in addition to all other rights and remedies available to Mortgagee at law or in equity. All of such rights and remedies shall be cumulative, and in addition to every other right, power or remedy, express or implied, given now or hereafter existing under any of the Loan Documents or at law or in equity, and each and every right, power and remedy herein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient by Mortgagee, and the exercise or the beginning of the exercise of any one or more of them shall not constitute an election of remedies and shall not be a waiver of the right to exercise at the same time or hereafter any other right, power or remedy, and no delay or omission of Mortgagee in the exercise of any right, power or remedy accruing hereafter or arising otherwise shall impair any such right, power or remedy, or be construed to be a waiver of any Event of Default or acquiescence therein.

(a) Acceleration. Mortgagee may declare any or all of the Secured Obligations to be due and payable immediately.

(b) Receiver. Mortgagee shall, as a matter of right, without notice and without giving bond to Mortgagor or anyone claiming by, under or through Mortgagor, and without regard for the solvency or insolvency of Mortgagor or the then value of the Project, to the extent permitted by applicable law, be entitled to have a receiver appointed for all or any part of the Project and

UNOFFICIAL COPY

the Rents, and the proceeds, issues and profits thereof, with the rights and powers referenced below and such other rights and powers as the court making such appointment shall confer, and Mortgagor hereby consents to the appointment of such receiver and shall not oppose any such appointment. Such receiver shall have all powers and duties prescribed by Illinois law, all other powers which are necessary or usual in such cases for the protection, possession, control, management and operation of the Project, and such rights and powers as Mortgagee would have, upon entering and taking possession of the Project under subsection (c) below.

(c) Entry. Mortgagee, in person, by agent or by court-appointed receiver, may enter, take possession of, manage and operate all or any part of the Project, and may also do any and all other things in connection with those actions that Mortgagee may in its sole discretion consider necessary and appropriate to protect the security of this Mortgage. Such other things may include: taking and possessing all of Mortgagor's or the then owner's Books and Records; entering into, enforcing, modifying or canceling leases on such terms and conditions as Mortgagee may consider proper; obtaining and evicting tenants; fixing or modifying Rents; collecting and receiving any payment of money owing to Mortgagor; completing any unfinished construction; and/or contracting for and making repairs and alterations. If Mortgagee so requests, Mortgagor shall assemble all of the Project that has been removed from the Land and make all of it available to Mortgagee at the site of the Land. Mortgagor hereby irrevocably constitutes and appoints Mortgagee as Mortgagor's attorney-in-fact to perform such acts and execute such documents as Mortgagee in its sole discretion may consider to be appropriate in connection with taking these measures, including endorsement of Mortgagor's name on any instruments.

(d) Cure; Protection of Security. Mortgagee may cure any breach or default of Mortgagor, and if it chooses to do so in connection with any such cure, Mortgagee may also enter the Project and/or do any and all other things which it may in its sole discretion consider necessary and appropriate to protect the security of this Mortgage. Such other things may include: appearing in and/or defending any action or proceeding which purports to affect the security of, or the rights or powers of Mortgagee under, this Mortgage; paying, purchasing, contesting or compromising any encumbrance, charge, lien or claim of lien which in Mortgagee's sole judgment is or may be senior in priority to this Mortgage, such judgment of Mortgagee to be conclusive as between the parties to this Mortgage; obtaining insurance and/or paying any premiums or charges for insurance required to be carried under the Loan Agreement; otherwise caring for and protecting any and all of the Project; and/or employing counsel, accountants, contractors and other appropriate persons to assist Mortgagee. Mortgagee may take any of the actions permitted under this Section 5.2(d) either with or without giving notice to any person. Any amounts expended by Mortgagee under this Section 5.2(d) shall be secured by this Mortgage.

(e) Uniform Commercial Code Remedies. Mortgagee may exercise any or all of the remedies granted to a secured party under the Code.

(f) Foreclosure; Lawsuits. Mortgagee shall have the right in one or several concurrent or consecutive proceedings, to foreclose the lien hereof upon the Project or any part thereof, for the Secured Obligations, or any part thereof, by any proceedings appropriate under applicable law, including the Illinois Mortgage Foreclosure Act (Chapter 735, Sections 5/15-

UNOFFICIAL COPY

1101 et. seq., Illinois Compiled Statutes) (as may be amended from time to time, the "Act"). Mortgagee or its nominee may bid and become the purchaser of all or any part of the Project at any foreclosure or other sale hereunder, and the amount of Mortgagee's successful bid shall be credited on the Secured Obligations. Without limiting the foregoing, Mortgagee may proceed by a suit or suits in law or equity, whether for specific performance of any covenant or agreement herein contained or contained in any of the other Loan Documents (as defined in the Loan Agreement), or in aid of the execution of any power herein granted, or for any foreclosure under the judgment or decree of any court of competent jurisdiction, or for damages, or to collect the indebtedness secured hereby, or for the enforcement of any other appropriate legal, equitable, statutory or contractual remedy. Mortgagee may sell the Project at public auction in one or more parcels, at Mortgagee's option, and convey the same to the purchaser in fee simple, Mortgagor to remain liable for any deficiency for which Mortgagor shall be personally liable. In the event of a foreclosure sale, Mortgagee is hereby authorized, without the consent of Mortgagor, to assign any and all insurance policies to the purchaser at such sale or to take such other steps as Mortgagee may deem advisable to cause the interest of such purchaser to be protected by any of such insurance policies. In any suit to foreclose the lien hereof, there shall be allowed and included as additional indebtedness in the decree for sale all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for reasonable attorneys' fees, appraisers' fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to the title as Mortgagee may deem reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or the value of the Project. All expenditures and expenses of the nature mentioned in this paragraph and such other expenses and fees as may be incurred in the enforcement of Mortgagor's obligations hereunder, the protection of said Project and the maintenance of the lien of this Mortgage, including the reasonable fees of any attorney employed by Mortgagee in any litigation or proceeding affecting this Mortgage, the Note, or the Project, including probate and bankruptcy proceedings, or in preparations for the commencement or defense of any proceeding or threatened suit or proceeding shall be immediately due and payable by Mortgagor, with interest thereon until paid at the Default Rate and shall be secured by this Mortgage.

(g) Other Remedies. Mortgagee may exercise all rights and remedies contained in any other instrument, document, agreement or other writing heretofore, concurrently or in the future executed by Mortgagor or any other person or entity in favor of Mortgagee in connection with the Secured Obligations or any part thereof, without prejudice to the right of Mortgagee thereafter to enforce any appropriate remedy against Mortgagor. Mortgagee shall have the right to pursue all remedies afforded to a mortgagee under the applicable laws of the state in which the Project is located, and shall have the benefit of all of the provisions of such laws, including all amendments thereto which may become effective from time to time after the date hereof. In the event any provision of such laws which is specifically referred to herein may be repealed, Mortgagee shall have the benefit of such provision as most recently existed prior to such repeal, as though the same were incorporated herein by express reference.

(h) Intentionally Omitted.

UNOFFICIAL COPY

(i) Single or Multiple Foreclosure Sales. If the Project consists of more than one lot, parcel or item of property, Mortgagee may:

(1) designate the order in which the lots, parcels and/or items shall be sold or disposed of or offered for sale or disposition; and

(2) elect to dispose of the lots, parcels and/or items through a single consolidated sale or disposition to be held or made under or in connection with judicial proceedings, or by virtue of a judgment and decree of foreclosure and sale, or pursuant to the power of sale contained herein; or through two or more such sales or dispositions; or in any other manner Mortgagee may deem to be in its best interests (any foreclosure sale or disposition as permitted by the terms hereof is sometimes referred to herein as a "Foreclosure Sale;" and any two or more such sales, "Foreclosure Sales").

If it chooses to have more than one Foreclosure Sale, Mortgagee at its option may cause the Foreclosure Sales to be held simultaneously or successively, on the same day, or on such different days and at such different times and in such order as it may deem to be in its best interests. No Foreclosure Sale shall terminate or affect the liens of this Mortgage on any part of the Project which has not been sold, until all of the Secured Obligations have been paid in full.

(j) Compliance with Illinois Mortgage Foreclosure Law. In the event that any provisions in this Mortgage shall be inconsistent with any provision of the Act, the provisions of the Act shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the Act. If any provision of this Mortgage shall grant to Mortgagee (including Mortgagee acting as a mortgagee-in-possession) or a receiver appointed pursuant to the provisions of Paragraph 5.2 of this Mortgage any powers, rights or remedies prior to, upon or following the occurrence of an Event of Default which are more limited than the powers, rights or remedies that would otherwise be vested in Mortgagee or in such receiver under the Act in the absence of said provision, Mortgagee and such receiver shall be vested with the powers, rights and remedies granted in the Act to the full extent permitted by law. Without limiting the generality of the foregoing, all expenses incurred by Mortgagee which are of the type referred to in Section 5/15-1510 or 5/15-1512 of the Act, whether incurred before or after any decree or judgment of foreclosure, and whether or not enumerated in this Mortgage, shall be added to the Secured Obligation and/or by the judgment of foreclosure.

5.3 Application of Foreclosure Sale Proceeds. The proceeds of any Foreclosure Sale shall be applied in the following manner:

(a) First, to pay the portion of the Secured Obligations attributable to the expenses of sale, costs of any action and any other sums for which Mortgagor is obligated to reimburse Mortgagee hereunder or under the other Loan Documents;

(b) Second, to pay the portion of the Secured Obligations attributable to any sums expended or advanced by Mortgagee under the terms of this Mortgage which then remain unpaid;

UNOFFICIAL COPY

(c) Third, to pay all other Secured Obligations in any order and proportions as Mortgagee in its sole discretion may choose; and

(d) Fourth, to remit the remainder, if any, to the person or persons entitled to it.

5.4 Application of Rents and Other Sums. Mortgagee shall apply any and all Rents collected by it in the manner provided in the Assignment of Leases and Rents of even date herewith executed by Mortgagor in favor of Mortgagee. Any and all sums other than Rents collected by Mortgagee or a receiver and proceeds of a Foreclosure Sale which Mortgagee may receive or collect under Section 5.2 shall be applied in the following manner:

(a) First, to pay the portion of the Secured Obligations attributable to the costs and expenses of operation and collection that may be incurred by Mortgagee or any receiver;

(b) Second, to pay all other Secured Obligations in any order and proportions as Mortgagee in its sole discretion may choose; and

(c) Third, to remit the remainder, if any, to the person or persons entitled to it.

Mortgagee shall have no liability for any funds which it does not actually receive.

6. RELEASE OF LIEN.

(a) Release of Entire Project. If (i) the Project is released in connection with a substitution of another property for the Project pursuant to Section 6.4 of the Loan Agreement, or (ii) the Project is released pursuant to Section 6.5 of the Loan Agreement, then Mortgagee shall release this Mortgage and the lien thereof by proper instrument upon payment, performance and discharge of all of the Mortgagor's, the Other Borrowers' and the Guarantors' obligations under Section 6.4 or 6.5 of the Loan Agreement, as applicable, and payment by Mortgagor of any filing fee in connection with such release. If Mortgagor shall fully pay and perform all of the Secured Obligations and comply with all of the other terms and provisions hereof and the other Loan Documents to be performed and complied with by Mortgagor, and the Other Borrowers and the Guarantors shall comply with all of the terms and provisions of the other Loan Documents to be performed and complied with by the Other Borrowers and the Guarantors, then Mortgagee shall release this Mortgage and the lien thereof by proper instrument upon payment, performance and discharge of all of the Secured Obligations and payment by Mortgagor of any filing fee in connection with such release.

(b) Partial Release. If (i) a portion of the Project is released in connection with a substitution of another property for a portion of the Project pursuant to Section 6.4 of the Loan Agreement, or (ii) a portion of the Project is released pursuant to Section 6.5 of the Loan Agreement, then Mortgagee shall release this Mortgage and the lien thereof solely with respect to such portion of the Project by proper instrument upon payment, performance and discharge of all of Mortgagor's, the Other Borrowers' and the Guarantors' obligations under Section 6.4 or 6.5 of the Loan Agreement, as applicable, and payment by Mortgagor of any filing fee in connection with such partial release.

7. MISCELLANEOUS PROVISIONS.

UNOFFICIAL COPY

7.1 Additional Provisions. The Loan Documents fully state all of the terms and conditions of the parties' agreement regarding the matters mentioned in or incidental to this Mortgage. The Loan Documents also grant further rights to Mortgagee and contain further agreements and affirmative and negative covenants by Mortgagor which apply to this Mortgage and the Project.

7.2 Giving of Notice. Any notice, demand, request or other communication which any party hereto may be required or may desire to give hereunder shall be given as provided in Section 9.3 of the Loan Agreement.

7.3 Remedies Not Exclusive. No action for the enforcement of the lien or any provision hereof shall be subject to any defense which would not be good and available to the party interposing same in an action at law upon the Note. Mortgagee shall be entitled to enforce payment and performance of any of the Secured Obligations and to exercise all rights and powers under this Mortgage or other agreement or any laws now or hereafter in force, notwithstanding some or all of the Secured Obligations may now or hereafter be otherwise secured, whether by mortgage, deed of trust, pledge, lien, assignment or otherwise. Neither the acceptance of this Mortgage nor its enforcement, whether by court action or other powers herein contained, shall prejudice or in any manner affect Mortgagee's right to realize upon or enforce any other security now or hereafter held by Mortgagee, it being agreed that Mortgagee shall be entitled to enforce this Mortgage and any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. No waiver of any default of the Mortgagor hereunder shall be implied from any omission by Mortgagee to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the express waiver and that only for the time and to the extent therein stated. No acceptance of any payment of any one or more delinquent installments which does not include interest at the Default Rate from the date of delinquency, together with any required late charge, shall constitute a waiver of the right of Mortgagee at any time thereafter to demand and collect payment of interest at such Default Rate or of late charges, if any.

7.4 Waiver of Statutory Rights. To the extent permitted by law, Mortgagor hereby agrees that it shall not and will not apply for or avail itself of any appraisal, valuation, stay, extension or exemption laws, or any so-called "Moratorium Laws," now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, but hereby waives the benefit of such laws. Mortgagor for itself and all who may claim through or under it waives any and all right to have the property and estates comprising the Project marshaled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Project sold as an entirety without limiting the foregoing.

(a) The Mortgagor hereby expressly waives any and all rights of reinstatement and redemption, if any, under any order or decree of foreclosure of this Mortgage, on its own behalf and on behalf of each and every person, it being the intent hereof that any and all such rights of reinstatement and redemption of the Mortgagor and of all other persons are and shall be deemed to be hereby waived to the full extent permitted by the provisions of Illinois Compiled Statutes 735 ILCS 5/15-1601 or other applicable law or replacement statutes;

UNOFFICIAL COPY

(b) The Mortgagor will not invoke or utilize any such law or laws or otherwise hinder, delay or impede the execution of any right, power remedy herein or otherwise granted or delegated to the Mortgagee but will suffer and permit the execution of every such right, power and remedy as though no such law or laws had been made or enacted; and

(c) If the Mortgagor is a trustee, Mortgagor represents that the provisions of this paragraph (including the waiver of reinstatement and redemption rights) were made at the express direction of Mortgagor's beneficiaries and the persons having the power of direction over Mortgagor, and are made on behalf of the trust estate of Mortgagor and all beneficiaries of Mortgagor, as well as all other persons mentioned above.

7.5 Estoppel Affidavits. Mortgagor, within ten (10) business days after written request from Mortgagee, shall furnish a written statement, duly acknowledged, setting forth the unpaid principal of and interest on, the Secured Obligations and stating whether or not any offset or defense exists against such Secured Obligations, and covering such other matters as Mortgagee may reasonably require.

7.6 Merger. No merger shall occur as a result of Mortgagee's acquiring any other estate in or any other lien on the Project unless Mortgagee consents to a merger in writing.

7.7 Binding on Successors and Assigns. This Mortgage and all provisions hereof shall be binding upon Mortgagor and all persons claiming under or through Mortgagor, and shall inure to the benefit of Mortgagee and its successors and assigns.

7.8 Captions. The captions and headings of various paragraphs of this Mortgage are for convenience only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

7.9 Severability. If all or any portion of any provision of this Mortgage shall be held to be invalid, illegal or unenforceable in any respect, then such invalidity, illegality or unenforceability shall not affect any other provision hereof or thereof, and such provision shall be limited and construed as if such invalid, illegal or unenforceable provision or portion thereof was not contained herein.

7.10 Effect of Extensions of Time and Amendments. If the payment of the Secured Obligations or any part thereof be extended or varied or if any part of the security be released, all persons now or at any time hereafter liable therefor, or interested in the Project, shall be held to assent to such extension, variation or release, and their liability and the lien and all provisions hereof shall continue in full force, the right of recourse, if any, against all such persons being expressly reserved by Mortgagee, notwithstanding such extension, variation or release. Nothing in this Section 7.10 shall be construed as waiving any provision contained herein or in the Loan Documents which provides, among other things, that it shall constitute an Event of Default if the Project be sold, conveyed, or encumbered.

7.11 Mortgagee's Lien for Service Charge and Expenses. At all times, regardless of whether any proceeds of the loan secured hereby have been disbursed, this Mortgage secures (in addition to the amounts secured hereby) the payment of any and all commissions, service charges, liquidated damages, expenses and advances due to or incurred by Mortgagee in

UNOFFICIAL COPY

connection with such loan; provided, however, that in no event shall the total amount secured hereby exceed two hundred percent (200%) of the face amount of the Note.

7.12 Applicable Law. This Mortgage shall be governed by and construed under the internal laws of the state in which the Project is located.

7.13 Limitation of Liability. The provisions of Section 9.18 of the Loan Agreement are hereby incorporated by reference.

7.14 Due on Sale Clause. As more fully set forth in Section 6.2 of the Loan Agreement, the assignment, sale, conveyance, pledge, transfer or encumbrance of the Project, or any interest therein, or the transfer of an interest in Mortgagor, except for the permitted transfers set forth in Section 6.3 of the Loan Agreement, without prior written consent of Mortgagee, shall constitute an Event of Default.

7.15 Time is of the Essence. Time is of the essence with respect to each and every covenant, agreement and obligation of Mortgagor under this Mortgage, the Note and the other Loan Documents.

7.16 Recordation. Mortgagor forthwith upon the execution and delivery of this Mortgage, and thereafter from time to time, will cause this Mortgage, and any security instrument creating a lien or evidencing the lien hereof upon the Project, or any portion thereof, and each instrument of further assurance, to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect the lien hereof upon, and the interest of Mortgagee in, the Project.

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

7.17 Modifications. This Mortgage may not be changed or terminated except in writing signed by both parties. The provisions of this Mortgage shall extend and be applicable to all renewals, amendments, extensions, consolidations, and modifications of the other Loan Documents, and any and all references herein to the Loan Documents shall be deemed to include any such renewals, amendments, extensions, consolidations or modifications thereof.

7.18 Independence of Security. Mortgagor shall not by act or omission permit any building or other improvement on any premises not subject to the lien of this Mortgage to rely on the Project or any part thereof or any interest therein to fulfill any municipal or governmental requirement, and Mortgagor hereby assigns to Mortgagee any and all rights to give consent for all or any portion of the Project to rely on any premises not subject to the lien of this Mortgage or any interest therein to fulfill any municipal or governmental requirement. Mortgagor shall not by act or omission impair the integrity of the Project as a single zoning lot, and as one or more complete tax parcels, separate and apart from all other premises. Any act or omission by

UNOFFICIAL COPY

Mortgagor which would result in a violation of any of the provisions of this Section 7.18 shall be void.

7.19 WAIVER OF JURY TRIAL. MORTGAGOR HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING OR COUNTERCLAIM, WHETHER IN CONTRACT, TORT OR OTHERWISE, RELATING DIRECTLY OR INDIRECTLY TO THIS MORTGAGE OR THE LOAN SECURED HEREBY OR ANY ACTS OR OMISSIONS OF MORTGAGEE, ITS OFFICERS, EMPLOYEES, DIRECTORS OR AGENTS IN CONNECTION THEREWITH.

7.20 Multisite Real Estate and Multiple Collateral Transaction. Mortgagor acknowledges that each of the Other Mortgages also secures the Loan, the indebtedness evidenced by the Note and the other obligations of Mortgagor under the Loan Documents. Mortgagor agrees that the lien of this Mortgage shall be absolute and unconditional and shall not in any manner be affected or impaired by any acts or omissions whatsoever of Mortgagee or any other holder of any of the indebtedness secured hereby, and, without limiting the generality of the foregoing, the lien and security hereof shall not be impaired by any acceptance of any collateral by Mortgagee or any other holder of any of the indebtedness secured hereby or by any failure, neglect or omission on the part of Mortgagee or any other holder of any the indebtedness secured hereby to realize upon or protect any of the indebtedness secured hereby or any collateral or security therefor including, without limitation, the Other Mortgages. The lien and security interest hereof shall not in any manner be impaired or affected by any release (except as to the property released), sale, pledge, surrender, compromise, settlement, renewal, extension, indulgence, alteration, substitution, exchange, change in, modification or disposition of any of the indebtedness secured hereby, or of any of the collateral or security therefor, including, without limitation, the Other Mortgages, or of any instrument or agreement setting forth the terms and conditions pertaining to the foregoing. Mortgagee may at its discretion foreclose, exercise any power of sale, or exercise any other remedy available to it under any or all of the Other Mortgages without first exercising or enforcing any of its rights and remedies hereunder. Such exercise of Mortgagee's rights and remedies under any or all of the Other Mortgages shall not in any manner impair the indebtedness secured hereby, except to the extent of payment, or the lien of this Mortgage, and any exercise of the rights and remedies of the Mortgagee hereunder shall not impair the lien of any of the Other Mortgages or any of Mortgagee's rights and remedies thereunder. Mortgagor specifically consents and agrees that Mortgagee may exercise its rights and remedies hereunder and under the Other Mortgages separately or concurrently and in any order that it may deem appropriate.

7.21 Maximum Indebtedness. Notwithstanding anything contained herein to the contrary, in no event shall the indebtedness secured by this Mortgage exceed an amount equal to \$125,480,000.00; provided, however, in no event shall Mortgagee be obligated to advance funds in excess of the face amount of the Note.

**[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK;
SIGNATURE PAGE FOLLOWS]**

UNOFFICIAL COPY

IN WITNESS WHEREOF, Mortgagor has executed this Mortgage as of the date first written above.

MORTGAGOR

CIVF I – IL1M03, LLC, a Delaware limited liability company

By: Cabot Industrial Value Fund, L.P., a Delaware limited partnership, its Managing Member

By: Cabot Industrial Value Fund Manager, LLC, a Massachusetts limited liability company, its sole General Partner

By: Cabot Properties, Inc., a Massachusetts corporation, its Manager

By: Mark A. Bechard
Mark A. Bechard, Senior Vice President

COMMONWEALTH OF MASSACHUSETTS
COUNTY OF SUFFOLK

On the 23rd day of June, 2005 before me, the undersigned notary public, personally appeared Mark A. Bechard, proved to me through evidence of identification, which were driver's license, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose as Senior Vice President of Cabot Properties, Inc., the Manager of Cabot Industrial Value Fund Manager, LLC, the sole General Partner of Cabot Industrial Value Fund, L.P., the Managing Member of CIVF I – IL1M03, LLC, a Delaware limited liability company.

Maria Mortimer
Notary Public
My Commission Expires  MARIA MORTIMER
Notary Public
Commonwealth of Massachusetts
My Commission Expires
August 30, 2007

UNOFFICIAL COPY**SCHEDULE A - Continued 10689308****Legal Description:**

that part of the west 1/2 of the southeast 1/4 of section 28, township 37 north, range 13, east of the third principal meridian, except that part used for 123rd Street, bounded and described as follows:

beginning at the northwest corner of said west 1/2 of the southeast 1/4 of section 28 and running thence south along the east line of said southeast 1/4 a distance of 1146.39 feet to a point of intersection of said west line with the northeasterly line of the property conveyed to the Illinois State Toll Highway Commission by deed recorded May 9, 1958 as document 17201136, (which point of intersection is 1509.54 feet north from the southwest corner of said southeast 1/4; thence southeastwardly along the northeasterly line of the property conveyed, (being a straight line, which if extended will intersect the east line of said west 1/2 of the southeast 1/4 of section 28 at a point 1214.48 feet north from the southeast corner of said west 1/2, a distance of 222.63 feet to a deflection point in said property line; thence southeastwardly, continuing along said property line, being a line forming an angle 02 degrees, 34 minutes, 34 seconds to the left with previous line as extended, a distance of 600.61 feet to a deflection point in said property line; thence southeastwardly, continuing along said property line, being a line forming an angle of 04 degrees 47 minutes, 49 seconds to the left with the previous course extended, a distance of 257.13 feet to a deflection point in said property line; thence northeastwardly continuing along said property line, being a line forming an angle of 32 degrees, 35 minutes, 03 seconds to the left with the previous line extended, a distance of 311.37 feet to its intersection with the east line of said west 1/2 of the southeast 1/4 of section 28; thence north along said east line of the west 1/2 of the southeast 1/4 of section 28, a distance of 1178.67 feet to the northeast corner of said west 1/2 of the southeast 1/4 of section 28; thence west along the north line of said west 1/2 of the southeast 1/4 of section 28, a distance of 1340.70 feet to the point of beginning, (excepting therefrom that part thereof lying east of a line, which is 367.33 feet east from and parallel with the west line of said west 1/2 of the southeast 1/4 of said section 28); also excepting therefrom that part taken for Laramie Avenue in condemnation proceedings entered December 3, 1980 as case no. 79CO2452, in Cook County, Illinois.