

# UNOFFICIAL COPY

Doc#: 0731009109 Fee: \$90.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 11/06/2007 01:51 PM Pg: 1 of 34



Doc#: 0734733016 Fee: \$88.00  
Eugene "Gene" Moore  
Cook County Recorder of Deeds  
Date: 12/13/2007 08:38 AM Pg: 1 of 33

As to 839202372 all this document is to be re-recorded due to a scrivener's error. A missing exhibit and attachment have been added.

RECORDING REQUESTED BY AND  
AFTER RECORDING RETURN TO:

Polsinelli Shalton Flanigan Suelthaus PC  
700 W. 47th Street, Suite 1000  
Kansas City, Missouri 64112  
Attention: Michael B. Hickman  
Asset No. 03-0252392 & 03-0252394

## CONSENT AND ASSUMPTION AGREEMENT WITH RELEASE

This Consent and Assumption Agreement With Release (this "Agreement") is entered into as of November 5, 2007, by and among 30 W. MONROE PROPERTY A LLC, 30 W. MONROE PROPERTY B LLC, and 30 W. MONROE PROPERTY F LLC, each a Delaware limited liability company (collectively, the "Seller"), each with an address of 111 West Jackson Boulevard, Suite 1342, Chicago, Illinois 60604, ALFRED E. D'ANCONA III, an individual (the "Seller Principal"), each with an address of 111 West Jackson Boulevard, Suite 1342, Chicago, Illinois 60604, BH INLAND REALTY LLC ("BH Realty"), RDC INLAND REALTY LLC ("RDC Realty"), and GB INLAND REALTY LLC ("GB Realty"), each a Delaware limited liability company, as tenants in common (collectively, the "Buyer"), each with an address of c/o Capital Properties, 717 Fifth Avenue, 20th Floor, New York, New York 10022, RICHARD D. COHEN, an individual (the "Buyer Principal"), with an address of c/o Capital Properties, 717 Fifth Avenue, 20th Floor, New York, New York 10022, LASALLE BANK NATIONAL ASSOCIATION, TRUSTEE FOR J.P. MORGAN CHASE COMMERCIAL MORTGAGE SECURITIES CORP. COMMERCIAL MORTGAGE PASS-THROUGH CERTIFICATES SERIES 2005-LDP5 ("Lead Lender") and THE VARIABLE ANNUITY LIFE INSURANCE COMPANY ("Co-Lender", and together with Lead Lender, the "Lender"), each with an address of c/o Midland Loan Services, Inc., 10851 Mastin, Suite 300, Overland Park, Kansas 66210.

Box 400-CTCC

31/8

# UNOFFICIAL COPY

## RECITALS

1. Seller is the owner of certain real property located in Cook County, Illinois, commonly known as 30 West Monroe, which real property is more particularly described in Exhibit A attached hereto and incorporated herein by reference. Such real property, together with all improvements, fixtures and personal property located thereon is collectively referred to as the "Property."

2. Lead Lender is the owner and holder of certain documents (the "Original Loan Documents") evidencing and securing a loan (the "A-Loan") made by AIG MORTGAGE CAPITAL, LLC, a Delaware limited liability company ("Original Lender") to Seller, including, without limitation, the:

- (i) Promissory Note A (the "A-Note") dated as of August 18, 2005 (the "Original Closing Date"), in the original principal amount of \$32,650,000.00, executed by Seller, as maker, in favor of Original Lender.
- (ii) Mortgage, Assignment of Leases and Rents and Security Agreement (the "Security Instrument") dated as of the Original Closing Date, executed by Seller in favor of Original Lender, filed for record on September 28, 2005, in the Office of the Register of Deeds, Recorder of Deeds or County Clerk, as applicable, in and for Cook County, Illinois (the "Recording Office"), as Document No. 0527127042.
- (iii) Assignment of Leases and Rents (the "Assignment of Leases") dated as of the Original Closing Date, executed by Seller in favor of Original Lender, filed for record September 28, 2005, in the Recording Office as Document No. 0527127043.
- (iv) Loan Agreement (the "Loan Agreement") dated as of the Original Closing Date, between by Seller and Original Lender.
- (v) Environmental Indemnity Agreement (the "Environmental Indemnity") dated as of the Original Closing Date, executed by 30 W. Monroe Property A LLC, a Delaware limited liability company, 30 W. Monroe Property B LLC, a Delaware limited liability company, 30 W. Monroe Property F LLC, a Delaware limited liability company, and Alfred E. D'Ancona III, an individual, in favor of Original Lender.
- (vi) Guaranty of Recourse Obligations (the "Guaranty") dated as of the Original Closing Date, executed by Seller Principal in favor of Original Lender.
- (vii) Deposit Account Agreement (the "Deposit Agreement") dated as of the Original Closing Date, executed by Seller and other parties in connection with the Loan.
- (viii) Clearing Account Agreement (the "Clearing Agreement") dated as of the Original Closing Date, executed by Seller and other parties in connection with the Loan.

# UNOFFICIAL COPY

- (ix) Assignment of Agreements, Licenses, Permits and Contracts dated as of the Original Closing Date and executed by Seller.
- (x) Agreement Concerning Insurance Requirements dated as of the Original Closing Date and executed by Seller.

3. Co-Lender is the owner and holder of Promissory Note B dated August 18, 2005 in the original principal amount of \$3,600,000.00, executed by Seller, as maker, in favor of Original Lender (the "B-Note", and together with the A-Note, the "Note"), and co-owner with Lead Lender of the other Original Loan Documents other than the A-Note, all of which evidence and secure a loan in the amount of the B-Note made by Original Lender to Original Borrower (the "B-Loan", and together with the A-Loan, the "Loan").

4. Midland Loan Services, Inc., a Delaware corporation, is the Master Servicer for Lender ("Master Servicer") pursuant to that certain Pooling and Servicing Agreement dated as of December 1, 2005 ("Servicing Agreement").

5. Pursuant to that certain Intercreditor Agreement ("Intercreditor Agreement") between Original Lender and Co-Lender dated August 18, 2005, Co-Lender has appointed the Master Servicer to service the B-Loan, secured by the B-Note, in accordance with the terms of the Servicing Agreement and Intercreditor Agreement.

6. Seller and Buyer are the current parties to a Sale Agreement dated July 6, 2007, as amended (the "Purchase Agreement"), pursuant to which an approximate 20.23% tenant in common interest in the Property is to be transferred to BH Realty, an approximate 68.83% tenant in common interest in the Property is to be transferred to GB Realty, an approximate 10.94% tenant in common interest in the Property is to be transferred to RDC Realty, and Buyer is to assume the Loan (the "Transfer and Assumption"), and such current parties have requested that Lender consent to the Transfer and Assumption (as defined below).

7. Without the prior consent of the Lender, the Transfer and Assumption would constitute a default under the Original Loan Documents. Subject to the terms and conditions of this Agreement, Lender and Co-Lender have agreed to consent to the Transfer and Assumption.

8. With respect to Seller and Seller Principal, the term "Loan Documents" as used hereinafter shall mean the Original Loan Documents. With respect to Buyer and Buyer Principal, the term "Loan Documents" as used hereinafter shall mean collectively the Original Loan Documents (except to the extent amended or replaced pursuant to this Agreement), this Agreement, and all other documents, instruments and agreements executed by Buyer or Buyer Principal in connection with the Loan or the Transfer and Assumption.

## AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

1. Consent to Transfer. Subject to satisfaction of all of the conditions contained herein, Lender consents to the Transfer and Assumption. This consent is strictly limited to the

# UNOFFICIAL COPY

Transfer and Assumption described in this Agreement. This Agreement shall not constitute a waiver or modification of any requirement of obtaining Lender's consent to any future transfer of the Property or any portion thereof or interest therein, nor shall it constitute a modification of the terms, provisions, or requirements in the Loan Documents in any respect except as expressly provided herein. Buyer specifically acknowledges that any subsequent transfer of any interest in any of the Property or interest in Buyer in violation of the Loan Documents shall be a default thereunder. The Loan Documents are hereby ratified and, except as expressly modified in this Agreement, remain unmodified and are in full force and effect. Lender hereby confirms that Lender consent is not required for a transfer by the Darman family of its 2% indirect interest in GB Realty to Buyer Principal, an affiliate of Buyer Principal or entities controlled by Buyer Principal.

2. Loan Information. The parties hereto agree that as of the date hereof:
- (a) The outstanding principal balance of the A-Note is \$32,650,000.00 and the outstanding principal balance of the B-Note is \$3,600,000.00.
  - (b) The interest rate of the Note is a fixed rate of 5.37% per annum.
  - (c) The maturity date of the Note is September 1, 2015.
  - (d) The following listed payments are due and payable on the first day of each and every calendar month:
 

• \$167,626.04	interest only installments (through 9/1/2008)
• \$202,876.59	principal and interest installments (beginning 10/1/2008)
• \$131,078.04	tax escrow deposit.
• \$9,000.00	insurance escrow deposit.
• \$4,759.56	capital improvement escrow deposit.
- Provided, however, that the amount of the insurance and tax escrow deposit may be modified at or before closing to reflect Lender's escrow analysis using the Buyer's cost of insurance and current tax payments, with such modified amount reflected on the Lender's closing settlement statement for the Transfer and Assumption.
- (e) The current balance of each escrow account held by Lender with respect to the Loan Note is:
 

• \$1,078,873.09	tax escrow account.
• \$55,093.01	insurance escrow account.
• \$2,432.43	replacement reserve escrow account.
• \$37,901.34	capital improvements escrow account.
• \$2,318,515.99	tenant improvement/leasing commission escrow account.
  - (f) All required payments due through November 1, 2007 under the Loan Documents have been paid.

# UNOFFICIAL COPY

- (g) There are no defenses or claims of setoffs with respect to any sums or amounts owing under the Loan Documents.
- (h) Lender is the current owner and holder of the Loan Documents.
- (i) There is no existing Event of Default (as defined in the Loan Documents) or event or condition that, with the giving of notice or passage of time or both, would constitute an Event of Default.

3. Conditions. In addition to any other conditions set forth herein or required by Lender, the following are conditions precedent that must be satisfied prior to the closing of the Transfer and Assumption (the "Closing"):

- (a) The execution, acknowledgment, delivery and recordation of this Agreement by all of the parties concurrently with the Closing, and the execution, acknowledgment and delivery of all other agreements, instruments and documents required by Lender hereunder concurrently with and in connection with the Closing, including but not limited to replacements for the Environmental Indemnity, Guaranty, Deposit Agreement, and Clearing Agreement.
- (b) The execution, delivery and recordation or filing, as applicable, of one more new financing statements, or amendments to existing financing statements as required by Lender at Closing.
- (c) Buyer's delivery to Lender of satisfactory evidence that all insurance over the Property required by the Loan Documents (the "Required Insurance") is in full force and effect as of the Closing, with all required premiums paid, and contains a mortgagee's clause (the "Mortgagee's Clause") satisfactory to Lender in favor of Lender, its successors and/or assigns, c/o Midland Loan Services, Inc., Master Servicer, 10851 Mastin, Suite 300, Overland Park, Kansas 66210; re: Loan Number 03-0252392 and Loan Number 03-0252394
- (d) Lender's receipt of satisfactory Title Policy (hereinafter defined).
- (e) The full release and reconveyance of any other liens or monetary encumbrances against the Property.
- (f) Lender's receipt of all of the Required Payments (hereinafter defined).
- (g) The satisfaction of all other conditions contained in the approval letter issued by the Lender in connection with the Transfer and Assumption.

4. Fees, Payment and Expenses. Buyer or Seller (as agreed between them) covenant and agree to pay to Lender at Closing the following (the "Required Payments"):

- (a) An amount equal to (i) one percent (1%) of the collective amounts listed in Section 2(a) above (the assumption fee for Lender's consent to the Transfer and Assumption of the Loan), minus (ii) a \$57,000 assumption fee credit.
- (b) The amounts listed in Section 2(d) above are due and payable on December 1, 2007, but only if the Transfer and Assumption closes on or after the 10th of the month preceding such date.
- (c) Payment of legal fees and expenses of Lender's counsel in connection with the Transfer and Assumption.
- (d) Payment of the fees and expenses of rating agencies, and their respective counsel, if applicable.

# UNOFFICIAL COPY

- (e) Costs and expenses for third party reports.
- (f) \$30,000.00 tenant in common administration fee.

## 4A. Modifications.

- (a) TIC Requirements. Buyer is executing, effective as of the date hereof, and recording, a Tenants-In Common Agreement ("TIC Agreement"). The TIC Agreement is and shall be subject and subordinate to the Loan Documents. In addition to and not in limitation of any provision contained in the Loan Agreement:
  - (1) To the extent that there are any inconsistencies between the terms of the TIC Agreement and the terms of the Loan Documents, the terms of the Loan Documents shall prevail.
  - (2) Each entity constituting Buyer (a "TIC") agrees that in the event any TIC becomes a debtor subject to the United States Bankruptcy Code ("Code"), another TIC shall have the right to purchase the bankrupt TIC's interest at fair market value based on independent appraisals as permitted under the Code, subject to Lender's prior written consent.
  - (3) The Managing Tenant-In-Common under the TIC Agreement (i) will make all decisions on behalf of each other TIC, (ii) will be the only party to receive written notice under the Loan Documents, and (iii) will provide such notice to each TIC; provided, however, that failure to do so will not alter the effect of such notice under the Loan Documents.
  - (4) The Managing Tenant-In-Common shall not be replaced without Lender's prior written consent.
  - (5) Each TIC agrees, for so long as the Loan is outstanding, not to sell or transfer its tenant in common interest to any other TIC (other than as permitted by the Code, with Lender's prior written consent, or as permitted by the transfer provisions of the Security Instrument, as amended by Paragraph 4A(c) below), or to an independent third party (other than as permitted by the transfer provisions of the Security Instrument).
- (b) Letter of Credit. Buyer shall deposit with Lender, until the Loan is paid in full (or until released per Paragraph 4A(c) below), a Letter of Credit for the benefit of Lender in the face amount of \$60,000.00. Buyer shall provide to Lender a replacement Letter of Credit or an extension of the expiration date of the Letter of Credit then deposited with Lender at least thirty (30) days prior to each expiration date of the Letter of Credit. The Letter of Credit shall be held by Lender to satisfy the obligations of Buyer under the Loan Documents. Lender shall be permitted to draw upon the Letter of Credit (i) if the Letter of Credit is not extended or replaced at least thirty (30) days prior to each expiration date, (ii) upon a bankruptcy filing by either TIC (whether voluntary or involuntary), (iii) upon a failure of either TIC to comply with the TIC requirement set forth above in the Loan Agreement or in its TIC Agreement, (iv) upon an Event of Default, or (v) if Buyer does not make any other payment required under the Loan Documents, after the expiration of any applicable notice and cure periods. Funds

# UNOFFICIAL COPY

received by Lender upon a draw on the Letter of Credit may be applied by Lender to the obligations of Buyer under the Loan Documents, to any costs or expenses relating to a TIC bankruptcy or failure to comply with TIC requirements set forth above or in the TIC Agreement, or may be held by Lender as an additional escrow pursuant to the Loan Documents as security for Buyer's current and future obligations under the Loan Documents.

- (c) Unifying Transfer; Release of Letter of Credit/Guaranty Agreement. Provided no Event of Default has occurred with respect to the Loan from and after the date hereof, upon a transfer of all tenant in common interests in the Property by Buyer to one new owner (a "Unifying Transfer") pursuant to and in accordance with the Loan Documents, Lender shall release the Letter of Credit (or such proceeds thereof as have not been applied by Lender in accordance with this Agreement).
- (d) The following addresses are hereby substituted for all addresses in Section 6.1 of the Loan Agreement:

Lender:

LASALLE BANK NATIONAL ASSOCIATION,  
TRUSTEE FOR J.P. MORGAN CHASE  
CERTIFICATES SERIES 2005-LDP5  
c/o Midland Loan Services, Inc.  
10851 Mastin, Suite 300  
Overland Park, Kansas 66210  
Attention: Asset Management

Borrower:

Capital Properties Management  
717 Fifth Avenue, 20th Floor  
New York, New York 10022

- (e) Mezzanine Loan Terms. The Mezzanine Loan, as defined in the Loan Agreement, is being paid in full as of the date hereof. Therefore, all references to the Mezzanine Loan and the Mezzanine Lender are hereby deleted from the Original Loan Documents.
- (f) Definitions. Section 1.1 of the Loan Agreement is hereby modified by replacing the definitions of the terms Borrowers, Borrower, Borrower Designee, Guarantor, Key Principal(s), Manager, Sole Member and Tenant in Common Agreement, with the following:

***Borrowers:*** collectively, BH INLAND REALTY LLC ("**BH Realty**"), RDC INLAND REALTY LLC ("**RDC Realty**"), and GB INLAND REALTY LLC ("**GB Realty**"), each a Delaware limited liability company, together with their respective permitted successors and assigns. '***Borrower***' means any one of the Borrowers.

# UNOFFICIAL COPY

**Borrowers' Designee:** Inland Manager Inc., a Delaware corporation.

**Guarantor:** Richard D. Cohen, an individual.

**Key Principal(s):** Richard D. Cohen.

**Manager:** Capital Properties Management, Inc., a Massachusetts corporation, or any successor, assignee or replacement manager appointed by Borrower in accordance with Section 5.12.

**Sole Member:** BH Inland Mezz LLC, a Delaware limited liability company ("**BH Mezz**"), is the sole member of BH Realty, RDC Inland Mezz LLC, a Delaware limited liability company ("**RDC Mezz**"), is the sole member of RDC Realty, and GB Inland Mezz LLC, a Delaware limited liability company ("**GB Mezz**"), is the sole member of GB Realty.

**Tenant in Common Agreement:** that certain Tenant-in-Common Agreement dated on or about November 4, 2007, by and among the Borrowers.

- (g) Definitions Within Defined Term "Loan Documents". Section 1.1 of the Loan Agreement is hereby modified by replacing subsections (v) and (vi) of the definition of "Loan Documents" with the following:
- (v) the Deposit Account Control Agreement (Three Party Soft Lockbox) (the "**Deposit Account Control Agreement**") among Borrowers, Lender and Deposit Bank,
  - (vi) the Cash Management Agreement (the "**Cash Management Agreement**") among Borrowers, Lender and Manager.
- (h) Substitution of Certain Terms and Provisions. The Loan Agreement is hereby modified as follows:
- (1) Clearing Account. All references to "Clearing Account" are hereby deleted and replaced with "Deposit Account".
  - (2) Clearing Bank. All references to "Clearing Bank" are hereby deleted and replaced with "Deposit Bank".
  - (3) Deposit Account. All references to "Deposit Account" are hereby deleted and replaced with "Cash Management Account".
  - (4) Deposit Bank. All references to "Deposit Bank" are hereby deleted and replaced with "Cash Management Bank".
  - (5) The definition of "Deposit Bank" in Section 1.1 of the Loan Agreement is hereby modified and replaced with the following: "**Cash Management Bank:** PNC BANK, NATIONAL ASSOCIATION, a national banking association."



# UNOFFICIAL COPY

- (6) **Cash Management Terms.** The third sentence of Section 3.1 of the Loan Agreement is hereby deleted and replaced with the following: “Funds deposited into the Deposit Account shall be swept by the Deposit Bank once per week on the same business day (or other day that the Borrower determines in any frequency) into the Borrowers operating account, as more specifically described below (“**Borrowers Operating Account**”), unless a Cash Management Period is continuing, in which event funds shall be swept on a daily basis into an Eligible Account at the Cash Management Bank controlled by Lender (the “**Cash Management Account**”) and applied and disbursed in accordance with this Agreement. The account information and wiring instructions for Borrowers Operating Account is as follows:

Account Name:	Inland Management Inc
Account #:	483004497919
ABA routing #	026009593
	Bank of America, New York, NY.”

- (i) **Investment of Funds in Deposit Account.** Section 3.1 of the Loan Agreement is hereby amended by deleting the sentence “Funds in the Deposit Account shall be invested at Lender’s discretion only in Permitted Investments” and replacing it with the following:

Funds in the Cash Management Account shall be invested by Lender in Permitted Investments. The selection of Permitted Investments shall be at Lender’s sole and absolute discretion and shall bear interest at Lender’s servicer’s standard rate for Lender directed investments.

- (j) **Ownership of Borrower.** Section 4.18 of the Loan Agreement is hereby deleted and replaced with the following:

**4.18 Ownership of Borrower.** The Ownership of each Borrower is as follows: (a) 100% of the membership interests of BH Realty, are held by BH Mezz, as Sole Member, and 100% of the membership interests in BH Mezz are held by CBK Brook House I Limited Partnership, a Massachusetts limited partnership, all of which interests have been validly issued and fully paid and are nonassessable; (b) 100% of the membership interests of RDC Realty, are held by RDC Mezz, as Sole Member, and 100% of the membership interests in RDC Mezz are held by RDC Inland Investments LLC, a Delaware limited liability company, all of which interests have been validly issued and fully paid and are nonassessable; and (c) 100% of the membership interests of GB Realty, are held by GB Mezz, as Sole Member, and 100% of the membership interests in GB Mezz are held by Glenbrook Apartments LLC, a Delaware limited liability company, all of which interests have been validly issued and fully paid and are nonassessable. The membership interests in the Sole Member and in Borrower are owned free and clear of all Liens, warrants, options and

# UNOFFICIAL COPY

rights to purchase. No Borrower nor any Sole Member has any obligation to any Person to purchase, repurchase or issue any ownership interest in it. The organizational chart attached to the Consent and Assumption Agreement with Release as Exhibit B is complete and accurate and illustrates all Persons who have a direct or indirect ownership interest in Borrower.

- (k) Organizational Chart – Schedule 3. Schedule 3 of the Loan Agreement is hereby deleted in its entirety and replaced with the Organizational Chart attached hereto as Exhibit B.

5. Title Policy. At Closing, Buyer shall (a) cause Chicago Title Insurance Company to issue Lender's mortgagee's title insurance policy (Policy No. 1401 008392023 D2) in such form as Lender may require ("Title Policy"), including showing that the Buyer is the owner of the Property, changing the effective date of the Title Policy to the date of the Closing, and showing that the Loan Documents are in a first lien position, and (b) pay the cost of the Title Policy, any escrow, filing or recording fees applicable to this transaction, and Lender's costs and expenses incurred in connection with this Agreement or this transaction, including Lender's attorneys' fees, if any, incurred in connection with this Agreement or this transaction.

6. Buyer's Assumption of Loan; Financing Statements. Buyer hereby expressly assumes the obligation to pay the unpaid balance due and owing on the Loan, all interest thereon as provided in the Note and all other obligations under the Loan Documents, with the same force and effect as if Buyer had been specifically named therein as the original maker, borrower or grantor, as applicable. Without limiting the generality of the foregoing, Buyer expressly assumes the obligation to pay all loan installments as they become due and to observe all obligations of the Loan Documents. Buyer's assumption of the foregoing obligations (a) is absolute, unconditional and is not subject to any defenses, waivers, claims or offsets, (b) shall not be affected or impaired by any agreement, condition, statement or representation of any person or entity other than Lender. Buyer expressly agrees that it has read, approved and will comply with and be bound by all of the terms, conditions, and provisions contained in the Loan Documents. Buyer specifically agrees that if any Note is recourse, Lender's remedies shall not in any respect or extent be limited solely to the Property or any other collateral securing the Loan.

Buyer hereby authorizes Lender to file one or more new financing statements, or amendments to existing financing statements, covering fixtures and personal property collateral included in the Property and covered by the security agreement contained in the Loan Documents, without signature of Buyer where permitted by law. Buyer hereby confirms that it grants Lender a security interest in all fixtures and personal property collateral described in the Loan Documents.

7. No Representations of Lender. The parties hereto agree that (a) Lender has made no representations or warranty, either express or implied regarding the Property and has no responsibility whatsoever with respect to the Property, its condition, or its use, occupancy or status, and (b) no claims relating to the Property, its condition, or its use, occupancy or status, will be asserted against Lender or its agents, employees, professional consultants, affiliated entities, successors or assigns, either affirmatively or as a defense.

# UNOFFICIAL COPY

8. Intentionally Omitted.

9. Intentionally Omitted.

10. Seller's Representations & Warranties. Seller hereby represents and warrants that:

- (a) Seller is the owner of the Property and is duly authorized to execute, deliver and perform this Agreement.
- (b) Any court or third-party approvals necessary for Seller to enter into this Agreement have been obtained.
- (c) The entities and/or persons executing this Agreement on behalf of Seller are duly authorized to execute and deliver this Agreement.
- (d) This Agreement and the Loan Documents are in full force and effect and the transactions contemplated therein constitute valid and binding obligations of Seller, enforceable against Seller in accordance with their terms and have not been modified either orally or in writing.
- (e) Lender has not waived any requirements of the Loan Documents nor any of Lender's rights thereunder.
- (f) There is no existing Event of Default or event or condition that, with the giving of notice or passage of time or both, would constitute an Event of Default.
- (g) All taxes and assessments applicable to the Property that are due and payable as of the Closing have been paid.
- (h) The next payment for real property taxes applicable to the Property is due on or before a date which has not yet been determined.
- (i) All representations and warranties of Seller in the Purchase Agreement are true and correct.
- (j) All representations and warranties referred to herein shall be true as of the date of this Agreement and the Closing and shall survive the Closing.

Lender is entitled to rely, and has relied, upon these representations and warranties in the execution and delivery of this Agreement and all other documents and instruments executed and delivered by Lender in connection with this Agreement.

11. Buyer's Representations and Warranties. Buyer hereby represents and warrants that:

- (a) Buyer is duly authorized to execute, deliver and perform this Agreement.
- (b) Any court or third-party approvals necessary for Buyer to enter into this Agreement have been obtained.
- (c) The entities and/or persons executing this Agreement on behalf of Buyer are duly authorized to execute and deliver this Agreement.
- (d) This Agreement and the Loan Documents are in full force and effect and the transactions contemplated therein constitute valid and binding obligations of Buyer, enforceable against Buyer in accordance with their terms and have not been modified either orally or in writing.

# UNOFFICIAL COPY

- (e) To Buyer's knowledge, there is no existing Event of Default or event or condition that, with the giving of notice or passage of time or both, would constitute an Event of Default.
- (f) To Buyer's knowledge, all taxes and assessments applicable to the Property that are due and payable as of the Closing have been paid.
- (g) The next payment for real property taxes applicable to the Property is due on or before a date which has not yet been determined.
- (h) All representations and warranties of Buyer in the Purchase Agreement are true and correct in all material respects.
- (i) There is no bankruptcy, receivership or insolvency proceeding pending or to Buyer's knowledge threatened against any Buyer.
- (j) No Buyer has any intention to do any of the following prior to the Closing or within the 180 days following the Closing (i) seek entry of any order for relief as debtor and a proceeding under the Code (hereinafter defined), (ii) seek consent to or not contest the appointment of a receiver or trustee for itself or for all or any part of its property, (iii) file a petition seeking relief under any bankruptcy, arrangement, reorganization or other debtor relief laws, or (iv) make a general assignment for the benefit of its creditors.
- (k) All of the Required Insurance is in full force and effect, with all required premiums paid, and contains the required Mortgagee's Clause.
- (l) All representations and warranties referred to herein shall be true as of the date of this Agreement and the Closing and shall survive the Closing.

Lender is entitled to rely, and has relied, upon these representations and warranties in the execution and delivery of this Agreement and all other documents and instruments executed and delivered by Lender in connection with this Agreement.

12. Buyer Principal's Representations and Warranties. Buyer Principal hereby represents and warrants that:

- (a) Buyer Principal is duly authorized to execute, deliver and perform this Agreement.
- (b) Any court or third-party approvals necessary for Buyer Principal to enter into this Agreement have been obtained.
- (c) The entities and/or persons executing this Agreement on behalf of Buyer Principal are duly authorized to execute and deliver this Agreement.
- (d) This Agreement, the Deposit Agreement, the Cash Management Agreement, the Guaranty, and the Environmental Indemnity are in full force and effect and the transaction contemplated therein constitute valid and binding obligations of Buyer Principal, enforceable against Buyer Principal in accordance with their terms, and have not been modified either orally or in writing.
- (e) There is no bankruptcy, receivership or insolvency proceeding pending or threatened against Buyer Principal.
- (f) Buyer Principal does not have any intention to do any of the following prior to the Closing or within the 180 days following the Closing: (i) seek entry of any order for relief as debtor and a proceeding under the Code (hereinafter defined), (ii) seek consent to or not contest the appointment of a receiver or trustee for itself or

# UNOFFICIAL COPY

for all or any part of its property, (iii) file a petition seeking relief under any bankruptcy, arrangement, reorganization or other debtor relief laws, or (iv) make a general assignment for the benefit of its creditors.

- (g) All representations and warranties referred to herein shall be true as of the date of this Agreement and Closing and shall survive Closing.

Lender is entitled to rely, and has relied, upon these representations and warranties in the execution and delivery of this Agreement and all other documents and instruments executed and delivered by Lender in connection with this Agreement.

13. Release of Seller and Seller Principal. Lender hereby releases Seller and Seller Principal and their officers, directors, members, managers, agents, employees, successors and assigns from all liability and obligations under the Loan Documents arising from and after the Closing, including, but not limited to, repayment of the Loan, but excepting, without limitation (i) liability under the Loan Documents for any environmental or other damage to the Property occurring prior to the Closing, (ii) any obligations arising from the Purchase Agreement, (iii) any liability under the Loan Documents related to or arising from Seller's or Seller Principal's acts or omissions occurring prior to the Closing, and (iv) any liability related to or arising from fraudulent or tortious conduct, including intentional misrepresentation of financial data presented to Lender prior to the Closing.

14. Release of Lender. Seller and Seller Principal, for themselves and for their agents, employees, representatives, officers, directors, general partners, limited partners, joint shareholders, beneficiaries, trustees, administrators, subsidiaries, affiliates, servants and attorneys (collectively, the "Seller Releasing Parties") jointly and severally release and forever discharge Lender and Midland Loan Services, Inc., and their respective successors, assigns, partners, directors, officers, employees, agents, attorneys, administrators, trustees, subsidiaries, affiliates, beneficiaries, shareholders and representatives from all liabilities, obligations, costs, expenses, claims and damages, at law or in equity, known or unknown, which any of the Seller Releasing Parties may now or hereafter hold or claim to hold under common law or statutory right, arising in any manner out of the Property, the Loan, any of the Loan Documents, the servicing of the Loan and the administration of reserves and escrows, or any of the documents, instruments or any other transactions relating thereto or the transactions contemplated thereby. Without limiting the generality of the foregoing, this release shall include the following matters: (a) all aspects of this Agreement and the Loan Documents, any negotiations, demands or requests with respect thereto, and (b) Lender's exercise or attempts to exercise any of its rights under this Agreement, any of the Loan Documents, at law or in equity. The Seller Releasing Parties agree that this release is a full, final and complete release and that it may be pleaded as an absolute bar to any or all suit or suits pending or which may thereafter be filed or prosecuted by any of the Seller Releasing Parties, or anyone claiming by, through or under any of the Seller Releasing Parties. The Seller Releasing Parties agree that this release is binding upon each of them and their respective agents, employees, representatives, officers, directors, general partners, limited partners, joint shareholders, beneficiaries, trustees, administrators, subsidiaries, affiliates, servants and attorneys.

Buyer and Buyer Principal, for themselves and for their agents, employees, representatives, officers, directors, general partners, limited partners, managers, members, joint

# UNOFFICIAL COPY

shareholders, beneficiaries, trustees, administrators, subsidiaries, affiliates, servants and attorneys (collectively, the "Buyer Releasing Parties") jointly and severally release and forever discharge Lender and Midland Loan Services, Inc., and their respective successors, assigns, partners, directors, officers, employees, agents, attorneys, administrators, trustees, subsidiaries, affiliates, beneficiaries, shareholders and representatives from all liabilities, obligations, costs, expenses, claims and damages, at law or in equity, known or unknown, which arise out of any matters occurring prior to the Closing in connection with the transactions contemplated hereby, including, without limitation, matters arising in any manner out of the Property, the Loan, any of the Loan Documents, the servicing of the Loan and the administration of reserves and escrows, or any of the documents, instruments or any other transactions relating thereto or the transactions contemplated thereby. The Buyer Releasing Parties agree that this release is a full, final and complete release and that it may be pleaded as an absolute bar to any or all suit or suits pending or which may thereafter be filed or prosecuted by any of the Buyer Releasing Parties, or anyone claiming by, through or under any of the Buyer Releasing Parties. The Buyer Releasing Parties agree that this release is binding upon each of them and their respective agents, employees, representatives, officers, directors, general partners, limited partners, joint shareholders, beneficiaries, trustees, administrators, subsidiaries, affiliates, servants and attorneys.

15. Ratification and Confirmation of the Loan. Buyer agrees to perform each and every obligation under the Loan Documents, as specifically modified by this Agreement, in accordance with their respective terms and conditions. Buyer ratifies, affirms, reaffirms, acknowledges, confirms and agrees that the Loan Documents remain in full force and effect and represent legal, valid and binding obligations of Buyer, enforceable against Buyer in accordance with their terms. Buyer agrees that this Agreement does not diminish, impair, release or relinquish the liens, powers, titles, security interests and rights securing or guaranteeing payment of the Loan, including the validity or first priority of the liens and security interests encumbering the Property granted Lender by the Loan Documents.

At all times Buyer shall comply with all terms of the Loan Documents, including without limitation, the insurance requirements of the Loan Documents. Although the Lender may accept certain evidence of insurance for purposes of closing the Transfer and Assumption, the Lender or its servicer may at any time and from time to time request additional insurance information from any Buyer to ensure or monitor Buyer's compliance with the insurance provisions of the Loan Documents and may request that Buyer provide such coverages as Lender or its servicer may require consistent with the terms of the Loan Documents. By entering into this Agreement, Lender specifically does not waive or modify any of the insurance requirements under the Loan Documents nor any of the remedies provided therein for failure to secure such required insurance coverage.

16. 1031 Exchange. Buyer and Buyer Principal informed Lender that Buyer is acquiring the Property and assuming the Loan as part of a transaction which Buyer and Buyer Principal anticipate will comply with the provisions of Section 1031 of the Internal Revenue Code allowing the deferment of any taxable gain or loss as the exchange of like kind property. Buyer and Buyer Principal acknowledge that they have not relied on any advice, representations or statements of Lender or Midland Loan Services, Inc., or their respective employees or agents concerning the tax, legal or investment consequences of Buyer's acquisition of the Property and the assumption of the Loan, including, without limiting the generality of the foregoing, whether

# UNOFFICIAL COPY

the acquisition of the Property and assumption of the Loan will comply with the requirements of Section 1031 of the Internal Revenue Code or whether the Buyer's and Buyer Principal's investment in the Property is suitable, but instead Buyer and Buyer Principal have obtained such tax, legal and investment advice as to the effect of Buyer's acquisition of the Property and assumption of the Loan from their own legal and other financial advisors.

17. Non-waiver. The parties hereto acknowledge and agree that (a) any performance or non-performance of the Loan Documents prior to the date of this Agreement does not affect or diminish Lender's ability to require future compliance with the Loan Documents, and (b) in the future, Lender will require strict compliance with and performance of the Loan Documents. Nothing contained herein shall be construed as a waiver of any of Lender's rights or remedies with respect to any default under this Agreement or any Loan Document.

18. Bankruptcy of Buyer or Buyer Principal. Buyer covenants and agrees that in the event any Buyer shall (i) file any petition with any bankruptcy court or be the subject of any petition under the United States Bankruptcy Code (11 U.S.C. §101 et seq., the "Code"), (ii) file or be the subject of any petition seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any present or future federal or state act or law relating to bankruptcy, insolvency, or other relief for debtors, (iii) have sought or consented to or acquiesced in the appointment of any trustee, receiver, conservator, or liquidator, or (iv) be the subject of any order, judgment, or decree entered by any court of competent jurisdiction approving a petition filed against such party for any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any present or future federal or state act or law relating to bankruptcy, insolvency, or relief for debtors, Lender shall thereupon be entitled, and Buyer irrevocably consents, to the entry of an order by a bankruptcy court granting to Lender relief from any automatic stay imposed by Section 362 of the Code, or otherwise, on or against the exercise of the rights and remedies otherwise available to Lender as provided in the Loan Documents, this Agreement or as otherwise provided by law or in equity, and Buyer irrevocably waives its right to object to, attempt to enjoin or otherwise interfere with such relief and the exercise and enforcement by Lender of its rights and remedies following entry of such order. Without limiting the generality of the immediately preceding sentence, Buyer agrees that Lender will be entitled to and it consents to immediate relief from the automatic stay imposed by the Code to allow Lender to take any and all actions necessary, desirable or appropriate to enforce any rights Lender may have under the Loan Documents, including, but not limited to, the right to possession of the Property, collection of rents, and/or the commencement or continuation of an action to foreclose Lender's liens and security interests. Buyer further agrees that the filing of any voluntary petition for relief by Buyer under the Code which postpones, prevents, delays or otherwise hinders Lender's efforts to collect the amounts due under the Note or to liquidate any of the collateral therefor shall be deemed to have been filed in bad faith and, therefore, shall be subject to prompt dismissal or conversion to a liquidation case under the Code upon motion therefor by Lender. Further, Buyer agrees that it will not seek, apply for or cause the entry of any order enjoining, staying, or otherwise prohibiting or interfering with Lender's obtaining an order granting relief from the automatic stay and enforcement of any rights which Lender may have under the Loan Documents, including, but not limited to, Lender's right to possession of the Property, collection of rents and/or the commencement or continuation of an action to foreclose Lender's liens and security interests under the Loan Documents.

# UNOFFICIAL COPY

Buyer Principal covenants and agrees that in the event any Buyer Principal shall (i) file any petition with any bankruptcy court or be the subject of any petition under the Code, (ii) file or be the subject of any petition seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any present or future federal or state act or law relating to bankruptcy, insolvency, or other relief for debtors, (iii) have sought or consented to or acquiesced in the appointment of any trustee, receiver, conservator, or liquidator, or (iv) be the subject of any order, judgment, or decree entered by any court of competent jurisdiction approving a petition filed against such party for any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any present or future federal or state act or law relating to bankruptcy, insolvency, or relief for debtors, Lender shall thereupon be entitled, and Buyer Principal irrevocably consents, to the entry of an order by a bankruptcy court granting to Lender relief from any automatic stay imposed by Section 362 of the Code, or otherwise, on or against the exercise of the rights and remedies otherwise available to Lender as provided in the Loan Documents, this Agreement or as otherwise provided by law or in equity, and Buyer Principal irrevocably waives its right to object to, attempt to enjoin or otherwise interfere with such relief and the exercise and enforcement by Lender of its rights and remedies following entry of such order. Without limiting the generality of the immediately preceding sentence, Buyer Principal agrees that Lender will be entitled to and it hereby consents to immediate relief from the automatic stay imposed by the Code to allow Lender to take any and all actions necessary, desirable or appropriate to enforce any rights Lender may have under the Loan Documents, including, but not limited to, the right to possession of the Property, collection of rents, and/or the commencement or continuation of an action to foreclose Lender's liens and security interests. Buyer Principal further agrees that the filing of any voluntary petition for relief by Buyer Principal under the Code which postpones, prevents, delays or otherwise hinders Lender's efforts to collect the amounts due under the Note or to liquidate any of the collateral therefor shall be deemed to have been filed in bad faith and, therefore, shall be subject to prompt dismissal or conversion to a liquidation case under the Code upon motion therefor by Lender. Further, Buyer Principal agrees that it will not seek, apply for or cause the entry of any order enjoining, staying, or otherwise prohibiting or interfering with Lender's obtaining an order granting relief from the automatic stay and enforcement of any rights which Lender may have under the Loan Documents, including, but not limited to, Lender's right to possession of the Property, collection of rents and/or the commencement or continuation of an action to foreclose Lender's liens and security interests under the Loan Documents.

19. Compliance with Interest Law. It is the intention of the parties hereto to conform strictly to any present or future law which has application to the interest and other charges under the Loan Documents (the "Interest Law"). Accordingly, notwithstanding anything to the contrary in the Loan Documents, the parties hereto agree that the aggregate amount of all interest or other charges taken, reserved, contracted for, charged or received under the Loan Documents or otherwise in connection with the Loan shall under no circumstances exceed the maximum amount of interest allowed by the Interest Law. If any excess interest is provided for in the Loan Documents, then any such excess shall be deemed a mistake and canceled automatically and, if theretofore paid, shall be credited against the indebtedness evidenced and secured by the Loan Documents (the "Indebtedness") (or if the Indebtedness shall have been paid in full, refunded by Lender), and the effective rate of interest under the Loan Documents shall be automatically reduce to the maximum effective contract rate of interest that Lender may from time to time legally charge under the then applicable Interest Law with respect to the Loan. To the extent



# UNOFFICIAL COPY

permitted by the applicable Interest Law, all sums paid or agreed to be paid to Lender for the use, forbearance or detention of the Indebtedness shall be amortized, prorated, allocated and spread throughout the full term of the Loan.

20. Impound Accounts. Seller hereby assigns to Buyer, its successors and assigns, all of its rights, title and interest in and to the reserve accounts, impound accounts and/or Escrow Deposits which have been established with Lender for the payment of taxes, assessments, repairs and replacements, production of financial reports, tenant rollover, tenant improvements and insurance, and the Lender and Midland Loan Services, Inc., are hereby released from any further responsibility to any Seller in connection with such accounts.

21. Single Purpose Entity. Until the indebtedness provided in the Note has been paid in full to Lender and Buyer (or such Buyer's successors and/or assigns) has satisfied all covenants, conditions and agreements contained in the Loan Documents (collectively, the "Debt"), Buyer's organizational documents will provide that such Buyer's sole business purpose shall be the acquisition, ownership and operation of the Property.

22. Compliance with Anti-Terrorism Orders.

(i) No Buyer will permit the transfer of any interest in any Buyer to any person or entity who is listed on the Lists or whose beneficial owners are listed on the specially Designated Nationals and Blocked Persons List (the "List") maintained by the Office of Foreign Asset Control, Department of the Treasury ("OFAC") pursuant to Executive Order No. 13224, 66 Fed. Reg. 49079 (September 25, 2001) (the "Order") and/or any other list of terrorists or terrorist organizations maintained pursuant to any of the rules and regulations of OFAC or pursuant to any other applicable Executive Orders (such lists are collectively referred to as the "Lists").

(ii) No Buyer will knowingly enter into a Lease with any party who is either (A) listed on the Lists or (B) engaged in money laundering activities.

(iii) Buyer shall immediately notify Lender if it becomes known to such Buyer that any member or beneficial owner of any Buyer is listed on the Lists or (A) is indicted on, or (B) arraigned and held over on charges involving money laundering or predicate crimes to money laundering.

(iv) Buyer shall immediately notify Lender if it becomes known to such Buyer that any tenant at the Property is listed on the Lists or (A) is convicted on, (B) pleads nolo contendere to, (C) is indicted on or (D) is arraigned and held over on charges involving money laundering or predicate crimes to money laundering.

23. Further Assurances. The parties hereto agree to do any act or execute any additional documents required by Lender, from time to time, to correct errors in the documenting of the Transfer and Assumption, to effectuate the purposes of this Agreement or to better assure, convey, assign, transfer, perfect or confirm unto Lender the property and rights intended to be given it in the Loan Documents.

24. Liability. If any party hereto consists of more than one person, the obligations and liabilities of each such person hereunder shall be joint and several. This Agreement shall be

# UNOFFICIAL COPY

binding upon and inure to the benefit of the parties hereto and their respective successors and assigns forever.

25. Severability. If any term, covenant or condition of this Agreement is held to be invalid, illegal or unenforceable in any respect, this Agreement shall be construed without such term, covenant or condition and the validity or enforceability of the remaining terms, covenants or conditions shall not in any way be affected.

26. Applicable Law; Jurisdiction. This Agreement shall be governed and construed in accordance with the governing laws provisions set forth in Section 10.6 of the Loan Agreement. The parties hereto submit to personal jurisdiction in the applicable state courts located in the applicable state and the federal courts of the United States of America located in such state for the enforcement of any obligations hereunder and waive any and all personal rights under the law of any other state to object to jurisdiction within such state for the purposes of any action, suit, proceeding or litigation to enforce such obligations.

27. No Restrictions on Performance. The execution and delivery of this Agreement and compliance with the provisions hereof, will not conflict with, or constitute a breach of or a default under any agreement or other instrument to which any party hereto is a party or by which it is bound.

28. Definitions. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Agreement (including pronouns) shall include the corresponding masculine, feminine or neuter forms, and the singular form such words shall include the plural and vice versa. The words "included," "includes" and "including" shall each be deemed to be followed by the phrase, "without limitation." The words "herein," "hereby," "hereof," and "hereunder" shall each be deemed to refer to this entire Agreement and not to any particular paragraph, article or section hereof. Notwithstanding the foregoing, if any law is amended so as to broaden the meaning of any term defined in it, such broader meaning shall apply subsequent to the effective date of such amendment. Where a defined term derives its meaning from a statutory reference, any regulatory definition is broader than the statutory reference and any reference or citation to a statute or regulation shall be deemed to include any amendments to that statute or regulation and judicial and administrative interpretations of it.

29. Securities Act of 1933. Neither Seller, Seller Principal, Buyer, Buyer Principal nor any agent acting for any of them has offered the Note or any similar obligation for sale to or solicited any offers to buy the Note or any similar obligation from any person or party other than Lender, and neither Seller, Seller Principal, Buyer, Buyer Principal nor any agent acting for any of them will take any action which would subject the sale of the Note to the provisions of Section 5 of the Securities Act of 1933, as amended.

30. Compliance with ERISA. As of the date of this Agreement, neither Seller, Seller Principal, Buyer nor Buyer Principal maintains any employee benefit plan which requires compliance with ERISA. If at any time Seller, Seller Principal, Buyer or Buyer Principal shall institute any employee benefit plans, they shall at all times comply with the requirements of ERISA.

# UNOFFICIAL COPY

31. Sole Discretion of Lender. Wherever pursuant to this Agreement, Lender exercises any right given to it to approve or disapprove, or any arrangement or term is to be satisfactory to Lender, Lender's decision to approve or disapprove or to decide that arrangements or terms are satisfactory or not satisfactory shall be in the sole and absolute discretion of Lender and shall be final and conclusive, except as may be otherwise expressly and specifically provided herein.

32. Headings, Etc. The headings and captions of various paragraphs of this Agreement 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.

33. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which when taken together shall constitute one and the same Agreement.

34. Integration, Survival. This Agreement and the Loan Documents embody the entire agreement by and between the parties hereto with respect to the Loan, and any and all prior correspondence, discussions or negotiations are deemed merged therein. Except as otherwise specifically provided herein, all obligations of any party contained in this Agreement or the Loan Documents shall survive the Closing and Lender hereby preserves all of its rights against all persons or entities and all collateral securing the Loan, including, without limitation, the Property.

35. No Oral Change. This Agreement, 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 any party hereto, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

36. Notices. Except as otherwise specified herein, any notice, consent, request or other communication required or permitted hereunder shall be in writing and shall be deemed properly given if delivered in accordance with the notice requirements contained in the Loan Documents using the address for a party hereto set forth at the top of the first page of this Agreement.

37. **WAIVER OF JURY TRIAL. THE PARTIES HERETO KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON THE LOAN OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR THE LOAN DOCUMENTS, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENT (WHETHER VERBAL OR WRITTEN) OR ACTION OF ANY PARTY HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT FOR LENDER'S CONSENT TO THE TRANSFER AND ASSUMPTION.**

[Remainder of page is blank; signatures appear on following page.]

# UNOFFICIAL COPY

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the day, month and year first above written.

BUYER:

BH INLAND REALTY LLC,  
a Delaware limited liability company

By: Inland Manager Inc.,  
a Delaware corporation,  
its Manager

By: \_\_\_\_\_  
Richard D. Cohen, its President

RDC INLAND REALTY LLC,  
a Delaware limited liability company

By: Inland Manager Inc.,  
a Delaware corporation,  
its Manager

By: \_\_\_\_\_  
Richard D. Cohen, its President

GB INLAND REALTY LLC,  
a Delaware limited liability company

By: Inland Manager Inc.,  
a Delaware corporation,  
its Manager

By: \_\_\_\_\_  
Richard D. Cohen, its President

BUYER PRINCIPAL:

INLAND MANAGER INC.,  
a Delaware corporation

By: \_\_\_\_\_  
Richard D. Cohen, its President


Property of Cook County Clerk's Office

# UNOFFICIAL COPY

SELLER:


30 W. MONROE PROPERTY A LLC,  
a Delaware limited liability company

By: INLAND HOLDING A LLC,  
an Illinois limited liability company,  
its sole member

By:   
Alfred E. D'Ancona III, its President

30 W. MONROE PROPERTY B LLC,  
a Delaware limited liability company

By: INLAND HOLDING B LLC,  
an Illinois limited liability company,  
its sole member

By:   
Alfred E. D'Ancona III, its President

30 W. MONROE PROPERTY F LLC,  
a Delaware limited liability company


By: INLAND HOLDING F LLC,  
an Illinois limited liability company,  
its sole member

By:   
Alfred E. D'Ancona III, its President

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

SELLER PRINCIPAL:

  
\_\_\_\_\_  
Alfred E. D'Ancona III, an individual

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

**LEAD LENDER:**

LASALLE BANK NATIONAL ASSOCIATION, TRUSTEE FOR  
J.P. MORGAN CHASE COMMERCIAL MORTGAGE  
SECURITIES CORP. COMMERCIAL MORTGAGE PASS-  
THROUGH CERTIFICATES SERIES 2005-LDP5

By: Midland Loan Services, Inc.,  
a Delaware corporation,  
Its Attorney-in-Fact

By: \_\_\_\_\_  
Brad Hauger, Senior Vice President

**CO-LENDER:**

THE VARIABLE ANNUITY LIFE INSURANCE COMPANY

By: AIG Global Investment Corp.,  
a New Jersey corporation,  
its investment advisor

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

Name: **Maria S. Campagna** \_\_\_\_\_  
**Vice President**

Title: \_\_\_\_\_

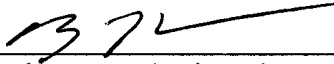
Property of Cook County Clerk's Office

# UNOFFICIAL COPY

**LEAD LENDER:**

LASALLE BANK NATIONAL ASSOCIATION, TRUSTEE FOR  
J.P. MORGAN CHASE COMMERCIAL MORTGAGE  
SECURITIES CORP. COMMERCIAL MORTGAGE PASS-  
THROUGH CERTIFICATES SERIES 2005-LDP5

By: Midland Loan Services, Inc.,  
a Delaware corporation,  
Its Attorney-in-Fact

By:       
Brad Hauger, Senior Vice President

**CO-LENDER:**

THE VARIABLE ANNUITY LIFE INSURANCE COMPANY

By: AIG Global Investment Corp.,  
a New Jersey corporation,  
its investment advisor

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

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

Title: \_\_\_\_\_

Property of Cook County Clerk's Office



# UNOFFICIAL COPY

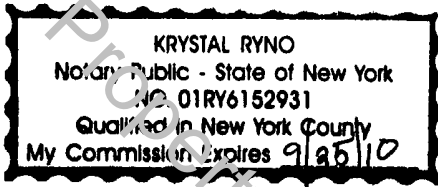
## ACKNOWLEDGMENTS

State of New York

County of New York

This instrument was acknowledge before me on November 1, 2007 by Richard D. Cohen as President of Inland Manager Inc., a Delaware corporation, as Manager of BH INLAND REALTY LLC, a Delaware limited liability company.

(Seal)



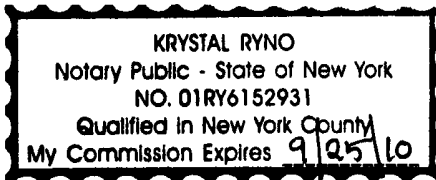
*Krystal Ryno*  
\_\_\_\_\_  
Signature of Notary Public

State of New York

County of New York

This instrument was acknowledge before me on November 1, 2007 by Richard D. Cohen as President of Inland Manager Inc., a Delaware corporation, as Manager of RDC INLAND REALTY LLC, a Delaware limited liability company.

(Seal)



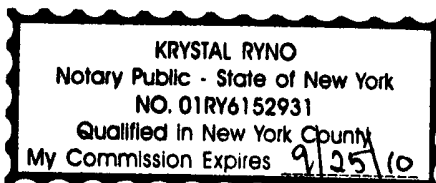
*Krystal Ryno*  
\_\_\_\_\_  
Signature of Notary Public

State of New York

County of New York

This instrument was acknowledge before me on November 1, 2007 by Richard D. Cohen as President of Inland Manager Inc., a Delaware corporation, as Manager of GB INLAND REALTY LLC, a Delaware limited liability company.

(Seal)



*Krystal Ryno*  
\_\_\_\_\_  
Signature of Notary Public

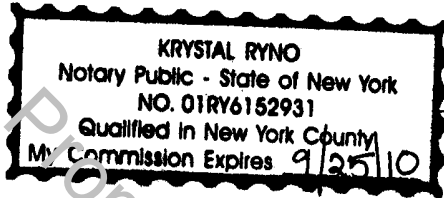
# UNOFFICIAL COPY

State of New York

County of New York

This instrument was acknowledge before me on November 1, 2007 by Richard D. Cohen as President of INLAND MANAGER INC., a Delaware corporation.

(Seal)



*Krystal Ryno*  
 \_\_\_\_\_  
 Signature of Notary Public

State of Illinois

County of Cook

This instrument was acknowledge before me on November \_\_\_\_, 2007 by Alfred E. D'Ancona III, as President of Inland Holding A LLC, an Illinois limited liability company, as sole member of 30 W. MONROE PROPERTY A LLC, a Delaware limited liability company.

(Seal)

\_\_\_\_\_  
 Signature of Notary Public

State of Illinois

County of Cook

This instrument was acknowledge before me on November \_\_\_\_, 2007 by Alfred E. D'Ancona III, as President of Inland Holding B LLC, an Illinois limited liability company, as sole member of 30 W. MONROE PROPERTY B LLC, a Delaware limited liability company.

(Seal)

\_\_\_\_\_  
 Signature of Notary Public

# UNOFFICIAL COPY

State of New York

County of New York

This instrument was acknowledge before me on November \_\_\_\_, 2007 by Richard D. Cohen as President of INLAND MANAGER INC., a Delaware corporation.

(Seal)

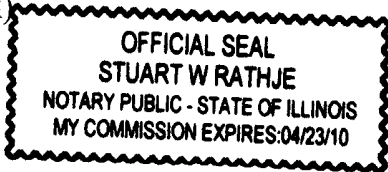
\_\_\_\_\_  
Signature of Notary Public

State of Illinois

County of Cook

This instrument was acknowledge before me on November 1, 2007 by Alfred E. D'Ancona III, as President of Inland Holding A LLC, an Illinois limited liability company, as sole member of 30 W. MONROE PROPERTY A LLC, a Delaware limited liability company.

(Seal)



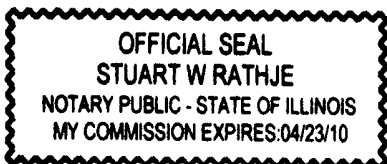
Stuart W Rathje  
Signature of Notary Public

State of Illinois

County of Cook

This instrument was acknowledge before me on November 1, 2007 by Alfred E. D'Ancona III, as President of Inland Holding B LLC, an Illinois limited liability company, as sole member of 30 W. MONROE PROPERTY B LLC, a Delaware limited liability company.

(Seal)



Stuart W Rathje  
Signature of Notary Public

# UNOFFICIAL COPY

State of Illinois

County of Cook

This instrument was acknowledge before me on November 1, 2007 by Alfred E. D'Ancona III, as President of Inland Holding ~~S~~ LLC, an Illinois limited liability company, as sole member of 30 W. MONROE PROPERTY F LLC, a Delaware limited liability company.

(Seal)



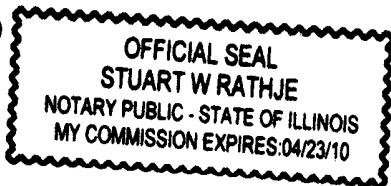
Stuart W. Rathje  
Signature of Notary Public

State of Illinois

County of Cook

This instrument was acknowledge before me on November 1, 2007 by Alfred E. D'Ancona III, an individual.

(Seal)



Stuart W. Rathje  
Signature of Notary Public

# UNOFFICIAL COPY

STATE OF KANSAS     )  
                                          ) ss.  
COUNTY OF JOHNSON )

This instrument was acknowledged before me on October 26, 2007, by Brad Hauger as Senior Vice President of Midland Loan Services, Inc., a Delaware corporation, the Master Servicer and Attorney-in-Fact for LASALLE BANK NATIONAL ASSOCIATION, TRUSTEE FOR J.P. MORGAN CHASE COMMERCIAL MORTGAGE SECURITIES CORP. COMMERCIAL MORTGAGE PASS-THROUGH CERTIFICATES SERIES 2005-LDP5.

Michelle Smith  
Print Name: Michelle Smith  
Notary Public in and for said  
County and State

My Appointment Expires:

5/1/2010

**MICHELLE SMITH**  
**NOTARY PUBLIC-State of Kansas**  
My Appt. Exp. 5/1/2010

# UNOFFICIAL COPY

State of \_\_\_\_\_

County of \_\_\_\_\_

This instrument was acknowledge before me on November \_\_\_\_, 2007 by  
\_\_\_\_\_ as \_\_\_\_\_ of AIG Global  
Investment Corp., a New Jersey corporation, as investment advisor for THE VARIABLE  
ANNUITY LIFE INSURANCE COMPANY.

(Seal)

\_\_\_\_\_  
Signature of Notary Public

SEE ATTACHED

Property of Cook County Clerk's Office

UNOFFICIAL COPY

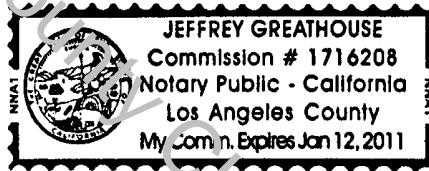
ACKNOWLEDGMENT

STATE OF CALIFORNIA )
) ss.
COUNTY OF LOS ANGELES )

On Nov. 1, 2007, before me, Jeffrey Greathouse, Notary Public, personally Marla Campagna, personally known to me to be the person whose name is subscribed within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person, or the entity upon which the person acted, executed the instrument.

WITNESS my hand and official seal.

[Handwritten Signature]
Notary Public



My Commission Expires: January 12, 2011

# UNOFFICIAL COPY

EXHIBIT A  
Legal Description

The real property situated in the County of Cook, State of Illinois, described as follows:

Lots 20, 21, 22, 23, 24, 25, 26, and 27 in the Subdivision of Block 142 in School Section Addition to Chicago in the Northeast  $\frac{1}{4}$  of Section 16, Township 39 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois.

Permanent Index Number: 17-16-206-017-0000.

Property of Cook County Clerk's Office



# UNOFFICIAL COPY

## EXHIBIT B

