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Mail To

Executive Land Title, Inc.  
7794 N. Milwaukee Ave.  
Niles, IL 60714



Doc#: 0734756065 Fee: \$78.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 12/13/2007 02:43 PM Pg: 1 of 28

2706364

Prepared by:  
IFC Credit Corporation  
8700 Waukegan Road  
Suite 100  
Morton Grove, ill 60053

## JUNIOR MORTGAGE AND SECURITY AGREEMENT

This Mortgage and Security Agreement (this "Mortgage") is made the 26th of November, 2007 between Richard Kuempel ("Mortgagor"), whose address is set forth below and IFC CREDIT CORPORATION, its successors and/or assigns, ("Mortgagee"), whose address is set forth below.

WHEREAS, IFC Credit Corporation, as Lessor, Authorized Transmission Remanufacturing, Inc., as Lessee, and Richard Kuempel, as Guarantor, have entered into that certain Master Lease Agreement Number 801145 dated November 15, 2007, and Lease Schedule 001 thereto dated November 15, 2007

NOW, THEREFORE, in consideration of the mutual benefits accruing to the parties hereto and other valuable consideration, their receipt and sufficiency of which consideration is hereby acknowledged, the parties hereto agree as follows:

### Article 1 -DEFINITIONS

#### 1.1 Definitions

As used herein, the following terms shall have the following meanings:

- (a) Assignment: Intentionally deleted.
- (b) Awards: All awards and payments made or hereafter to be made by any municipal, township, county, state, Federal or other governmental agencies, authorities or boards or any other entity having the power of eminent domain to Mortgagor, including, but not limited to, any awards and payments for any taking of all or a portion of the Mortgaged Property, as a result of, or by agreement in anticipation of, the exercise of the right of

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condemnation or eminent domain, or for any change or changes of grade of streets affecting the Mortgaged Property.

(c) Buildings: All buildings, improvements, alterations or appurtenances now, or at any time hereafter, constructed or located upon the Land or any part thereof.

(d) Defaulted Interest Rate: The lesser of (i) the Applicable (implicit) Interest Rate, of the Master Lease Agreement and Schedule(s) thereto secured by this Mortgage, plus one and one-half percent (1.5%) per annum, or (ii) the highest contract rate allowed by law.

(e) Event(s) of Default: The happenings and occurrences described in Article 5 of this Mortgage or an Event of Default as defined in the Master Lease Agreement and Schedule(s) thereto or any other Lease Documents.

(f) Fixtures: All fixtures located upon or within the Land or Buildings or now or hereafter attached to, or installed in, or used in connection with, any of the Land or Buildings whether or not permanently affixed to the Mortgaged Property.

(g) Hazardous Materials: Any flammable explosives, radioactive materials, oil or petroleum or chemical liquids or solids, liquid or gaseous products or hazardous wastes, toxic substances and similar substances and materials, including all substances and materials defined as hazardous or toxic wastes, substances or materials under any applicable rule, regulation, ordinance or law.

(h) Impositions: All (i) real estate and personal property taxes and other taxes and assessments, water and sewer rates and charges, and all other governmental charges and any interest or costs or penalties with respect thereto, and charges for any easement or agreement maintained for the benefit of the Mortgaged Property which at any time prior to or after the execution of the other Lease Documents may be assessed, levied, or imposed upon the Mortgaged Property or the rent or income received there from or any use or occupancy thereof, and (ii) other taxes, assessments, fees and governmental charges levied, imposed or assessed upon or against Mortgagor or any of its properties.

(i) Indebtedness: The rental payments, including but not limited to Initial Term, Extended Term, and Renewal Term payments, principal of and interest thereon and all other amounts, payments and premiums due under the Master Lease Agreement and Schedule(s) thereto, the other Lease Documents, and all other indebtedness of Mortgagor to Mortgagee under and/or secured by this Mortgage and by any of the other Lease Documents, or any amendments, modifications, renewals and extensions of any of the foregoing.

(j) Land: The real estate described in Exhibit A attached hereto.

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(k) Lease or Leases: Intentionally deleted.

(l) Mortgaged Property: The Land, the Buildings, the Fixtures, the Leases and the Rents together with:

(i) all rights, privileges, permits, licenses, tenements, hereditaments, rights-of-way, easements, appendages and appurtenances of the Buildings belonging or in any way appertaining thereto and all right, title and interest of Mortgagor in and to any streets, ways, alleys, strips or gores of land adjoining the Land or any part thereof;

(ii) all the estate, right, title, interest, claim or demand whatsoever of Mortgagor, either at law or in equity, in and to the Land, the Buildings, the Fixtures, the Leases and the Rents; and

(iii) all the estate, right, title, interest, claim or demand whatsoever of Mortgagor, either at law or in equity, in and to the Awards, or payments with respect to casualties.

(m) Mortgagee: IFC CREDIT CORPORATION and their successors and assigns and the holders, from time to time, of the Equipment Lease and other Lease Documents (as hereinafter defined).

(n) Mortgagee's Address: 8700 Waukegan Road, Suite 100, Morton Grove, Illinois 60053.

(o) Mortgagor: The person or persons named as such in the preamble of this Mortgage, and their respective heirs, administrators, executors, successors and assigns and their successors in interest in and to the Mortgaged Property.

(p) Mortgagor's Address: 620 South Hough Street, Unit C, Barrington, IL 60010.

(q) Master Lease Agreement and Schedule(s) thereto: That certain Master Lease Agreement Number 801145 dated November 15, 2007, and Lease Schedule 001 thereto dated November 15, 2007, by and among IFC Credit Corporation, its successors and/or assigns, as Lessor, Authorized Transmission Remanufacturing, Inc., as Lessee, and Richard Kuempel, as Guarantor, and any other lease or lease schedule or First Amendment or Guaranty thereto now or hereafter made between said Lessor and said Lessee secured, in part, by this Mortgage, together with any and all extensions, renewals, modifications and amendments thereof (hereinafter the Lease Agreement and Schedule(s) thereto are referred to as the "Equipment Lease").

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(r) Obligations: Any and all of the covenants, promises, warranties and other obligations (other than the Indebtedness) made or owing by Mortgagor, the Beneficiary and others to or due to Mortgagee under and/or as set forth in the Equipment Lease and/or the other Lease Documents, and any and all extensions, renewals, modifications and amendments of any of the foregoing.

(s) Other Lease Documents: All other documentation associated or related to the Master Lease Agreement and Schedule(s) thereto, and any other lease or lease schedule or First Amendment or Guaranty thereto now or hereafter made between the Lessor and Lessee under the Equipment Lease, any Security Agreement and any and all other documents executed by the Mortgagor or others now or hereafter securing the payment of the Indebtedness or the observance or performance of the Obligations.

(t) Permitted Encumbrances: The encumbrances described with particularity in Paragraph 4.13 (g) of this Mortgage and the exceptions listed within Exhibit A attached hereto.

(u) Personalty: All furniture, furnishings, equipment, machinery, trade fixtures and all other personal property (other than the Fixtures) owned by Mortgagor now or hereafter located in, upon or about the Land, the Building, together with all accessions, replacements and substitutions thereto or therefore and the proceeds and products thereof.

(v) Rents: Intentionally deleted.

## Article 2 - GRANT

2.1 Grant. To secure the payment of the Indebtedness and the performance and discharge of the Obligations, Mortgagor by these presents hereby grants, bargains, sells, assigns, mortgages, conveys and warrants unto Mortgagee the Mortgaged Property, subject, however, to the Permitted Encumbrances, to have and to hold the Mortgaged Property unto Mortgagee, its successors and assigns forever.

2.2 Condition of Grant. Provided always, that if Mortgagor promptly shall pay the entire Indebtedness as and when the same shall become due and payable and shall observe, perform and discharge the Obligations, then the other Lease Documents and the estate and rights hereby granted shall cease, terminate and become void, and shall be released by Mortgagee, at the cost and expense of Mortgagor, and, in case of failure of the Mortgagee to so release this Mortgage, all claims for statutory penalties are hereby waived.

2.3 Doctrine of Merger. Upon the foreclosure of this Mortgage, no assigned Lease

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shall be destroyed or terminated by application of the doctrine of merger or as a matter of law unless Mortgagee or any purchaser at such foreclosure sale so elects. No act by or on behalf of Mortgagee or any such purchaser shall constitute a termination of any assigned Lease unless Mortgagee or such purchaser gives written notice thereof to the applicable tenant or subtenant.

## Article 3 - SECURITY INTEREST AND ASSIGNMENT OF LEASES AND RENTS

3.1 Security Agreement. This Mortgage shall be construed as a mortgage of a fee simple interest in real property and it shall also constitute a "Security Agreement" within the meaning of, and shall create a security interest under, the Uniform Commercial Code as adopted in the state in which the Mortgaged Property is located (the "UCC"), in the Fixtures.

3.2 Security Interest. Mortgagor hereby grants to Mortgagee a security interest under the UCC in the Fixtures and Mortgagee shall have all rights with respect thereto afforded to it by the UCC, in addition to, but not in limitation of, the other rights afforded to Mortgagee by the Equipment Lease or the other Lease Documents.

3.3 Financing Statements. Mortgagor agrees to and shall execute and deliver to Mortgagee, in form satisfactory to Mortgagee, such "Financing Statements", if any, and such further assurances as Mortgagee may, from time to time, consider reasonably necessary to create, perfect and preserve Mortgagee's liens upon the Fixtures, and Mortgagee, at the expense of Mortgagor, may or shall cause such statements and assurances to be recorded and re-recorded, filed and re-filed, at such times and places as may be required or permitted by law to so create, perfect and preserve such liens.

3.4 Assignment of Leases and Rents. Intentionally deleted.

## Article 4 - COVENANTS

### 4. Covenants

Until the entire Indebtedness shall have been paid in full, Mortgagor hereby covenants and agrees as follows:

4.1 Compliance with Laws. Mortgagor will promptly and faithfully comply with,

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conform to and obey all present and future laws, ordinances, rules, regulations and requirements of every duly constituted governmental authority or agency including, but not limited to, health care, congregate care or nursing facility regulatory agencies, and of every Board of Fire Underwriters having jurisdiction, or similar body exercising similar functions, which may be applicable to it or to the Mortgaged Property, or any part thereof, or to the use or manner of use, occupancy, possession, operation, maintenance, alteration, repair or reconstruction of the Mortgaged Property, or any part thereof, whether or not such law, ordinance, rule, order, regulation or requirement shall necessitate structural changes or improvements or interfere with the use or enjoyment of the Mortgaged Property.

4.2 Payment of Impositions. Mortgagor will duly pay and discharge, or cause to be paid and discharged, the Impositions, such Impositions or installments thereof to be paid prior to the day before any fine, penalty, interest or cost may be added thereto or imposed by law for the non-payment thereof; provided, however, that if, by law, any Imposition may be paid in installments, Mortgagor may pay the same in such installments.

4.3 Repair. Mortgagor will keep the Mortgaged Property in good order and condition and make all necessary or appropriate repairs, replacements and renewals thereof and will use its best efforts to prevent any act or thing which might impair the value or usefulness of the Mortgaged Property, and Mortgagor will obtain the written consent of Mortgagee, which consent will not unreasonably be withheld, prior to (i) making any alterations or additions to the Mortgaged Property or (ii) removing any of the Buildings or Fixtures.

4.4 Insurance. Mortgagor will maintain insurance upon the Mortgaged Property against loss by fire and such other hazards, casualties and contingencies as are normally and usually covered by extended coverage policies in effect in the locality where the Mortgaged Property is situated and such other risks as may be specified by Mortgagee, from time to time, in amounts and with insurers acceptable to Mortgagee but not less than the lesser of (a) the amount of the Indebtedness, or (b) one hundred percent (100%) of the replacement value of the Buildings, Fixtures and Personalty. Mortgagor shall cause each insurance policy issued in connection therewith to provide (and the insurer issuing such policy to certify to Mortgagee) that (i) loss payments will be payable to Mortgagee as its interests may appear, such payments to be applied to the restoration, repair or replacement of the Mortgaged Property, provided, however, that if an Event of Default has occurred and is continuing or an event has occurred and is continuing which with the passage of time or the giving of notice would constitute an Event of Default, then such payments shall be applied to the payment of the Indebtedness; (ii) the interest of Mortgagee shall be insured regardless of any breach or violation by Mortgagor of any warranties, declarations or conditions in such policy; (iii) if any such insurance policy be subject to cancellation or be endorsed or sought to be endorsed to effect a change in coverage for any reason whatsoever, such insurer will promptly notify Mortgagee and such cancellation



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or change shall not be effective as to Mortgagee until thirty (30) days after receipt by Mortgagee of such notice; and (iv) Mortgagee may, but shall not be obligated to, make premium payments to prevent such cancellation, and that such payments shall be accepted by the insurer. For purposes of this Section, replacement value of the Buildings, Fixtures and Personalty shall be equal to the cost of replacing the Buildings, Fixtures and Personalty, exclusive of the cost of excavation, foundations and footings below the lowest basement floor and shall be determined from time to time during the terms of the Equipment Lease or other Lease Documents (but no more frequently than once in any twelve (12) calendar months) at the written request of Mortgagee by an engineer, appraiser, architect or contractor designated by Mortgagee, approved in writing by Mortgagor, and paid by Mortgagor. In addition, upon Mortgagee's written request, Mortgagor shall furnish to Mortgagee duplicate executed copies of each such policy at the time of execution hereof, and copies of each renewal policy not less than thirty (30) days prior to the expiration of the original policy or the preceding renewal policy (as the case may be), together with receipts or other evidence that the premiums thereon have been paid; and furnish to Mortgagee on or before fifteen (15) days after the close of each fiscal year of Mortgagor a statement of Mortgagor of the amounts of insurance maintained in compliance with this Subsection, of the risks covered by such insurance and of the insurance company or companies which carry such insurance.

#### 4.5 Disbursement of Insurance or Eminent Domain Proceeds.

(a) Before commencing to repair, restore or rebuild following damage to, or destruction of, all or a portion of the Mortgaged Property, whether by fire or other casualty or by a taking under the power of eminent domain, Mortgagor shall obtain from Mortgagee its approval of all site and building plans and specifications pertaining to such repair, restoration or rebuilding, which approval will not unreasonably be withheld.

(b) Prior to each payment or application of any insurance proceeds or a condemnation or eminent domain award to the repair or restoration of the improvements upon the Mortgaged Property to the extent permitted herein (which payment or application may be made, at Mortgagee's option, through an escrow, the terms and conditions of which are satisfactory to Mortgagee and the cost of which is to be borne by Mortgagor), Mortgagee shall be entitled to be satisfied as to the following:

(i) An Event of Default has not occurred;

(ii) Either (A) such improvements have been fully restored, or (B) the expenditure of money as may be received from such insurance proceeds or condemnation award will be sufficient to repair, restore or rebuild the Mortgaged Property, free and clear of all liens, claims

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and encumbrances, except the lien of this Mortgage and the Permitted Exceptions, or, in the event such insurance proceeds or condemnation award shall be insufficient to repair, restore and rebuild the Mortgaged Property, Mortgagor has deposited with Mortgagee such amount of money which, together with the insurance proceeds or condemnation award, shall be sufficient to restore, repair and rebuild the Mortgaged Property; and

(iii) Prior to each disbursement of any such proceeds held by Mortgagee in accordance with the terms of this Paragraph 4.5 for the cost of any repair, restoration or rebuilding, Mortgagee shall be furnished with a statement of an architect selected by Mortgagee (the cost of which shall be borne by Mortgagor), certifying the extent of the repair and restoration completed to the date thereof, and that such repairs, restoration, and rebuilding have been performed to date in conformity with the plans and specifications approved by Mortgagee and with all statutes, regulations or ordinances (including building and zoning ordinances) affecting the Mortgaged Property; and Mortgagee shall be furnished with appropriate evidence of payment for labor or materials furnished to the Mortgaged Property, and total or partial lien waivers substantiating such payments.

(c) Prior to the payment or application of insurance proceeds or a condemnation award to the repair, restoration or rebuilding of the improvements upon the Mortgaged Property to the extent permitted herein, there shall have been delivered to Mortgagee the following:

(i) A waiver of subrogation from any insurer with respect to Mortgagor or the then owner or other insured under the policy of insurance in question;

(ii) Such plans and specifications, such payment and performance bonds and such insurance, in such amounts, issued by such company or companies and in such forms and substances, as are reasonably required by Mortgagee.

(d) In the event Mortgagor shall fail to restore, repair or rebuild the improvements upon the Mortgaged Property within a time deemed satisfactory by Mortgagee, then Mortgagee, at its option, may commence and perform all necessary acts to restore, repair or rebuild the said improvements for or on behalf of Mortgagor. In the event insurance proceeds or condemnation award shall exceed the amount necessary to complete the repair, restoration or rebuilding of the improvements upon the Mortgaged Property, such excess shall be applied on account of the unpaid principal balance of the Indebtedness irrespective of whether such balance is then due and payable.

(e) In the event Mortgagor commences the repair or rebuilding of any improvements located on the Mortgaged Property, but fails to comply with the conditions



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precedent to the payment or application of insurance proceeds or a condemnation or eminent domain award set forth in this Paragraph 4.5 or Mortgagor shall fail to restore, repair or rebuild the improvements upon the Mortgaged Property within a time deemed satisfactory by Mortgagee, and if Mortgagee does not restore, repair or rebuild the said improvements as provided in subparagraph (d) above, then such failure shall constitute an Event of Default.

4.6 Performance of Leases and Other Agreements. Intentionally deleted.

4.7 Inspection. Mortgagor will permit Mortgagee, at all reasonable times, to inspect the Mortgaged Property. Mortgagee shall have the right to enter onto the Mortgaged Property, at all times, upon reasonable notice, to inspect the Mortgaged Property for the existence of Hazardous Materials on the Mortgaged Property and to determine the compliance of the Mortgaged Property and its use with any law, rule or regulation relating to industrial hygiene or environmental conditions, including soil and ground water conditions and the compliance of the Mortgagor and the Mortgaged Property with the conditions and covenants set forth herein with respect to Hazardous Materials.

4.8 Hold Harmless. Mortgagor will employ legal counsel acceptable to the Mortgagee and who is not also representing the Mortgagee in any other matter, and will defend and hold Mortgagee harmless from any action, proceeding or claim affecting the Mortgaged Property, or the validity of the Equipment Lease or the other Lease Documents. Mortgagor shall appear in and defend (or pay the reasonable expenses of Mortgagee to defend, if Mortgagor elects to allow Mortgagee to handle such defense) any action or proceeding purporting to affect the security of this Mortgage and/or the rights and/or powers of Mortgagee hereunder, and Mortgagor shall pay all costs and expenses (including costs of evidence of title and reasonable attorneys' fees) in any action or proceeding in which Mortgagee may so appear and/or any suit brought by Mortgagee to foreclose this Mortgage, to enforce any obligations secured by this Mortgage, and/or to prevent the breach hereof. Mortgagor's obligations under this Section 4.8 shall survive payment of the Indebtedness.

4.9 Books and Records. Mortgagor will maintain full and complete books of account and other records reflecting the results of its operations (in conjunction with its other operations as well as its operations of the Mortgaged Property), in accordance with generally accepted accounting principles, and furnish or cause to be furnished to Mortgagee such financial data and other information, including, without limitation, copies of all Leases, as Mortgagee shall, from time to time, reasonably request with respect to, the ownership and operation of the Mortgaged Property, and Mortgagee shall have the right, at reasonable times and upon reasonable notice to audit Mortgagor's books of account and records.

4.10 Awards. Mortgagor will file and prosecute its claim or claims for any Awards in good faith and with due diligence and cause the same to be collected and paid over to

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Mortgagee, and hereby irrevocably authorizes and empowers Mortgagee, if it so desires, to file such claim and collect any Awards and agrees that the proceeds of any Awards will be applied by Mortgagee in reduction of any portion of the Indebtedness as Mortgagee may determine in accordance with Article 7 hereof.

4.11 Licenses. Mortgagor shall keep in full force and effect all licenses, permits and other governmental approvals which are necessary for the operation of the Mortgaged Property and related facilities, and furnish evidence satisfactory to Mortgagee that the Mortgaged Property and the use thereof comply with all applicable zoning and building laws, regulations, ordinances and other applicable laws.

4.12 Junior Financing. Mortgagor shall not, without the prior written consent of Mortgagee, incur any additional indebtedness or create or permit to be created or to remain, any mortgage, pledge, lien, lease, encumbrance or charge on, or conditional sale or other title retention agreement, with respect to the Mortgaged Property or any part thereof or income therefrom, other than the other Lease Documents and the Permitted Encumbrances.

4.13 Representations and Warranties of Mortgagor. Mortgagor hereby represents and warrants to Mortgagee that:

(a) Mortgagor is qualified to do business in every jurisdiction in which the nature of its business or properties makes such qualification necessary, and is in compliance with all laws, regulations, ordinances and orders of public authorities applicable to Mortgagor.

(b) This Mortgage, the Equipment Lease and the other Lease Documents, will not violate any provision of existing law (including, but not limited to, any law relating to usury), any order of any court or other agency or government, or any indenture, agreement or other instrument to which Mortgagor is a party or by which Mortgagor or any of its property is bound, or be in conflict with, result in a breach of or constitute (with due notice and/or lapse of time) a default under any such indenture, agreement or other instrument, or violate the articles of incorporation or by-laws of the Mortgagor or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of Mortgagor, except as contemplated by this Mortgage, the Equipment Lease and the other Lease Documents, and no action with respect thereto by Mortgagor is required.

(c) No consent or approval of any regulatory body to the execution, delivery and performance of this Mortgage and the other Lease Documents or the transactions contemplated thereby is required by law.

(d) There are no suits, proceedings or investigations pending or to their

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knowledge, threatened against or affecting Mortgagor, at law or in equity, or before or by any governmental or administrative agency or instrumentality which, if adversely determined, would have a material adverse effect on the business or condition of Mortgagor.

(e) No judgment, decree or order of any court or governmental or administrative agency or instrumentality has been entered against Mortgagor or Beneficiary which has or may have any material adverse effect on the business or condition of Mortgagor.

(f) All information, reports, papers and data given to Mortgagee with respect to Mortgagor, or Beneficiary or others obligated under the terms of the Equipment Lease and the other Lease Documents are accurate and correct in all material respects and complete insofar as completeness may be necessary to give Mortgagee a true and accurate knowledge of the subject matter thereof.

(g) Mortgagor has good and marketable title in fee simple to the Mortgaged Property and good and marketable title to the Fixtures, free and clear of any prior assignment, liens, charges, encumbrances, security interests and adverse claims whatsoever except for the first mortgage dated March 31, 2006 which is presently held by MERS for CitiMortgage Inc., its successors or assigns as mortgagee, with an original principle balance of approximately \$155,250.00 which is a Permitted Encumbrance.

(h) Intentionally deleted.

(i) The Permitted Encumbrances have not materially interfered with the operation of the Mortgaged Property, nor does Mortgagor reasonably foresee any material interference arising from the Permitted Encumbrances during the terms of the Equipment Lease.

(j) Mortgagor has filed all Federal, state, county and municipal income tax returns required to have been filed by them and have paid all taxes which have become due pursuant to any assessments received by them, and Mortgagor does not know of any basis for additional assessment in respect to such taxes.

(k) The Mortgaged Property is being, and will continue to be, used for residential purposes by the Mortgagor, however, nothing in this Mortgage shall be deemed to prohibit the Mortgagor from renting or leasing the Mortgaged Property to any third party.

(l) To the best of Mortgagor's knowledge, and upon due inquiry, no release (a "Release") of Hazardous Material has occurred on the Mortgaged Property. Mortgagor has not

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received any notice from any governmental agency or from any other party with respect to any such Release.

Breach of such representations and warranties shall constitute an Event of Default under Section 5.5 hereof. Mortgagor shall promptly give written notice to Mortgagee of any breach under this Section 4.13.

4.14 Mechanics' Lien. Mortgagor shall not permit or suffer any mechanics' lien claims to be filed or otherwise asserted against the Mortgaged Property and Mortgagor shall promptly, and in any event within sixty (60) days after filing, discharge or cause to be discharged the same in case of the filing of any claims for lien or proceedings for the enforcement thereof; provided, however, that in connection with any such lien or claim which Mortgagor or may in good faith desire to contest, Mortgagor may contest the same by appropriate legal proceedings diligently prosecuted, but only if Mortgagor shall cause a title insurance company (the "Title Company"), to issue an endorsement to the Title Policy insuring over the exception created by such lien (including furnishing such security or indemnity as the Title Company requires to issue such endorsement) or provide such other security and indemnification as may be reasonably acceptable to Lender.

4.15 Hazardous Materials. (a) Without limiting the generality of Section 4.1 hereof, Mortgagor shall not cause or permit the violation of any law relating to industrial hygiene or environmental conditions in connection with the Mortgaged Property, including soil and ground water conditions, or use, generate, manufacture, store or dispose of any Hazardous Materials on, under or about the Mortgaged Property.

(a) Mortgagor shall indemnify and hold Mortgagee harmless from any loss, liability, cost, expense and/or claim (including without limitation the cost of any fines, remedial action, damage to the environment and cleanup and the fees of attorneys and other experts) arising from the use, release or disposal any Hazardous Materials on, under or about the Mortgaged Property or the transport of any Hazardous Materials to or from the Mortgaged Property; and the violation of any law relating to industrial hygiene or environmental conditions in connection with the Mortgaged Property, including soil and ground water conditions; and the breach of any of the representations, warranties and covenants of Mortgagor with respect to Hazardous Materials set forth in this Section 4.15 and Section 4.13 hereof. Notwithstanding the foregoing, Mortgagor does not indemnify Mortgagee with respect to gross negligence or intentional acts of the Mortgagee which result in the use, release or disposal of Hazardous Materials on, under or about the Mortgaged Property.

## Article 5 - EVENTS OF DEFAULT

### 5. Events of Default

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The term "Event(s) of Default", as used in the other Lease Documents and in the Equipment Lease, shall mean the occurrence or happening, from time to time, of any one or more of the following:

5.1 Payment of Indebtedness. If Mortgagor shall default in the due and punctual payment of all or any portion of any installment of the Indebtedness as and when the same shall become due and payable, whether at the due date thereof or at a date fixed for prepayment or by acceleration or otherwise, and such default shall continue for a period of thirty (30) days after the due date.

5.2 Performance of Obligations. If Mortgagor shall default in the due observance or performance of any of the Obligations other than payment of money and such default shall not be curable, or if curable shall continue for a period of thirty (30) days after written notice thereof from Mortgagee to Mortgagor (unless such default, if curable, requires work to be performed, acts to be done or conditions to be remedied which by their nature cannot be performed, done or remedied, as the case may be, within such thirty (30) day period and Mortgagor shall commence to cure such default within such thirty (30) day period and shall thereafter diligently and continuously process the same to completion but in no event shall the period for cure exceed ninety (90) days unless otherwise agreed by Mortgagee).

5.3 Bankruptcy, Receivership, Insolvency, Etc. If voluntary or involuntary proceedings under the Federal Bankruptcy Code, as amended, shall be commenced by or against Mortgagor or Beneficiary or bankruptcy, receivership, insolvency, reorganization, dissolution, liquidation or other similar proceedings shall be instituted by or against Mortgagor or Beneficiary with respect to all or any part of Mortgagor's or Beneficiary's property under the Federal Bankruptcy Code, as amended, or other law of the United States or of any state or other competent jurisdiction, and if such proceedings are instituted against Mortgagor or Beneficiary, it shall consent thereto or shall fail to cause the same to be discharged within forty-five (45) days of filing.

5.4 Laws Affecting Obligations and Indebtedness. If subsequent to the date of this Mortgage, any governmental entity in which the Mortgaged Property is located passes any law (i) which renders payment of the Indebtedness and/or performance of the Obligations by Mortgagor unlawful, or (ii) which prohibits Mortgagee from exercising any of its material rights and remedies under this Mortgage, the Equipment Lease or any of the other Lease Documents.

5.5 False Representation. If any representation or warranty made by Mortgagor, Beneficiary or others in, under or pursuant to this Mortgage, the Equipment Lease or the other Lease Documents, shall prove to have been false or misleading in any material respect as of the

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date on which such representation or warranty was made, provided, however, Mortgagor shall have a period not to exceed thirty (30) days after written notice to cure same.

5.6 Destruction of Improvements. Borrower demolishes or removes any of the Buildings.

5.7 Default Under Other Mortgage. If the holder of any other mortgage or any other lien on the Mortgaged Property (without hereby implying Mortgagee's consent to any such mortgage or lien except for the First Mortgage presently held by MERS for CitiMortgage Inc., (its successors or assigns) institutes foreclosure or other proceedings for the enforcement of its remedies thereunder, or if a default exists under any other mortgage or lien on the Mortgaged Property, and such default shall continue for a period of thirty (30) days, notwithstanding any other provision in the Equipment Lease or the other Lease Documents or in any other document to the contrary with respect to notice and right to cure being provided to Mortgagee.

5.8 Lease Documents. If a default shall occur under any of the other Lease Documents, including but not limited to, the Equipment Lease.

5.9 Due On Sale. If, without the prior written consent of Mortgagee, there is (i) sale, transfer, agreement for deed, conveyance, assignment, hypothecation or encumbrance, whether voluntary or involuntary, of all or part of the Mortgaged Property or any interest therein, or (ii) any sale, assignment, pledge, encumbrance or transfer to a third party of all or any portion of the member shares of the Mortgagor or (iii) the seizure of the Mortgaged Property, or Fixtures or attachment of any lien thereon, whether voluntary or involuntary, which has not been removed or bonded off to Mortgagee's satisfaction within ten (10) days of such attachment.

## **Article 6 - DEFAULT AND FORECLOSURE**

6.1 Remedies. If an Event of Default shall occur Mortgagee may, at its option, exercise one or more or all of the following remedies:

6.1.1 Acceleration. Declare the unpaid portion of the Indebtedness to be immediately due and payable, with written notice or demand to Mortgagor, whereupon the same shall become immediately due and payable.

6.1.2 Entry on Mortgaged Property. Upon receipt of a Court Order so authorizing, enter upon the Mortgaged Property and take possession thereof and of all books, records, and accounts relating thereto.



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6.1.3 Operation of Mortgaged Property. Upon receipt of a Court Order so authorizing, hold, lease, operate or otherwise use or permit the use of the Mortgaged Property, or any portion thereof, in such manner, for such time and upon such terms as Mortgagee may deem to be in its best interest (making such repairs, alterations, additions and improvements thereto, from time to time, as Mortgagee shall deem necessary or desirable) and collect and retain all earnings, rents, profits or other amounts payable in connection therewith.

6.1.4 Enforcement of Mortgage. Upon receipt of a Court Order so authorizing, Mortgagee, with or without entry, personally or by its agents or attorneys, insofar as applicable may: (a) sell the Mortgaged Property and all estate, right, title and interest, claim and demand therein, and right of redemption thereof, to the extent permitted by and pursuant to the procedures provided by law, at one or more sales, and at such time and place upon such terms and after such notice thereof as may be required or permitted by law; (b) institute proceedings for the complete or partial foreclosure of this Mortgage; or (c) take such steps to protect and enforce its rights whether by action, suit or proceeding in equity or at law for the specific performance of any covenant, condition or agreement in the Equipment Lease, other Lease Documents or in this Mortgage, (without being required to foreclose this Mortgage) or in aid of the execution of any power herein granted, or for any foreclosure hereunder, or for the enforcement of any other appropriate legal or equitable remedy or otherwise as Mortgagee shall elect.

6.1.5 Foreclosure and Private Sale. Sell the Mortgaged Property, in whole or in part, (a) under the judgment or decree of a court of competent jurisdiction, in such manner, at such time or times and upon such terms as Mortgagee may determine, or as provided by law; and/or sell the Personalty and/or the Fixtures, in whole or in part, at one or more public or private sales, in such manner, at such time or times and upon such terms as Mortgagee may determine, or as provided by law.

6.1.6 Receiver. Mortgagee shall be entitled, as a matter of strict right, and without regard to the value or occupancy of the security, or the solvency of the Mortgagor or of Beneficiary, or the adequacy of the Mortgaged Property as security for the Equipment Lease, to have a receiver appointed to enter upon and take possession of the Mortgaged Property, collect the Rents and profits therefrom and apply the same as the court may direct such receiver to have all the rights and powers permitted under the laws of the State where the Mortgaged Property is located. Mortgagor hereby waives any requirements on the receiver or Mortgagee to post any surety or other bond. Mortgagee or the receiver may also take possession of, and for these purposes use, any and all Personalty which is a part of the Mortgaged Property and used by Mortgagor in the rental or leasing thereof or any part thereof. The expense (including the receiver's fees, counsel fees, costs and agent's compensation) incurred pursuant to the powers herein contained shall be secured by this Mortgage. Mortgagee

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shall (after payment of all costs and expenses incurred) apply such Rents, issues and profits received by it on the Indebtedness in the order set forth in Section 6.8 hereof. The right to enter and take possession of the Mortgaged Property, to manage and operate the same, and to collect the Rents, issues and profits thereof, whether by receiver or otherwise, shall be cumulative to any other right or remedy hereunder or afforded by law, and may be exercised concurrently therewith or independently thereof. Mortgagee shall be liable to account only for such Rents, issues and profits actually received by Mortgagee.

6.1.7 Additional Rights and Remedies. With or without notice, and without releasing Mortgagor from any Indebtedness or Obligations, and without becoming a mortgagee in possession, Mortgagee shall have the right to cure any breach or default of Mortgagor and, in connection therewith, to enter upon the Mortgaged Property and to do such acts and things as Mortgagee deems necessary or desirable to protect the security hereof including, but without limitation to appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Mortgagee hereunder; to pay, purchase, contest or compromise any encumbrance, charge, lien or claim of lien which, in the judgment of Mortgagee, is prior or superior hereto, the judgment of Mortgagee being conclusive as between the parties hereto; to obtain insurance to pay any premiums or charges with respect to insurance required to be carried hereunder; and to employ counsel, accountants, contractors and other appropriate persons to assist them.

6.1.8 Other. Exercise any other remedy specifically granted under the Equipment Lease, other Lease Documents or now or hereafter existing in equity, at law, by virtue of statute or otherwise, including the rights described below.

6.2 Separate Sales. Any real estate, Building, Fixture, Land or any interest or estate therein sold pursuant to any writ of execution issued on a judgment obtained by virtue of the Equipment Lease, this Mortgage or the other Lease Documents, or pursuant to any other judicial proceedings under this Mortgage, the Equipment Lease or the other Lease Documents, may be sold in one parcel, as an entirety, or in such parcels, and in such manner or order as Mortgagee, in its sole discretion, may elect.

6.3 Remedies Cumulative and Concurrent. The rights and remedies of Mortgagee as provided in the Equipment Lease, this Mortgage and in the other Lease Documents shall be cumulative and concurrent and may be pursued separately, successively or together against Mortgagor or Beneficiary or against other obligors or against the Mortgaged Property, or any one or more of them, at the sole discretion of Mortgagee, and may be exercised as often as occasion therefor shall arise. The failure to exercise any such right or remedy shall in no event be construed as a waiver or release thereof, nor shall the choice of one remedy be deemed an election of remedies to the exclusion of other remedies.

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6.4 No Cure or Waiver. Neither Mortgagee's nor any receiver's entry upon and taking possession of all or any part of the Mortgaged Property, nor any collection of rents, issues, profits, insurance proceeds, condemnation proceeds or damages, other security or proceeds of other security, or other sums, nor the application of any collected sum to any Indebtedness and Obligations, nor the exercise of any other right or remedy by Mortgagee or any receiver shall impair the status of the security, or cure or waive any default or notice of default under this Mortgage, or nullify the effect of any notice of default or sale or prejudice Mortgagee in the exercise of any right or remedy, or be construed as an affirmation by Mortgagee of any tenancy, lease or option or a subordination of the lien of this Mortgage.

6.5 Payment of Costs, Expenses and Attorneys' Fees. Mortgagor agrees to pay to Mortgagee immediately and without demand all costs and expenses incurred by Mortgagee in exercising the remedies under the Equipment Lease and other Lease Documents (including but without limit, court costs and reasonable attorneys' fees, whether incurred in litigation or not) with interest at the greater of Defaulted Interest Rate or the highest rate payable under any Indebtedness and Obligations from the date of expenditure until said sums have been paid. Mortgagee shall be entitled to bid, at the sale of the Mortgaged Property held pursuant to the power of sale granted herein or pursuant to any judicial foreclosure of this instrument, the amount of said costs, expenses and interest in addition to the amount of the other Indebtedness and Obligations as a credit bid, the equivalent of cash.

6.6 Waiver of Redemption, Notice and Marshaling. Mortgagor hereby waives and releases (a) any and all statutory or equitable rights of redemption whether arising before or after the entry of a Judgment for Foreclosure and Sale, (b) all benefit that might accrue to Mortgagor and each Beneficiary by virtue of any present or future law exempting the Mortgaged Property, or any part of the proceeds arising from any sale thereof, from attachment, levy or sale on execution, or providing for any appraisement, valuation, stay of execution, exemption from civil process, moratorium, redemption or extension of time for payment; (c) unless specifically required herein, all notices of Mortgagor's default or of Mortgagee's election to exercise, or Mortgagee's actual exercise, of any option or remedy under the Equipment Lease or the other Lease Documents; (d) any right to have the liens against Mortgaged Property marshaled; and (e) the right to plead or assert any statute of limitations as a defense or bar to the enforcement of the Equipment Lease or the other Lease Documents.

6.7 Power of Sale. Mortgagee acknowledges that a power of sale provision is not currently enforceable under the Illinois Mortgage Foreclosure Act (the "Foreclosure Act"). Mortgagor acknowledges that in the event the Foreclosure Act is hereafter amended to permit the enforcement of a power of sale provision (the "Amendment"), such Amendment, to the extent permitted by law, will be enforceable against the Mortgagor and allow Mortgagee to proceed under the Amendment, so long as the Event of Default under which Mortgagee is proceeding occurs on or after the effective date of the Amendment. Whereupon, Mortgagee

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may elect to sell the Mortgaged Property by power of sale and, upon such election, such notice of Event of Default and election to sell shall be given as shall be required by the Amendment. Thereafter, upon the expiration of such time and the giving of such notice of sale as may then be required by law, at the time and place specified in the notice of sale, Mortgagee, or such selling officer as required or allowed by the Amendment, shall sell such property, or any portion thereof specified by Mortgagee, at public auction to the highest bidder for cash in lawful money of the United States. Mortgagee may postpone the sale by public announcement thereof at the time and place noticed therefore. If the Mortgaged Property consists of several lots, parcels or interests, Mortgagee may designate the order in which the same shall be offered for sale or sold.

6.8 Application of Proceeds. The proceeds of any sale of all or any portion of the Mortgaged Property and the amounts generated by any holding, leasing, operation or other use of the Mortgaged Property shall be applied by Mortgagee in the following order:

(a) First, to the payment of reasonable costs and expenses of taking possession of the Mortgaged Property and of holding, using, leasing, repairing, improving and selling the same (including, without limitation, payment of any Impositions or other taxes);

(b) Second, to the extent allowed by law, to the payment of reasonable attorneys' fees and other legal expenses, including expenses and fees incurred on appeals and legal expenses and fees of a receiver,

(c) Third, to the payment of accrued and unpaid interest on the Indebtedness; and

(d) Fourth, to the payment of the balance of the Indebtedness. The balance, if any, shall be paid to the parties entitled to receive it.

6.9 Strict Performance. Any failure by Mortgagee to insist upon strict performance by Mortgagor or of any of the terms and provisions of this Mortgage or of the other Lease Documents or of the Equipment Lease shall not be deemed to be a waiver of any of the terms or provisions of this Mortgage or of the other Lease Documents or the Equipment Lease and Mortgagee and Mortgage shall have the right thereafter to insist upon strict performance by Mortgagor or of any and all of them.

6.10 No Conditions Precedent to Exercise of Remedies. Neither Mortgagor nor any other person now or hereafter obligated for payment of all or any part of the Indebtedness (including the Beneficiary) shall be relieved of such obligation by reason of the failure of Mortgagee to comply with any request of Mortgagor or Beneficiary or of any other person so

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obligated to take action to foreclose on this Mortgage or otherwise enforce any provisions of this Mortgage, the Equipment Lease or the other Lease Documents, or by reason of the release, regardless of consideration, of all or any part of the security held for the Indebtedness, or by reason of any agreement or stipulation between any subsequent owner of the Mortgaged Property and Mortgagee extending the time of payment or modifying the terms of this Mortgage, the Equipment Lease or the other Lease Documents without first having obtained the consent of Mortgagor or Beneficiary or such other person; and in the latter event Mortgagor or Beneficiary and all such other persons shall continue to be liable to make payment according to the terms of any such extension or modification agreement, unless expressly released and discharged in writing by Mortgagee.

6.11 Release of Collateral. Mortgagee may release, regardless of consideration, any part of the security held for the Indebtedness or Obligations without, as to the remainder of the security, in any way impairing or affecting the liens of the Equipment Lease or the other Lease Documents or their priority over any subordinate lien. Without affecting the liability of Mortgagor, Beneficiary or any other person (except any person expressly released in writing) for payment of any Indebtedness secured hereby or for performance of any Obligations contained herein, and without affecting the rights of Mortgagee with respect to any security not expressly released in writing, Mortgagee may, at any time and from time to time, either before or after maturity of the Equipment Lease, and without notice or consent: (a) release any person liable for payment of all or any part of the Indebtedness or for performance of any Obligations; (b) make any agreement extending the time or otherwise altering terms of payment of all or any part of the Indebtedness, or modifying or waiving any Obligation, or subordinating, modifying or otherwise dealing with the lien or charge hereof; (c) exercise or refrain from exercising or waive any right Mortgagee may have; (d) accept additional security of any kind; (e) release or otherwise deal with any property, real or personal, securing the Indebtedness, including all or any part of the Mortgaged Property.

6.12 Other Collateral. For payment of the Indebtedness, Mortgagee may resort to any other security therefor held by Mortgagee in such order and manner as Mortgagee may elect.

6.13 Discontinuance of Proceedings. In the event Mortgagee shall have proceeded to enforce any rights under this Mortgage, the Equipment Lease or the other Lease Documents and such proceedings shall have been discontinued or abandoned for any reason, then in every such case Mortgagor and Mortgagee shall be restored to their former positions and the rights, remedies and powers of Mortgagee shall continue as if no such proceedings had been taken.

6.14 Waiver of Homestead. In accordance with Illinois law, Mortgagor, and each of them, hereby release and waive all rights under and by virtue of the Illinois homestead exemption laws.



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## Article 7 - CONDEMNATION

7.1 Condemnation. To the extent of the outstanding Indebtedness, Mortgagor hereby assigns, transfers and sets over to Mortgagee all rights of Mortgagor to any award or payment in respect of (a) any taking of all or a portion of the Mortgaged Property as a result of, or by agreement in anticipation of, the exercise of the right of condemnation or eminent domain; (b) any such taking of any appurtenances to the Mortgaged Property or of vaults, areas or projections outside the boundaries of the Mortgaged Property, or rights in, under or above the alleys, streets or avenues adjoining the Mortgaged Property, or rights and benefits of light, air, view or access to said alleys, streets, or avenues or for the taking of space or rights therein, below the level of, or above the Mortgaged Property; and (c) any damage to the Mortgaged Property or any part thereof due to governmental action, but not resulting in, a taking of any portion of the Mortgaged Property, such as, without limitation, the changing of the grade of any street adjacent to the Mortgaged Property. Mortgagor hereby agrees to file and prosecute its claim or claims for any such award or payment in good faith and with due diligence and cause the same to be collected and paid over to Mortgagee, and hereby irrevocably authorizes and empowers Mortgagee, in the name of Mortgagor or otherwise, to collect and receipt for any such award or payment and, in the event Mortgagor fails to act, or in the event that an Event of Default has occurred and is continuing, to file and prosecute such claim or claims.

7.2 Application of Proceeds. All proceeds received by Mortgagee with respect to a taking of all or any part of the Mortgaged Property or with respect to damage to all or any part of the Mortgaged Property from governmental action not resulting in a taking of the Mortgaged Property, shall be applied as follows, in the order of priority indicated:

(a) To reimburse Mortgagee for all reasonable costs and expenses, including reasonable attorneys' fees incurred in connection with collecting the said proceeds;

(b) To the payment of accrued and unpaid amounts due under the Equipment Lease and the other Lease Documents; and

(c) To the payment of the balance of the Indebtedness. The balance, if any, will be paid to Mortgagor.

## Article 8 - MISCELLANEOUS



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8.1 Further Assurances. Mortgagor, upon the reasonable request of Mortgagee, will execute, acknowledge and deliver such further instruments (including, without limitation, financing statements, estoppel certificates and declarations of no set-off) and do such further acts as may be necessary, desirable or proper to carry out more effectively the purpose of this Mortgage, the Equipment Lease and/or the other Lease Documents, to facilitate the assignment or transfer of this Mortgage, the Equipment Lease and/or the other Lease Documents, and to subject to the liens of this Mortgage, the Equipment Lease and/or the other Lease Documents, any property intended by the terms thereof to be covered thereby, and any renewals, additions, substitutions, replacements or betterments thereto. Upon any failure by Mortgagor to execute and deliver such instruments, certificates and other documents on or before seven (7) days after a written request therefor is given to Mortgagor, Mortgagee may make, execute and record any and all such instruments, certificates and Mortgagor irrevocably appoints Mortgagee the agent and attorney-in-fact of Mortgagor to do so.

8.2 Recording and Filing. Mortgagor, at its expense, will cause this Mortgage, the Equipment Lease, and the other Lease Documents, all supplements thereto and any financing statements at all times to be recorded and filed and re-recorded and re-filed in such manner and in such places as Mortgagee shall reasonably request, and will pay all such recording, filing, re-recording and re-filing taxes, fees and other charges.

8.3 Notice. All notices, demands, requests and other communications required under this Mortgage, the Equipment Lease and the other Lease Documents shall be in writing and shall be deemed to have been properly given if sent by U. S. certified or registered mail, postage prepaid, or personal delivery, addressed to the party for whom it is intended at the Mortgagor's Address or the Mortgagee's Address, as the case may be. Any party may designate a change of address by written notice to the other, given at least ten (10) days before such change of address is to become effective.

8.4 Mortgagee's Right to Perform the Obligations. If Mortgagor shall fail to make any payment or perform any act required by this Mortgage, the Equipment Lease or the other Lease Documents, then, at any time thereafter, upon reasonable prior notice to or demand upon Mortgagor and without waiving or releasing any obligation or default, Mortgagee may make such payment or perform such act for the account of and at the expense of Mortgagor, and shall have the right to enter the Mortgaged Property for such purpose and to take all such action thereon and with respect to the Mortgaged Property as may be necessary or appropriate for such purpose. All sums so paid by Mortgagee, and all costs and expenses, including, without limitation, reasonable attorneys' fees and expenses so incurred together with interest thereon at the Defaulted Interest Rate, from the date of payment or incurring, shall constitute additions to the Indebtedness secured by this Mortgage, the Equipment Lease and the other Lease Documents, and shall be paid by Mortgagor to Mortgagee, on demand. If Mortgagee shall elect

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to pay any Imposition, Mortgagee may do so in reliance on any bill, statement or assessment procured from the appropriate public office, without inquiring into the accuracy thereof or into the validity of such Imposition. Mortgagor shall indemnify Mortgagee for all losses and expenses, including reasonable attorneys' fees, incurred by reason of any acts performed by Mortgagee pursuant to the provisions of this Subsection 8.4 or by reason of the Equipment Lease or the other Lease Documents, and any funds expended by Mortgagee to which it shall be entitled to be indemnified, together with interest thereon at the Defaulted Interest Rate from the date of such expenditures, shall constitute additions to the Indebtedness and shall be secured by this Mortgage, the Equipment Lease and the other Lease Documents and shall be paid by Mortgagor to Mortgagee upon demand.

8.5 Covenants Running with the Land. All covenants contained in this Mortgage and in the Equipment Lease and the other Lease Documents shall run with the Mortgaged Property.

8.6 Severability. In case any one or more of the Obligations shall be invalid, illegal or unenforceable in any respect, the validity of the Equipment Lease, this Mortgage, and the other Lease Documents and remaining Obligations shall be in no way affected, prejudiced or disturbed thereby.

8.7 Modification. This Mortgage, the Equipment Lease and the other Lease Documents and the terms of each of them may not be changed, waived, discharged or terminated orally, but only by an instrument or instruments in writing signed by the party against which enforcement of the change, waiver, discharge or termination is asserted.

8.8 Assumption. The Indebtedness evidenced by the Equipment Lease and the other Lease Documents and secured by this Mortgage and the other Lease Documents is personal to Mortgagor, and Mortgagee made such extension of credit to Mortgagor based upon the credit of Mortgagor, and Beneficiary and Mortgagee's judgment of the ability of Mortgagor, or Beneficiary to repay the entire Indebtedness and therefore this Mortgage may not be assumed by any subsequent holder of an interest in the Mortgaged Property without Mortgagee's prior written consent. This Section 8.8 does not limit the effect and generality of Section 5.9 hereof. Mortgagor shall notify Mortgagee promptly in writing of any transaction or event described in Section 5.9 hereof.

8.9 Tax on Indebtedness or Mortgage. In the event of the passage, after the date of this Mortgage, of any law deducting from the value of land for the purposes of taxation, any lien thereon, or imposing upon Mortgagee the obligation to pay 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 as to affect the Mortgage or the Indebtedness, the entire unpaid balance of the Indebtedness shall, at the option of Mortgagee,

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after thirty (30) days written notice to Mortgagor, become due and payable; provided, however, that if, in the opinion of Mortgagee's counsel, it shall be lawful for Mortgagor to pay such taxes, assessments, or charges, or to reimburse Mortgagee therefore, then there shall be no such acceleration of the time for payment of the unpaid balance of the Indebtedness if a mutually satisfactory agreement for reimbursement, in writing, is executed by Mortgagor and delivered to Mortgagee within the aforesaid period.

8.10 Maximum Rate of Interest. Notwithstanding any provision in this Mortgage, or in any instrument now or hereafter relating to or securing the Indebtedness evidenced by the Equipment Lease, this Mortgage or the other Lease Documents the total liability for payments of interest and payments in the nature of interest, including, without limitation, all charges, fees, exactions, or other sums which may at any time be deemed to be interest, shall not exceed the limit imposed by applicable usury laws. In the event the total liability for payments of interest and payments in the nature of interest, including without limitation, all charges, fees, exactions or other sums which may at any time be deemed to be interest, shall, for any reason whatsoever, result in an effective rate of interest, which for any month or other interest payment period exceeds the limit imposed by the applicable usury laws, all sums in excess of those lawfully collectible as interest for the period in question shall, without further agreement or notice by, between, or to any party hereto, be applied to the reduction of the Indebtedness immediately upon receipt of such sums by Mortgagee, with the same force and effect as though Mortgagor, and/or Beneficiary had specifically designated such excess sums to be so applied to the reduction of the Indebtedness and Mortgagee had agreed to accept such sums as a premium-free payment of the Indebtedness, provided, however, that Mortgagee may, at any time and from time to time, elect, by notice in writing to Mortgagor, to waive, reduce, or limit the collection of any sums (or refund to Mortgagor any sums collected) in excess of those lawfully collectible as interest rather than accept such sums as a prepayment of the Indebtedness.

8.11 Survival of Warranties and Covenants. The warranties, representations, covenants and agreements set forth in this Mortgage, the Equipment Lease and the other Lease Documents shall survive the making of the extension of credit and the execution and delivery of the Equipment Lease, and shall continue in full force and effect until the Indebtedness shall have been paid in full, except such obligations as specified in Section 4.10 hereof which shall survive.

8.12 Applicable Law. This Mortgage, the Equipment Lease and the other Lease Documents shall be governed by and construed according to the laws of the State of Illinois.

8.13 Equipment Lease Expenses. Mortgagee shall pay all costs and expenses in connection with the preparation, execution, delivery and performance of this Mortgage, the Equipment Lease and the other Lease Documents, including (but not limited to) fees and

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disbursements of its and Mortgagee's counsel, recording costs and expenses, conveyance fee, documentary stamp, intangible and other taxes, surveys, appraisals and policies of title insurance, physical damage insurance, and liability insurance.

8.14 Tax Escrow. Mortgagor shall pay to Mortgagee on each of the monthly due dates of payments, as set forth in the Equipment Lease, an amount equal to one-twelfth of the annual Impositions. Mortgagor shall also pay into such account such additional amounts, to be determined by Mortgagee from time to time, as will provide a sufficient fund, at least 30 days prior to the due dates of the next installment of such Impositions and premiums, for payment of such Impositions and premiums so as to realize the maximum discounts permitted by law. Amounts held hereunder by Mortgagee shall be non-interest bearing and may be commingled with Mortgagee's other funds. Upon assignment of this Mortgage, Mortgagee shall have the right to pay over the balance of such amounts then in its possession to the assignee and Mortgagee shall thereupon be completely released from all liability with respect to such amounts. Upon full payment of the Indebtedness, or, at the election of Mortgagee at any prior time, the balance of such amounts shall be paid over to Mortgagor and no other party shall have any right or claim thereto. Amounts held by Mortgagee pursuant to this Section 8.14 shall (a) be made available to Mortgagor in sufficient time to allow Mortgagor to satisfy Mortgagor's obligations under this Mortgage, the Equipment Lease and the other Lease Documents to pay Impositions and required insurance premiums, within the maximum discount period, where applicable and (b) not bear interest.

8.15 No Representations by Mortgagee. By accepting or approving anything required to be observed, performed or fulfilled or to be given to Mortgagee, pursuant to this Mortgage, the Equipment Lease or the other Lease Documents, including (but not limited to) any officer's certificate, survey, appraisal or insurance policy, Mortgagee shall not be deemed to have warranted or represented the sufficiency, legality, effectiveness or legal effect of the same, or of any term, provision or condition thereof, and such acceptance or approval thereof shall not be or constitute any warranty or representation with respect thereto by Mortgagee.

8.16 Headings. The article headings and the section and subsection captions are inserted for convenience or reference only and shall in no way alter or modify the text of such articles, sections and subsections.

8.17 Counterparts. This Mortgage may be executed in counterparts, and all said counterparts when taken together shall constitute one and the same Mortgage.

8.18 Collateral Protection Act. Pursuant to the requirements of the Illinois Collateral Protection Act, Mortgagor is hereby notified as follows:

Unless the Mortgagor provides the Mortgagee with evidence of the insurance coverage required

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by this Mortgage, the Equipment Lease or any of the other Lease Documents, Mortgagee may purchase insurance at Mortgagor's expense to protect Mortgagee's interests in the Mortgaged Property or any other collateral for the Indebtedness or Obligations. This insurance may, but need not protect Mortgagor's interests. The coverage the Mortgagee purchases may not pay any claim that Mortgagor makes or any claim that is made against Mortgagor in connection with the Mortgaged Property or any other collateral for the Indebtedness or Obligations. Mortgagor may later cancel any insurance purchased by Mortgagee but only after providing Mortgagee with evidence that Mortgagor has obtained insurance as required by this Mortgage, the Equipment Lease or any of the other Lease Documents. If Mortgagee purchases insurance for the Mortgaged Property or any other collateral for the indebtedness or obligations, Mortgagor will be responsible for the costs of that insurance, including interest in any other charges that Mortgagee may lawfully impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to the total outstanding indebtedness. The costs of the insurance may be more than the cost of insurance that Mortgagor may be able to obtain on its own.

8.19 Equipment Lease. This Mortgage is given, in part, to secure the Equipment Lease, Master Lease Agreement and Schedule(s) thereto, other Lease Documents, and any other lease or lease schedule now or hereafter made between the Lessor and Lessee under said Equipment Lease and shall secure not only presently existing Indebtedness under the Equipment Lease and other Lease Documents, but also future advances, whether such advances are obligatory or to be made at the option of the Mortgagee or otherwise, as are made within ten (10) years from the date hereof, to the same extent as if such future advances were made on the date of the execution of this Mortgage, although there may be no advance made at the time of execution of this Mortgage and although there may be no indebtedness secured hereby outstanding at the time any advance is made. The lien of this Mortgage shall be valid as to all Indebtedness secured hereby, including future advances, from the time of its filing for record in the recorder's office of the county in which the Mortgaged Property is located. The total amount of indebtedness secured hereby may increase or decrease from time to time. This Mortgage shall be valid and have priority to the extent of the Indebtedness secured hereby over all subsequent liens and encumbrances, including statutory liens, excepting solely taxes and assessments levied on the Mortgaged Property given priority by law.

8.20 ASSIGNMENT. **MORTGAGOR'S INTEREST HEREIN IS NOT ASSIGNABLE AND SHALL NOT BE ASSIGNED OR TRANSFERRED BY OPERATION OF LAW WITHOUT THE PRIOR WRITTEN CONSENT OF MORTGAGEE. MORTGAGOR SHALL NOT ASSIGN, TRANSFER PLEDGE OR HYPOTHECATE THIS MORTGAGE, THE EQUIPMENT LEASE, ANY OF THE OTHER LEASE DOCUMENTS, BUILDING, FIXTURES, LAND, OR ANY INTEREST IN THIS MORTGAGE OR THE EQUIPMENT LEASE OR THE OTHER LEASE DOCUMENTS OR IN AND TO THE EQUIPMENT COVERED BY THE EQUIPMENT**



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**LEASE OR OTHER THE LEASE DOCUMENTS OR PERMIT ITS RIGHTS UNDER THIS MORTGAGE TO BE SUBJECT TO ANY LIEN, CHARGE OR ENCUMBRANCE OF ANY NATURE WITHOUT THE PRIOR WRITTEN CONSENT OF MORTGAGEE.**

Mortgagee shall have the right to assign this Mortgage, its interest in any Building, Fixture, Land hereunder or Equipment under the Equipment Lease or other Lease Documents or any part thereof or any interest therein or proceeds due it pursuant to an end of term option or agreement, if any. Mortgagor agrees to execute such instruments and documents and take such other actions as Mortgagee may require to carry out the purpose and intent of this Section 8.20. If Mortgagee assigns this Mortgage, the Equipment Lease or any of the other Lease Documents, rents or Indebtedness reserved therein or all or any of the Mortgagee's other rights or interests hereunder, or amounts equal thereto, the right of the assignee to receive the rentals or Indebtedness as well as any other rights of the assignee shall not be subject to any defense, set-off, counterclaim or recoupment which may arise out of any breach or obligation of Mortgagee or by reason of any other indebtedness or liability at any time owing by Mortgagee to Mortgagor. Following such assignments, the term "Mortgagee" shall be deemed to include or refer to Mortgagee's assignee, provided that no such assignee shall be deemed to assume any obligation or duty imposed upon Mortgagee hereunder and Mortgagor shall look only to Mortgagee for performance thereof. All rights and remedies of Mortgagee hereunder shall accrue to and be enforceable by any assignee of Mortgagee in its own name. Mortgagor acknowledges and confirms that in the event of an assignment, said assignment will not materially increase Mortgagor's risks or burdens.

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

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

**Richard Kuempel**

Attest: \_\_\_\_\_

Witness



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## ACKNOWLEDGMENT

STATE OF ILLINOIS     )  
                                          ) SS  
COUNTY OF LAKE     )

On December 29, 2007 before me, the undersigned, a Notary Public in and for the county and state aforesaid, personally appeared \_\_\_\_\_ personally known to me (or proved to me on the basis of satisfactory evidence) to be \_\_\_\_\_ the person who executed this Mortgage as Mortgagor and acknowledged to me that the execution thereof was his/her free and voluntary act and deed for the uses and purposes there mentioned.

WITNESS my hand and official seal (SEAL)



Notary Public in and for the State of Illinois

*[Handwritten Signature]*

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## Exhibit A

### Legal Description:

Subject to: Mortgage dated March 31, 2006 and recorded April 5, 2006 as document number 0609534019 made by Richard Kuempel, to MERS for CitiMortgage Inc., to secure an indebtedness of \$155,250.00 and such other sums as provided therein.

Permanent Index Numbers: 01 01 123 076 1003

Commonly known as: 620 South Hough Street, Unit C, Barrington, IL 60010

Lease amount covered by this mortgage is \$461,412.32

### PARCEL 1:

Unit C in the 620 S. Hough Street Condominium as delineated and defined in the Declaration recorded as Document Number 0412644031 as amended from time to time, together with its undivided percentage interest in the common elements, in Section 01, Township 42 North, Range 9, East of the Third Principal Meridian, in Cook County Illinois.

### PARCEL 2:

The exclusive right to the use of limited common elements known as parking space 10 and storage space 10 as delineated on the survey attached to the Declaration aforesaid recorded as Document 0412644031.