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Bayview Loan Servicing, LLC  
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Palm Harbor, FL 33683  
(800) 346-9152



Doc#: 0632235264 Fee: \$82.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 11/20/2008 11:07 AM Pg: 1 of 30

## ASSIGNMENT OF LEASES AND RENTS { ILLINOIS }

**Anthony Johnson, an Unmarried Man**

as Assignor  
(Borrower)

To

**InterBay Funding, LLC, a Delaware Limited  
Liability Company**

as Assignee  
(Lender)

Property of Cook County Clerk's Office

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**THIS ASSIGNMENT OF LEASES AND RENTS** ("Assignment") made as of August 15, 2006, by Anthony Johnson, an Unmarried Man, having an address at 5135 South Kenwood Avenue #501, Chicago, IL 60644, as assignor ("Borrower") to InterBay Funding, LLC, a Delaware Limited Liability Company, having an address at 89 Forbes Blvd., Suite 1000, Mansfield, MA 02048, as assignee ("Lender").

## RECITALS:

Borrower by its promissory note of even date herewith given to Lender is indebted to Lender in the principal sum of Four Hundred Eighty Thousand and No/100 Dollars (\$480,000.00) in lawful money of the United States of America (together with all extensions, renewals, modifications, substitutions and amendments thereof, the "Note"), with interest from the date thereof at the rates set forth in the Note, principal and interest to be payable in accordance with the terms and conditions provided in the Note.

Borrower desires to secure the payment of the Debt (defined below) and the performance of all of its obligations under the Note and the Other Obligations as defined in Article 2 of the Security Instrument (defined below).

In consideration of the credit represented by the Note, and other good and valuable consideration, and intending to be legally bound, the parties agree as follows:

## CONSIDERATION

**CONSIDERATION.** This Assignment is made in consideration of that certain loan made by Lender to Borrower evidenced by the Note and secured by that certain Mortgage and Security Agreement, Deed of Trust and Security Agreement, Deed to Secure Debt and Security Agreement and Fixture Filing or similar real estate security instrument given by Borrower for the benefit of Lender, dated the date hereof, in the principal sum of Four Hundred Eighty Thousand and No/100 Dollars (\$480,000.00), covering the Property, (the "Property"), described therein and legally described on *Exhibit A* attached hereto and intended to be duly recorded (the "Security Instrument"). The principal sum, interest and all other sums due and payable under the Note, the Security Instrument, this Assignment and the Other Security Documents (defined below) are collectively referred to as the "Debt." The documents other than this Assignment, the Note or the Security Instrument now or hereafter executed by Borrower and/or others and by or in favor of Lender which wholly or partially secure or guarantee payment of the Debt are referred to herein as the "Other Security Documents."

## ARTICLE 1. - ASSIGNMENT

Section 1.1. **PROPERTY ASSIGNED.** Borrower hereby irrevocably, absolutely and unconditionally assigns, transfers, conveys and grants to Lender the right, title and interest of Borrower, in and to all of the following property, rights, interests and estates, whether now owned, or hereafter acquired (the "Assigned Property"):

(a) **Leases and Other Agreements.** All existing and future leases and all other agreements, whether or not in writing, affecting the use, enjoyment or occupancy of the Property or any portion thereof now or hereafter made, whether before or after the filing by or against Borrower of any petition for relief under 11 U.S.C. § 101 et seq., as the same may be amended from time to time (the "Bankruptcy Code") together with any extension, renewal or replacement of the same (collectively the "Leases"); this Assignment of all such other present and future leases and present

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and future agreements being effective without further or supplemental assignment.

(b) Rents. All rents, additional rents, revenues, income, issues and profits (including all oil and gas or other mineral royalties and bonuses), deposits, accounts and other benefits arising from the Leases and renewals and replacements thereof or otherwise from the use, enjoyment and occupancy of the Property and any cash or security deposited in connection therewith, whether paid or accruing before or after the filing by or against Borrower of any petition for relief under the Bankruptcy Code (collectively, the "Rents").

(c) Bankruptcy Claims. All claims and rights (the "Bankruptcy Claims") to the payment of damages and other claims arising from any rejection by a lessee of any Lease under the Bankruptcy Code.

(d) Lease Guaranties. All claims and rights under any and all lease guaranties, letters of credit and any other credit support given to Borrower by any guarantor in connection with any of the Leases (individually, a "Lease Guarantor," and collectively, the "Lease Guarantors").

(e) Proceeds. All proceeds from any sale or other disposition of the Leases, the Rents, the Lease Guaranties and the Bankruptcy Claims.

(f) Other Rights. All rights, powers, privileges, options and other benefits of Borrower as lessor under the Leases and beneficiary under the Lease Guaranties, including without limitation the immediate and continuing right to make claim for, receive, collect and apply all Rents payable or receivable under the Leases and all sums payable under the Lease Guaranties or pursuant thereto (and to apply the same to the payment of the Debt or the Other Obligations), and to do all other things which Borrower or any lessor is or may become entitled to do under the Leases or the Lease Guaranties.

(g) Entry. The right, at Lender's option, upon revocation of the license granted herein, to enter upon the Property in person, by agent or by court-appointed receiver, to collect the Rents and enforce the Leases.

(h) Power of Attorney. Borrower's irrevocable power of attorney and power of substitution, coupled with an interest, to take any and all of the actions set forth in Section 3.1 of this Assignment and any or all other actions designated by Lender for the proper management and preservation of the Property.

(i) Other Rights and Agreements. Any and all other rights of Borrower in and to the items set forth in subsections (a) through (h) above, and all amendments, modifications, replacements, renewals, extensions, supplements, restatements and substitutions thereof.

Section 1.2. TERMINATION OF ASSIGNMENT. Upon payment in full of the Debt and the delivery and recording of a satisfaction or discharge of the Security Instrument duly executed by Lender, this Assignment shall become null and void and shall be of no further force and effect.

## ARTICLE 2. - TERMS OF ASSIGNMENT

Section 2.1. PRESENT ASSIGNMENT AND LICENSE BACK. It is intended by Borrower that this Assignment constitute a present, irrevocable, absolute and unconditional assignment of the Assigned Property, and not an assignment for additional security only. Nevertheless, subject to the terms of this Assignment and the Security Instrument, Lender grants to Borrower a revocable license

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to collect and receive the Rents and other sums payable with respect to the Assigned Property unless and until an Event of Default (as defined in the Security Instrument) shall occur. Borrower shall hold the Rents and all sums received pursuant to any Assigned Property, or a portion thereof sufficient to discharge all current sums due on the Debt, and all taxes, assessments, insurance, maintenance and repairs on the Property, in trust for the benefit of Lender for use in the payment of such sums.

Section 2.2. NOTICE TO LESSEES. Borrower hereby agrees to authorize and direct the lessees named in the Leases or any other or future lessees or occupants of the Property and all Lease Guarantors to pay over to Lender or to such other party as Lender directs all Rents and all sums due under any Lease Guaranties upon receipt from Lender of written notice to the effect that Lender is then the holder of the Security Instrument and that an Event of Default exists, and to continue so to do until otherwise notified by Lender.

Section 2.3. INCORPORATION BY REFERENCE. All representations, warranties, covenants, conditions and agreements contained in the Security Instrument as same may be modified, renewed, substituted or extended are hereby made a part of this Assignment to the same extent and with the same force as if fully set forth herein.

## ARTICLE 3. - REMEDIES

Section 3.1. REMEDIES OF LENDER.

(a) Upon or at any time after the occurrence of an Event of Default, the license granted to Borrower in Section 2.1 of this Assignment shall automatically be revoked, and Lender shall immediately be entitled to possession of all Rents and sums due and payable pursuant to any of the Assigned Property, whether or not Lender enters upon or takes control of the Property. In addition, upon or at any time after an Event of Default, without waiving such Event of Default, to the extent permitted by law, without notice and without regard to the adequacy of the security for the Debt, with or without bringing any action or proceeding, either in person or by agent, nominee or attorney, or a receiver appointed by a court, Lender, at its option, may dispossess Borrower and its agents and servants from the Property, and exclude Borrower and its agents or servants wholly therefrom and take possession of the Property and all books, records and accounts relating thereto without liability for trespass, damages or otherwise. Thereafter, Lender may have, hold, manage, lease and operate the Property on such terms and for such period of time as Lender may deem proper and either with or without taking possession of the Property in its own name, demand, sue for or otherwise collect and receive all Rents and other sums payable pursuant to any of the Assigned Property, including those past due and unpaid with full power to make from time to time all alterations, renovations, repairs or replacements thereto or thereof as may seem proper to Lender. Lender may apply the Rents and sums received pursuant to any of the Assigned Property to the payment of the following in such order and proportion as Lender in its sole discretion may determine: (i) all expenses of managing and securing the Property, including, without limitation, the salaries, fees and wages of a managing agent and such other employees or agents as Lender may deem necessary or desirable; (ii) all expenses of operating and maintaining the Property, including, without limitation, all utility charges, Taxes, and Other Charges (as such terms are defined in the Security Instrument) and any other liens, charges and expenses which Lender may deem necessary or desirable; (iii) the cost of all alterations, renovations, repairs or replacements; (iv) all expenses incident to taking and retaining possession of the Property; and (v) the Debt, together with all costs and reasonable attorneys' fees.

(b) In addition, upon the occurrence of an Event of Default, Lender, at its option,

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may (i) complete any construction on the Property in such manner and form as Lender deems advisable; (ii) exercise all rights and powers of Borrower, including, without limitation, the right to make, negotiate, execute, cancel, enforce or modify Leases, obtain and evict tenants, and demand, sue for, collect and receive all Rents from the Property and all sums payable under the Assigned Property; (iii) either require Borrower to pay monthly in advance to Lender, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupancy of such part of the Property as may be in possession of Borrower or (iv) require Borrower to vacate and surrender possession of the Property to Lender or to such receiver and, in default thereof, Borrower may be evicted by summary proceedings or otherwise as provided by law.

Section 3.2. OTHER REMEDIES. Nothing contained in this Assignment and no act done or omitted by Lender pursuant to the power and rights granted to Lender hereunder shall be deemed to be a waiver by Lender of its rights and remedies under the Note, the Security Instrument, or the Other Security Documents and this Assignment is made and accepted without prejudice to any of the rights and remedies possessed by Lender under the terms thereof. The right of Lender to collect the Debt and to enforce any other security therefor held by it may be exercised by Lender either prior to, simultaneously with, or subsequent to any action taken by it hereunder. Borrower hereby absolutely, unconditionally and irrevocably waives any and all rights to assert any setoff, counterclaim or crossclaim of any nature whatsoever with respect to the obligations of Borrower under this Assignment, the Note, the Security Instrument, the Other Security Documents or otherwise with respect to the loan secured hereby in any action or proceeding brought by Lender to collect same, or any portion thereof, or to enforce and realize upon the lien and security interest created by this Assignment, the Note, the Security Instrument, or any of the Other Security Documents (provided, however, that the foregoing shall not be deemed a waiver of Borrower's right to assert any compulsory counterclaim if such counterclaim is compelled under local law or rule of procedure, nor shall the foregoing be deemed a waiver of Borrower's right to assert any claim which would constitute a defense, setoff, counterclaim or crossclaim of any nature whatsoever against Lender in any separate action or proceeding).

Section 3.3. OTHER SECURITY. Lender may take or release other security for the payment of the Debt, may release any party primarily or secondarily liable therefor and may apply any other security held by it to the reduction or satisfaction of the Debt without prejudice to any of its rights under this Assignment.

Section 3.4. NON-WAIVER. The exercise by Lender of the option granted it in Section 3.1 of this Assignment and the collection of the Rents and other sums payable pursuant to the Assigned Property and the application thereof as herein provided shall not be considered a waiver of any default by Borrower under the Note, the Security Instrument, the Leases, this Assignment or the Other Security Documents. The failure of Lender to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Assignment. Borrower shall not be relieved of Borrower's obligations hereunder by reason of (a) the failure of Lender to comply with any request of Borrower or any other party to take any action to enforce any of the provisions hereof or of the Security Instrument, the Note or the Other Security Documents, (b) the release regardless of consideration, of the whole or any part of the Property, or (c) any agreement or stipulation by Lender extending the time of payment or otherwise modifying or supplementing the terms of this Assignment, the Note, the Security Instrument or the Other Security Documents. Lender may resort for the payment of the Debt to any other security held by or guaranties given to Lender in such order and manner as Lender, in its discretion, may elect. Lender may take any action to recover the Debt, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Lender thereafter to enforce its rights under this Assignment to the extent allowed by law. The rights of



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Lender under this Assignment shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Lender shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision.

## Section 3.5. BANKRUPTCY.

(a) Upon or at any time after the occurrence of an Event of Default, Lender shall have the right to proceed in its own name or in the name of Borrower in respect of any claim, suit, action or proceeding relating to the rejection of any Lease, including, without limitation, the right to file and prosecute, to the exclusion of Borrower, any proofs of claim, complaints, motions, applications, notices and other documents, in any case in respect of the lessee under such Lease under the Bankruptcy Code.

(b) If there shall be filed by or against Borrower a petition under the Bankruptcy Code, and Borrower, as lessor under any Lease, shall determine to reject such Lease pursuant to Section 365(a) of the Bankruptcy Code, then Borrower shall give Lender not less than ten (10) days' prior notice of the date on which Borrower shall apply to the bankruptcy court for authority to reject the Lease. Lender shall have the right, but not the obligation, to serve upon Borrower within such ten-day period a notice stating that (i) Lender demands that Borrower assume and assign the Lease to Lender pursuant to Section 365 of the Bankruptcy Code and (ii) Lender covenants to cure or provide adequate assurance of future performance under the Lease. If Lender serves upon Borrower the notice described in the preceding sentence, Borrower shall not seek to reject the Lease and shall comply with the demand provided for in clause (i) of the preceding sentence within thirty (30) days after the notice shall have been given, subject to the performance by Lender of the covenant provided for in clause (ii) of the preceding sentence.

## **ARTICLE 4. NO LIABILITY, FURTHER ASSURANCES**

Section 4.1. NO LIABILITY OF LENDER. This Assignment shall not be construed to bind Lender to the performance of any of the covenants, conditions or provisions contained in any Lease or Lease Guaranty or otherwise impose any obligation upon Lender. Lender shall not be liable for any loss sustained by Borrower resulting from Lender's failure to let the Property after an Event of Default or from any other act or omission of Lender in managing the Property after an Event of Default unless such loss is caused by the willful misconduct and bad faith or gross negligence of Lender. Lender shall not be obligated to perform or discharge any obligation, duty or liability under the Leases or any Lease Guaranties or under or by reason of this Assignment and Borrower shall, and hereby agrees, to indemnify Lender for, and to hold Lender harmless from, any and all liability, loss or damage which may or might be incurred under the Assigned Property or under or by reason of this Assignment and from any and all claims and demands whatsoever, including the defense of any such claims or demands which may be asserted against Lender by reason of any alleged obligations and undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in the Leases or any Lease Guaranties. Should Lender incur any such liability, the amount thereof, including costs, expenses and reasonable attorneys' fees, shall be secured by this Assignment and by the Security Instrument and the Other Security Documents and Borrower shall reimburse Lender therefor immediately upon demand and upon the failure of Borrower so to do Lender may, at its option, declare all sums secured by this Assignment and by the Security Instrument and the Other Security Documents immediately due and payable. This Assignment shall not operate to place any obligation or liability for the control, care, management or repair of the Property upon Lender, nor for the carrying out of any of the terms and conditions of the Leases or any Lease Guaranties; nor shall it operate to make Lender responsible or liable for any waste committed on the Property by the tenants

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or any other parties, or for any dangerous or defective condition of the Property, including without limitation the presence of any Hazardous Materials (as defined in the Security Instrument), or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any tenant, licensee, employee or stranger.

Section 4.2. NO MORTGAGEE IN POSSESSION. Nothing herein contained shall be construed as constituting Lender a "mortgagee in possession" in the absence of the taking of actual possession of the Property by Lender. In the exercise of the powers herein granted Lender, no liability shall be asserted or enforced against Lender, all such liability being expressly waived and released by Borrower.

Section 4.3. FURTHER ASSURANCES. Borrower will, at the cost of Borrower, and without expense to Lender, do, execute, acknowledge and deliver all and every such further acts, conveyances, assignments, notices of assignments, transfers and assurances as Lender shall, from time to time, require for the better assuring, conveying, assigning, transferring and confirming unto Lender the property and rights hereby assigned or intended now or hereafter so to be, or which Borrower may be or may hereafter become bound to convey or assign to Lender, or for carrying out the intention or facilitating the performance of the terms of this Assignment or for filing, registering or recording this Assignment and on demand, will execute and deliver and hereby authorizes Lender to execute in the name of Borrower to the extent Lender may lawfully do so, one or more financing statements, chattel mortgages or comparable security instruments, to evidence more effectively the lien and security interest hereof in and upon the Leases.

## ARTICLE - 5. DEFINITIONS

Section 5.1. CERTAIN DEFINITIONS. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Assignment may be used interchangeably in singular or plural form and the word "Borrower" shall mean "each Borrower and any subsequent owner or owners of the Property or any part thereof or interest therein," the word "Lender" shall mean "Lender and any subsequent holder of the Note," the word "Note" shall mean "the Note and any other evidence of indebtedness secured by the Security Instrument," the word "person" shall include an individual, corporation, partnership, limited liability company, trust, unincorporated association, government, governmental authority, and any other entity, the word "Property" shall include any portion of the Property and any interest therein, the phrases "attorneys' fees" and "counsel fees" shall include any and all attorneys', paralegal and law clerk fees and disbursements, including, but not limited to, fees and disbursements at the pre-trial, trial and appellate levels incurred or paid by Lender in protecting its interest in the Property, the Leases and the Rents and enforcing its rights hereunder, and the word "Debt" shall mean the principal balance of the Note with interest thereon as provided in the Note and the Security Instrument and all other sums due pursuant to the Note, the Security Instrument, this Assignment and the Other Security Documents; whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

## ARTICLE 6. - APPLICABLE LAW

Section 6.1. CHOICE OF LAW. This Assignment shall be governed, construed, applied and enforced in accordance with the laws of the state in which the Property is located, without regard to principles of conflicts of law.

Section 6.2. PROVISIONS SUBJECT TO APPLICABLE LAW. All rights, powers and

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remedies provided in this Assignment may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of law and are intended to be limited to the extent necessary so that they will not render this Assignment invalid, unenforceable or not entitled to be recorded, registered or filed under the provisions of any applicable laws.

## ARTICLE 7. - MISCELLANEOUS PROVISIONS

Section 7.1. CONFLICT OF TERMS. In case of any conflict between the terms of this Assignment and the terms of the Security Instrument, the terms of the Security Instrument shall prevail.

Section 7.2. NO ORAL CHANGE. This Assignment and any provisions hereof may not be modified, amended, waived, extended, changed, discharged or terminated orally, or by any act or failure to act on the part of Borrower or Lender, but only by an agreement in writing signed by the party against whom the enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

Section 7.3. AUTHORITY. Borrower represents and warrants that it has full power and authority to execute and deliver this Assignment and the execution and delivery of this Assignment has been duly authorized and does not conflict with or constitute a default under any law, judicial order or other agreement affecting Borrower or the Property.

Section 7.4. DUPLICATE ORIGINALS; COUNTERPARTS. This Assignment may be executed in any number of duplicate originals and each such duplicate original shall be deemed to be an original. This Assignment may be executed in several counterparts, each of which counterparts shall be deemed an original instrument and all of which together shall constitute a single Assignment. The failure of any party hereto to execute this Assignment, or any counterpart hereof, shall not relieve the other signatories from their obligations hereunder.

Section 7.5. NOTICES. All notices required or permitted hereunder shall be given as provided in the Security Instrument.

Section 7.6. LIABILITY. If Borrower consists of more than one person, the obligations and liabilities of each such person hereunder shall be joint and several. This Assignment shall be binding upon and inure to the benefit of Borrower and Lender and their respective successors and assigns forever.

Section 7.7. HEADINGS, ETC. The headings and captions of various paragraphs of this Assignment are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

Section 7.8. NUMBER AND GENDER. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

Section 7.9. SOLE DISCRETION OF LENDER. Wherever pursuant to this Assignment (a) Lender exercises any right given to it to approve or disapprove, (b) any arrangement or term is to be satisfactory to Lender, or (c) any other decision or determination is to be made by Lender, the decision of Lender to approve or disapprove, all decisions that arrangements or terms are satisfactory or not satisfactory and all other decisions and determinations made by Lender, shall be in the sole discretion of Lender, except as may be otherwise expressly and specifically provided herein.



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Section 7.10. COSTS AND EXPENSES OF BORROWER. To the extent permitted by applicable law, wherever pursuant to this Assignment it is provided that Borrower pay any costs and expenses, such costs and expenses shall include, but not be limited to, legal fees and disbursements of Lender, whether with respect to retained firms, the reimbursement of the expenses for in-house staff or otherwise.

Section 7.11. SEVERABILITY. If any term, covenant or condition of this Assignment is held to be invalid, illegal or unenforceable in any respect, this Assignment shall be construed without such provision.

Section 7.12. WAIVER OF TRIAL BY JURY. BORROWER AND LENDER, BY ITS ACCEPTANCE HEREOF, EACH HEREBY IRREVOCABLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY LAW, THE RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM, WHETHER IN CONTRACT, TORT OR OTHERWISE, RELATING DIRECTLY OR INDIRECTLY TO THE LOAN EVIDENCED BY THE NOTE, THE APPLICATION FOR THE LOAN EVIDENCED BY THE NOTE, THIS ASSIGNMENT, THE NOTE, THE SECURITY INSTRUMENT OR THE OTHER SECURITY DOCUMENTS OR ANY ACTS OR OMISSIONS OF ANY PARTY OR ANY OF THEIR RESPECTIVE OFFICERS, EMPLOYEES, DIRECTORS OR AGENTS IN CONNECTION THEREWITH. THIS WAIVER OF THE RIGHT TO TRIAL BY JURY IS A MATERIAL INDUCEMENT TO THE LENDER FOR THE LENDER TO MAKE THE LOAN.

THIS ASSIGNMENT, together with the covenants and warranties therein contained, shall inure to the benefit of Lender and any subsequent holder of the Security Instrument and shall be binding upon Borrower, its heirs, personal representatives, executors, administrators, successors and assigns and any subsequent owner of the Property.

READ ALL CREDIT AGREEMENTS BEFORE SIGNING. THE TERMS OF ALL CREDIT AGREEMENTS SHOULD BE READ CAREFULLY BECAUSE ONLY THOSE TERMS IN WRITING ARE ENFORCEABLE. NO OTHER TERMS OR ORAL PROMISES NOT CONTAINED OR SPECIFICALLY INCORPORATED BY WRITING IN THIS WRITTEN CREDIT AGREEMENT MAY BE LEGALLY ENFORCED. YOU MAY CHANGE THE TERMS OF THIS CREDIT AGREEMENT ONLY BY OTHER WRITTEN CREDIT AGREEMENTS.

[NO FURTHER TEXT - SIGNATURES APPEAR ON NEXT PAGE]

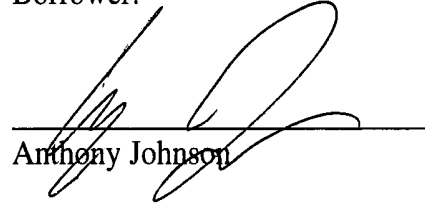
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IN WITNESS WHEREOF, Borrower has executed this instrument as of the day and year first above written.

Signed, sealed and delivered  
in the presence of:

Borrower:

Print Name: Anthony Johnson

  
Anthony Johnson

Print Name: \_\_\_\_\_

This Instrument Prepared by: Antonio Chimienti, Esq.

Upon recording return to: Bayview Loan Servicing, LLC  
c/o Nationwide Title Clearing, Inc.  
Attn: Final Docs Unit  
2100 Alt 19 North  
Palm Harbor, FL 33683  
(800) 346-9152

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## LEGAL DESCRIPTION ATTACHMENT

LOTS 41 AND 42 IN BRITIGAN'S HARRIS STREET AND CENTRAL AVENUE SUBDIVISION LOTS 141, 142, 143 AND 144 IN SCHOOL TRUSTEES' SUBDIVISION OF THE NORTHWEST QUARTER OF SECTION 15, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Property Identification Number: 15-16-120-008

Address of Property (for identification purposes only):

Street: 5551-53 W. CONGRESS  
City, State: CHICAGO, Illinois  
Unit/Lot:  
Condo/Subdiv:

Property of Cook County Clerk's Office



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## AFFIDAVIT OF OWNER

STATE OF ILLINOIS

DATE: August 15, 2006

COUNTY OF COOK

**BEFORE ME**, the undersigned authority, personally appeared the undersigned Anthony Johnson, an Unmarried Man (the "Affiant"), who being of lawful age and first duly sworn upon oath, deposes and says that:

1. The Affiant is the owner in fee simple and is now in possession of certain real property (the "Property") situate and being in Wayne County, Parish or Judicial District of the Commonwealth or State of ILLINOIS, being more particularly described as follows:

*See Exhibit "A" attached hereto and by this reference made a part hereof.*

2. Affiant makes this affidavit in order to induce InterBay Funding, LLC, a Delaware Limited Liability Company, (the "Lender"), to make a loan to the Affiant secured by a Mortgage and Security Agreement or Deed of Trust or Deed to Secure Debt and Assignment of Leases and Rents Agreement and Fixture Filing on the Property, and in order to induce Stewart Title Guaranty Company (the "Title Insurer") to insure the priority of said mortgage.

3. There are no outstanding contracts, either oral or written, for the furnishing of any labor, materials or services to the Property or to the improvements on the Property, except for:

*NONE*

4. All labor, materials or services (if any) for which a lien could be claimed against the Property pursuant to any and all Mechanic's Lien Laws were furnished, completed and in place not less than ninety (90) days prior to the date of this affidavit and all charges for any such labor, materials or services whenever furnished have been paid in full, and the Affiant has not received notice from any materialman, laborer or subcontractor pursuant to the provisions of any such lien laws.

5. The Property is free and clear of all liens (including mechanic's, materialman's or laborer's liens), taxes, encumbrances, claims, demands and judgments of every nature, kind and description whatsoever, except for the lien of real estate taxes for the current year and subsequent years, and except for:

*NONE*

6. There are no outstanding unrecorded easements, contracts for sale, agreements for deed, deeds, liens or mortgages affecting the Property or any portion thereof.

7. There are no outstanding pending assessments against the Property by any governmental agency or authority, nor any unpaid assessments or unpaid service charges outstanding for gas, water, garbage or sewerage services with respect to the Property.

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8. There are no federal or state tax claims, liens or penalties assessed against the Affiant, and there are no judgments against the Affiant unsatisfied of record in the courts of any state or of the United States of America.

9. No proceedings in bankruptcy have ever been brought by or against the Affiant, nor has the Affiant made any assignment for the benefit of creditors at any time, nor is there now in effect any assignment of rents of the Property or any part thereof except in favor of any present record mortgagee.

10. The Affiant has never changed its name, nor at any time used any name other than as set forth in this affidavit.

11. There is no person in possession of the Property or with a claim of possession to the Property, except for the Affiant and except for:

*NONE*

12. Except for property owned by tenants who have been disclosed in this affidavit, the Affiant is the owner of all personal property, chattels and fixtures attached to, appurtenant to or used in the operation of the Property or any improvements thereon, and all such personal property, chattels or fixtures owned by the Affiant are free and clear of all liens, security interests, financing agreements, claims and demands whatsoever, and any personal property tax thereon has been paid.

13. All buildings, fences and other structures on the Property shown on the survey thereof made by N/A, dated N/A remain as shown without any alteration having been made, and no additions of any buildings, fences or other structures or changes to the exteriors thereof have been made during the Affiant's ownership of the Property.

14. The following judgments are not against the Affiant but are against other persons of a similar name, and the Affiant does not know any of the respective judgment creditors and the Affiant has never been sued by any of them:

*NONE*

15. There has been no change in title to the Property from and after the effective date of the Title Insurer's commitment to insure said mortgage in favor of the Lender which could adversely affect the interest to be insured by the Title Insurer.

16. There are no matters pending against the Affiant or the Property that could give rise to a lien that would attach to the Property between the effective date of said title commitment and the actual date of recordation of the documents for the loan transaction.

17. The Affiant has not executed and shall not execute any instrument (and has taken no action and shall take no action) that would adversely affect the interest to be insured by the Title Insurer.

18. The Affiant shall indemnify and hold the Lender and the Title Insurer harmless of and from all loss, cost, damage and expense of every kind, including attorney's fees, which the Lender and/or the Title Insurer shall or may suffer or become liable for because of their reliance on the

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statements made in this affidavit or because of any change in the title to the Property as aforesaid.

The improvements upon the Property are all located entirely within the bounds of the Property, and there are no encroachments thereon. There are no existing violations of zoning ordinances or other restrictions applicable to the Property, and no portion of the Property constitutes "wetlands" as defined or delineated by the U.S. Army Corps of Engineers.

19. Affiant is neither principal nor surety on any bond payable to the Commonwealth or State of ILLINOIS.

20. Subsequent to the date that application was made to the Lender for the loan evidenced by the Note (the "Loan"), the Affiant has not incurred any material liabilities or obligations direct or contingent or entered into any material transaction agreement not in the ordinary course of business, and there has not been any material adverse change in the business prospects, properties or conditions (financial or other) of the Affiant, or any material change in its capitalization or debt.

21. Subsequent to the date that said application was made, the Property of Affiant has not been materially interfered with by strike, fire, flood, accident or other calamity, whether or not insured.

22. Affiant, in his/her capacity as authorized agent for the borrower on the related loan from Lender, agrees to comply with any and all requests by Lender to execute corrective loan documents and/or to otherwise assist in the correction of any errors related to the subject loan. Accordingly, Affiant hereby grants Lender a limited power of attorney, coupled with an interest and irrevocable so long as any indebtedness to Lender remains outstanding, to make such corrections to the promissory note, the mortgage or deed of trust, assignment of rents and leases, and all other applicable loan documents (collectively the "Loan Documents") as necessary to conform such Loan Documents to reflect the correct terms of the transaction in the event that Affiant fails to respond to the Lender's request for corrective assistance within 15 days. Affiant, as agent for borrower, allows Lender to make such corrections in order to assure that the Loan Documents will be acceptable in the marketplace in the instance of transfer, sale, conveyance or securitization by Lender. Affiant acknowledges that this Affidavit, and the power of attorney granted herein, may be recorded in the public record by Lender in Lender's sole discretion.

*FURTHER AFFIANT SAYETH NAUGHT.*

THIS INSTRUMENT INCLUDES A RIDER, THE TERMS OF WHICH ARE ATTACHED  
HERETO AND BY THIS REFERENCE MADE A PART HEREOF

AFFIANT:

  
\_\_\_\_\_  
Anthony Johnson





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## LEGAL DESCRIPTION ATTACHMENT

LOTS 41 AND 42 IN BRITIGAN'S HARRIS STREET AND CENTRAL AVENUE SUBDIVISION LOTS 141, 142, 143 AND 144 IN SCHOOL TRUSTEES' SUBDIVISION OF THE NORTHWEST QUARTER OF SECTION 16, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Property Identification Number: 16-16-120-008

Address of Property (for identification purposes only):

Street: 5551-53 W. CONGRESS  
City, State: CHICAGO, Illinois  
Unit/Lot:  
Condo/Subdiv:

Property of Cook County Clerk's Office

**UNOFFICIAL COPY****AMENDMENT TO AFFIDAVIT OF OWNER  
{ ILLINOIS }**

STATE OF ILLINOIS

COUNTY OF COOK

DATE: August 15, 2006

THIS AMENDMENT TO ILLINOIS AFFIDAVIT OF OWNER ("Amendment") modifies and amends that Affidavit of Owner ("Affidavit") dated August 15, 2006, and executed by Anthony Johnson ("Affiant") in connection with that certain loan in the amount of Four Hundred Eighty Thousand and No/100 Dollars (\$480,000.00) from InterBay Funding, LLC, a Delaware Limited Liability Company to Affiant.

1. Paragraph 6 is hereby deleted in its entirety and replaced as follows:

All labor, materials or services (if any) for which a lien could be claimed against the Property pursuant to the Illinois Mechanic's Lien Act (770 ILCS 60/0.01 et seq.) were furnished, completed and in place not less than four months prior to the date of this affidavit and all charges for any such labor, materials or services whenever furnished have been paid in full, and the Affiant has not received notice from any materialman, laborer or subcontractor of any claim or lien pursuant to the provisions of Illinois Revised Statutes Chapter 765, Article 60.

Except as is set forth herein, the Affidavit is unchanged and in full force and effect.

*FURTHER AFFIANT SAYETH NAUGHT*

AFFIANT:

Anthony Johnson

Print Name: Anthony Johnson



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## LEGAL DESCRIPTION ATTACHMENT

LOTS 41 AND 42 IN BRITIGAN'S HARRIS STREET AND CENTRAL AVENUE SUBDIVISION LOTS 141, 142, 143 AND 144 IN SCHOOL TRUSTEES' SUBDIVISION OF THE NORTHWEST QUARTER OF SECTION 15, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

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## AFFIDAVIT AND INDEMNITY OF BORROWER REGARDING HAZARDOUS AND TOXIC MATERIALS

STATE OF ILLINOIS

COUNTY OF COOK

DATE:

August 15, 2006

**BEFORE ME**, the undersigned authority, Anthony Johnson, an Unmarried Man, ("Borrower") who, being first duly sworn by me under oath, depose, state, warrant, represent and covenant as follows

1. The following definitions shall apply for the purposes of this Affidavit and Indemnity:

A. "Hazardous or Toxic Materials" includes but is not limited to any hazardous, toxic or harmful substances, wastes, materials, pollutants, or contaminants (including, without limitation, asbestos, radon, polychlorinated biphenyls, petroleum products, flammable explosives, radioactive materials, infectious substances or raw materials which include hazardous constituents) or any of the substances, and/or materials which are included under or regulated by any local, state, or federal laws rules or regulations pertaining to environmental regulation, contamination or clean up (said laws, rules and regulations collectively referred to herein as "Environmental Laws"), including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 USC 9601 et seq. and 40 CFR 302.1 et seq.); the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901 et seq.); the Federal Waste Pollution Control Act (33 USC 1251 et seq. and 40 CFR 116.1 et seq.), and the Hazardous Materials Transportation Act (49 U.S.C. 1801 et seq.).

B. The "Property" includes the land as more fully described on *Exhibit "A"* attached hereto and by reference made a part hereof, including all buildings and other improvements now or hereafter located thereon, and any real property hereinafter encumbered by the lien of the Security Instrument described below.

2. Borrower is the fee simple title holder of the Property.

3. Borrower is borrowing the sum of Four Hundred Eighty Thousand and No/100 Dollars (\$480,000.00) (the "Loan") from InterBay Funding, LLC, a Delaware Limited Liability Company ("Lender") evidenced by a Promissory Note in the amount of the Loan (the "Note") secured by a Mortgage and Security Agreement executed simultaneously herewith and to be recorded among the Public Records in the County, Parish or Judicial District of the Commonwealth or State where the Property is located ("Security Instrument"). The Note, Security Instrument and other documents as defined in the Note and/or Security Agreement are hereafter called the "Loan Documents". As a condition to making the Loan, the Lender requires Borrower to provide certain full recourse indemnities concerning Hazardous or Toxic Materials, as hereinafter set forth. Borrower acknowledges Lender's reliance hereon.

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4. Borrower has undertaken such inquiry into the previous ownership and uses of the Property as is consistent with good commercial practice in an effort to minimize liability with respect to any Hazardous or Toxic Materials.

5. Borrower represents and warrants that:

(a) The Property is presently free from contamination by or the presence of Hazardous or Toxic Materials, and the Property and the activities conducted thereon do not pose any significant hazard to human health or the environment or violate any Environmental Laws.

(b) The Property and any improvements now or hereafter located thereon have not in the past been used, are not presently being used, and will not be used in the future for such time as any indebtedness is owned by Borrower to Lender (or its assigns) for the generation, release, treatment, discharge, emission, handling, storage, transportation, or disposal of Hazardous or Toxic Materials in excess of any acceptable levels imposed by any applicable governmental authority or Environmental Laws.

(c) There has been no release, discharge, spillage, emanation, uncontrolled loss or seepage of any Hazardous Substance to the air, ground or water attributable to or in any way related to the Borrower, or the Property. Any and all discharges and releases or any substances to the air, ground and water, attributable to or in any way related to the Borrower or the Property have, at all times, been within all applicable limits and restrictions set by applicable laws, statutes, ordinances, regulations or similar standards or by applicable permits, licenses or similar grants of governmental permission or approval (collectively the "Permits").

(d) There are no underground or aboveground storage tanks or storage tanks having ten percent or more of their volume below ground located on the Property.

(e) No substances containing Polychlorinated Biphenyls (PCBs) are used or stored on the Property.

(f) There is no asbestos on any part of the Property or in any of the building or other improvements located thereon.

(g) There are no lagoons, waste piles, surface impoundments, dry wells or similar items on the Property. Such items have not existed on such Property at any time during which the Borrower owned or operated such Property, or to the best knowledge of the Borrower, at any other time.

(h) There are no currently outstanding orders or notices of violations from the Department of Environment Protection (the "DEP"), the United States Environmental Protection Agency (the "EPA") or any similar state or other organization pertaining to the Borrower, the Property or any occupant of such Property, and no such order or notices have been issued in the past.

(i) There are no actions pending or threatened by any party seeking to enforce any law, statute, ordinance, regulation or similar standard, including, but not limited to, those relating to environmental protection, pollution control, hazardous waste, and any other waste (collectively the "Environmental Laws"), or seeking damages or other relief based on the Borrower's alleged violation of any such Environmental Law or any pollution or contamination caused by the Borrower or located on or emanating from the Property.

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(j) The Property was never utilized as nor did it ever abut a dump, landfill or other waste treatment storage or disposal facility.

(k) The Borrower and the Property are and, to the best knowledge of the Borrower, at all times have been in compliance with all Environmental Laws.

6. The Borrower shall immediately notify the Lender in writing of the occurrence of any of the following:

(a) Any release, discharge, spillage, emanation, uncontrolled loss or seepage of any Hazardous Substance on or from the Property.

(b) Any order, notice of violation or other action by the DEP, the EPA or any similar entity pertaining to any alleged violation of any Environmental Law by the Borrower or any alleged violation of any Environmental Law occurring on the Property.

(c) Any action by any party seeking to enforce any Environmental Law or seeking damages or other relief based on the Borrower's alleged violation of any Environmental Law or any pollution or contamination caused by the Borrower or located on or emanating from the Property.

7. The Borrower shall provide the Lender with copies of all notices, orders, summonses, correspondence and other similar items delivered to or served upon the Borrower pertaining to any of the foregoing.

8. Borrower hereby indemnifies and agrees to defend and save and hold Lender and its directors, officers, employees, agents, successors and assigns harmless from and against any and all losses, liabilities (including, without limitation, strict liability and common law liability), obligations, damages (including, without limitation, all foreseeable and unforeseeable consequential damages to any person or entity including third parties), injuries (including, without limitation, injuries to the environment), defenses, charges, penalties, interest, expenses, fees (including attorneys' fees at all pretrial, administrative and judicial hearings, trial and appellate levels), costs (including, without limitations, costs of any settlement), judgements, administrative or judicial proceedings and orders, remedial action requirements, enforcement actions, claims and demands of any and every kind whatsoever paid, incurred or suffered by, or asserted against, Lender by any person or entity or governmental agency or body for, with respect to, related to, arising out of, or as a direct or indirect result of, in whole or in part, the violation of any Environmental Laws applicable to the Property or any activity conducted thereon, or the past, present and future use, generation, release, treatment, discharge, emission, escape, seepage, leakage, spillage, handling, storage, transportation, disposal, clean-up or presence at, on or under the Property or adjacent property, or to the soil, air or to surface or ground water thereat, of any Hazardous or Toxic Materials. All sums paid and costs incurred by Lender with respect to the foregoing matters shall bear interest at the highest applicable legal rate and shall be secured by the lien of the Security Instrument, and the lien of the Security Instrument shall also further secure this indemnity and any liabilities hereunder. This indemnification shall remain in full force and effect until Lender's satisfaction or release of the Note and Security Instrument, or the Lender's acceptance of a deed in lieu of foreclosure.

9. In addition to any environmental audit which may have been required by Lender as a precedent to the closing of the Loan, at any time it sees fit, Lender, at its sole option, upon its notification of an Environmental Complaint (as hereinafter defined), may obtain, at Borrower's

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expense, an environmental audit prepared by an independent engineer or other qualified environmental consultant of the Lender's choice, which evaluates (i) whether any Hazardous or Toxic Materials are present in the soil or surface or ground water at the site of the Property or in the soil or surface or ground water adjacent to such site; (ii) whether Hazardous or Toxic Materials are now or have been previously used, generated, released, treated, discharged, emitted, escaped, seeped, leaked, spilled, handled, stored, transported or disposed of at the site of the Property; and (iii) whether activities presently being conducted at the site of the Property are in compliance with all applicable Environmental Laws. The consultant shall prepare a written report detailing its findings and conclusions.

The Borrower agrees that in the event Lender requests such an audit or an audit pursuant to subparagraph 10 below, and either of said audits indicates such past or present use, generation, release, treatment, discharge, emission, escape, seepage, leakage, spillage, handling, storage, transportation, disposal, clean-up or presence, Lender may, in its sole discretion, require that Borrower take, and Borrower shall in fact take, all steps necessary to further define the nature of the Hazardous or Toxic Materials, any risks related to or resulting therefrom and possible remedial measures; and thereafter may also require that all violations of law with respect to Hazardous or Toxic Materials be corrected and/or cleaned up by Borrower and that Borrower obtain all necessary environmental permits and approvals associated therewith.

If Borrower receives any notice of (i) the happening of any material event involving the use, generation, release, treatment, discharge, emission, escape, seepage, leakage, spillage, handling, storage, transportation, disposal or clean-up of any Hazardous or Toxic Materials on or at the site of the Property or adjacent thereto, or in connection with Borrower's operations thereon or (ii) any complaint, order, citation or notice with regard to air emissions, water discharges, or any other environmental, health or safety matter affecting Borrower or the Property (an "Environmental Complaint") from any person or entity or governmental agency or body (including, without limitation, the EPA), then Borrower shall immediately notify Lender orally and in writing of said notice.

10. Lender shall have the right, in its sole, reasonable discretion, to require Borrower to periodically (but not more frequently than annually unless an Environmental Complaint is then outstanding) perform, at Borrower's expense, an environmental audit and, if reasonably deemed necessary by Lender, an environmental risk assessment, each of which must be satisfactory to Lender, of the Property, and/or of Borrower's hazardous waste management practices and/or of the hazardous waste disposal sites used by Borrower, if any, and of compliance with all permits, consent orders, licenses, approvals, permissions or any of the like required for the operation of the Property or any business, process or activity thereon. Said audit and/or risk assessment must be by an environmental consultant satisfactory to Lender. Should Borrower fail to perform said environmental audit or risk assessment within (30) days of the Lender's written request, Lender shall have the right but not the obligation to retain, at Borrower's sole cost payable in demand and to be secured by the Security Instrument, an environmental consultant to perform said environmental audit or risk assessment.

11. Any breach of any warranty, representation, covenant or agreement contained herein shall also be an Event of Default under the Note and Security Instrument and shall entitle Lender to exercise any and all remedies provided in the Security Instrument or otherwise permitted by law. All notices hereunder shall be in writing and shall be deemed to have been sufficiently given or served as provided in the Security Instrument.



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12. This Affidavit and Indemnity may be executed in one or more counterparts, each of which shall be deemed an original. Said counterparts shall constitute but one and the same instrument and shall be binding upon each of the undersigned individually as fully and completely as if all had signed but one instrument so that the joint and several liability of each of the undersigned hereunder shall be unaffected by the failure of any of the undersigned to execute any or all of said counterparts. Any one or more of Borrower, or any other party liable upon or in respect of this Indemnity or the Loan, may be released without affecting the liability of any party not so released. This Indemnity shall be binding upon and inure to the benefit of Borrower, Lender and their respective heirs, personal representatives, successors and assigns.

13. All of the terms and provisions of this Agreement are recourse obligations of Borrower and notwithstanding the fact all of the objectives and costs of Borrower created hereby are served by the Security Instrument, the Borrower's obligations created hereby are and not restricted by any limitation on personal liability.

14. This Agreement shall be deemed to be continuing in nature and shall remain in full force and effect and shall survive the payment of the indebtedness evidenced and secured by the Loan Documents and the exercise of any remedy by Lender under the Security Instrument or any of the other Loan Documents, including, without limitation, any foreclosure or deed in lieu thereof, even if, as a part of such remedy, the Loan is paid or satisfied in full.

15. Notwithstanding the satisfaction by Borrower of any liability hereunder, Borrower shall not have any right of subrogation, contribution, reimbursement or indemnity whatsoever or any right of recourse to or with respect to any collateral for the Loan. In connection with the foregoing, Borrower expressly waives any and all rights of subrogation to Lender against Borrower and Borrower hereby waives any rights to enforce any remedy which Lender may have against Borrower and any right to participate in any collateral for the Loan. In addition to and without in any way limiting the foregoing, Borrower hereby subordinates any and all indebtedness of any owner of the Property now or hereafter owed to Borrower to all indebtedness to Lender arising out of the Property, and agrees with Lender that Borrower shall not demand or accept any payment of principal or interest from any owner of the Property, shall not claim any offset or other reduction of any of Borrower's obligations hereunder because of any such indebtedness and shall not take any action to obtain any of the collateral from the Loan. Further, Borrower shall have no right of recourse against Lender by reason of any action Lender may take or omit to take under the provisions of this Agreement or under the provisions of any of the Loan Documents.

16. Nothing contained in this Agreement shall prevent or in any way diminish or interfere with any rights or remedies, including, without limitation, the right to contribution, which Lender may have against Borrower or any other party under any Environmental Laws, as they may be amended from time to time.

17. Lender's rights under this Agreement shall be in addition to all rights of Lender under the Note, the Security Instrument and the other Loan Documents. **FURTHER, PAYMENTS MADE BY BORROWER UNDER THIS AGREEMENT SHALL NOT REDUCE IN ANY RESPECT BORROWER'S OBLIGATIONS AND LIABILITIES UNDER THE NOTE, THE SECURITY INSTRUMENT, ANY GUARANTY (IF ANY) AND THE OTHER LOAN DOCUMENTS.**

18. Borrower hereby consents and agrees that Lender may, at any time and from time to time without further consent, do any of the following events, and the liability of Borrower under this

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Agreement shall be unconditional and absolute and shall in no way be impaired or limited by any of the following events, whether occurring with or without notice to Borrower or with or without consideration: (i) any extensions of time for performance required by any of the Loan Documents or extension or renewal of the Note; (ii) any sale, assignment or foreclosure of the Note, the Security Instrument or any of the other Loan Documents or any sale or transfer of the Property; (iii) any change in the ownership of the Property, including, without limitation, the withdrawal or removal of Borrower from any current or future position of ownership, management or control of the Property; (iv) the accuracy or inaccuracy of the representations and warranties made by Borrower herein or in any of the Loan Documents; (v) the release of Borrower or any other person or entity from performance or observance of any of the agreements, covenants, terms or conditions contained in any of the Loan Documents by operation of law, Lender's voluntary act or otherwise; (vi) the release or substitution in whole or in part of any security for the Loan; (vii) Lender's failure to record the Security Instrument or to file any financing statement (or Lender's improper recording or filing thereof) or to otherwise perfect, protect, secure or insure any lien or security interest given as security for the Loan; (viii) the modification of the terms of any one or more of the Loan Documents; or (ix) the taking or failure to take any action of any type whatsoever. No such action which Lender shall take or fail to take in connection with the Loan Documents or any collateral for the Loan, nor any course or dealing with Borrower or any other person, shall limit, impair or release the obligations of Borrower hereunder, affect this Agreement in any way or afford Borrower any recourse against Lender. Nothing contained in this Section shall be construed to require Lender to take or refrain from taking any action referred to herein.

19. This Agreement contains the entire agreement between the parties respecting the matters herein set forth and supersedes (except as to the Security Instrument and other Loan Documents) all prior agreements, whether written or oral, between the parties respecting such matters. Any amendments or modifications hereto, in order to be effective, shall be in writing and executed by the parties hereto. A determination that any provision of this Agreement is unenforceable or invalid as to one person shall not affect the enforceability or validity of such provision as it may apply to any other persons or circumstances.

20. This Agreement shall be governed by and construed in accordance with the laws of the State where the Property is located, except to the extent that the applicability of any of such laws may now or hereafter be preempted by Federal law, in which case such Federal law shall so govern and be controlling. This Agreement shall bind Borrower and their heirs, personal representatives, successors and assigns and shall inure to the benefit of Lender and the officers, directors, shareholders, agents and employees of Lender and their respective heirs, successors and assigns.

21. All notices, demands, requests or other communications to be sent by one party to the other hereunder or required by law shall be in writing and shall be deemed to have been validly given or served by delivery of the same in person to the intended addressee, or by depositing the same with Federal Express or another reputable private courier service for next business day delivery to the intended addressee at its address set forth in the Security Instrument, the respective Guaranty(ies) or at such other address as may be designated by such party as herein provided. All notices, demands and requests shall be effective in accordance with the requirements for notice as set forth in the Security Instrument.

22. The failure of any party hereto to enforce any right or remedy hereunder, or to promptly enforce any such right or remedy, shall not constitute a waiver thereof nor give rise to any estoppel against such party nor excuse any of the parties hereto from their respective obligations hereunder. Any waiver of such right or remedy must be in writing and signed by the party to be bound. This

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Agreement is subject to enforcement at law or in equity, including actions for damages or specific performance. Time is of the essence hereof.

23. In the event it is necessary for Lender to retain the services of an attorney or any other consultants in order to enforce this Agreement, or any portion thereof, Borrower agrees to pay to Lender any and all costs and expenses, including, without limitation, attorneys' fees, incurred by Lender whether incurred at pretrial, trial or appellate trials.

24. A separate right of action hereunder shall arise each time Lender acquires knowledge of any matter indemnified by Borrower under this Agreement. Separate and successive actions may be brought hereunder to enforce any of the provisions hereof at any time and from time to time. No action hereunder shall preclude any subsequent action, and Borrower hereby waives and covenants not to assert any defense in the nature of splitting of causes of action or merger of judgments.

25. Notwithstanding anything to the contrary contained herein, the representations, warranties, covenants and agreements made by Borrowers herein, and the liability hereunder, is joint and several.

26. Lender would not make the Loan without this Agreement. Accordingly, Borrower, intentionally and unconditionally enter into the covenants and agreements as set forth above and understand that, in reliance upon and in consideration of such covenants and agreements, the Loan shall be made and, as part and parcel thereof, specific monetary and other obligations have been, are being and shall be entered into which would not be made or entered into but for such reliance.

27. BORROWER, TO THE FULL EXTENT PERMITTED BY LAW, HEREBY KNOWINGLY, INTENTIONALLY AND VOLUNTARILY, WITH AND UPON THE ADVICE OF COMPETENT COUNSEL, (A) SUBMITS TO PERSONAL JURISDICTION IN THE STATE OR COMMONWEALTH WHERE THE PROPERTY IS LOCATED OVER ANY SUIT, ACTION OR PROCEEDING BY ANY PERSON ARISING FROM OR RELATING TO THIS AGREEMENT, (B) AGREES THAT ANY SUCH ACTION, SUIT OR PROCEEDING MAY BE BROUGHT IN ANY STATE OR FEDERAL COURT OR COMPETENT JURISDICTION SITTING IN THE COUNTY, PARISH OR JUDICIAL DISTRICT WHERE THE PROPERTY IS LOCATED OR IN MIAMI-DADE COUNTY, FLORIDA (C) SUBMITS TO THE JURISDICTION OF SUCH COURTS, AND (D) TO THE FULLEST EXTENT PERMITTED BY LAW, AGREES THAT BORROWER WILL NOT BRING ANY ACTION, SUIT OR PROCEEDING IN ANY OTHER FORUM (BUT NOTHING HEREIN SHALL AFFECT THE RIGHT OF LENDER TO BRING ANY ACTION, SUIT OR PROCEEDING IN ANY OTHER FORUM). BORROWER FURTHER CONSENTS AND AGREES TO SERVICE OF ANY SUMMONS, COMPLAINT OR OTHER LEGAL PROCESS IN ANY SUCH SUIT, ACTION OR PROCEEDING BY REGISTERED OR CERTIFIED U.S. MAIL, POSTAGE PREPAID, TO THE BORROWER AT THE ADDRESS(ES) FOR NOTICES DESCRIBED IN THE SECURITY INSTRUMENT, AND CONSENT AND AGREE THAT SUCH SERVICE SHALL CONSTITUTE IN EVERY RESPECT VALID AND EFFECTIVE SERVICE (BUT NOTHING HEREIN SHALL AFFECT THE VALIDITY OR EFFECTIVENESS OF PROCESS SERVED IN ANY OTHER MANNER PERMITTED BY LAW).

28. BORROWER, TO THE FULL EXTENT PERMITTED BY LAW, HEREBY KNOWINGLY, INTENTIONALLY AND VOLUNTARILY, WITH AND UPON THE ADVICE OF COMPETENT COUNSEL, WAIVES, RELINQUISHES AND FOREVER FORGOES THE



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RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED UPON, ARISING OUT OF, OR IN ANY WAY RELATING TO THIS AGREEMENT OR ANY CONDUCT, ACT OR OMISSION OF LENDER, BORROWER, OR ANY OF THEIR DIRECTORS, OFFICERS, PARTNERS, MEMBERS, EMPLOYEES, AGENTS OR ATTORNEYS, OR ANY OTHER PERSONS AFFILIATED WITH LENDER OR BORROWER, IN EACH OF THE FOREGOING CASES, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE.

Borrower covenants and agrees that upon the commencement of a voluntary or involuntary bankruptcy proceeding by or against Borrower or any owner of the Property, they shall not seek a supplemental stay or otherwise pursuant to 11 U.S.C. § 105 or any other provision of the Bankruptcy Reform Act of 1978, as amended, or any other debtor relief law (whether statutory, common law, case law, or otherwise) of any jurisdiction whatsoever, now or hereafter in effect, which may be or become applicable, to stay, interdict, condition, reduce or inhibit the ability of Lender to enforce any rights of Lender by virtue of this Agreement or otherwise.

AFFIANT:

  
Anthony Johnson

Property of Cook County Clerk's Office

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## ACKNOWLEDGMENT

STATE OF ILLINOIS                    )  
   ) SS:  
 COUNTY OF COOK                    )

The foregoing instrument was acknowledged before me on August 15, 2006 by Anthony Johnson. He is personally known to me or produced IL Drivers License as identification, and did/did not take an oath.

[Official Notary Seal]

Michelle G. Lee  
 Print Name: Michelle G. Lee  
 Notary Public, State of Illinois  
 My Commission Expires: \_\_\_\_\_

Property of Cook County Clerk's Office

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## LEGAL DESCRIPTION ATTACHMENT

LOTS 41 AND 42 IN BRITIGAN'S HARRIS STREET AND CENTRAL AVENUE SUBDIVISION LOTS 141, 142, 143 AND 144 IN SCHOOL TRUSTEES' SUBDIVISION OF THE NORTHWEST QUARTER OF SECTION 16, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Property Identification Number: 16-16-120-008

Address of Property (for identification purposes only):

Street: 5551-53 W. CONGRESS  
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