

UNOFFICIAL COPY



Doc#: 0804460016 Fee: \$120.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 02/13/2008 10:21 AM Pg: 1 of 49

Property of Cook County Clerk's Office

INLAND AMERICAN CFG PORTFOLIO, L.L.C.,
a Delaware limited liability company, as Borrower

to

SOVEREIGN BANK,
a federal savings bank, as Administrative Agent for the ratable benefit of Lender

**MORTGAGE, ASSIGNMENT OF LEASES AND RENTS,
SECURITY AGREEMENT AND FIXTURE FILING**

This document serves as a Fixture Filing under the Uniform Commercial Code.

Dated: As of January 31, 2008
Counties: Cook County, Illinois
DuPage County, Illinois

Borrower's Federal Tax I.D. No.: 20-0190739
Borrower's Organizational No.: 4353915

PREPARED BY AND UPON
RECORDATION RETURN TO:
Nutter, McClennen & Fish, LLP
World Trade Center West
155 Seaport Boulevard
Boston, MA 02210-2604
Attention: Marianne Ajemian, Esq.

First American Title Order # 276596 IL2, IL4, IL11, IL7, IL13, IL16
HV 1 of 2 OEC

49

UNOFFICIAL COPY

MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING

THIS MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (this "Mortgage") is made as of this 31st day of January, 2008 by INLAND AMERICAN CFG PORTFOLIO, L.L.C., a Delaware limited liability company, having its principal place of business at 2901 Butterfield Road, Oak Brook, Illinois 60523, as mortgagor ("Borrower"), to SOVEREIGN BANK, a federal savings bank, as Administrative Agent (when acting in such capacity, "Agent") for the ratable benefit of the Lender (as defined below), having an address of 75 State Street, Boston, Massachusetts 02109.

WITNESSETH:

WHEREAS, pursuant to that certain Loan Agreement dated as of the date hereof by and among Borrower, Inland American CFG Pennsylvania Portfolio DST ("Other Borrower"), Agent and the various banks and other lending institutions (including, without limitation, Sovereign Bank) that are or may become a party thereto (collectively, the "Lender") (as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, the "Loan Agreement"), Borrower and Other Borrower have agreed to borrow from Lender the sum of TWO HUNDRED MILLION AND NO/100 DOLLARS (\$200,000,000.00) (the "Loan") as evidenced by (a) that certain Promissory Note dated the date hereof made by Borrower and Other Borrower to Lender in the aggregate principal amount of ONE MILLION ONE HUNDRED FIFTY-SIX THOUSAND DOLLARS (\$1,156,000) (with all extensions, renewals, replacements, restatements or modifications thereof being hereinafter referred to as the "New York Note"), and (b) that certain Promissory Note dated the date hereof made by Borrower and Other Borrower to Lender in the aggregate principal amount of ONE HUNDRED NINETY-EIGHT MILLION EIGHT HUNDRED FORTY-FOUR THOUSAND DOLLARS (\$198,844,000.00) (with all extensions, renewals, replacements, restatements or modifications thereof being hereinafter referred to as the "Portfolio Note" and, together with the New York Note, the "Note"). The final payment of the Note is due on January 31, 2010. All capitalized terms used in this Mortgage but not otherwise defined herein shall have the meanings assigned to such terms in the Loan Agreement;

WHEREAS, Borrower desires to secure the payment of the Debt (as defined hereinafter) and the performance of all of its obligations under the Note, the Loan Agreement and the other Loan Documents with this Mortgage, and Borrower and Other Borrower desire to secure the payment of the Debt (as defined hereinafter) and the performance of all of their obligations under the Note, the Loan Agreement and the other Loan Documents (as hereinafter defined) with Mortgages (as defined in the Loan Agreement) granted by Borrower or Other Borrower (the "Other Mortgages") covering certain other properties identified in the Loan Agreement (the "Other Properties"), and together with the Property, the "Properties").

WHEREAS, payment, fulfillment, and performance by Borrower of its obligations thereunder and under the other Loan Documents are, subject to the limits set forth herein, secured hereby, and each and every term and provision of the Loan Agreement and the Note, including the rights, remedies, obligations, covenants, conditions, agreements, indemnities, representations and warranties of the parties therein, are hereby incorporated by reference herein

UNOFFICIAL COPY

as though set forth in full and shall be considered a part of this Mortgage (the Loan Agreement, the Note, this Mortgage, the Other Mortgages and all other documents evidencing or securing the Debt are hereinafter referred to collectively as the "Loan Documents").

NOW THEREFORE, in consideration of the making of the Loan by Lender and the covenants, agreements, representations and warranties set forth in this Mortgage:

ARTICLE 1 - GRANTS OF SECURITY

1.1 Property Mortgaged. Borrower does hereby irrevocably mortgage, grant, bargain, pledge, assign, warrant, transfer and convey to Agent and its successors and assigns the following property, rights, interests and estates now owned, or hereafter acquired by Borrower (collectively, the "Property");

(a) Land. The real property described in Exhibits A-1 through A-7 attached hereto and made a part hereof (the "Land");

(b) Additional Land. All additional lands, estates and development rights hereafter acquired by Borrower for use in connection with the Land and the development of the Land and all additional lands and estates therein which may, from time to time, by supplemental mortgage or otherwise be expressly made subject to the lien of this Mortgage;

(c) Improvements. The buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter erected or located on the Land (collectively, the "Improvements");

(d) Easements. All easements, rights-of-way or use, rights, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, air rights and development rights, and all estates, rights, title, interests, privileges, liberties, servitudes, tenements, hereditaments and appurtenances of any nature whatsoever, in any way now or hereafter belonging, relating or pertaining to the Land and the Improvements and the reversion and reversions, remainder and remainders, and all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Land, to the center line thereof and all the estates, rights, titles, interests, dower and rights of dower, curtesy and rights of curtesy, property, possession, claim and demand whatsoever, both at law and in equity, of Borrower of, in and to the Land and the Improvements and every part and parcel thereof, with the appurtenances thereto;

(e) Equipment. All "equipment," as such term is defined in Article 9 of the Uniform Commercial Code, now owned or hereafter acquired by Borrower, which is used at or in connection with the Improvements or the Land or is located thereon or therein (including, but not limited to, all machinery, equipment, furnishings, and electronic data-processing and other office equipment now owned or hereafter acquired by Borrower and any and all additions, substitutions and replacements of any of the foregoing), together with all attachments, components, parts, equipment and accessories installed thereon or affixed thereto (collectively, the "Equipment"). Notwithstanding the foregoing, Equipment shall not include any property belonging to tenants under leases except to the extent that Borrower shall have any right or interest therein;

UNOFFICIAL COPY

(f) Fixtures. All Equipment now owned, or the ownership of which is hereafter acquired, by Borrower which is so related to the Land and Improvements forming part of the Property that it is deemed fixtures or real property under the law of the particular state in which the Equipment is located, including, without limitation, all building or construction materials intended for construction, reconstruction, alteration or repair of or installation on the Property, construction equipment, appliances, machinery, plant equipment, fittings, apparatuses, fixtures and other items now or hereafter attached to, installed in or used in connection with (temporarily or permanently) any of the Improvements or the Land, including, but not limited to, engines, devices for the operation of pumps, pipes, plumbing, cleaning, call and sprinkler systems, fire extinguishing apparatuses and equipment, heating, ventilating, plumbing, laundry, incinerating, electrical, air conditioning and air cooling equipment and systems, gas and electric machinery, appurtenances and equipment, pollution control equipment and facilities of all kinds, and dishwashers, refrigerators and ranges, recreational equipment and facilities of all kinds, and water, gas, electrical, storm and sanitary sewer facilities, utility lines and equipment (whether owned individually or jointly with others, and, if owned jointly, to the extent of Borrower's interest therein) and all other utilities whether or not situated in easements, all water tanks, water supply, water power sites, fuel stations, fuel tanks, fuel supply, and all other structures, together with all accessions, appurtenances, additions, replacements, betterments and substitutions for any of the foregoing and the proceeds thereof (collectively, the "Fixtures"). Notwithstanding the foregoing, "Fixtures" shall not include any property which tenants are entitled to remove pursuant to leases except to the extent that Borrower shall have any right or interest therein;

(g) Personal Property. All furniture, furnishings, objects of art, machinery, goods, tools, supplies, appliances, general intangibles, contract rights, accounts, accounts receivable, franchises, licenses, certificates and permits, and all other personal property of any kind or character whatsoever (as defined in and subject to the provisions of the Uniform Commercial Code as hereinafter defined), other than Fixtures, which are now or hereafter owned by Borrower and which are located within or about the Land and the Improvements, together with all accessories, replacements and substitutions thereto or therefor and the proceeds thereof (collectively, the "Personal Property"), and the right, title and interest of Borrower in and to any of the Personal Property which may be subject to any security interests, as defined in the Uniform Commercial Code, as adopted and enacted by the state or states where any of the Property is located (the "Uniform Commercial Code"), superior in lien to the lien of this Mortgage and all proceeds and products of the above;

(h) Leases and Rents. All leases, subleases or subsubleases, lettings, licenses, concessions or other agreements (whether written or oral) pursuant to which any Person is granted a possessory interest in, or right to use or occupy all or any portion of the Land and the Improvements, and every modification, amendment or other agreement relating to such leases, subleases, subsubleases, or other agreements entered into in connection with such leases, subleases, subsubleases, or other agreements and every guarantee, of the performance and observance of the covenants, conditions and agreements to be performed and observed by the other party thereto, heretofore or hereafter entered into, whether before or after the filing by or against Borrower of any petition for relief under 11 U.S.C. §101 et seq., as the same may be amended from time to time (the "Bankruptcy Code") (collectively, the "Leases") and all right, title and interest of Borrower, its successors and assigns therein and thereunder, including, without limitation, cash or securities deposited thereunder to secure the performance by the

UNOFFICIAL COPY

lessees of their obligations thereunder and all rents, additional rents, revenues, issues and profits (including all oil and gas or other mineral royalties and bonuses) from the Land and the Improvements whether paid or accruing before or after the filing by or against Borrower of any petition for relief under the Bankruptcy Code (collectively, the "Rents") and all proceeds from the sale or other disposition of the Leases and the right to receive and apply the Rents to the payment of the Debt;

(i) Condemnation Awards. All awards or payments, including interest thereon, which may heretofore and hereafter be made with respect to the Property, whether from the exercise of the right of eminent domain (including but not limited to any transfer made in lieu of or in anticipation of the exercise of the right), or for a change of grade, or for any other injury to or decrease in the value of the Property subject to the terms, provisions and conditions of the Loan Agreement;

(j) Insurance Proceeds. All proceeds in respect of the Property under any insurance policies covering the Property, including, without limitation, the right to receive and apply the proceeds of any insurance, judgments, or settlements made in lieu thereof, for damage to the Property subject to the terms, provisions and conditions of the Loan Agreement;

(k) Tax Certiorari. All refunds, rebates or credits in connection with reduction in real estate taxes and assessments charged against the Property as a result of tax certiorari or any applications or proceedings for reduction;

(l) Conversion. All proceeds of the conversion, voluntary or involuntary, of any of the foregoing including, without limitation, proceeds of insurance and condemnation awards, into cash or liquidation claims;

(m) Rights. Subject to the terms, provisions and conditions of the Loan Agreement, the right, in the name and on behalf of Borrower, to appear in and defend any action or proceeding brought with respect to the Property and to commence any action or proceeding to protect the interest of Lender in the Property;

(n) Agreements. All agreements, contracts, certificates, instruments, franchises, permits, licenses, plans, specifications and other documents, now or hereafter entered into, and all rights therein and thereto, respecting or pertaining to the use, occupation, construction, management or operation of the Land and any part thereof and any Improvements or respecting any business or activity conducted on the Land and any part thereof and all right, title and interest of Borrower therein and thereunder, including, without limitation, the right, upon the happening of any default hereunder, to receive and collect any sums payable to Borrower thereunder, in each case, to the extent assignable (collectively, the "Agreements");

(o) Trademarks. All tradenames, trademarks, servicemarks, logos, copyrights, goodwill, books and records and all other general intangibles relating to or used in connection with the operation of the Property (excluding, however, the name "Inland" and any mark registered to The Inland Group, Inc., or any of its affiliates), in each case, to the extent assignable;

UNOFFICIAL COPY

(p) Accounts. All reserves, escrows and deposit accounts maintained by Borrower with respect to the Property, including without limitation, all securities, investments, property and financial assets held therein from time to time and all proceeds, products, distributions or dividends or substitutions thereon and thereof;

(q) Letter of Credit. All letter-of-credit rights (whether or not the letter of credit is evidenced by a writing) Borrower now has or hereafter acquires relating to the properties, rights, titles and interests referred to in this Section 1.1;

(r) Tort Claims. All commercial tort claims Borrower now has or hereafter acquires relating to the properties, rights, titles and interests referred to in this Section 1.1;

(s) Interest Rate Agreements. All of Borrower's rights in and to any Interest Rate Agreements; and

(t) Other Rights. Any and all other rights of Borrower in and to the items set forth in Subsections (a) through (s) above.

AND without limiting any of the other provisions of this Mortgage, to the extent permitted by applicable law, Borrower expressly grants to Agent, as secured party, a security interest in the portion of the Property which is or may be subject to the provisions of the Uniform Commercial Code which are applicable to secured transactions; it being understood and agreed that the Improvements and Fixtures are part and parcel of the Land (the Land, the Improvements and the Fixtures collectively referred to as the "Real Property") appropriated to the use thereof and, whether affixed or annexed to the Real Property or not, shall for the purposes of this Mortgage be deemed conclusively to be real estate and mortgaged hereby.

1.2 Assignment of Leases and Rents. Borrower hereby absolutely and unconditionally assigns to Agent, for the ratable benefit of Lender, all of Borrower's right, title and interest in and to all current and future Leases and Rents; it being intended by Borrower that this assignment constitutes a present, absolute assignment and not an assignment for additional security only. Borrower hereby irrevocably authorizes and directs each of the tenants under the Leases and the guarantors under any guaranties, upon receipt of a written notice from Agent that an Event of Default exists and demanding that such tenants pay all Rents due or which become due under the Leases or the guaranties to Agent and to continue to do so until otherwise notified by Agent. Neither the tenants under the Leases nor any of the guarantors under any guaranties shall have any obligation to determine whether or not an Event of Default does in fact exist. Nevertheless, subject to the terms of Section 7.1(h) of this Mortgage and so long as no Event of Default exists, Agent grants to Borrower a revocable license to collect, receive, use and enjoy the Rents. Borrower shall hold the Rents, or a portion thereof sufficient to discharge all current sums due on the Debt, for use in the payment of such sums. The collection of Rents by Agent shall in no way waive the right of Agent to foreclose this Mortgage upon the occurrence of an Event of Default.

1.2.1 Assignment of Agreements. Borrower hereby absolutely and unconditionally assigns to Agent, for the ratable benefit of Lender, all of Borrower's right, title and interest in and to all current and future Agreements; it being intended by

UNOFFICIAL COPY

Borrower that this assignment constitutes a present, absolute assignment and not an assignment for additional security only. Nevertheless, subject to the terms of Section 7.1(h) of this Mortgage and so long as no Event of Default exists, Agent grants to Borrower a revocable license to exercise all of its rights under the Agreements for Borrower's benefit. Borrower shall perform or cause to be performed all of its material covenants and agreements under each of the Agreements so as to cause the same to remain in full force and effect. Borrower shall give prompt notice to Agent of any notice alleging Borrower's default of any obligation under any of the Agreements received from any Person that is a party thereto and shall furnish Agent with complete copies of said notice. Borrower shall use commercially reasonable efforts to enforce the Agreements and all rights and remedies available to Borrower against any party to such Agreements.

1.3 Security Agreement. This Mortgage is both a real property mortgage and a "security agreement" within the meaning of the Uniform Commercial Code. The Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Borrower in the Property. By executing and delivering this Mortgage, Borrower hereby grants to Agent, as security for the Obligations (hereinafter defined), a security interest in the Fixtures, the Equipment and the Personal Property and other property constituting the Property, whether now owned or hereafter acquired, to the full extent that the Fixtures, the Equipment and the Personal Property may be subject to the Uniform Commercial Code (said portion of the Property so subject to the Uniform Commercial Code being called the "Collateral"). THE COLLATERAL IS OR INCLUDES FIXTURES. If an Event of Default shall occur and be continuing, Agent, in addition to any other rights and remedies which it may have, shall have and may exercise immediately and without demand, any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing, the right to take possession of the Collateral or any part thereof, and to take such other measures as Agent may deem necessary for the care, protection and preservation of the Collateral. Upon request or demand of Agent after the occurrence and during the continuance of an Event of Default, Borrower shall, at its expense, assemble the Collateral and make it available to Agent at a convenient place (at the Land if tangible property) reasonably acceptable to Agent. Borrower shall pay to Agent and/or Lender on demand any and all expenses, including reasonable legal expenses and attorneys' fees, incurred or paid by Agent and/or Lender in protecting its interest in the Collateral and in enforcing its rights hereunder with respect to the Collateral after the occurrence and during the continuance of an Event of Default. Any notice of sale, disposition or other intended action by Agent with respect to the Collateral sent to Borrower in accordance with the provisions hereof at least ten (10) business days prior to such action, shall, except as otherwise provided by applicable law, constitute commercially reasonable notice to Borrower. The proceeds of any disposition of the Collateral, or any part thereof, may, except as otherwise required by applicable law, be applied by Agent and Lender to the payment of the Debt in such priority and proportions as Agent and Lender in their discretion shall deem proper. Borrower's (Debtor's) principal place of business is as set forth on page one hereof and the address of Agent (Secured Party) is as set forth on page one hereof.

1.4 Fixture Filing. Certain of the Property is or will become "fixtures" (as that term is defined in the Uniform Commercial Code) on the Land, described or referred to in this Mortgage, and this Mortgage, upon being filed for record in the real estate records of the city or

UNOFFICIAL COPY

county wherein such fixtures are situated, shall operate also as a financing statement filed as a fixture filing in accordance with the applicable provisions of said Uniform Commercial Code upon such of the Property that is or may become fixtures.

The Borrower hereby authorizes Agent at any time and from time to time to file any initial financing statements, amendments thereto and continuation statements with or without the signature of Borrower as authorized by applicable law, as applicable to all or part of the fixtures or Personal Property. For purposes of such filings, Borrower agrees to furnish any information requested by the Agent promptly upon request by the Agent. Borrower also ratifies its authorization for Agent to have filed any like initial financing statements, amendments thereto and continuation statements, if filed prior to the date of this Mortgage. Borrower hereby irrevocably constitutes and appoints Agent and any officer or agent of Agent, with full power of substitution, as its true and lawful attorneys-in-fact with full irrevocable power and authority in the place and stead of Borrower or in Borrower's own name to execute in Borrower's name any documents and otherwise to carry out the purposes of this Section 1.4, to the extent that Borrower's authorization above is not sufficient. To the extent permitted by law, Borrower hereby ratifies all acts said attorneys-in-fact have lawfully done in the past or shall lawfully do or cause to be done in the future by virtue hereof. This power of attorney is coupled with an interest and shall be irrevocable.

1.5 Pledges of Monies Held. Borrower hereby pledges to Agent and Lender any and all monies now or hereafter held by Agent or Lender or on behalf of Agent or Lender, including, without limitation, any sums deposited in the Lockbox Account (if any), the Reserve Funds and Net Proceeds, as additional security for the Obligations until expended or applied as provided in this Mortgage or in the Loan Agreement.

CONDITIONS TO GRANT

TO HAVE AND TO HOLD the above granted and described Property unto Agent, for the ratable benefit of Lender, and its successors and assigns forever;

PROVIDED, HOWEVER, these presents are upon the express condition that, if Borrower shall well and truly pay to Agent or Lender the Debt at the time and in the manner provided in the Note, the Loan Agreement and this Mortgage, shall well and truly perform the Other Obligations as set forth in this Mortgage and shall well and truly abide by and comply with each and every covenant and condition set forth herein and in the Note, the Loan Agreement and the other Loan Documents, these presents and the estate hereby granted shall cease, terminate and be void and Lender shall mark the Note "paid in full" and will, at Borrower's sole cost and expense, release the lien of this Mortgage; provided, however, that Borrower's obligation to indemnify and hold harmless Agent and Lender pursuant to the provisions hereof shall survive any such payment or release.

ARTICLE 2 - DEBT AND OBLIGATIONS SECURED

2.1 Debt. This Mortgage and the grants, assignments and transfers made in Article 1 are given for the purpose of securing the debt evidenced by the Note, following in such order of priority as Agent and Lender may determine in their sole discretion (the "Debt"):

UNOFFICIAL COPY

- (a) the payment of the indebtedness evidenced by the Note in lawful money of the United States of America;
- (b) the payment of interest, breakage fees, default interest, late charges and other sums, as provided in the Note, the Loan Agreement, this Mortgage and the other Loan Documents;
- (c) the payment of all other moneys agreed or provided to be paid by Borrower and Other Borrower in the Note, the Loan Agreement, this Mortgage or the other Loan Documents;
- (d) the payment of all sums advanced pursuant to this Mortgage to protect and preserve the Property and the lien and the security interest created hereby; and
- (e) the payment of all sums advanced and costs and expenses incurred by Agent and/or Lender in connection with the Debt or any part thereof, any renewal, extension, or change of or substitution for the Debt or any part thereof, or the acquisition or perfection of the security therefor, whether made or incurred at the request of Borrower, Other Borrower, Agent or Lender.

2.2 Other Obligations. This Mortgage and the grants, assignments and transfers made in Article 1 are also given for the purpose of securing the following (the "Other Obligations"):

- (a) the performance of all other obligations of Borrower and Other Borrower contained herein;
- (b) the performance of each obligation of Borrower and Other Borrower contained in the Loan Agreement, the other Loan Documents and the Interest Rate Agreements; and
- (c) the performance of each obligation of Borrower and Other Borrower contained in any renewal, extension, amendment, modification, consolidation, change of, or substitution or replacement for, all or any part of the Note, the Loan Agreement or any other Loan Document.

2.3 Debt and Other Obligations. Borrower's and Other Borrower's obligations for the payment of the Debt and the performance of the Other Obligations shall be referred to collectively herein as the "Obligations."

ARTICLE 3 - BORROWER COVENANTS

Borrower covenants and agrees that:

3.1 Payment of Debt. Borrower will pay the Debt at the time and in the manner provided in the Loan Agreement, the Note and this Mortgage.

3.2 Incorporation by Reference. All the covenants, conditions and agreements contained in (a) the Loan Agreement, (b) the Note and (c) all and any of the other Loan Documents, are hereby made a part of this Mortgage to the same extent and with the same force as if fully set forth herein.

UNOFFICIAL COPY

3.3 Insurance. Borrower shall obtain and maintain, or cause to be maintained, in full force and effect at all times insurance with respect to Borrower and the Property as required pursuant to the Loan Agreement.

3.4 Maintenance of Property. Borrower shall cause the Property to be maintained in a good and safe condition and repair. The Improvements, the Fixtures, the Equipment and the Personal Property shall not be removed, demolished or materially altered except as provided for in the Loan Agreement (except for normal replacement of the Fixtures, the Equipment or the Personal Property, tenant finish and refurbishment of the Improvements) without the consent of Agent as provided for in the Loan Agreement. Borrower shall promptly repair, replace or rebuild any part of the Property which may be destroyed by any casualty, or become damaged, worn or dilapidated and shall complete and pay for any structure at any time in the process of construction or repair on the Land except as set forth in the Loan Agreement.

3.5 Waste. Borrower shall not commit or suffer any waste of the Property or make any change in the use of the Property which will in any way materially increase the risk of fire or other hazard arising out of the operation of the Property, or take any action that might invalidate or allow the cancellation of any Policy, or do or permit to be done thereon anything that may in any way materially impair the value of the Property or the security of this Mortgage. Borrower will not, without the prior written consent of Agent, permit any drilling or exploration for or extraction, removal, or production of any minerals from the surface or the subsurface of the Land, regardless of the depth thereof or the method of mining or extraction thereof.

3.6 Payment for Labor and Materials.

(a) Subject to the terms, provisions and conditions of the Loan Agreement, Borrower will promptly pay or cause to be paid when due all bills and costs for labor, materials, and specifically fabricated materials ("Labor and Material Costs") incurred in connection with the Property and never permit to exist beyond the due date thereof in respect of the Property or any part thereof any lien or security interest, even though inferior to the liens and the security interests hereof, and in any event never permit to be created or exist in respect of the Property or any part thereof any other or additional lien or security interest other than the liens or security interests hereof except for the Permitted Encumbrances.

(b) Subject to the terms, provisions and conditions of the Loan Agreement, after prior written notice to Agent, Borrower, or any tenant of the Property pursuant to the terms of such tenant's lease, at its own expense, may contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the amount or validity or application in whole or in part of any of the Labor and Material Costs, provided that (i) no Event of Default has occurred and is continuing under the Loan Agreement, the Note, this Mortgage or any of the other Loan Documents, (ii) Borrower is permitted to do so under the provisions of any other mortgage, deed of trust or deed to secure debt affecting the Property, (iii) such proceeding shall suspend the collection of the Labor and Material Costs from Borrower and from the Property or Borrower shall have paid all of the Labor and Material Costs under protest, (iv) such proceeding shall be permitted under and be conducted in accordance with the provisions of any other instrument to which Borrower is subject and shall not constitute a default thereunder, (v) neither the Property nor any part thereof or interest therein will be in danger of being sold,

UNOFFICIAL COPY

forfeited, terminated, canceled or lost, and (vi) Borrower shall have furnished the security as may be required in the proceeding, or as may be reasonably requested by Agent to insure the payment of any contested Labor and Material Costs, together with all interest and penalties thereon.

3.7 Performance of Other Agreements. Borrower shall observe and perform each and every term, covenant and provision to be observed or performed by Borrower pursuant to the Loan Agreement, any other Loan Document and any other agreement or recorded instrument affecting or pertaining to the Property and any amendments, modifications or changes thereto.

3.8 Change of Name, Identity or Structure. Except as set forth in the Loan Agreement, Borrower shall not change Borrower's name, identity (including its trade name or names) or, if not an individual, Borrower's corporate, partnership or other structure without notifying Agent of such change in writing at least thirty (30) days prior to the effective date of such change and, in the case of a change in Borrower's structure, without first obtaining the prior written consent of Agent, which consent will not be unreasonably withheld, delayed or conditioned provided that such action is otherwise in compliance with the Loan Agreement. Borrower shall execute and deliver to Agent, prior to or contemporaneously with the effective date of any such change, any financing statement or financing statement change reasonably required by Agent to establish or maintain the validity, perfection and priority of the security interest granted herein. At the request of Agent, Borrower shall execute a certificate in form reasonably satisfactory to Agent listing the trade names under which Borrower intends to operate the Property, and representing and warranting that Borrower does business under no other trade name with respect to the Property.

3.9 Title. Borrower has good, marketable and insurable fee simple title to the real property comprising part of the Property and good title to the balance of such Property, free and clear of all Liens whatsoever except the Permitted Encumbrances, such other Liens as are permitted pursuant to the Loan Documents and the Liens created by the Loan Documents. To Borrower's actual knowledge, the Permitted Encumbrances in the aggregate do not materially adversely affect the value, operation or use of the Property or Borrower's ability to repay the Loan. This Mortgage, when properly recorded in the appropriate records, together with any Uniform Commercial Code financing statements required to be filed in connection therewith, will create (a) a valid, perfected first priority lien, security title and security interest on the Property, to the extent such security interests can be perfected by filing; subject only to any applicable Permitted Encumbrances, such other Liens as are permitted pursuant to the Loan Documents and the Liens created by the Loan Documents. There are no claims for payment for work, labor or materials affecting the Property which are past due and are or may become a lien prior to, or of equal priority with, the Liens created by the Loan Documents unless such claims for payments are being contested in accordance with the terms and conditions of this Mortgage.

3.10 Letter of Credit Rights. If Borrower is at any time a beneficiary under a letter of credit relating to the properties, rights, titles and interests referenced in Section 1.1 of this Mortgage now or hereafter issued in favor of Borrower, Borrower shall promptly notify Agent thereof and, at the request and option of Agent, Borrower shall, pursuant to an agreement in form and substance satisfactory to Agent, either (i) arrange for the issuer and any confirmer of such letter of credit to consent to an assignment to Agent of the proceeds of any drawing under

UNOFFICIAL COPY

the letter of credit or (ii) arrange for the Agent to become the transferee beneficiary of the letter of credit, with Agent agreeing, in each case that the proceeds of any drawing under the letter of credit are to be applied as provided in Section 7.2 of this Mortgage.

ARTICLE 4 - OBLIGATIONS AND RELIANCES

4.1 Relationship of Borrower and Lender. The relationship between Borrower and Lender is solely that of debtor and creditor, and Agent and Lender have no fiduciary or other special relationship with Borrower, and no term or condition of any of the Loan Agreement, the Note, this Mortgage and the other Loan Documents shall be construed so as to deem the relationship between Borrower and Agent or Lender to be other than that of debtor and creditor.

4.2 No Reliance on Agent/Lender. The general partners, members, principals and (if Borrower is a trust) beneficial owners of Borrower are experienced in the ownership and operation of properties similar to the Property, and Borrower, Agent and Lender are relying solely upon such expertise and business acumen in connection with the ownership and operation of the Property. Borrower is not relying on Agent's or Lender's expertise, business acumen or advice in connection with the Property.

4.3 No Agent/Lender Obligations.

(a) Notwithstanding the provisions of Subsections 1.1(h) and (n) or Section 1.2, neither Agent nor Lender is undertaking the performance of (i) any obligations under the Leases; or (ii) any obligations with respect to such agreements, contracts, certificates, instruments, franchises, permits, trademarks, licenses and other documents.

(b) By accepting or approving anything required to be observed, performed or fulfilled or to be given to Agent and/or Lender pursuant to this Mortgage, the Loan Agreement, the Note or the other Loan Documents, including, without limitation, any officer's certificate, balance sheet, statement of profit and loss or other financial statement, survey, appraisal, or insurance policy, neither Agent nor Lender shall be deemed to have warranted, consented to, or affirmed the sufficiency, the legality or effectiveness of same, and such acceptance or approval thereof shall not constitute any warranty or affirmation with respect thereto by Agent or Lender.

4.4 Reliance. Borrower recognizes and acknowledges that in accepting the Loan Agreement, the Note, this Mortgage and the other Loan Documents, Agent or Lender are expressly and primarily relying on the truth and accuracy of the warranties and representations set forth in Section 4.1 of the Loan Agreement without any obligation to investigate the Property and notwithstanding any investigation of the Property by Agent or Lender; that such reliance existed on the part of Agent and Lender prior to the date hereof, that the warranties and representations are a material inducement to Agent and Lender in making the Loan; and that Lender would not be willing to make the Loan and accept this Mortgage in the absence of the warranties and representations as set forth in Section 4.1 of the Loan Agreement.

ARTICLE 5 - FURTHER ASSURANCES

5.1 Recording of Security Instrument, Etc. Borrower forthwith upon the execution and delivery of this Mortgage and thereafter, from time to time, will cause this

UNOFFICIAL COPY

Mortgage and any of the other Loan Documents creating a lien or security interest or evidencing the lien hereof upon the Property and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect and perfect the lien or security interest hereof upon, and the interest of Agent and/or Lender in, the Property. Borrower will pay all taxes, filing, registration or recording fees, and all expenses incident to the preparation, execution, acknowledgment and/or recording of the Note, this Mortgage, the other Loan Documents, any note, deed of trust or mortgage supplemental hereto, any security instrument with respect to the Property and any instrument of further assurance, and any modification or amendment of the foregoing documents, and all federal, state, county and municipal taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Mortgage, any deed of trust or mortgage supplemental hereto, any security instrument with respect to the Property or any instrument of further assurance, and any modification or amendment of the foregoing documents, except where prohibited by law so to do.

5.2 Further Acts, Etc. Borrower will, at the cost of Borrower, and without expense to Agent or Lender, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, deeds of trust, mortgages, assignments, notices of assignments, transfers and assurances as Agent or Lender shall, from time to time, reasonably require, for the better assuring, conveying, assigning, transferring, and confirming unto Agent and Lender the property and rights hereby mortgaged, deeded, granted, bargained, sold, conveyed, confirmed, pledged, assigned, warranted and transferred or intended now or hereafter so to be, or which Borrower may be or may hereafter become bound to convey or assign to Agent or Lender, or for carrying out the intention or facilitating the performance of the terms of this Mortgage or for filing, registering or recording this Mortgage, or for complying with all Legal Requirements. Borrower, on demand, will execute and deliver, and in the event it shall fail to so execute and deliver, hereby authorizes Agent to execute in the name of Borrower or without the signature of Borrower to the extent Agent may lawfully do so, one or more financing statements to evidence more effectively the security interest of Agent in the Property. Borrower grants to Agent an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies available to Agent at law and in equity following an Event of Default, including without limitation such rights and remedies available to Agent pursuant to this Section 5.2. Nothing contained in this Section 5.2 shall be deemed to create an obligation on the part of Borrower to pay any costs and expenses incurred by Agent in connection with any sale or transfer of the Loan.

5.3 Changes in Tax, Debt, Credit and Documentary Stamp Laws.

(a) If any law is enacted or adopted or amended after the date of this Mortgage which deducts the Debt from the value of the Property for the purpose of taxation or which imposes a tax, either directly or indirectly, on the Debt or Agent's or Lender's interest in the Property, Borrower will pay the tax, with interest and penalties thereon, if any. If Agent is advised by counsel chosen by it that the payment of tax by Borrower would be unlawful or taxable to Agent or Lender or unenforceable or provide the basis for a defense of usury then Agent shall have the option by written notice of not less than one hundred eighty (180) days to declare the Debt immediately due and payable.

UNOFFICIAL COPY

(b) Borrower will not claim or demand or be entitled to any credit or credits on account of the Debt for any part of the Taxes or Other Charges assessed against the Property, or any part thereof, and no deduction shall otherwise be made or claimed from the assessed value of the Property, or any part thereof, for real estate tax purposes by reason of this Mortgage or the Debt. If such claim, credit or deduction shall be required by law, Agent and/or Lender shall have the option, by written notice of not less than one hundred eighty (180) days, to declare the Debt immediately due and payable.

(c) If at any time the United States of America, any State thereof or any subdivision of any such State shall require revenue or other stamps to be affixed to the Note, this Mortgage, or any of the other Loan Documents or impose any other tax or charge on the same, Borrower will pay for the same, with interest and penalties thereon, if any.

5.4 Splitting of Mortgage. The provisions of Section 9.7 of the Loan Agreement are hereby incorporated by reference herein.

5.5 Replacement Documents. Upon receipt of an affidavit of an officer of Agent or Lender as to the loss, theft, destruction or mutilation of the Note or any other Loan Document which is not of public record, and, in the case of any such mutilation, upon surrender and cancellation of such Note or other Loan Document, Borrower will issue, in lieu thereof, a replacement Note or other Loan Document, dated the date of such lost, stolen, destroyed or mutilated Note or other Loan Document in the same principal amount thereof and otherwise of like tenor.

ARTICLE 6 - DUE ON SALE/ENCUMBRANCE

6.1 Agent/Lender Reliance. Borrower acknowledges that Agent and Lender have examined and relied on the experience of Borrower and its general partners, members, principals and (if Borrower is a trust) beneficial owners in owning and operating properties such as the Property in agreeing to make the Loan, and will continue to rely on Borrower's ownership of the Property as a means of maintaining the value of the Property as security for repayment of the Debt and the performance of the Other Obligations. Borrower acknowledges that Agent and Lender have a valid interest in maintaining the value of the Property so as to ensure that, should Borrower default in the repayment of the Debt or the performance of the Other Obligations, Agent and Lender can recover the Debt by a sale of the Property conducted in accordance with the terms of the Loan Documents and applicable law.

6.2 No Sale/Encumbrance. Except as set forth in Section 5.2.13 of the Loan Agreement, Borrower agrees that Borrower shall not, without the prior written consent of Agent, sell, convey, mortgage, grant, bargain, encumber, pledge, assign, or otherwise transfer the Property or any part thereof, including, but not limited to, a grant of an easement, restriction, covenant, reservation or right of way (except as expressly permitted in Section 5.2.13 of the Loan Agreement), or permit the Property or any part thereof to be sold, conveyed, mortgaged, granted, bargained, encumbered, pledged, assigned, or otherwise transferred, unless Agent shall consent thereto in accordance with Section 6.4 hereof.

UNOFFICIAL COPY

6.3 Sale/Encumbrance Defined. Except as permitted pursuant to the terms of Section 5.2.13 of the Loan Agreement, a sale, conveyance, mortgage, grant, bargain, encumbrance, pledge, assignment, or transfer within the meaning of this Article 6 shall be deemed to include, but not be limited to, (a) an installment sales agreement wherein Borrower agrees to sell the Property or any part thereof for a price to be paid in installments; (b) an agreement by Borrower leasing all or a substantial part of the Property for other than actual occupancy by a space tenant thereunder or a sale, assignment or other transfer of, or the grant of a security interest in, Borrower's right, title and interest in and to any Leases or any Rents; (c) the voluntary or involuntary sale, conveyance, transfer or pledge of the stock of the sole member of Borrower (or the stock of any corporation directly or indirectly controlling such sole member by operation of law or otherwise) or the creation or issuance of new stock by which an aggregate of more than ten percent (10%) of such sole member's stock shall be vested in a party or parties who are not now stockholders; (d) the voluntary or involuntary sale, conveyance, transfer or pledge of any membership interest in Borrower; (e) if Borrower, any member of Borrower, any guarantor or any indemnitor is a limited liability company, the change, removal or resignation of a member or managing member or the transfer or pledge of the interest of any member or managing member or any profits or proceeds relating to such interest; or (f) any other transfer prohibited by the terms of the Loan Agreement.

6.4 Agent/Lender's Rights. Except as set forth in the Loan Agreement, Agent reserves the right to condition the consent required hereunder upon (a) a modification of the terms hereof and of the Loan Agreement, the Note or the other Loan Documents; (b) an assumption of the Loan Agreement, the Note, this Mortgage and the other Loan Documents as so modified by the proposed transferee; (c) payment of all of Agent's and Lender's reasonable expenses incurred in connection with such transfer including, without limitation, the cost of any third party reports, legal fees or required legal opinions; (d) the payment of an assumption fee equal to one percent (1%) of the outstanding principal balance of the Loan; (e) [Intentionally deleted]; (f) the delivery of an Additional Insolvency Opinion; (g) the proposed transferee's continued compliance with the representations and covenants set forth in Section 4.1.30 and 5.2.12 of the Loan Agreement; (h) the delivery of evidence satisfactory to Agent that the single purpose nature and bankruptcy remoteness of Borrower following such transfers are in accordance with the then current standards of Agent, or (i) such other conditions as Agent shall determine in its reasonable discretion to be in the interest of Agent, including, without limitation, the creditworthiness, reputation and qualifications of the transferee with respect to the Loan and the Property. Neither Agent nor Lender shall be required to demonstrate any actual impairment of its security or any increased risk of default hereunder in order to declare the Debt immediately due and payable upon Borrower's sale, conveyance, mortgage, grant, bargain, encumbrance, pledge, assignment, or transfer of the Property without Agent's consent (to the extent such consent is required hereunder or under the Loan Agreement). This provision shall apply to every sale, conveyance, mortgage, grant, bargain, encumbrance, pledge, assignment, or transfer of the Property regardless of whether voluntary or not, or whether or not Agent has consented to any previous sale, conveyance, mortgage, grant, bargain, encumbrance, pledge, assignment, or transfer of the Property.

UNOFFICIAL COPY

ARTICLE 7 - RIGHTS AND REMEDIES UPON DEFAULT

- 7.1 Remedies. Upon the occurrence and during the continuance of any Event of Default, Borrower agrees that Agent may take such action, without notice or demand, as it deems advisable to protect and enforce its rights against Borrower and in and to the Property, including, but not limited to, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Agent may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Agent or Lender:
- (a) declare the entire unpaid Debt to be immediately due and payable;
 - (b) institute proceedings, judicial or otherwise, for the complete foreclosure of this Mortgage under any applicable provision of law, in which case the Property or any interest therein may be sold for cash or upon credit in one or more parcels or in several interests or portions and in any order or manner;
 - (c) to the extent permitted under applicable law, with or without entry, to the extent permitted and pursuant to the procedures provided by applicable law, institute proceedings for the partial foreclosure of this Mortgage for the portion of the Debt then due and payable, subject to the continuing lien and security interest of this Mortgage for the balance of the Debt not then due, unimpaired and without loss of priority;
 - (d) sell for cash or upon credit the Property or any part thereof and all estate, claim, demand, right, title and interest of Borrower therein and rights of redemption thereof, pursuant to power of sale or otherwise, at one or more sales, as an entity or in parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by law;
 - (e) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein, in the Note, the Loan Agreement or in the other Loan Documents;
 - (f) recover judgment on the Note either before, during or after any proceedings for the enforcement of this Mortgage or the other Loan Documents;
 - (g) to the extent permitted by applicable law, apply for the appointment of a receiver, trustee, liquidator or conservator of the Property, without notice and without regard for the adequacy of the security for the Debt and without regard for the solvency of Borrower, any guarantor, or indemnitor with respect to the Loan or of any Person, liable for the payment of the Debt;
 - (h) the licenses granted to Borrower under Section 1.2 hereof shall automatically be revoked and Agent may, to the extent permitted pursuant to procedures provided by applicable law, enter into or upon the Property, either personally or by its agents, nominees or attorneys and dispossess Borrower and its agents and servants therefrom, without liability for trespass, damages or otherwise and exclude Borrower and its agents or servants wholly therefrom, and take possession of all books, records and accounts relating thereto and Borrower agrees to surrender possession of the Property and of such books, records and accounts to Agent upon demand, and thereupon Agent may (i) use, operate, manage, control, insure, maintain, repair,

UNOFFICIAL COPY

restore and otherwise deal with all and every part of the Property and conduct the business thereat; (ii) complete any construction on the Property in such manner and form as Agent deems advisable; (iii) make alterations, additions, renewals, replacements and improvements to or on the Property; (iv) exercise all rights and powers of Borrower with respect to the Property, whether in the name of Borrower or otherwise, including, without limitation, the right to make, cancel, enforce or modify Leases, obtain and evict tenants, and demand, sue for, collect and receive all Rents of the Property and every part thereof; (v) require Borrower to pay monthly in advance to Agent, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Property as may be occupied by Borrower; (vi) require Borrower to vacate and surrender possession of the Property to Agent or to such receiver and in default thereof, Borrower may be evicted by summary proceedings or otherwise; and (vii) apply the receipts from the Property to the payment of the Debt, in such order, priority and proportions as Agent shall deem appropriate in its sole discretion after deducting therefrom all expenses (including reasonable attorneys' fees) incurred in connection with the aforesaid operations and all amounts necessary to pay the Taxes, Other Charges, insurance and other expenses in connection with the Property, as well as just and reasonable compensation for the services of Agent and/or Lender, its counsel, agents and employees;

(i) exercise any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing: (i) the right to take possession of the Fixtures, the Equipment, the Personal Property or any part thereof, and to take such other measures as Agent may deem necessary for the care, protection and preservation of the Fixtures, the Equipment, the Personal Property, and (ii) request Borrower at its expense to assemble the Fixtures, the Equipment, the Personal Property and make it available to Agent at a convenient place acceptable to Agent. Any notice of sale, disposition or other intended action by Agent with respect to the Fixtures, the Equipment, the Personal Property sent to Borrower in accordance with the provisions hereof at least five (5) days prior to such action, shall constitute commercially reasonable notice to Borrower;

(j) apply any sums then deposited or held in escrow or otherwise by or on behalf of Agent or Lender in accordance with the terms of the Loan Agreement, this Mortgage or any other Loan Document to the payment of the following items in any order in its uncontrolled discretion:

- (i) Taxes and Other Charges;
- (ii) Insurance Premiums;
- (iii) Interest on the unpaid principal balance of the Note;
- (iv) Amortization of the unpaid principal balance of the Note;

(v) All other sums payable pursuant to the Note, the Loan Agreement, this Mortgage and the other Loan Documents, including, without limitation, advances made by Agent or Lender pursuant to the terms of this Mortgage;

(k) pursue such other remedies as Agent or Lender may have under applicable law; or

UNOFFICIAL COPY

(l) apply the undisbursed balance of any Net Proceeds Deficiency deposit, together with interest thereon, to the payment of the Debt in such order, priority and proportions as Agent and Lender shall deem to be appropriate in their discretion.

In the event of a sale, by foreclosure, power of sale or otherwise, of less than all of Property, this Mortgage shall continue as a lien and security interest on the remaining portion of the Property unimpaired and without loss of priority.

7.2 Application of Proceeds. The purchase money, proceeds and avails of any disposition of the Property, and or any part thereof, or any other sums collected by Agent or Lender pursuant to the Note, this Mortgage or the other Loan Documents, may be applied by Agent and/or Lender to the payment of the Debt in such priority and proportions as Agent and Lender in their discretion shall deem proper. Upon any foreclosure sale or sales of all or any portion of the Property under the power of sale hereby granted, Agent or Lender may bid for and purchase the Property and shall be entitled to apply all or any part of the Debt as a credit to the purchase price.

7.3 Right to Cure Defaults. Upon the occurrence and during the continuance of any Event of Default or if Borrower fails to make any payment or to do any act as herein provided, Agent may, but without any obligation to do so and without notice to or demand on Borrower and without releasing Borrower from any obligation hereunder, make or do the same in such manner and to such extent as Agent may deem necessary to protect the security hereof. Agent is authorized to enter upon action or proceeding to the Property for such purposes, or appear in, defend, or bring any action or proceeding to protect its interest in the Property or to foreclose this Mortgage or collect the Debt, and the cost and expense thereof (including reasonable attorneys' fees to the extent permitted by law), with interest as provided in this Section 7.3, shall constitute a portion of the Debt and shall be due and payable to Agent upon demand. All such costs and expenses incurred by Agent and/or Lender in remedying such Event of Default or such failed payment or act or in appearing in, defending, or bringing any such action or proceeding shall bear interest at the Default Rate, for the period after notice from Agent and/or Lender that such cost or expense was incurred to the date of payment to Agent and/or Lender. All such costs and expenses incurred by Agent and/or Lender together with interest thereon calculated at the Default Rate shall be deemed to constitute a portion of the Debt and be secured by this Mortgage and the other Loan Documents and shall be immediately due and payable upon demand by Agent and/or Lender therefor.

7.4 Actions and Proceedings. Agent has the right to appear in and defend any action or proceeding brought with respect to the Property and to bring any action or proceeding, in the name and on behalf of Borrower, which Agent, in its discretion, decides should be brought to protect its interest in the Property.

7.5 Recovery of Sums Required To be Paid. Agent shall have the right from time to time to take action to recover any sum or sums which constitute a part of the Debt as the same become due, without regard to whether or not the balance of the Debt shall be due, and without prejudice to the right of Agent thereafter to bring an action of foreclosure, or any other action, for a default or defaults by Borrower existing at the time such earlier action was commenced.

UNOFFICIAL COPY

7.6 Examination of Books and Records. At reasonable times and upon reasonable notice, Agent, its agents, accountants and attorneys shall have the right to examine the records, books, management and other papers of Borrower which reflect upon their financial condition, at the Property or at any office regularly maintained by Borrower where the books and records are located. Agent and its agents shall have the right to make copies and extracts from the foregoing records and other papers. In addition, at reasonable times and upon reasonable notice, Agent, its agents, accountants and attorneys shall have the right to examine and audit the books and records of Borrower pertaining to the income, expenses and operation of the Property during reasonable business hours at any office of Borrower where the books and records are located. This Section 7.6 shall apply throughout the term of the Note and without regard to whether an Event of Default has occurred or is continuing. Unless an Event of Default shall be continuing, the which event the action contemplated by this Section 7.6 shall be at Borrower's sole costs and expenses hereunder.

7.7 Other Rights, Etc.

(a) The failure of Agent or Lender to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Mortgage. Borrower shall not be relieved of Borrower's obligations hereunder by reason of (i) the failure of Agent or Lender to comply with any request of Borrower or any guarantor or indemnitor with respect to the Loan to take any action to foreclose this Mortgage or otherwise enforce any of the provisions hereof or of the Note or the other Loan Documents, (ii) the release, regardless of consideration, of the whole or any part of the Property, or of any person liable for the Debt or any portion thereof, or (iii) any agreement or stipulation by Agent or Lender extending the time of payment or otherwise modifying or supplementing the terms of the Note, this Mortgage or the other Loan Documents.

(b) It is agreed that the risk of loss or damage to the Property is on Borrower, and neither Agent nor Lender shall have any liability whatsoever for decline in value of the Property, for failure to maintain the Policies, or for failure to determine whether insurance in force is adequate as to the amount of risks insured. Possession by Agent shall not be deemed an election of judicial relief, if any such possession is requested or obtained, with respect to any Property or collateral not in Agent's possession.

(c) Agent may resort for the payment of the Debt to any other security held by Agent in such order and manner as Agent, in its discretion, may elect. Agent may take action to recover the Debt, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Agent thereafter to foreclose this Mortgage. The rights of Agent under this Mortgage shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Agent shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision. Agent shall not be limited exclusively to the rights and remedies herein stated but shall be entitled to every right and remedy now or hereafter afforded at law or in equity.

7.8 Right to Release Any Portion of the Property. Without limiting any provision of Section 2.5 of the Loan Agreement, Agent may release any portion of the Property for such consideration as Agent may require without, as to the remainder of the Property, in any way impairing or affecting the lien or priority of this Mortgage, or improving the position of any

UNOFFICIAL COPY

subordinate lienholder with respect thereto, except to the extent that the obligations hereunder shall have been reduced by the actual monetary consideration, if any, received by Agent for such release, and may accept by assignment, pledge or otherwise any other property in place thereof as Agent may require without being accountable for so doing to any other lienholder. This Mortgage shall continue as a lien and security interest in the remaining portion of the Property.

7.9 Violation of Laws. If the Property is not in material compliance with Legal Requirements, Agent may impose additional requirements upon Borrower in connection herewith including, without limitation, monetary reserves or financial equivalents.

7.10 Recourse and Choice of Remedies. Notwithstanding any other provision of this Mortgage or the Loan Agreement, Agent and other Indemnified Parties (as hereinafter defined) are entitled to enforce the obligations of Borrower, any guarantor or indemnitor contained in Sections 9.2, 9.3 and 9.4 herein without first resorting to or exhausting any security or collateral and without first having recourse to the Note or any of the Property, through foreclosure or acceptance of a deed in lieu of foreclosure or otherwise, and in the event Lender commences a foreclosure action against the Property, Agent is entitled to pursue a deficiency judgment with respect to such obligations against Borrower. The provisions of Sections 9.2, 9.3 and 9.4 herein are exceptions to any non-recourse or exculpation provisions in the Loan Agreement, the Note, this Mortgage or the other Loan Documents, and Borrower and any guarantor or indemnitor with respect to the Loan are fully and personally liable for the obligations pursuant to Sections 9.2, 9.3 and 9.4 herein. The liability of Borrower and any guarantor or indemnitor with respect to the Loan pursuant to Sections 9.2, 9.3 and 9.4 herein is not limited to the original principal amount of the Note. Notwithstanding the foregoing, nothing herein shall inhibit or prevent Agent from foreclosing or exercising any other rights and remedies pursuant to the Loan Agreement, the Note, this Mortgage and the other Loan Documents, whether simultaneously with foreclosure proceedings or in any other sequence. A separate action or actions may be brought and prosecuted against Borrower pursuant to Sections 9.2, 9.3 and 9.4 herein, whether or not action is brought against any other Person or whether or not any other Person is joined in the action or actions. In addition, Agent shall have the right but not the obligation to join and participate in, as a party if it so elects, any administrative or judicial proceedings or actions initiated in connection with any matter addressed in Article 8 or Section 9.4 herein.

7.11 Right of Entry. Upon reasonable notice to Borrower, Agent and its agents shall have the right to enter and inspect the Property at all reasonable times.

7.12 Release. Upon payment of all sums secured by this Mortgage, the Agent shall release this Mortgage. The Borrower shall pay the Agent's reasonable costs incurred in releasing this Mortgage, unless prohibited by applicable law in which case such costs shall be paid by Agent.

7.13 References to Lender. [Intentionally deleted.]

7.14 Failure to Act. Notwithstanding anything to the contrary contained herein or in any of the other Loan Documents, the failure of Agent or Lender to take any action hereunder or under any of the other Loan Documents shall not (a) be deemed to be a waiver of

UNOFFICIAL COPY

any term or condition of this Mortgage or any of the other Loan Documents, or (b) adversely affect any rights of Agent or Lender hereunder or under any of the other Loan Documents.

ARTICLE 8 - ENVIRONMENTAL HAZARDS

8.1 Environmental Representations and Warranties. To the best of Borrower's knowledge, and except as otherwise disclosed by those certain environmental reports relating to the Property delivered to Agent prior to the date hereof (collectively, such reports are referred to below as the "Environmental Report"), Borrower hereby represents and warrants (a) to the best of Borrower's knowledge, based on the Environmental Report, there are no Hazardous Substances (defined below) or underground storage tanks in, on, or under the Property, except those that are both (i) in compliance with Environmental Laws (defined below) and with permits issued pursuant thereto and (ii) fully disclosed to Agent in writing pursuant the Environmental Report; (b) there are no past, present or threatened Releases (defined below) of Hazardous Substances in, on, under or from the Property which has not been fully remediated in accordance with Environmental Law; (c) there is no threat of any Release of Hazardous Substances migrating to the Property; (d) there is no past or present non-compliance with Environmental Laws, or with permits issued pursuant thereto, in connection with the Property which has not been fully remediated in accordance with Environmental Law; (e) Borrower does not know of, and has not received, any written or oral notice or other communication from any Person (including but not limited to a governmental entity) relating to Hazardous Substances or Remediation (defined below) thereof, of possible liability of any Person pursuant to any Environmental Law, other environmental conditions in connection with the Property, or any actual or potential administrative or judicial proceedings in connection with any of the foregoing; and (f) Borrower has truthfully and fully provided to Agent, in writing, any and all information relating to conditions in, on, under or from the Property that is known to Borrower and that is contained in Borrower's files and records, including but not limited to any reports relating to Hazardous Substances in, on, under or from the Property and/or to the environmental condition of the Property.

"Environmental Law" means any present and future federal, state and local laws, statutes, ordinances, rules, regulations and the like, as well as common law, relating to protection of human health or the environment, relating to Hazardous Substances, relating to liability for or costs of Remediation or prevention of Releases of Hazardous Substances or relating to liability for or costs of other actual or threatened danger to human health or the environment. Environmental Law includes, but is not limited to, the following statutes, as amended, any successor thereto, and any regulations promulgated pursuant thereto, and any state or local statutes, ordinances, rules, regulations and the like addressing similar issues: the Comprehensive Environmental Response, Compensation and Liability Act; the Emergency Planning and Community Right-to-Know Act; the Hazardous Substances Transportation Act; the Resource Conservation and Recovery Act (including but not limited to Subtitle I relating to underground storage tanks); the Solid Waste Disposal Act; the Clean Water Act; the Clean Air Act; the Toxic Substances Control Act; the Safe Drinking Water Act; the Occupational Safety and Health Act; the Federal Water Pollution Control Act; the Federal Insecticide, Fungicide and Rodenticide Act; the Endangered Species Act; the National Environmental Policy Act; the River and Harbors Appropriation Act. Environmental Law also includes, but is not limited to, any present and future federal, state and local laws, statutes, ordinances, rules, regulations and the like, as well as

UNOFFICIAL COPY

common law conditioning transfer of property upon a negative declaration or other approval of a governmental authority of the environmental condition of the Property; requiring notification or disclosure of Releases of Hazardous Substances or other environmental condition of the Property to any governmental authority or other Person, whether or not in connection with transfer of title to or interest in property; imposing conditions or requirements in connection with permits or other authorization for lawful activity; relating to nuisance, trespass or other causes of action related to the Property; and relating to wrongful death, personal injury, or property or other damage in connection with any physical condition or use of the Property.

“Hazardous Substances” include but are not limited to any and all substances (whether solid, liquid or gas) defined, listed, or otherwise classified as pollutants, hazardous wastes, hazardous substances, hazardous materials, extremely hazardous wastes, or words of similar meaning or regulatory effect under any present or future Environmental Laws or that may have a negative impact on human health or the environment, including but not limited to petroleum and petroleum products, asbestos and asbestos-containing materials, polychlorinated biphenyls, lead, radon, radioactive materials, flammables and explosives, but excluding substances of kinds and in amounts ordinarily and customarily used or stored in similar properties for the purpose of cleaning or other maintenance or operations and otherwise in compliance with all Environmental Laws.

“Release” of any Hazardous Substance includes but is not limited to any release, deposit, discharge, emission, leaking, spilling, seeping, migrating, injecting, pumping, pouring, emptying, escaping, dumping, disposing or other movement of Hazardous Substances.

“Remediation” includes but is not limited to any response, remedial, removal, or corrective action, any activity to cleanup, detoxify, decontaminate, contain or otherwise remediate any Hazardous Substance, any actions to prevent cure or mitigate any Release of any Hazardous Substance, any action to comply with any Environmental Laws or with any permits issued pursuant thereto, any inspection, investigation, study, monitoring, assessment, audit, sampling and testing, laboratory or other analysis, or evaluation relating to any Hazardous Substances or to anything referred to in Article VIII.

8.2 **Environmental Covenants.** Borrower covenants and agrees that: (a) all uses and operations on or of the Property, whether by Borrower or any other Person, shall be in compliance with all Environmental Laws and permits issued pursuant thereto; (b) Borrower shall not cause or permit the Release of any Hazardous Substances in, on, under or from the Property; (c) there shall be no Hazardous Substances in, on, or under the Property, except those that are both (i) in compliance with all Environmental Laws and with permits issued pursuant thereto and (ii) fully disclosed to Agent in writing; (d) Borrower shall keep the Property free and clear of all liens and other encumbrances imposed pursuant to any Environmental Law, whether due to any act or omission of Borrower or any other Person (the **“Environmental Liens”**); (e) Borrower shall, at its sole cost and expense, fully and expeditiously cooperate in all activities pursuant to Section 8.3 below, including but not limited to providing all relevant information and making knowledgeable persons available for interviews; (f) Borrower shall, at its sole cost and expense, perform any environmental site assessment or other investigation of environmental conditions in connection with the Property, pursuant to any reasonable written request of Agent made in the event that Agent has a good faith reason to believe based upon credible evidence or information

UNOFFICIAL COPY

that an environmental hazard exists on or affects the Property (including but not limited to sampling, testing and analysis of soil, water, air, building materials and other materials and substances whether solid, liquid or gas), and share with Agent the reports and other results thereof, and Agent and other Indemnified Parties shall be entitled to rely on such reports and other results thereof; (g) Borrower shall, at its sole cost and expense, comply with all reasonable written requests of Agent made in the event that Agent has a good faith reason to believe based upon credible evidence or information that an environmental hazard exists on or affects the Property to (i) reasonably effectuate Remediation of any condition (including but not limited to a Release of a Hazardous Substance) in, on, under or from the Property; (ii) comply with any Environmental Law; (iii) comply with any directive from any governmental authority; and (iv) take any other reasonable action necessary or appropriate for protection of human health or the environment; (h) Borrower shall not do or knowingly allow any tenant or other user of the Property to do any act that materially increases the dangers to human health or the environment, poses an unreasonable risk of harm to any Person (whether on or off the Property), impairs or may impair the value of the Property, is contrary to any requirement of any insurer, constitutes a public or private nuisance, constitutes waste, or violates any covenant, condition, agreement or easement applicable to the Property; and (i) Borrower shall immediately notify Agent in writing of (A) any presence or Releases or threatened Releases of Hazardous Substances in, on, under, from or migrating towards the Property; (B) any non-compliance with any Environmental Laws related in any way to the Property; (C) any actual or potential Environmental Lien; (D) any required or proposed Remediation of environmental conditions relating to the Property; and (E) any written or oral notice or other communication of which Borrower becomes aware from any source whatsoever (including but not limited to a governmental entity) relating in any way to Hazardous Substances or Remediation thereof, possible liability of any Person pursuant to any Environmental Law, other environmental conditions in connection with the Property, or any actual or potential administrative or judicial proceedings in connection with anything referred to in this Article VIII.

8.3 Agent's Rights. In the event that Agent has a good faith reason to believe based upon credible evidence or information that an environmental hazard exists on the Property, upon reasonable notice from Agent, Borrower shall, at Borrower's expense, promptly cause an engineer or consultant satisfactory to Agent to conduct any environmental assessment or audit (the scope of which shall be determined in Agent's sole and absolute discretion) and take any samples of soil, groundwater or other water, air, or building materials or any other invasive testing requested by Agent and promptly deliver the results of any such assessment, audit, sampling or other testing; provided, however, if such results are not delivered to Agent within a reasonable period, upon reasonable notice to Borrower, Agent and any other Person designated by Agent, including but not limited to any receiver, any representative of a governmental entity, and any environmental consultant, shall have the right, but not the obligation, to enter upon the Property at all reasonable times to assess any and all aspects of the environmental condition of the Property and its use, including but not limited to conducting any environmental assessment or audit (the scope of which shall be determined in Agent's sole and absolute discretion) and taking samples of soil, groundwater or other water, air, or building materials, and reasonably conducting other invasive testing. Borrower shall cooperate with and provide access to Agent and any such Person designated by Agent.

UNOFFICIAL COPY

ARTICLE 9 - INDEMNIFICATION

9.1 General Indemnification. Borrower shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all claims, suits, liabilities (including, without limitation, strict liabilities), actions, proceedings, obligations, debts, damages, losses, costs, expenses, diminutions in value, fines, penalties, charges, fees, expenses, judgments, awards, amounts paid in settlement, punitive damages, foreseeable and unforeseeable consequential damages, of whatever kind or nature (including but not limited to reasonable attorneys' fees and other costs of defense) (collectively, the "Losses") imposed upon or incurred by or asserted against any Indemnified Parties and directly or indirectly arising out of or in any way relating to any one or more of the following: (a) ownership of this Mortgage, the Property or any interest therein or receipt of any Rents; (b) any amendment to, or restructuring of, the Debt, and the Note, the Loan Agreement, this Mortgage, or any other Loan Documents; (c) any and all lawful action that may be taken by Agent and/or Lender in connection with the enforcement of the provisions of this Mortgage or the Loan Agreement or the Note or any of the other Loan Documents, whether or not suit is filed in connection with same, or in connection with Borrower, any guarantor or indemnitor and/or any partner, joint venturer or shareholder thereof becoming a party to a voluntary or involuntary federal or state bankruptcy, insolvency or similar proceeding; (d) any accident, injury to or death of persons or loss of or damage to property occurring in, on or about the Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (e) performance of any labor or services or the furnishing of any materials or other property in respect of the Property or any part thereof; (f) if applicable, the failure of any person to file timely with the Internal Revenue Service an accurate Form 1099-B, Statement for Recipients of Proceeds from Real Estate, Broker and Partner Exchange Transactions, which may be required in connection with this Mortgage, or to supply a copy thereof in a timely fashion to the recipient of the proceeds of the transaction in connection with which this Mortgage is made; (g) any failure of the Property to be in compliance with any Legal Requirements; (h) the enforcement by any Indemnified Party of the provisions of this Article IX; (i) any and all claims and demands whatsoever which may be asserted against Agent and/or Lender by reason of any alleged obligations or undertakings on its or their part to perform or discharge any of the terms, covenants, or agreements contained in any Lease; (j) the payment of any commission, charge or brokerage fee to anyone claiming through Borrower which may be payable in connection with the funding of the Loan; or (k) any misrepresentation made by Borrower in this Mortgage or any other Loan Document. Notwithstanding the foregoing, Borrower shall not be liable to the Indemnified Parties under this Section 9.1 for any Losses to which the Indemnified Parties may become subject to the extent such Losses arise by reason of the gross negligence, illegal acts, fraud or willful misconduct of the Indemnified Parties or Losses resulting from acts or omissions arising after a completed foreclosure of the Property or acceptance by Agent or Lender of a deed in lieu of foreclosure. Any amounts payable to Agent and/or Lender by reason of the application of this Section 9.1 shall become immediately due and payable and shall bear interest at the Default Rate from the date loss or damage is sustained by Agent and/or Lender until paid. For purposes of this Article IX, the term "Indemnified Parties" means Agent, Lender and any Person who is or will have been involved in the origination of the Loan, any Person who is or will have been involved in the servicing of the Loan secured hereby, any Person in whose name the encumbrance created by this Mortgage is or will have been recorded, persons and entities who may hold or acquire or will have held a full or partial interest in the Loan secured hereby

UNOFFICIAL COPY

(including, but not limited to, custodians, trustees and other fiduciaries who hold or have held a full or partial interest in the Loan secured hereby for the benefit of third parties) as well as the respective directors, officers, shareholders, partners, employees, agents, servants, representatives, contractors, subcontractors, affiliates, subsidiaries, participants, successors and assigns of any and all of the foregoing (including but not limited to any other Person who holds or acquires or will have held a participation or other full or partial interest in the Loan, whether during the term of the Loan or as a part of or following a foreclosure of the Loan and including, but not limited to, any successors by merger, consolidation or acquisition of all or a substantial portion of Agent's and/or Lender's assets and business).

9.2 Mortgage and/or Intangible Tax. Borrower shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all Losses imposed upon or incurred by or asserted against any Indemnified Parties and directly or indirectly arising out of or in any way relating to any tax on the making and/or recording of this Mortgage, the Note or any of the other Loan Documents, but excluding any income, franchise or other similar taxes. Borrower hereby agrees that, in the event that it is determined that any documentary stamp taxes or intangible personal property taxes are due hereon or on any mortgage or promissory note executed in connection herewith (including, without limitation, the Note), Borrower shall indemnify and hold harmless the Indemnified Parties for all such documentary stamp and/or intangible taxes, including all penalties and interest assessed or charged in connection therewith.

9.3 ERISA Indemnification. Borrower shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all Losses (including, without limitation, reasonable attorneys' fees and costs incurred in the investigation, defense, and settlement of Losses incurred in correcting any prohibited transaction or in the sale of a prohibited loan, and in obtaining any individual prohibited transaction exemption under ERISA that may be required, in Agent's sole discretion) that Agent may incur, directly or indirectly, as a result of a default under Sections 4.1.9 or 5.2.12 of the Loan Agreement.

9.4 Environmental Indemnification. Borrower shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all Losses and costs of Remediation (whether or not performed voluntarily), engineers' fees, environmental consultants' fees, and costs of investigation (including but not limited to sampling, testing, and analysis of soil, water, air, building materials and other materials and substances whether solid, liquid or gas) imposed upon or incurred by or asserted against any Indemnified Parties, and directly or indirectly arising out of or in any way relating to any one or more of the following: (a) any presence of any Hazardous Substances in, on, above, or under the Property; (b) any past, present or threatened Release of Hazardous Substances in, on, above, under or from the Property; (c) any activity by Borrower, any Person affiliated with Borrower or any tenant or other user of the Property in connection with any actual, proposed or threatened use, treatment, storage, holding, existence, disposition or other Release, generation, production, manufacturing, processing, refining, control, management, abatement, removal, handling, transfer or transportation to or from the Property of any Hazardous Substances at any time located in, under, on or above the Property; (d) any activity by Borrower, any Person affiliated with Borrower or any tenant or other user of the Property in connection with any actual

UNOFFICIAL COPY

or proposed Remediation of any Hazardous Substances at any time located in, under, on or above the Property, whether or not such Remediation is voluntary or pursuant to court or administrative order, including but not limited to any removal, remedial or corrective action; (e) any past or present non-compliance or violations of any Environmental Laws (or permits issued pursuant to any Environmental Law) in connection with the Property or operations thereon, including but not limited to any failure by Borrower, any Affiliate of Borrower or any tenant or other user of the Property to comply with any order of any Governmental Authority in connection with any Environmental Laws; (f) the imposition, recording or filing of any Environmental Lien encumbering the Property; (g) any administrative processes or proceedings or judicial proceedings in any way connected with any matter addressed in Article VIII and this Section 9.4; (h) any past, present or threatened injury to, destruction of or loss of natural resources in any way connected with the Property, including but not limited to costs to investigate and assess such injury, destruction or loss; (i) any acts of Borrower or other users of the Property in arranging for disposal or treatment, or arranging with a transporter for transport for disposal or treatment, of Hazardous Substances owned or possessed by such Borrower or other users, at any facility or incineration vessel owned or operated by another Person and containing such or any similar Hazardous Substance; (j) any acts of Borrower or other users of the Property, in accepting any Hazardous Substances for transport to disposal or treatment facilities, incineration vessels or sites selected by Borrower or such other users, from which there is a Release, or a threatened Release of any Hazardous Substance which causes the incurrence of costs for Remediation; (k) any personal injury, wrongful death, or property damage arising under any statutory or common law or tort law theory, including but not limited to damages assessed for the maintenance of a private or public nuisance or for the conducting of an abnormally dangerous activity on or near the Property; and (l) any misrepresentation or inaccuracy in any representation or warranty or material breach or failure to perform any covenants or other obligations pursuant to Article VIII. Notwithstanding the foregoing, Borrower shall not be liable under this Section 9.4 for any Losses or costs of Remediation to which the Indemnified Parties may become subject to the extent such Losses or costs of Remediation arise by reason of the gross negligence, illegal acts, fraud or willful misconduct of the Indemnified Parties or Losses resulting from acts or omissions arising after a completed foreclosure of the Property or acceptance by Agent of a deed in lieu of foreclosure. This indemnity shall survive any termination, satisfaction or foreclosure of this Mortgage, subject to the provisions of Section 10.5.

9.5 Duty to Defend; Attorneys' Fees and Other Fees and Expenses. Upon written request by any Indemnified Party, Borrower shall defend such Indemnified Party (if requested by any Indemnified Party, in the name of the Indemnified Party) by attorneys and other professionals approved by the Indemnified Parties. Notwithstanding the foregoing, if the defendants in any such claim or proceeding include both Borrower and any Indemnified Party and Borrower and such Indemnified Party shall have reasonably concluded that there are any legal defenses available to it and/or other Indemnified Parties that are different from or additional to those available to Borrower, such Indemnified Party shall have the right to select separate counsel to assert such legal defenses and to otherwise participate in the defense of such action on behalf of such Indemnified Party, provided that no compromise or settlement shall be entered without Borrower's consent, which consent shall not be unreasonably withheld. Upon demand, Borrower shall pay or, in the sole and absolute discretion of the Indemnified Parties, reimburse, the Indemnified Parties for the payment of reasonable fees and disbursements of attorneys,

UNOFFICIAL COPY

engineers, environmental consultants, laboratories and other professionals in connection therewith.

ARTICLE 10 - WAIVERS

10.1 Waiver of Counterclaim. To the extent permitted by applicable law, Borrower hereby waives the right to assert a counterclaim, other than a mandatory or compulsory counterclaim, in any action or proceeding brought against it by Agent and/or Lender arising out of or in any way connected with this Mortgage, the Loan Agreement, the Note, any of the other Loan Documents, or the Obligations.

10.2 Marshalling and Other Matters. To the extent permitted by applicable law, Borrower hereby waives the benefit of all appraisement, valuation, stay, extension, reinstatement and redemption laws now or hereafter in force and all rights of marshalling in the event of any sale or under of the Property or any part thereof or any interest therein. Further, Borrower hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Mortgage on behalf of Borrower, and on behalf of each and every person acquiring any interest in or title to the Property subsequent to the date of this Mortgage and on behalf of all persons to the extent permitted by applicable law.

10.3 Waiver of Notice. To the extent permitted by applicable law, Borrower shall not be entitled to any notices of any nature whatsoever from Agent or Lender except with respect to matters for which this Mortgage specifically and expressly provides for the giving of notice by Agent or Lender to Borrower and except with respect to matters for which Agent or Lender is required by applicable law to give notice, and Borrower hereby expressly waives the right to receive any notice from Agent or Lender with respect to any matter for which this Mortgage does not specifically and expressly provide for the giving of notice by Agent or Lender to Borrower.

10.4 Waiver of Statute of Limitations. To the extent permitted by applicable law, Borrower hereby expressly waives and releases to the fullest extent permitted by law, the pleading of any statute of limitations as a defense to payment of the Debt or performance of its Other Obligations.

10.5 Survival. The indemnifications made pursuant to Sections 9.3 and 9.4 herein and the representations and warranties, covenants, and other obligations arising under Article VIII, shall continue indefinitely in full force and effect and shall survive and shall in no way be impaired by: any satisfaction or other termination of this Mortgage, any assignment or other transfer of all or any portion of this Mortgage or Agent's interest in the Property (but, in such case, shall benefit both Indemnified Parties and any assignee or transferee), any exercise of Agent's or Lender's rights and remedies pursuant hereto including but not limited to foreclosure or acceptance of a deed in lieu of foreclosure, any exercise of any rights and remedies pursuant to the Loan Agreement, the Note or any of the other Loan Documents, any transfer of all or any portion of the Property (whether by Borrower or by Agent following foreclosure or acceptance of a deed in lieu of foreclosure or at any other time), any amendment to this Mortgage, the Loan Agreement, the Note or the other Loan Documents, and any act or omission that might otherwise be construed as a release or discharge of Borrower from the obligations pursuant hereto.

UNOFFICIAL COPY

Notwithstanding anything to the contrary contained in this Mortgage or the other Loan Documents, Borrower shall not have any obligations or liabilities under the indemnification under Section 9.4 herein or other indemnifications with respect to Hazardous Substances contained in the other Loan Documents with respect to those obligations and liabilities that Borrower can prove arose solely from Hazardous Substances that (i) were not present on or a threat to the Property prior to the date that Agent or its nominee acquired title to the Property, whether by foreclosure, exercise by power of sale, acceptance of a deed-in-lieu of foreclosure or otherwise and (ii) were not the result of any act or negligence of Borrower or any of Borrower's affiliates, agents or contractors.

ARTICLE 11 - EXCULPATION

[Intentionally deleted.]

ARTICLE 12 - NOTICES

All notices or other written communications hereunder shall be delivered in accordance with Section 10.6 of the Loan Agreement.

ARTICLE 13 - APPLICABLE LAW

13.1 GOVERNING LAW, CONSENT TO JURISDICTION. THIS MORTGAGE SHALL BE DEEMED TO BE A CONTRACT ENTERED INTO PURSUANT TO THE LAWS OF THE COMMONWEALTH OF MASSACHUSETTS AND SHALL IN ALL RESPECTS BE GOVERNED, CONSTRUED, APPLIED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE COMMONWEALTH OF MASSACHUSETTS, PROVIDED HOWEVER, THAT WITH RESPECT TO THE CREATION, PERFECTION, PRIORITY AND ENFORCEMENT OF THE LIEN OR TITLE CONVEYED BY THIS MORTGAGE, AND THE DETERMINATION OF DEFICIENCY JUDGMENTS, THE LAWS OF THE STATE WHERE THE PROPERTY IS LOCATED SHALL APPLY. BORROWER HEREBY SUBMITS TO THE CONCURRENT AND NON-EXCLUSIVE PERSONAL JURISDICTION OF THE UNITED STATES DISTRICT COURT FOR THE COMMONWEALTH OF MASSACHUSETTS AND THE UNITED STATES DISTRICT COURT FOR THE STATE WHERE THE PROPERTY IS LOCATED OR ANY STATE COURT SITTING IN THE COMMONWEALTH OF MASSACHUSETTS OR THE STATE WHERE THE PROPERTY IS LOCATED IN CONNECTION WITH ANY ACTION, SUIT OR PROCEEDING WHICH THE AGENT MAY, AT ANY TIME, WISH TO FILE IN CONNECTION WITH THIS ASSIGNMENT AND ANY OTHER LOAN DOCUMENT TO WHICH BORROWER IS A PARTY AND ANY OTHER RELATED MATTER.

13.2 Usury Laws. Notwithstanding anything to the contrary, (a) all agreements and communications between Borrower and Agent or Lender are hereby and shall automatically be limited so that, after taking into account all amounts deemed interest, the interest contracted for, charged or received by Agent or Lender shall never exceed the maximum lawful rate or amount, (b) in calculating whether any interest exceeds the lawful maximum, all such interest shall be amortized, prorated, allocated and spread over the full amount and term of all principal indebtedness of Borrower to Agent or Lender, and (c) if through any contingency or event,

UNOFFICIAL COPY

Lender receives or is deemed to receive interest in excess of the lawful maximum, any such excess shall be deemed to have been applied toward payment of the principal of any and all then outstanding indebtedness of Borrower to Lender, or if there is no such indebtedness, shall immediately be returned to Borrower.

13.3 Provisions Subject to Applicable Law. All rights, powers and remedies provided in this Mortgage may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of law and are intended to be limited to the extent necessary so that they will not render this Mortgage invalid, unenforceable or not entitled to be recorded, registered or filed under the provisions of any applicable law. If any term of this Mortgage or any application thereof shall be invalid or unenforceable, the remainder of this Mortgage and any other application of the term shall not be affected thereby.

ARTICLE 14 - DEFINITIONS

Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Mortgage may be used interchangeably in singular or plural form and the word "**Borrower**" shall mean "each Borrower and any subsequent owner or owners of the Property or any part thereof or any interest therein," the word "**Lender**" shall mean "Lender and any subsequent holder of the Note," the word "**Note**" shall mean "the Note and any other evidence of indebtedness secured by this Mortgage," the word "**Property**" shall include any portion of the Property and any interest therein, and the phrases "**attorneys' fees**", "**legal fees**" and "**counsel fees**" shall include any and all attorneys', paralegal and law clerk fees and disbursements, including, but not limited to, fees and disbursements at the pre-trial, trial and appellate levels incurred or paid by Agent and/or Lender in protecting its interest in the Property, the Leases and the Rents and enforcing its rights hereunder.

ARTICLE 15 - MISCELLANEOUS PROVISIONS

15.1 No Oral Change. This Mortgage, and any provisions hereof, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Borrower, Agent or Lender, 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.

15.2 Successors and Assigns. This Mortgage shall be binding upon and inure to the benefit of Borrower, Agent and Lender and their respective successors and assigns forever.

15.3 Inapplicable Provisions. If any term, covenant or condition of the Loan Agreement, the Note or this Mortgage is held to be invalid, illegal or unenforceable in any respect, the Loan Agreement, the Note and this Mortgage shall be construed without such provision.

15.4 Headings, Etc. The headings and captions of various Sections of this Mortgage 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.

UNOFFICIAL COPY

15.5 Number and Gender. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

15.6 Subrogation. If any or all of the proceeds of the Note have been used to extinguish, extend or renew any indebtedness heretofore existing against the Property, then, to the extent of the funds so used, Agent and Lender shall be subrogated to all of the rights, claims, liens, titles, and interests existing against the Property heretofore held by, or in favor of, the holder of such indebtedness and such former rights, claims, liens, titles, and interests, if any, are not waived but rather are continued in full force and effect in favor of Agent and Lender and are merged with the lien and security interest created herein as cumulative security for the repayment of the Debt, the performance and discharge of Borrower's obligations hereunder, under the Loan Agreement, the Note and the other Loan Documents and the performance and discharge of the Other Obligations.

15.7 Entire Agreement. The Note, the Loan Agreement, this Mortgage and the other Loan Documents constitute the entire understanding and agreement between Borrower, Agent and Lender with respect to the transactions arising in connection with the Debt and supersede all prior written or oral understandings and agreements between Borrower, Agent and Lender with respect thereto. Borrower hereby acknowledges that, except as incorporated in writing in the Note, the Loan Agreement, this Mortgage and the other Loan Documents, there are not, and were not, and no persons are or were authorized by Agent or Lender to make, any representations, understandings, stipulations, agreements or promises, oral or written, with respect to the transaction which is the subject of the Note, the Loan Agreement, this Mortgage and the other Loan Documents.

15.8 Limitation on Agent's and Lender's Responsibility. No provision of this Mortgage shall operate to place any obligation or liability for the control, care, management or repair of the Property upon Agent or Lender, nor shall it operate to make Agent or Lender responsible or liable for any waste committed on the Property by the tenants or any other Person, or for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any tenant, licensee, employee or stranger. Nothing herein contained shall be construed as constituting Agent or Lender a "mortgagee in possession."

15.9 Unsecured Portion of Debt. If any part of the Debt cannot be lawfully secured by this Mortgage or if any part of the Property cannot be lawfully subject to the lien and security interest hereof to the full extent of such indebtedness, then all payments made shall be applied on said indebtedness first in discharge of that portion thereof which is unsecured by this Mortgage.

15.10 Cross-Default; Cross Collateralization. Borrower acknowledges that Lender has made the Loan to Borrower and Other Borrower upon the security of the collective interest in the Properties and in reliance upon the aggregate of the Properties taken together being of greater value as collateral security than the sum of each Property (as defined in the Loan Agreement) taken separately. Borrower agrees that this Mortgage and the Other Mortgages executed simultaneously herewith with respect to the Properties are and will be cross-

UNOFFICIAL COPY

collateralized and cross-defaulted with each other so that (i) an Event of Default under this Mortgage shall constitute an Event of Default under each of the Other Mortgages, (ii) an Event of Default under any of the Other Mortgages shall constitute an Event of Default under this Mortgage; (iii) an Event of Default under the Note shall constitute an Event of Default under this Mortgage and the Other Mortgages, and (iv) this Mortgage and each of the Other Mortgages constitute security for the Note as if a single blanket lien were placed on all of the Properties as security for the Note.

ARTICLE 16 - SPECIAL ILLINOIS PROVISIONS

16.1 Amount Secured. This Mortgage secures all present and future loan disbursements made by Agent and/or Lender under the Note or Loan Agreement, and all other sums from time to time owing to the Agent or Lender by the Borrower under the other Loan Documents, including, without limitation, sums advanced in accordance herewith to protect the security of this Mortgage. The amount secured hereby shall in no event exceed an amount equal to 300% of the face amount of the Note.

16.2 Acceleration; Foreclosure. Upon the occurrence of an Event of Default, the Agent, at the Agent's option, may declare the entire balance of the Loan, including all accrued interest, to be immediately due and payable without further demand and may foreclose the lien of this Mortgage by judicial proceeding and may pursue any other remedies permitted by applicable law or provided herein or in any of the other Loan Documents. If the foreclosure is for less than all of the indebtedness secured hereby, the lien of this Mortgage shall continue for the balance of the indebtedness and obligations secured hereby. Without limitation of any other provision of this Mortgage, if Agent and/or Lender shall incur or expend any sums, including without limitation attorneys' fees, whether or not in connection with any action or proceeding, to sustain the lien of this Mortgage or its priority, or to protect or enforce any of Agent's or Lender's rights hereunder, or to recover any indebtedness secured hereby, all such sums shall become immediately due and payable by the Borrower, with interest thereon. All such sums shall be secured by this Mortgage and shall be a lien on the Property prior to any right, title, interest, or claim in, to or upon the Property attaching or accruing subsequent to the lien of this Mortgage. Agent and Lender shall be entitled to collect all fees, costs and expenses incurred in pursuing such remedies, including, but not limited to, reasonable attorney's fees, costs of documentary evidence, abstracts and title reports. Without limitation of the foregoing in any suit to foreclose the lien hereof, Agent shall be allowed to include as additional indebtedness secured hereby in the decree for sale all costs and expenses which may be paid or incurred by or on behalf of the Borrower or any holder or holders of the Note or other indebtedness secured hereby (plus interest thereon) for attorneys' fees, appraiser's fees, receiver's costs and expenses, insurance, taxes, outlays for documentary and expert evidence, costs for preservation of the Property, stenographer's charges, publication costs and costs of procuring all abstracts of title, title searches and examinations, guarantee policies and similar data and assurances with respect to title as Agent may deem to be reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or value of the Property or for any other reasonable purpose. Subject to applicable law, the amount of any such costs and expenses which may be paid or incurred after the decree for sale is entered may be estimated and the amount of such estimate may be allowed and included as additional indebtedness secured hereby in the decree for sale.

UNOFFICIAL COPY

16.3 Application of the Foreclosure Law. If any provision in this Mortgage shall be inconsistent with any provision of the Illinois Mortgage Foreclosure Law, 735 ILCS 5/15-1101, et seq., as amended from time to time (the "Act"), the provisions of the Act shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the Act. If any provision of this Mortgage shall grant to Agent and/or Lender any rights or remedies upon an Event of Default which are more limited than the right that otherwise would be vested in the Agent and/or Lender under the Act from time to time in the absence of said provision, Agent and Lender shall be vested with the rights in the Act to the fullest extent permitted by applicable law. If any provision of the Act which is specifically referred to herein shall be repealed, Agent and Lender shall have the benefit of such provision as most recently existing prior to such repeal, as though the same were incorporated herein by express reference.

16.4 Protective Advances. All advances, disbursements and expenditures made by Agent and/or Lender before and during a foreclosure, and before and after judgment of foreclosure, and at any time prior to sale, and, where applicable, after sale, and during the pendency of any related proceedings, for the following purposes, in addition to those otherwise authorized by this Mortgage or by the Act (collectively "Protective Advances"), shall have the benefit of all applicable provisions of the Act. All Protective Advances shall be so much additional amounts or obligations secured by this Mortgage, and shall become immediately due and payable without notice and with interest thereon from the date of the advance until paid at the rate due and payable after a default under the terms of the Loan. This Mortgage shall be a lien for all Protective Advances as to subsequent purchasers and judgment creditors from the time this Mortgage is recorded pursuant to Subsection (b)(1) of Section 5/15-1302 of the Act. All Protective Advances shall, except to the extent if any, that any of the same is clearly contrary to or inconsistent with the provisions of the Act, apply to and be included in: (i) the determination of the amount of obligations secured by this Mortgage at any time; (ii) the amount found due and owing to Agent in the judgment of foreclosure and any subsequent supplemental judgments, orders, adjudications or findings by the court of any additional amount becoming due after such entry of judgment, it being agreed that in any foreclosure judgment, the court may reserve jurisdiction for such purpose; (iii) if the right of redemption has not been waived by Borrower in this Mortgage, the computation of the amount required to redeem, pursuant to Subsections (d)(2) and (e) of Section 5/15-1603 of the Act; (iv) the determination of the amount deductible from sale proceeds pursuant to Section 5/15-1512 of the Act; (v) the application of income in the hands of any receiver or mortgagee in possession; and (vi) the computation of any deficiency judgment pursuant to Subsections (b)(2) and (e) of Sections 5/15-1508 and Section 5/15-1511 of the Act.

16.5 Waiver of Redemption. Borrower acknowledges that the Property does not constitute agricultural real estate, as said term is defined in Section 5/15-1201 of the Act or residential real estate as defined in Section 5/15-1219 of the Act. Pursuant to Section 5/15-1601(b) of the Act, Borrower hereby waives any and all right to redemption.

16.6 Appointment of Receiver. Upon the occurrence of an Event of Default (or to the extent permitted by applicable law, at any time prior thereto), Agent shall be entitled, without additional notice and without regard to the adequacy of any security for the Loan, whether the Property shall then be occupied as a homestead or not, or the solvency of any party

UNOFFICIAL COPY

bound for its payment, to make application for the appointment of a receiver to take possession of and to operate the Property, and to collect the Rents, all expenses of which shall be added to the Loan and secured hereby. The receiver shall have all the rights and powers described in Section 15-1704 of the Act, including without limitation, the power to execute leases, and the power to collect the rents, sales, proceeds, issues, profits and proceeds of the Property during the pendency of such foreclosure suit, as well as during any further times when Borrower, its successors or assigns, except for the intervention of such receiver, would be entitled to collect such rents, sales proceeds, issues, proceeds and profits, and all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Property during the whole of said period. All costs and expenses (including receiver's fees, reasonable attorney's fees and costs incurred in connection with the appointment of a receiver) shall be secured by this Mortgage. Notwithstanding the appointment of any receiver, trustee or other custodian, Agent and/or Lender, as applicable, shall be entitled, to retain possession and control of any cash or other instruments, at the time held by or payable or deliverable under the terms of the Mortgage to Agent and/or Lender to the fullest extent permitted by law. In addition to any provision herein authorizing Agent to take or be placed in possession of the Property, or for the appointment of a receiver, Agent shall have the right, in accordance with Sections 5/15-1701 and 5/15-1702 of the Act, to be placed in possession of the Property or at its request to have a receiver appointed, and such receiver, or Agent, if and when placed in possession, shall have, in addition to any other powers provided in this Mortgage, all powers, immunities, and duties as provided for in Sections 5/15-1701 and 5/15-1703 of the Act.

16.7 Use of Loan Proceeds. Borrower covenants and agrees that all of the proceeds of the Note secured by this Mortgage will be used solely for business purposes and in furtherance of the regular business affairs of Borrower, and the entire principal obligation secured hereby constitutes: (a) a "business loan" as that term is defined in, and for all purposes of, the Illinois Interest Act, Section 815 ILCS 205/4(1)(c); and (b) "a loan secured by a mortgage on real estate" within the purview and operation of Section 815 ILCS 205/4(1)(1) thereof.

16.8 Usury. All agreements between Borrower, Agent and/or Lender (including, without limitation, those contained in this Mortgage, the Note, the Loan Agreement and any other Loan Documents) are expressly limited so that in no event whatsoever shall the amount paid or agreed to be paid to Agent or Lender exceed the highest lawful rate of interest permissible under the laws of the State of Illinois. If, from any circumstances whatsoever, fulfillment of any provision hereof or of the Note, the Loan Agreement or any other Loan Documents, at the time performance of such provision shall be due, shall involve the payment of interest exceeding the highest rate of interest permitted by law which a court of competent jurisdiction may deem applicable hereto, then, ipso facto, the obligation to be fulfilled shall be reduced to the highest lawful rate of interest permissible under the laws of the State of Illinois; and if for any reason whatsoever, Agent or Lender shall ever receive as interest an amount which would be deemed unlawful, such interest shall be applied to the payment of the last maturing installment or installments of the indebtedness secured hereby (whether or not then due and payable) and not to the payment of interest.

[NO FURTHER TEXT ON THIS PAGE]

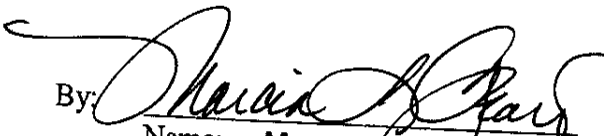
UNOFFICIAL COPY

IN WITNESS WHEREOF, THIS MORTGAGE has been executed as a sealed instrument by Borrower the day and year first above written.

BORROWER:

**INLAND AMERICAN CFG PORTFOLIO,
L.L.C.**, a Delaware limited liability company

By: Inland American Real Estate Trust, Inc., a
Maryland corporation, its sole member

By: 
Name: **Marcia L. Grant**
Title: **Assistant Secretary**

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Exhibit "A"

IL2
1400 Torrence Avenue
Calumet City, IL

LOT 9, IN RESUBDIVISION OF LOT 2, RIVER OAKS WEST UNIT 2, BEING A SUBDIVISION OF PART OF THE NORTHEAST QUARTER OF SECTION 24, TOWNSHIP 36 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING NORTHEAST OF THE PITTSBURGH, CINCINNATI, CHICAGO AND ST. LOUIS RAILROAD (EXCEPTING FROM SAID LOT 2 THAT PART TAKEN FROM ROW SUBDIVISION RECORDED AUGUST 9, 1973 AS DOCUMENT NO. 22433855) ALL IN COOK COUNTY, ILLINOIS.

BEING the same premises conveyed by Deed recorded at Document Number 0718316057.

PERMANENT INDEX NUMBER: 29-24-200-020-0000



UNOFFICIAL COPY

Exhibit "A"

IL4
5650 North Lincoln Avenue
Chicago, IL

PARCEL 1:

LOT 4 (EXCEPT THAT PART OF LOT 4 AFORESAID LYING BETWEEN THE SOUTHWESTERLY LINE OF LINCOLN AVENUE AND A LINE 17 FEET SOUTHWESTERLY OF AND MEASURED AT RIGHT ANGLES THERETO, PARALLEL WITH THE SOUTHWESTERLY LINE OF LINCOLN AVENUE, TAKEN FOR WIDENING LINCOLN AVENUE) IN BLOCK 31 IN W. F. KAISER AND COMPANY'S SECOND ADDITION TO ARCADIA TERRACE, A SUBDIVISION OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 1, TOWNSHIP 40 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

LOTS 1 AND 2 IN BLOCK 1 IN FRED W. BRUMMEL AND COMPANY'S SUBDIVISION OF THE SOUTH HALF OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 1, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, (EXCEPT THAT PART TAKEN FOR THE WIDENING OF LINCOLN AVENUE) IN COOK COUNTY, ILLINOIS.

BEING the same premises conveyed by Deed recorded at Document Number 0734734126.

Permanent Index No. 13-01-425-009-0000 and 13-01-425-027-0000

UNOFFICIAL COPY

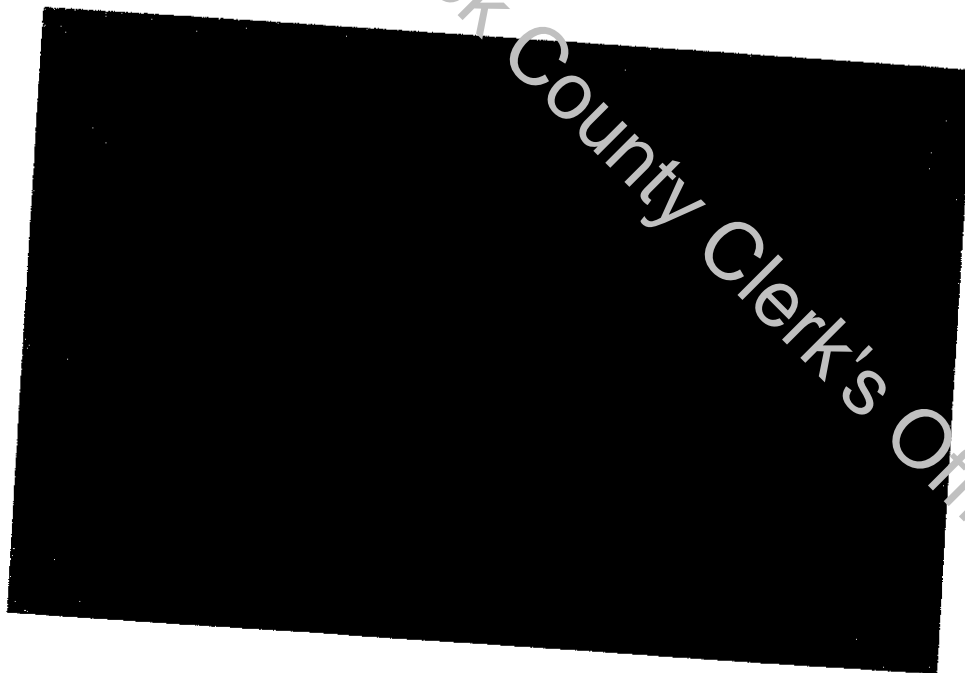
Exhibit "A"

IL7
101 Dixie Highway
Chicago Heights, IL

THAT PART OF THE NORTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 18, TOWNSHIP 35 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING NORTHEASTERLY OF THE CENTER LINE OF DIXIE HIGHWAY, ALL IN COOK COUNTY, ILLINOIS, EXCEPT THAT PORTION AS TAKEN FOR ROADS AND HIGHWAYS, IN COOK COUNTY, ILLINOIS.

BEING the same premises conveyed by Deed recorded at Document Number 0802247024.

PERMANENT INDEX NUMBER: 32-18-213-051-0000



UNOFFICIAL COPY

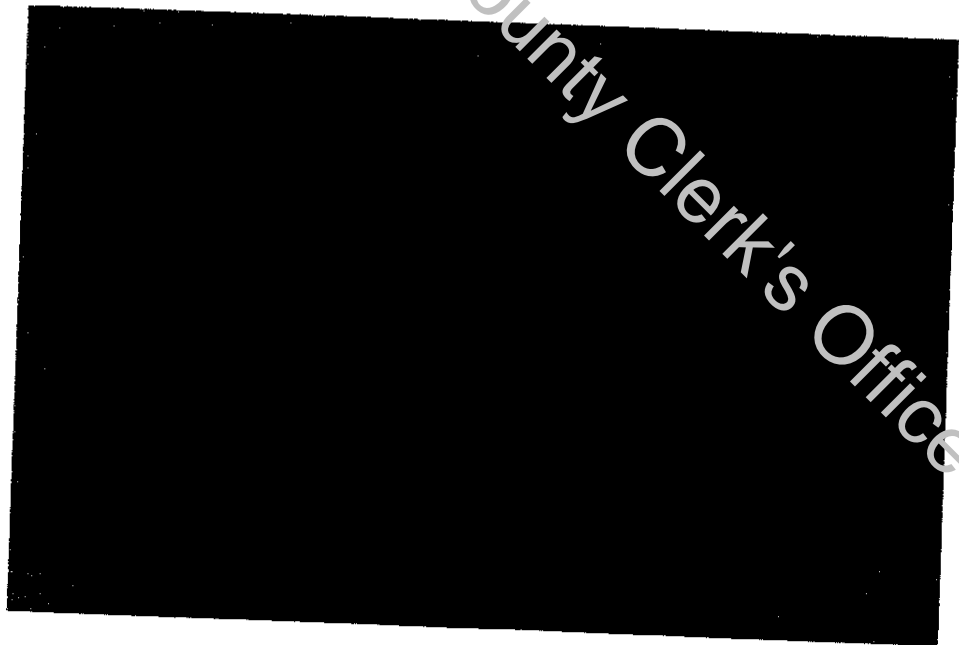
Exhibit "A"

IL11
20900 S. Western Avenue
Olympia Fields, IL

LOTS 1, 2, 3 AND 4 IN BLOCK 9 IN ATHENIA PARK, BEING A SUBDIVISION OF THE NORTHEAST 1/4 OF SECTION 24, TOWNSHIP 35 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

BEING the same premises conveyed by Deed recorded at Document Number 0800440224.

Permanent Index Numbers:
31-24-207-021-0000 (Lot 4)
31-24-207-022-0000 (Lot 3)
31-24-207-023-0000 (Lot 2)
31-24-207-024-0000 (Lot 1)



UNOFFICIAL COPY

Exhibit "A"

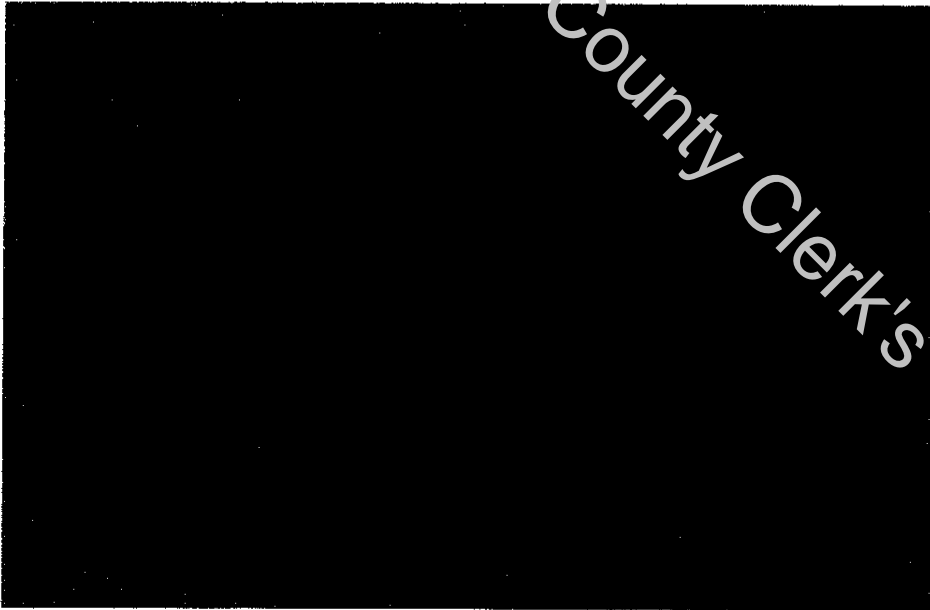
IL13
8811 W. 159th Street
Orland Hills, IL

LOT 1 IN MCENERY SUBDIVISION UNIT 1, A SUBDIVISION OF PART OF THE NORTHEAST 1/4 OF SECTION 22, TOWNSHIP 36 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED ON SEPTEMBER 3, 1987 AS DOCUMENT 87487665, IN COOK COUNTY, ILLINOIS.

TOGETHER WITH RIGHTS OF INGRESS AND EGRESS SHOWN ON SUBDIVISION PLAT 87487665.

BEING the same premises conveyed by Deed recorded at Document Number 0717831097.

Permanent Index Number: 27-22-201-018-0000



Property of Cook County Clerk's Office

UNOFFICIAL COPY

Exhibit "A"

IL15
320 E. St. Charles Road
Villa Park, IL

Lot 5 in Robertson's Villa Park, being a Subdivision in the Southwest quarter of Section 3, Township 39 North, Range 11, East of the Third Principal Meridian, according to the Plat thereof recorded September 23, 1911 as document 105545, in Du Page County, Illinois.

BEING the same premises conveyed by Deed recorded at Document Number R2007-121386.

Tax Identification Number: 06-03-323-023



UNOFFICIAL COPY

Exhibit "A"

IL16
1844 S. Mannheim Road
Westchester, IL

LOTS 35, 36, 37, 38, 39, 40, 41 AND 42 IN GEORGE F. NIXON AND COMPANY'S CIVIC CENTER ADDITION TO WESTCHESTER, BEING A SUBDIVISION IN THE EAST HALF OF THE SOUTHEAST QUARTER OF SECTION 20, TOWNSHIP 39 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED OCTOBER 31, 1924, AS DOCUMENT NO. 8653757, IN COOK COUNTY, ILLINOIS.

BEING the same premises conveyed by Deed recorded at Document Number 0727660011.

Permanent Index Numbers:

15-20-416-024-0000 (Lot 35)

15-20-416-025-0000 (Lot 36)

15-20-416-026-0000 (Lot 37)

15-20-416-027-0000 (Lot 38)

15-20-416-028-0000 (Lot 39)

15-20-416-029-0000 (Lot 40)

15-20-416-030-0000 (Lot 41)

15-20-416-031-0000 (Lot 42)