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Cook County Recorder 227.00



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INLAND REAL ESTATE BSC I LLC,
a Delaware limited liability company, as Borrower
(Borrower)

to

BEAR, STEARNS FUNDING, INC., as Lender
(Lender)

48-P

**MORTGAGE AND
SECURITY AGREEMENT**

Dated: As of May 12, 1999

Location: See Exhibit B attached hereto

PREPARED BY AND UPON
RECORDATION RETURN TO:

Cadwalader, Wickersham & Taft
100 Maiden Lane
New York, New York 10038

Attention: Reese Mason, Esq.

7803500 MRP

Property of Cook County Clerk's Office

BOX 333-CTI

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99492315

MORTGAGE AND SECURITY AGREEMENT

THIS MORTGAGE AND SECURITY AGREEMENT (this "**Mortgage**") is made as of this 12th day of May, 1999, by INLAND REAL ESTATE BSC I LLC, a Delaware limited liability company, having its principal place of business at 2901 Butterfield Road, Oak Brook, Illinois 60523, as mortgagor ("**Borrower**") to BEAR, STEARNS FUNDING, INC., a Delaware corporation, having an address at 245 Park Avenue, New York, New York 10167, as mortgagee ("**Lender**").

WITNESSETH:

WHEREAS, this Mortgage is given to secure a loan (the "**Loan**") in the principal sum of Fifty-Seven Million Four Hundred Fifty Thousand AND NO/100 DOLLARS (\$57,450,000.00) advanced pursuant to that certain Loan Agreement dated as of the date hereof between Borrower and Lender (as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, the "**Loan Agreement**") and evidenced by that certain Promissory Note dated the date hereof made by Borrower to Lender (such Note, together with all extensions, renewals, replacements, restatements or modifications thereof being hereinafter referred to as the "**Note**");

WHEREAS, Borrower desires to secure the payment of the Debt (as defined in the Loan Agreement) and the performance of all of its obligations under the Note, the Loan Agreement and the other Loan Documents; and

WHEREAS, this Mortgage is given pursuant to the Loan Agreement, and payment, fulfillment, and performance by Borrower of its obligations thereunder and under the other Loan Documents are 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 as though set forth in full and shall be considered a part of this Mortgage (the Loan Agreement, the Note, this Mortgage, that certain Assignment of Leases and Rents of even date herewith made by Borrower in favor of Lender (the "**Assignment of Leases**") 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

Section 1.1 Property Mortgaged. Borrower does hereby irrevocably mortgage, grant, bargain, pledge, assign, warrant, transfer and convey to Lender 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 Exhibit A 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, titles, 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;

(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, security systems, disposals, 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 (including, without limitation, the Park Center Account (as defined in the Loan Agreement)), 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. Subject to the terms, provisions and conditions of the Loan Agreement, all leases and other agreements affecting the use, enjoyment or occupancy of the Land and the Improvements 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 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 (including, without limitation that certain Escrow Agreement, dated February 8, 1989 by and among Clinton C. Atkins, Inland Real Estate Corporation (predecessor-in-interest to Borrower) and Chicago Title Insurance Company) 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;

(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;

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

AND without limiting any of the other provisions of this Mortgage, to the extent permitted by applicable law, Borrower expressly grants to Lender, 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.

Section 1.2 Assignment of Rents. Borrower hereby absolutely and unconditionally assigns to 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. Nevertheless, subject to the terms of the Assignment of Leases and Section 7.1(h) of this Mortgage, Lender 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.

Section 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 Lender, as security for the Obligations (hereinafter defined), a security interest in the Fixtures, the Equipment and the Personal Property 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"). If an Event of Default shall occur and be continuing, Lender, 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 Lender may deem necessary for the care, protection and preservation of the Collateral. Upon request or demand of Lender 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 Lender at a convenient place (at the Land if tangible property) reasonably acceptable to Lender. Borrower shall pay to Lender on demand any and all expenses, including reasonable legal expenses and attorneys' fees, incurred or paid by 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 Lender 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 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 Lender to the payment of the Debt in such priority and proportions as Lender in its discretion shall deem proper. Borrower's (Debtor's) principal place of business is as set forth on page one hereof and the address of Lender (Secured Party) is as set forth on page one hereof.

Section 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 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.

Section 1.5 Pledges of Monies Held. Borrower hereby pledges to Lender any and all monies now or hereafter held by Lender or on behalf of Lender, including, without limitation, any sums deposited in the Lockbox Account, 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 and to the use and 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 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 Lender pursuant to the provisions hereof shall survive any such payment or release.

ARTICLE 2

DEBT AND OBLIGATIONS SECURED

Section 2.1 Debt. This Mortgage and the grants, assignments and transfers made in Article 1 are given for the purpose of securing the Debt.

Section 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 contained herein;
- (b) the performance of each obligation of Borrower contained in the Loan Agreement and any other Loan Document; and
- (c) the performance of each obligation of 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.

Section 2.3 Debt and Other Obligations. 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:

Section 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.

Section 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.

Section 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.

Section 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 Lender 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.

Section 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 Lender, 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.

Section 3.6 Payment for Labor and Materials. (a) Subject to the terms, provisions and conditions of the Loan Agreement, Borrower will promptly pay 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 Lender, Borrower, 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, 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 Lender to insure the payment of any contested Labor and Material Costs, together with all interest and penalties thereon.

Section 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.

Section 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 Lender 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 Lender 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 Lender, prior to or contemporaneously with the effective date of any such change, any financing statement or financing statement change reasonably required by Lender to establish or maintain the validity, perfection and priority of the security interest granted herein. At the request of Lender, Borrower shall execute a certificate in form reasonably satisfactory to Lender 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.

ARTICLE 4

OBLIGATIONS AND RELIANCES

Section 4.1 Relationship of Borrower and Lender. The relationship between Borrower and Lender is solely that of debtor and creditor, and Lender has 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 Lender to be other than that of debtor and creditor.

Section 4.2 No Reliance on 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 and Lender are relying solely upon such expertise and business plan in connection with the ownership and operation of the Property. Borrower is not relying on Lender's expertise, business acumen or advice in connection with the Property.

Section 4.3 No Lender Obligations. (a) Notwithstanding the provisions of Subsections 1.1(h) and (n) or Section 1.2, Lender is not 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 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, Lender shall not 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 Lender.

Section 4.4 Reliance. Borrower recognizes and acknowledges that in accepting the Loan Agreement, the Note, this Mortgage and the other Loan Documents, Lender is 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 Lender; that such reliance existed on the part of Lender prior to the date hereof, that the warranties and representations are a material inducement to 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

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

Section 5.2 Further Acts, Etc. Borrower will, at the cost of Borrower, and without expense to 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 Lender shall, from time to time, reasonably require, for the better assuring, conveying, assigning, transferring, and confirming unto 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 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 Lender to execute in the name of Borrower or without the signature of Borrower to the extent Lender may lawfully do so, one or more financing statements to evidence more effectively the security interest of Lender in the Property. Borrower grants to Lender an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies available to Lender at law and in equity following an Event of Default, including without limitation such rights and remedies available to Lender 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 Lender in connection with the Securitization or other sale or transfer of the Loan.

Section 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 Lender's interest in the Property, Borrower will pay the tax, with interest and penalties thereon, if any. If Lender is advised by counsel chosen by it that the payment of tax by Borrower would be unlawful or taxable to Lender or unenforceable or provide the basis for a defense of usury then 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.

(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, 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.

Section 5.4 Splitting of Mortgage. This Mortgage and the Note shall, at any time until the same shall be fully paid and satisfied, at the sole election of Lender, be split or divided into two or more notes and two or more security instruments, each of which shall cover all or a portion of the Property to be more particularly described therein. To that end, Borrower, upon written request of Lender, shall execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered by the then owner of the Property, to Lender and/or its designee or designees substitute notes and security instruments in such principal amounts, aggregating not more than the then unpaid principal amount of this Mortgage, and containing terms, provisions and clauses similar to those contained herein and in the Note, and such other documents and instruments as may be required by Lender. Unless an Event of Default shall be continuing, in which event the action contemplated by this Section 5.4 shall be at Borrower's sole cost and expense, Lender shall incur the reasonable costs and expenses hereunder.

Section 5.5 Replacement Documents. Upon receipt of an affidavit of an officer of 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

Section 6.1 Lender Reliance. Borrower acknowledges that Lender has 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 Lender has 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, Lender can recover the Debt by a sale of the Property.

Section 6.2 No Sale/Encumbrance. Borrower agrees that Borrower shall not, without the prior written consent of Lender, sell, convey, mortgage, grant, bargain, encumber, pledge, assign, or otherwise transfer the Property or any part thereof or permit the Property or any part thereof to be sold, conveyed, mortgaged, granted, bargained, encumbered, pledged, assigned, or otherwise transferred, unless Lender shall consent thereto in accordance with Section 6.4 hereof.

Section 6.3 Sale/Encumbrance Defined. Except as set forth in 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 general partner of Borrower (or the stock of any corporation directly or indirectly controlling such general partner 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 general partner'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 general or limited partnership interest in Borrower; (e) if Borrower, any general partner 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.

Section 6.4 Lender's Rights. Except as set forth in the Loan Agreement, Lender 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, subject to the provisions of Section 9.4 of the Loan Agreement; (c) payment of all of Lender's reasonable expenses incurred in connection with such transfer; (d) the confirmation in writing by the applicable Rating Agencies that the proposed transfer will not, in and of itself, result in a downgrade, qualification or withdrawal of the initial, or, if higher, then current ratings assigned in connection with any Securitization; (e) the delivery of a nonconsolidation opinion reflecting the proposed transfer satisfactory in form and substance to Lender; (f) 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; (g) the delivery of evidence satisfactory to Lender that the single purpose nature and bankruptcy remoteness of Borrower, its shareholders, partners or members, as the case may be, following such transfers are in accordance with the then current standards of Lender and the Rating Agencies, or (h) such other conditions as Lender shall determine in its reasonable discretion to be in the interest of Lender, including, without limitation, the creditworthiness, reputation and qualifications of the transferee with respect to the Loan and the Property. Lender shall not 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 Lender's consent. 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 Lender has consented to any previous sale, conveyance, mortgage, grant, bargain, encumbrance, pledge, assignment, or transfer of the Property.

ARTICLE 7

RIGHTS AND REMEDIES UPON DEFAULT

Section 7.1 Remedies. Upon the occurrence and during the continuance of any Event of Default, Borrower agrees that Lender may take such action, without notice or demand,

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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 Lender may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of 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) 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) 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, indemnitor with respect to the Loan or of any Person, liable for the payment of the Debt;
- (h) the license granted to Borrower under Section 1.2 hereof shall automatically be revoked and Lender may 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 Lender upon demand, and thereupon Lender may (i) use, operate, manage, control, insure, maintain, repair, 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 Lender 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 Lender, 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 Lender 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 Lender 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 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 Lender 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 Lender at a convenient place acceptable to Lender. Any notice of sale, disposition or other intended action by Lender 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 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 Lender pursuant to the terms of this Mortgage;

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

(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 Lender shall deem to be appropriate in its 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.

Section 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 Lender pursuant to the Note, this Mortgage or the other Loan Documents, may be applied by Lender to the payment of the Debt in such priority and proportions as Lender in its discretion shall deem proper.

Section 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, Lender 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 Lender may deem necessary to protect the security hereof. Lender 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 Lender upon demand. All such costs and expenses incurred by 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 Lender that such cost or expense was incurred to the date of payment to Lender. All such costs and expenses incurred by 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 Lender therefor.

Section 7.4 Actions and Proceedings. Lender 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 Lender, in its discretion, decides should be brought to protect its interest in the Property.

Section 7.5 Recovery of Sums Required To be Paid. Lender 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 Lender 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.

Section 7.6 Examination of Books and Records. At reasonable times and upon reasonable notice, Lender, 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. Lender 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, Lender, 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.

Section 7.7 Other Rights, Etc. (a) The failure of Lender to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Mortgage. Borrower shall not be relieved of Borrower's obligations hereunder by reason of (i) the failure of 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 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 Lender shall have no 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 Lender 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 Lender's possession.

(c) Lender may resort for the payment of the Debt to any other security held by Lender in such order and manner as Lender, in its discretion, may elect. Lender may take action to recover the Debt, or any portion thereof or to enforce any covenant hereof without prejudice to the right of Lender thereafter to foreclose this Mortgage. The rights of Lender under this Mortgage shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Lender shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision. Lender 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.

Section 7.8 Right to Release Any Portion of the Property. Lender may release any portion of the Property for such consideration as Lender 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 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 Lender for such release, and may accept by assignment, pledge or otherwise any other property in place thereof as Lender 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.

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

Section 7.10 Recourse and Choice of Remedies. Notwithstanding any other provision of this Mortgage or the Loan Agreement, including, without limitation, Section 9.4 of the Loan Agreement, Lender and other Indemnified Parties (as hereinafter defined) are entitled to enforce the obligations of Borrower, any guarantor and indemnitor contained in Sections 9.2, 9.3 and 9.4 herein and Section 9.2 of the Loan Agreement 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, Lender is entitled to pursue a deficiency judgment with respect to such obligations against Borrower and any guarantor or indemnitor with respect to the Loan. The provisions of Sections 9.2, 9.3 and 9.4 herein and Section 9.2 of the Loan Agreement 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 and Section 9.2 of the Loan Agreement. 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 and Section 9.2 of the Loan Agreement is not limited to the original principal amount of the Note. Notwithstanding the foregoing, nothing herein shall inhibit or prevent Lender 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 and Section 9.2 of the Loan Agreement, 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, Lender 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.

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

ARTICLE 8

ENVIRONMENTAL HAZARDS

Section 8.1 Environmental Representations and Warranties. Except as otherwise disclosed by that certain Environmental Site Assessment of the Property delivered to Lender (such report is referred to below as the "**Environmental Report**"), (a) 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 Lender 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 Lender, 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; and 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 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 8.

Section 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) there shall be no Releases of 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 Lender 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 Lender made in the event that Lender has a good faith reason to believe based upon credible evidence or information that an environmental hazard exists on 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 Lender the reports and other results thereof, and Lender 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 Lender to made in the event that Lender has a good faith reason to believe based upon credible evidence or information that an environmental hazard exists on the Property (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 Lender 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 8.

Section 8.3 Lender's Rights. In the event that Lender 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 Lender, Borrower shall, at Borrower's expense, promptly cause an engineer or consultant satisfactory to Lender to conduct any environmental assessment or audit (the scope of which shall be determined in Lender'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 Lender and promptly deliver the results of any such assessment, audit, sampling or other testing; provided, however, if such results are not delivered to Lender within a reasonable period, upon reasonable notice to Borrower, Lender and any other Person designated by Lender, 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 Lender'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 Lender and any such Person designated by Lender.

ARTICLE 9

INDEMNIFICATION

Section 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 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) 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 Barter 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 9; (i) any and all claims and demands whatsoever which may be asserted against Lender by reason of any alleged obligations or undertakings on its 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. Any amounts payable to 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 Lender until paid. For purposes of this Article 9, the term "**Indemnified Parties**" means 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 (including, but not limited to, investors or prospective investors in the Securities, as well as 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 Lender's assets and business).

Section 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.

Section 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 Lender's sole discretion) that Lender may incur, directly or indirectly, as a result of a default under Sections 4.1.9 or 5.2.12 of the Loan Agreement.

Section 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 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 8 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 8. 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. This indemnity shall survive any termination, satisfaction or foreclosure of this Mortgage, subject to the provisions of Section 10.5.

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

ARTICLE 10

WAIVERS

Section 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 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.

Section 10.2 Marshalling and Other Matters. To the extent permitted by applicable law, Borrower hereby waives, to the extent permitted by law, the benefit of all appraisal, valuation, stay, extension, reinstatement and redemption laws now or hereafter in force and all rights of marshalling in the event of any sale hereunder 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.

Section 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 Lender except with respect to matters for which this Mortgage specifically and expressly provides for the giving of notice by Lender to Borrower and except with respect to matters for which Lender is required by

applicable law to give notice, and Borrower hereby expressly waives the right to receive any notice from Lender with respect to any matter for which this Mortgage does not specifically and expressly provide for the giving of notice by Lender to Borrower.

Section 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.

Section 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 8, 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 Lender's interest in the Property (but, in such case, shall benefit both Indemnified Parties and any assignee or transferee), any exercise of 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 Lender 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. 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 Lender 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

The provisions of Section 9.4 of the Loan Agreement are hereby incorporated by reference into this Mortgage to the same extent and with the same force as if fully set forth herein.

ARTICLE 12

NOTICES

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

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ARTICLE 13

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APPLICABLE LAW

Section 13.1 **GOVERNING LAW.** (A) THIS MORTGAGE WAS NEGOTIATED IN THE STATE OF NEW YORK, AND MADE BY BORROWER AND ACCEPTED BY LENDER IN THE STATE OF NEW YORK, AND THE PROCEEDS OF THE NOTE SECURED HEREBY WERE DISBURSED FROM THE STATE OF NEW YORK, WHICH STATE THE PARTIES AGREE HAS A SUBSTANTIAL RELATIONSHIP TO THE PARTIES AND TO THE UNDERLYING TRANSACTION EMBODIED HEREBY, AND IN ALL RESPECTS, INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THIS MORTGAGE AND THE OBLIGATIONS ARISING HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE (WITHOUT REGARD TO PRINCIPLES OF CONFLICT LAWS) AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA, EXCEPT THAT AT ALL TIMES THE PROVISIONS FOR THE CREATION, PERFECTION, AND ENFORCEMENT OF THE LIENS AND SECURITY INTERESTS CREATED PURSUANT HERETO AND PURSUANT TO THE OTHER LOAN DOCUMENTS WITH RESPECT TO THE PROPERTY SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE LAW OF THE STATE IN WHICH THE PROPERTY IS LOCATED, IT BEING UNDERSTOOD THAT, TO THE FULLEST EXTENT PERMITTED BY THE LAW OF SUCH STATE, THE LAW OF THE STATE OF NEW YORK SHALL GOVERN THE CONSTRUCTION, VALIDITY AND ENFORCEABILITY OF ALL LOAN DOCUMENTS AND ALL OF THE OBLIGATIONS ARISING HEREUNDER OR THEREUNDER. TO THE FULLEST EXTENT PERMITTED BY LAW, BORROWER HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS MORTGAGE OR THE OTHER LOAN DOCUMENTS, AND THIS MORTGAGE AND THE OTHER LOAN DOCUMENTS SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK PURSUANT TO SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW.

(B) ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST LENDER OR BORROWER ARISING OUT OF OR RELATING TO THIS MORTGAGE MAY AT LENDER'S OPTION BE INSTITUTED IN ANY FEDERAL OR STATE COURT IN THE CITY OF NEW YORK, COUNTY OF NEW YORK, PURSUANT TO SECTION 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW, AND BORROWER WAIVES ANY OBJECTIONS WHICH IT MAY NOW OR HEREAFTER HAVE BASED ON VENUE AND/OR FORUM NON CONVENIENS OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND BORROWER HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING. BORROWER DOES HEREBY DESIGNATE AND APPOINT

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CT CORPORATION SYSTEMS
1633 BROADWAY
NEW YORK, NEW YORK 10019

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AS ITS AUTHORIZED AGENT TO ACCEPT AND ACKNOWLEDGE ON ITS BEHALF SERVICE OF ANY AND ALL PROCESS WHICH MAY BE SERVED IN ANY SUCH SUIT, ACTION OR PROCEEDING IN ANY FEDERAL OR STATE COURT IN NEW YORK, NEW YORK, AND AGREES THAT SERVICE OF PROCESS UPON SAID AGENT AT SAID ADDRESS AND WRITTEN NOTICE OF SAID SERVICE MAILED OR DELIVERED TO BORROWER IN THE MANNER PROVIDED HEREIN SHALL BE DEEMED IN EVERY RESPECT EFFECTIVE SERVICE OF PROCESS UPON BORROWER IN ANY SUCH SUIT, ACTION OR PROCEEDING IN THE STATE OF NEW YORK. BORROWER (I) SHALL GIVE PROMPT NOTICE TO LENDER OF ANY CHANGED ADDRESS OF ITS AUTHORIZED AGENT HEREUNDER, (II) MAY AT ANY TIME AND FROM TIME TO TIME DESIGNATE A SUBSTITUTE AUTHORIZED AGENT WITH AN OFFICE IN NEW YORK, NEW YORK (WHICH SUBSTITUTE AGENT AND OFFICE SHALL BE DESIGNATED AS THE PERSON AND ADDRESS FOR SERVICE OF PROCESS), AND (III) SHALL PROMPTLY DESIGNATE SUCH A SUBSTITUTE IF ITS AUTHORIZED AGENT CEASES TO HAVE AN OFFICE IN NEW YORK, NEW YORK OR IS DISSOLVED WITHOUT LEAVING A SUCCESSOR.

Section 13.2 Usury Laws. Notwithstanding anything to the contrary, (a) all agreements and communications between Borrower and 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 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 Lender, and (c) if through any contingency or event, 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.

Section 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

All capitalized terms not defined herein shall have the respective meanings set forth in the Loan Agreement. 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 Lender in protecting its interest in the Property, the Leases and the Rents and enforcing its rights hereunder.

ARTICLE 15

MISCELLANEOUS PROVISIONS

Section 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 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.

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

Section 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.

Section 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.

Section 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.

Section 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, 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 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.

Section 15.7 Entire Agreement. The Note, the Loan Agreement, this Mortgage and the other Loan Documents constitute the entire understanding and agreement between Borrower 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 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 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.

Section 15.8 Limitation on 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 Lender, nor shall it operate to make 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 Lender a "mortgagee in possession."

ARTICLE 16

STATE-SPECIFIC PROVISIONS

Section 16.1 Principles of Construction. In the event of any inconsistencies between the terms and conditions of this Article 16 and the terms and conditions of this Mortgage, the terms and conditions of this Article 16 shall control and be binding.

Section 16.2 Illinois Mortgage Foreclosure Law. In the event that any provision in this Mortgage shall be inconsistent with any provision of the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1501 et seq. herein called 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 Lender any rights or remedies upon the occurrence and during the continuation of an Event of Default of Borrower which are more limited than the rights that would otherwise be vested in Lender under the Act in the absence of said provision, Lender shall be vested with the rights granted in the Act to the full extent permitted by law.

Without limiting the generality of the foregoing, all expenses incurred by Lender to the extent reimbursable under Sections 15-1510 and 15-1512 of the Act, whether incurred before or after any decree or judgment of foreclosure, and whether or not enumerated in this Mortgage, shall be added to the Debt.

Borrower acknowledges that the transaction of which this Mortgage is a part is a transaction which does not include either agricultural real estate (as defined in Section 15-1201 of the Act) or residential real estate (as defined in Section 15-1219 of the Act), and to the full extent permitted by law, hereby voluntarily and knowingly waives its rights to reinstatement and redemption to the extent allowed under Section 15-1610(b) of the Act, and to the full extent permitted by law, the benefits of all present and future valuation, appraisal, homestead, exemption, stay, redemption and moratorium laws under any state or federal law.

Section 16.3 Borrower Waivers. Borrower agrees, to the fullest extent that Borrower may lawfully so agree, that Borrower will not at any time insist upon or plead or in any manner whatsoever claim the benefit of any valuation, stay, extension, or exemption law now or hereafter in force, in order to prevent or hinder the enforcement or foreclosure of this Mortgage or the absolute sale of the Property or the possession thereof by any purchaser at any sale made pursuant to any provision hereof, or pursuant to the decree of any court of competent jurisdiction; but Borrower, for Borrower and all who may claim through or under Borrower, so far as Borrower or those claiming through or under Borrower now or hereafter lawfully may, hereby waives the benefit of all such laws. Borrower, to the extent Borrower may lawfully do so, hereby waives any and all right to have the Property marshaled upon any foreclosure of this Mortgage, or sold in inverse order of alienation, and agrees that Lender or any court having jurisdiction to foreclose this Mortgage may sell the Property as an entirety. If any law now or hereafter in force referred to in this paragraph of which Borrower or Borrower's successor or successors might take advantage despite the provisions hereof, shall hereafter be repealed or cease to be in force, such law shall not thereafter be deemed to constitute any part of the contract herein contained or to preclude the operation or application of the provisions of this paragraph.

In the event of the commencement of judicial proceedings to foreclose this Mortgage, Borrower, on behalf of Borrower, its successors and assigns, and each and every person or entity they may legally bind acquiring any interest in or title to the Property subsequent to the date of this Mortgage: (a) expressly waives any and all rights of appraisal, valuation, stay, extension and (to the extent permitted by law) reinstatement and redemption from sale under any order or decree of foreclosure of this Mortgage; and (b), to the extent permitted by applicable law, agrees that when sale is had under any decree of foreclosure of this Mortgage, upon confirmation of such sale, the officer making such sale, or his successor in office, shall be and is authorized immediately to execute and deliver to any purchaser at such sale a deed conveying the Property, showing the amount paid therefor, or if purchased by the person in whose favor the order or decree is entered, the amount of his bid therefor.

Section 16.4 IRPTA. No disclosure document is required to be given to Lender or any other person, governmental body or entity or filed or recorded pursuant to the Illinois Responsible Property Transfer Act.

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Section 16.5 Maximum Amount Secured. The maximum principal indebtedness secured by this Mortgage shall not exceed \$57,450,000.00.

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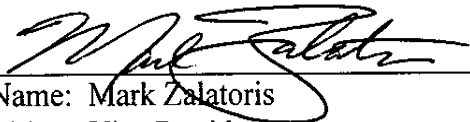
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IN WITNESS WHEREOF, THIS MORTGAGE has been executed by Borrower as of the day and year first above written.

INLAND REAL ESTATE BSC I LLC, a Delaware
limited liability company

By: Inland Real Estate BSC I Corporation, a
Delaware corporation, its member

By: 
Name: Mark Zalatoris
Title: Vice President

Property of Cook County Clerk's Office

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EXHIBIT A

99492315

LEGAL DESCRIPTIONS

(see attached)

Property of Cook County Clerk's Office

Legal Description

Tax ID Nos.: 41-20-02-226-001 (Parcel 1)

41-20-02-226-005 (Parcel 2)

Parcel 1:

Lot 201 in North Pointe Subdivision No. 3A, as per plat recorded in Plat Book "CC" at page 88 as document no. 95R 7620, situated in the City of Champaign, in Champaign County, Illinois, being more particularly described as follows:

Beginning at the Southwest corner of Lot 202 in said North Pointe Subdivision No. 3A, proceed along the Northeast right-of-way line of W. Marketview Drive/Boardwalk Drive along the following described courses: Northwestwardly around the arc of a curve to the right having a radius of 755.50 feet, a chord bearing of N 72° 21' 22" W, a chord length of 120.39 feet for an arc length of 120.52 feet; N 63° 39' 03" W 100.82 feet; N 50° 59' 16" W 183.40 feet; Northwestwardly around the arc of a curve to the right having a radius of 345.97 feet, a chord bearing of N 25° 25' 14" W, a chord length of 298.61 feet for an arc length of 308.75 feet; N 00° 06' 20" E 320.00 feet; Northwestwardly around the arc of a curve to the left having a radius of 1472.00 feet, a chord bearing of N 01° 51' 28" W, a chord length of 108.08 feet for an arc length of 108.10 feet to the South right-of-way line of Baytowne Drive; thence S 89° 51' 49" E along said right-of-way line 492.24 feet; thence S 87° 02' 08" E along said right-of-way line 104.35 feet to a Northwestwardly corner of Lot 205 in said North Pointe Subdivision No. 3A; thence S 46° 30' 21" W 27.57 feet; thence S 00° 15' 42" W 24.96 feet; thence S 46° 45' 05" W 27.58 feet; thence S 00° 06' 20" W 262.07 feet; thence S 47° 28' 07" E 33.71 feet; thence N 85° 10' 59" E 143.24 feet; thence N 28° 35' 36" E 65.93 feet to the West right-of-way line of N. Prospect Avenue; thence S 04° 30' 08" W along said right-of-way line 205.59 feet; thence N 16° 42' 17" W 55.23 feet; thence N 84° 34' 31" W 143.14 feet; thence S 49° 10' 05" W 34.51 feet; thence proceed Southwestwardly around the arc of a curve to the right having a radius of 213.00 feet, a chord bearing of S 21° 12' 53" W, a chord length of 115.04 feet for an arc length of 116.49 feet; thence proceed Southwestwardly around the arc of a curve to the left having a radius of 187.00 feet, a chord bearing of S 18° 27' 22" W, a chord length of 118.21 feet for an arc length of 120.28 feet; thence S 00° 17' 30" W 189.08 feet to the Point of Beginning situated in the City of Champaign, Champaign County, Illinois.

Parcel 2:

Lot 205 in North Pointe Subdivision No. 3A, as per plat recorded in Plat Book "CC" at page 88 as document no. 95R 7620, situated in the City of Champaign, in Champaign County, Illinois, being more particularly described as follows:

Beginning at the Southeast corner of Lot 205 in said North Pointe Subdivision No. 3A, said point being located on the West right-of-way line of N. Prospect Avenue, proceed on a local bearing of N 89° 51' 24" W 208.00 feet along the South line of said Lot 205; thence N. 00° 06' 20" E 92.69 feet; thence N 46° 45' 05" E 27.58 feet; thence N 00° 15' 42" E 24.96 feet; thence N. 46° 30' 21" E 27.57 feet to the South right-of-way line of Baytowne Drive; thence S 87° 02' 08" E along said right-of-way line 140.89 feet; thence S 42° 39' 34" E 51.44 feet to the West right-of-way line of N. Prospect Avenue; thence proceed along said right-of-way line Southwestwardly around the arc of a curve to the right having a radius of 3769.72 feet for an arc length of 151.20 feet to the Point of Beginning, situated in the City of Champaign, Champaign County, Illinois.

Parcel 7:

Reciprocal parking easements and ingress and egress for the benefit of Parcel 1 and 2 as created by the owner's certificate and as shown on the recorded plat of North Pointe Subdivision No. 3A, recorded in Plat Book "CC" at page 88 as document no. 95R 7620, in Champaign County, Illinois.

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Baytowne Shoppes

99492315

Legal Description

Tax ID No.: 41-20-02-276-008

Parcel 3:

Lot 202 in North Pointe Subdivision No. 2, as per plat recorded in Plat Book "BB" at page 199 as document no. 92R 26067, situated in the City of Champaign, in Champaign County, Illinois, more particularly described as follows:

Beginning at the Southeast corner of Lot 202 of said North Pointe Subdivision No. 2 thence along a local bearing of North 88° 29' 21" West 355.27 feet along the South line of said North Pointe Subdivision No. 2 to a point on the East line of Wal-Mart/Sam's Subdivision, City of Champaign, Champaign County, Illinois, recorded in Book BB of Plats at page 145 as document no. 91 R 23645 in the Office of the Recorder of Champaign County, Illinois; thence North 01° 35' 04" East 255.20 feet along said East line of Wal-Mart/Sam's Subdivision to the Northwest corner of Lot 202 of said North Pointe Subdivision No. 2; thence along the lines common to Lots 201 and 202 of said North Pointe Subdivision No. 2 on the following described courses: South 88° 26' 06" East 153.06 feet; North 39° 04' 43" East 13.04 feet; South 51° 02' 46" East 33.00 feet; North 38° 55' 46" East 70.53 feet; North 51° 09' 55" West 2.01 feet; North 39° 02' 59" East 42.53 feet to a point on the Southerly right-of-way line of Marketview Drive; thence South 51° 03' 26" East 144.12 feet along said Southerly right-of-way line; thence South 50° 41' 40" East 61.06 feet along said Southerly right-of-way line to a Northerly corner of Lot 203 of said North Pointe Subdivision No. 2; thence along the lines commons to Lots 202 and 203 of said North Pointe Subdivision No. 2 on the following described courses: South 39° 45' 26" West 34.40 feet; North 88° 18' 06" West 40.10 feet; South 01° 44' 19" West 184.39 feet to the Point of Beginning situated in the City of Champaign, Champaign County, Illinois.

Parcel 4:

Easement for ingress and egress and parking, as reserved in deed recorded March 29, 1991 in book 1732 at page 196 as document no. 91R 5603, for the benefit of parcel 3, over and upon that part of the Northeast Quarter of Section 2, Township 19 North, Range 8 East of the Third Principal Meridian, lying North of the Right-of-Way of F.A. Route 39, Champaign County, Illinois, more particularly described as follows:

Commencing at the intersection of the West Right-of-Way Line of Prospect Avenue and the North Right-of-Way Line of F.A. Route 39, marked by a concrete right-of-way marker and recorded in book 528 at page 307, in the office of the Recorder of Champaign County, Illinois and therein shown as being 80 feet left of Station 3+77 on the centerline of Prospect Avenue extension; thence North 04 degrees, 18 minutes, 48 seconds East, along the Westerly Right-of-Way Line of Prospect Avenue, 305.25 feet to an iron pipe monument found; thence North 88 degrees, 26 minutes, 22 seconds West, 863.98 feet to the true point of beginning; thence continuing North 88 degrees, 26 minutes, 22 seconds West, 116.00 feet; thence North 01 degrees, 33 minutes, 38 seconds East, 385.00 feet; thence South 88 degrees, 26 minutes, 22 seconds East, 116.00 feet; thence South 01 degrees, 33 minutes, 38 seconds West, 385.00 feet to the point of beginning, in Champaign County, Illinois.

Parcel 5:

Cross parking easement(s) and ingress-egress easement(s), as shown on the plat of North Pointe Subdivision No. 2 as per plat recorded in Plat Book "BB" at page 199 as document no. 92R 26067, for the benefit of Parcel 3.

Parcel 6:

Non-exclusive easement for the benefit of Parcel 3, as granted in the Reciprocal Easement Agreement recorded October 1, 1992 in book 1853 at page 33 as document no. 92R 27722, across Lot 203 of North Pointe Subdivision No. 2 as per plat recorded in Plat Book "BB" at page 199 as document no. 92R 26067, in Champaign County, Illinois.

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CAR MAX

99492315

LEGAL DESCRIPTION

Tax ID Nos.: 07-10-401-011; 07-10-401-012

Lot 1 in CarMax Auto Superstores subdivision being a resubdivision of part of Lots 13 and 14 in Golf-Roselle Development, being a subdivision of part of the Southeast $\frac{1}{4}$ of Section 10, Township 41 North, Range 10 East of the Third Principal Meridian, in Cook County, Illinois.

METES AND BOUNDS LEGAL DESCRIPTION

The surveyed property can also be described as that part of the Southeast quarter of Section 10, Township 41 North, Range 10 East of the Third Principal Meridian, described as follows:

Commencing at the Southeast corner of said Section 10; thence N $0^{\circ} 03' 27''$ E along the East line of said Southeast quarter of Section 10 a distance of 89.20 feet to the point of beginning, said point being on the North line of Golf Road; thence Westerly along said North line of Golf Road (130 Feet Wide), said line being a curve, concave to the South, having a radius of 53283.23 feet and a central angle of $00^{\circ} 02' 35''$, an arc distance of 40.04 feet, the chord of said arc having a length of 40.04 feet and a bearing of S $87^{\circ} 26' 10''$ W; thence N $0^{\circ} 03' 27''$ E 837.06 feet; thence S $86^{\circ} 29' 26''$ W 300.58 feet; thence S $0^{\circ} 03' 27''$ W 833.06 feet to a point on the North line of Golf Road; thence Westerly along said North line of Golf Road, said line being a curve, concave to the South, having a radius of 53243.23 Feet and a Central angle of $00^{\circ} 11' 40''$, an arc distance of 180.78 feet, the chord of said arc having a length of 180.78 feet and a bearing of S $86^{\circ} 59' 40''$ W; thence continuing along said North line of Golf Road N $03^{\circ} 06' 10''$ W 7.00 feet; thence continuing along said North line of Golf Road, said line being a curve, concave to the South, having a radius of 53290.23 feet and a central angle of $00^{\circ} 28' 18''$, an arc distance of 438.70 feet, the chord of said arc having a length of 438.70 feet and a bearing of S $86^{\circ} 39' 41''$ W; thence Northerly along the Easterly line of Wilkening Road, said line being a curve concave to the Northeast, having a radius of 30.00 feet and a central angle of $50^{\circ} 06' 36''$, an arc distance of 26.24 feet to a point of tangency, the chord of said arc having a length of 25.41 feet and a bearing of N $28^{\circ} 33' 52''$ W; thence continuing along said Easterly line of Wilkening Road (90 Feet Wide) N $3^{\circ} 30' 34''$ W 169.89 Feet; thence continuing along said Easterly line of Wilkening Road N $8^{\circ} 06' 40''$ W 183.85 feet to a point of curvature; thence continuing along said Easterly line of Wilkening Road (66 Feet Wide), said line being a curve, concave to the Southwest, having a radius of 533.00 feet and a central angle of $38^{\circ} 47' 04''$, an arc distance of 260.80 feet to a point of tangency, the chord of said arc having a length of 353.95 feet and a bearing of N $28^{\circ} 43' 30''$ W; thence continuing along said Easterly line of Wilkening Road N $48^{\circ} 07' 02''$ W 100.12 feet to a point of curvature; thence continuing along said Easterly line of Wilkening Road, said line being a curve, concave to the Northeast, having a radius of 467.00 feet and a central angle of $42^{\circ} 13' 29''$ an arc distance of 344.16 feet to a point of compound curvature, the chord of said arc having a length of 336.43 feet and a bearing of N $27^{\circ} 00' 17''$ W; thence continuing along said Easterly line of Wilkening Road, said line being a curve, concave to the Southeast, having a radius of 30.00 feet and a central angle of $99^{\circ} 35' 11''$, an arc distance of 52.14 feet to a point of reverse curvature, the chord of said arc having a length of 45.82 feet and a bearing of N $43^{\circ} 54' 03''$ E; thence Easterly along the Southerly line of Remington Road (66 Feet Wide), said line being a curve, concave to the North, having a radius of 833.00 feet and a central angle of $13^{\circ} 28' 53''$, an arc distance of 196.00 feet to a point of tangency, the chord of said arc having a length of 195.55 feet and a bearing of N $86^{\circ} 57' 12''$ E; thence continuing along

said Southerly line of Remington Road N 80° 12' 45" E 112.24 feet to a point of curvature; thence continuing along the Southerly line of Remington Road, said line being a curve, concave to the South, having a radius of 1185.31 feet and a central angle of 17° 55' 31", an arc distance of 370.83 feet to a point of tangency, the chord of said arc having a length of 369.32 feet and a bearing of N 89° 10' 31" E; thence continuing along said Southerly line of Remington Road S 81° 51' 44" E 100.00 feet to a point of curvature; thence continuing along said Southerly line of Remington Road, said line being a curve, concave to the North, having a radius of 3647.98 feet and a central angle of 8° 00' 00", an arc distance of 509.35 feet to a point of tangency, the chord of said arc having a length of 508.94 feet and a bearing of S 85° 51' 44" E; thence continuing along said Southerly line of Remington Road S 89° 51' 44" E 92.26 feet to the East line of the Southeast Quarter of said Section 10; thence S 0° 03' 27" W along said East line of the Southeast quarter of Section 10, a distance of 1023.37 feet to the place of beginning, in Cook County, Illinois.

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Fairview Heights

Legal Description

99492315

Tax ID Nos.:	03-21-0-400-026	03-21-0-304-020
	03-21-0-400-029	03-21-0-304-031
	03-21-0-400-005	03-21-0-304-026
	03-21-0-400-029	

Parcel 1

Lot 10 of "Fourth Addition to Fairview Heights Office Park"; reference being had to the plat thereof recorded in the recorder's office of St. Clair County, Illinois in Book of Plats "89", Page 77. Except the coal underlying the surface of said land and all rights and easements in favor of the estate of said coal. Situated in St. Clair County, Illinois.

Parcel 2

Lot No. 5 of "Resubdivision of the Third Addition to Fairview Office Park a Resubdivision of Lot 5 of the Second Addition to Fairview Office Park and Lot 6 of the Third Addition to Fairview Office Park"; reference being had to the plat thereof recorded in the recorder's office of St. Clair County, Illinois in Book of Plats "89" on Page 76. Except the coal underlying the surface of said land and all rights and easements in favor of the estate of said coal. Situated in St. Clair County, Illinois.

Parcel 3

Easements for ingress and egress over and across the private roadways and ingress/egress easements as shown on the Plat of "First Addition to Fairview Office Park" as shown on the Plat thereof recorded in Book of Plats "85" on Page 58; "Third Addition to Fairview Office Park" as shown on the Plat thereof recorded in Book of Plats "89" on Page 74; "Resubdivision of the Third Addition to Fairview Office Park" recorded in Book of Plats "89" on Page 76; and "Fourth Addition to Fairview Heights Office Park" recorded in Book of Plats "89" on Page 77. Situated in St. Clair County, Illinois.

Parcel 4

Reciprocal Easement and Operation Agreement recorded August 27, 1998 in Book 3277 Page 1224 made by and between Inland Real Estate Corporation to Fairview Heights Associates Limited Partnership over the following described land:

a) Lot No. 5 as shown on "Skarha Tracts Assessment Plat Lot 8 & Pt. of Lot 6 of "A Subdivision of the East half of the Southwest fractional quarter section 21 Lot 2 Southeast quarter Section 21 Lots 1A & 2A U.S. Survey 768 all in Township 2 North Range 8 West St. Clair County, Illinois made for assessment purposes" reference being had to the plat thereof recorded in the recorder's office of St. Clair County, Illinois in Book of Plats 43 on Page 87.

Excepting however, from all of said above described premises that part thereof lying within the confines of the subdivision known as "Ruby Lane Heights"; reference being had to the plat thereof recorded in the recorder's office of St. Clair County, Illinois, in Book of Plats 46 on Page 76. Excepting further, that part thereof conveyed to Town of Caseyville by right of way deed from H. Leroy Pensoneau and Bertha C. Personeau, his wife, dated February 26, 1951 and recorded April 2, 1951 in Book 969 on Page 546 of said Recorder's Office. Except the coal underlying the surface of said land and all rights and easements in favor of the estate of said coal. Situated in St. Clair County, Illinois.

b) Lot 6, excepting the Northerly 6.3 feet thereof, in Ruby Lane Heights subdivision, according to the plat thereof recorded in Plat Book 46 Page 76 in the Recorder's Office of St. Clair County, Illinois, excepting therefrom the coal underlying with the right to mine and remove same. Situated in St. Clair County, Illinois.

c) Part of Lot No. 1E in U.S. Survey No. 768, Claim No. 1990 and part of Lot No. 3 in the Southeast quarter of Section 21, Township 2 North, Range 8 West of the Third Principal Meridian, reference being had to the plat thereof recorded in the recorder's office of St. Clair County, Illinois, in Book of Plats "C" on Page 445 and part of Lots No. 4 and 5 of "Ruby Lane Heights", reference being had to the plat thereof recorded in the recorder's office of St. Clair County, Illinois, in Book of Plats "46" on Page 76, more particularly described as follows: Beginning at the intersection of the Northerly right of way line of Ludwig (60 foot wide) Drive, and the Westerly line of Lot 9 of the "Fourth Addition to Fairview Heights Office Park reference being had to the plat thereof recorded in the recorder's office of St. Clair County, Illinois in Book of Plats "89" on Page 77; thence North 04 degrees 19 minutes 26 seconds East a distance of 617.59 feet; thence South 23 degrees 42 minutes 12 seconds West a distance of 261.00 feet; thence South 31 degrees 51 minutes 44 seconds West a distance of 301.96 feet; thence North 67 degrees 08 minutes 16 seconds West a distance of 431.00 feet; thence South 00 degrees 59 minutes 38 seconds East a distance of 137.70 feet to the Northeast corner of Lot No. 5 of said "Ruby Lane Heights", thence South 89 degrees 00 minutes 22 seconds West a distance of 159.46 feet to the Easterly right of way line of "Ruby Lane" (varying width); thence South 04 degrees 36 minutes 38 seconds West along the Easterly right of way line a distance of 73.88 feet; thence South 40 degrees 55 minutes 00 seconds East a distance of 21.16 feet to the Northerly right of way line of Ludwig (60 foot wide) Drive; thence South 85 degrees 40 minutes 34 seconds East along said Northerly right of way line a distance of 766.20 feet to the point of beginning. Situated in St. Clair County, Illinois.

d) Lot 9 of "Fourth Addition to Fairview Heights Office Park"; reference being had to the plat thereof recorded in the recorder's office of St. Clair County, Illinois, in Book of Plats "89" on Page 77 and more particularly described as follows: Beginning at the intersection of the Northerly right of way line of Ludwig Drive (60 foot wide) and the Westerly line of said Lot 9; thence North 04 degrees 19 minutes 26 seconds East a distance of 186.36 feet; thence South 04 degrees 19 minutes 26 seconds West, a distance of 180.00 feet to the Northerly right of way line of Ludwig (60 foot wide) Drive; thence North 85 degrees 40 minutes 34 seconds West along said Northerly line a distance of 186.36 feet to the point of beginning. Situated in St. Clair County, Illinois.

Parcel 5

Lot 1 of "Resubdivision of the Fairview Heights Plaza Annex"; according to the Plat thereof recorded in the Recorder's Office of St. Clair County, Illinois in Book of Plats 93 on Page 16.

Except the coal underlying the surface of said land and all rights and easements in favor of the estate of said coal. Situated in St. Clair County, Illinois.

Property of Cook County Clerk's Office

99492315

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Orland Greens Shopping Center Legal Description

Tax ID No.: 27-09-401-017

Parcel 1

Lot 2 in Dominick's Subdivision, being a subdivision of part of the East ½ of the South East ¼ of Section 9, Township 36 North, Range 12, East of the Third Principal Meridian, according to the Plat thereof filed in the Office of the Registrar of Titles of Cook County, Illinois as Document LR3188017 on November 12, 1980, in Cook County, Illinois.

Parcel 2

Non-exclusive easement for the benefit of Parcel 1 for ingress and egress and parking over the following described land:

The Common Area in Lot 1 of Dominick's Subdivision, being a Subdivision of part of the East ½ of the South East ¼ of Section 9, Township 36 North, Range 12, East of the Third Principal Meridian as delineated on the survey attached as Exhibit "A" to the Grant of Easement made by Dominick's Finer Foods, Inc., a corporation of Illinois, Lawndale Trust and Savings Bank, as Trustee under Trust Agreement dated October 9, 1979 and known as Trust Number 7362, and Orland Park Associates, an Illinois limited partnership dated August 7, 1980 and filed January 2, 1981 as Document LR3196334, in Cook County, Illinois.

Parcel 3

Non-exclusive easement as granted in Access Easement Agreement recorded August 28, 1995 as Document 95567936 for the benefit of Parcel 1 for ingress and egress over the roadways and public highway access points located on the following described land.

The North ½ of the South ½ of the East ½ of the East ½ of the Southeast ¼ of Section 9, Township 36 North, Range 12, East of the Third Principal Meridian, except that part thereof taken for street in plat of dedication registered on August 13, 1985, as Document 3454828, and also except that part thereof taken for Ravinia Avenue registered on November 28, 1988 as Document 3756290, in Cook County, Illinois.

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PARK CENTER

Legal Description

Tax ID Nos.: 27-24-201-009; 27-24-201-010

THE LAND REFERRED TO BELOW IS IN THE STATE OF ILLINOIS, COUNTY OF COOK, AND IS DESCRIBED AS FOLLOWS:

PARCEL 1:

THE NORTHEAST $\frac{1}{4}$ OF THE NORTHEAST $\frac{1}{4}$ OF SECTION 24, TOWNSHIP 36 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN;

EXCEPT THAT PART OF THE NORTHEAST $\frac{1}{4}$ OF THE NORTHEAST $\frac{1}{4}$ OF SECTION 24, TOWNSHIP 36 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT THE POINT OF INTERSECTION OF THE EAST LINE OF THE NORTHEAST $\frac{1}{4}$ OF SECTION 24, WITH THE SOUTHERLY LINE OF 159TH STREET, AS DEDICATED PER DOCUMENT 10909313; THENCE SOUTH ALONG SAID EAST LINE OF THE NORTHEAST $\frac{1}{4}$ OF SECTION 24, A DISTANCE OF 1223.50 FEET TO THE SOUTH LINE OF THE NORTHEAST $\frac{1}{4}$ OF THE NORTHEAST $\frac{1}{4}$ OF SECTION 24; THENCE WEST ALONG SAID SOUTH LINE OF THE NORTHEAST $\frac{1}{4}$ OF THE NORTHEAST $\frac{1}{4}$ OF SECTION 24 TO A POINT DISTANT 70.00 FEET WEST, MEASURED AT RIGHT ANGLES FROM SAID EAST LINE OF THE NORTHEAST $\frac{1}{4}$ OF SECTION 24; THENCE NORTH PARALLEL WITH SAID EAST LINE OF THE NORTHEAST $\frac{1}{4}$ OF SECTION 24, A DISTANCE OF 1173.78 FEET TO A POINT OF CURVATURE; THENCE NORTHWESTERLY ALONG A CURVED LINE CONCAVE TO THE SOUTHWEST HAVING A CENTRAL ANGLE OF 89 DEGREES, 41 MINUTES AND A RADIUS OF 50 FEET, A DISTANCE OF 78.26 FEET TO A POINT OF TANGENCY, DISTANT 10 FEET SOUTH, AS MEASURED AT RIGHT ANGLES FROM SAID SOUTHERLY LINE OF 159TH STREET; THENCE WESTERLY PARALLEL WITH SAID SOUTHERLY LINE OF 159TH STREET, A DISTANCE OF 314.28 FEET TO A POINT; THENCE NORTHWESTERLY IN A STRAIGHT, A DISTANCE OF 207.24 FEET TO A POINT ON SAID SOUTHERLY LINE OF 159TH STREET; THENCE EASTERLY ALONG SAID SOUTHERLY LINE OF 159TH STREET, A DISTANCE OF 641 FEET TO THE POINT OF BEGINNING,

AND ALSO EXCEPTING THEREFROM:

99492315

THE WEST 410 FEET LYING SOUTH OF THE SOUTH LINE OF 159TH STREET, AS DEDICATED BY DOCUMENT 10909313 OF THE NORTHEAST $\frac{1}{4}$ OF THE NORTHEAST $\frac{1}{4}$ OF SECTION 24, TOWNSHIP 36 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN (EXCEPT THE WEST 30.00 FEET OF THE NORTH 435.01 FEET THEREOF);

ALSO EXCEPTING THE FOLLOWING DESCRIBED PORTION:

THAT PART OF THE NORTHEAST $\frac{1}{4}$ OF THE NORTHEAST $\frac{1}{4}$ OF SECTION 24, TOWNSHIP 36 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, BOUNDED AND DESCRIBED AS FOLLOWS:

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COMMENCING AT THE NORTHEAST CORNER OF SAID SECTION 24; THENCE SOUTHERLY ALONG THE EAST LINE OF SAID SECTION 24, A DISTANCE OF 109.80 FEET TO A POINT OF INTERSECTION OF THE SOUTHERLY LINE OF 159TH STREET, AS DEDICATED PER DOCUMENT 10909313, WITH THE EAST LINE OF SECTION 24; THENCE WESTERLY ALONG THE SOUTHERLY LINE OF 159TH STREET, AS DEDICATED PER DOCUMENT 10909313, 89.65 FEET; THENCE SOUTHERLY ALONG A LINE FORMING A RIGHT ANGLE WITH THE PREVIOUSLY DESCRIBED LINE, A DISTANCE OF 20.00 FEET TO THE POINT OF BEGINNING; THENCE WESTERLY ALONG A LINE PARALLEL TO AND 20.00 FEET SOUTHERLY OF THE SOUTHERLY LINE OF 159TH STREET, AS DEDICATED PER DOCUMENT 10909313, A DISTANCE OF 265.24 FEET; THENCE SOUTHERLY ALONG A LINE FORMING AN ANGLE OF 89 DEGREES, 39 MINUTES, 26 SECONDS, MEASURED FROM EAST TO SOUTH WITH THE PREVIOUSLY DESCRIBED LINE, A DISTANCE OF 239.81 FEET; THENCE EASTERLY ALONG A LINE FORMING A RIGHT ANGLE WITH THE PREVIOUSLY DESCRIBED LINE, A DISTANCE OF 112.00 FEET; THENCE SOUTHERLY ALONG A LINE FORMING A RIGHT ANGLE WITH THE PREVIOUSLY DESCRIBED LINE, 46.09 FEET; THENCE EASTERLY ALONG A LINE FORMING A RIGHT ANGLE WITH THE PREVIOUSLY DESCRIBED LINE, A DISTANCE OF 173.00 FEET TO A POINT ON THE WEST RIGHT OF WAY LINE OF HARLEM AVENUE; THENCE NORTHERLY ALONG THE WEST RIGHT OF WAY LINE OF HARLEM AVENUE, A DISTANCE OF 244.50 FEET TO A POINT OF CURVATURE; THENCE NORTHWESTERLY ALONG THE ARC OF A CURVE CONCAVE TO THE SOUTHWEST, HAVING A RADIUS OF 50.00 FEET AND A CENTRAL ANGLE OF 52 DEGREES, 46 MINUTES, 6 SECONDS, A DISTANCE OF 46.05 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

ALSO EXCEPT THAT PART OF THE LAND DEDICATED BY PLAT OF DEDICATION RECORDED DECEMBER 2, 1988 AS DOCUMENT 88555753 FOR 159TH STREET AND THAT PART OF LAND DEDICATED BY PLAT OF DEDICATION RECORDED DECEMBER 2, 1988 AS DOCUMENT 88555754 FOR PUBLIC STREET ALL IN COOK COUNTY, ILLINOIS.

PARCEL 2:

EASEMENTS DATED AUGUST 7, 1987 AND RECORDED AUGUST 21, 1987 AS DOCUMENT 87464664 BY AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO AS TRUSTEE UNDER TRUST AGREEMENT DATED FEBRUARY 28, 1986 AND KNOWN AS TRUST NUMBER 66662 RELATING TO AMONG OTHER THINGS, EASEMENTS, GENERAL CONSTRUCTION REQUIREMENTS, COVENANTS RELATING TO LOCATION, SIZE, CHARACTER AND USE OF BUILDING; AND OPERATION, MAINTENANCE AND REPAIR OF COMMON AREA.

FIRST AMENDMENT TO DECLARATION OF EASEMENTS AND RESTRICTIONS DATED MARCH 21, 1989 AND RECORDED MARCH 22, 1989 AS DOCUMENT 89127008 FOR PURPOSES OF PLACING OF RECORD LEGAL DESCRIPTIONS FOR THE ACCESS ROADS AND COMMON UTILITY FACILITIES UPON COMPLETION OF ACCESS ROADS AND COMMON UTILITY FACILITIES AS PROVIDED IN SECTION 2.5 OF SAID DECLARATION.

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ROSE PLAZA
Legal Description

Tax Parcel No.: 12-36-428-045 (Parcel 1)

2-36-427-041 (Parcel 2)

Parcel 1

Lot 4 (except the North 44 feet thereof), all of Lots 5 and 6 and Lot 7 (except the North 44 feet thereof) in Block 28 in Mills and Sons' Green Fields Subdivision of the East $\frac{1}{2}$ of the Southeast $\frac{1}{4}$ and the South $\frac{1}{2}$ of the Northwest $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ and the South $\frac{1}{2}$ of the Southwest $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ and the South $\frac{1}{2}$ of the Southeast $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of Section 36, Township 40 North, Range 12, East of the Third Principal Meridian, in Cook County, Illinois.

Along with the East $\frac{1}{2}$ of vacated 74th Avenue lying West of and adjoining said Lot 6 and lying South of a line 125.0 feet North of and parallel to the North line of North Avenue, in Cook County, Illinois.

Parcel 2

Lots 15, 16 and 17 in Block 8 in Forest View Gardens, a Subdivision of the Southwest $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ of Section 36, Township 40 North, Range 12, East of the Third Principal Meridian, according to the plat thereof recorded November 7, 1921 as Document 7320337, in Cook County, Illinois.

Along with the West $\frac{1}{2}$ of vacated 74th Avenue lying East of and adjoining said Lot 15 and lying South of a line 125.0 feet North of and parallel to the North line of North Avenue, in Cook County, Illinois.

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Staples

Legal Description

Tax ID Nos.: 89-18-18-01-426-041
89-18-18-01-426-041
89-18-18-01-426-041
89-18-18-01-426-041

Parcel 1:

Lots 34 and 35 as designated upon the Plat of Green Gables Subdivision Plat 4, being a subdivision of part of the East Half of Section 1, Township 26 North, Range 7 East of the Fourth Principal Meridian, the Plat of which subdivision is recorded in Book L of Plats on page 26 in the Recorder's Office of Stephenson County, Illinois, and part of the Southeast Quarter of Section 1, Township 26 North, Range 7 East of the Fourth Principal Meridian, in Stephenson County, Illinois, described as follows:

Commencing at the Northeast corner of the Southeast Quarter of said Section 1, thence South 0 degrees 04 minutes 56 seconds East along the East line of said Section 1, a distance of 264.00 feet; thence South 89 degrees 55 minutes 04 seconds West, a distance of 53.19 feet to a point on the West Right-of-Way line of F. A. Route 38 (Illinois Route 26), as designated upon Illinois Department of Transportation Right-of-Way Plat sheet No. 44B revised April 18, 1988, said point being the Point of Beginning; thence North 89 degrees 15 minutes 48 seconds West along the North line of the premises conveyed by Kari A. Feller to Universal Investments by Executor's Deed recorded in Book P-277 on page 401 in the Recorder's Office of Stephenson County, Illinois, a distance of 275.54 feet to the Northwest corner of said premises, said point also being on the East line of Lot 36 of said Green Gables Subdivision, a distance of 263.46 feet to the Southwest corner of the premises conveyed by William V. Brown to Lewis H. Ackerman by Warranty Deed recorded in Book P-112 of Plats on page 632 in the Recorder's Office of Stephenson County, Illinois; thence South 89 degrees 07 minutes 53 seconds East, a distance of 277.56 feet to a point on the Westerly Right-of-Way line of said Illinois Route 26; thence North 2 degrees 58 minutes 50 seconds West along the Westerly Right-of-Way line of said Illinois Route 26, a distance of 66.81 feet to an angle point in said Right-of-Way; thence North 3 degrees 55 minutes 10 seconds East along the Westerly Right-of-Way line of said Illinois 26, a distance of 97.77 feet to the Point of Beginning.

All being situated in Stephenson County, Illinois.

Parcel 2

Easement for the benefit of Parcel 1 created by Declaration of Easement by and between Mercantile Bank of Northern Illinois, as Trustee under the provisions of a Trust Agreement dated 7/31/79 known as Trust No. 12LT1100 and Freeport Development Group, LLC dated 4/22/98 recorded 4/23/98 as Document No. 9886672.

99492315

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Two Rivers Plaza

Legal Description

Tax ID Nos.: 02-08-101-023 (Parcel 1) 02-08-101-025 & 02-08-101-026 (Parcel 2)

Parcel 1

Lots 3 and 5 in Two Rivers Plaza Subdivision in Bolingbrook, being a Subdivision of part of the Northeast ¼ of Section 7 and part of the West ½ of Section 8, Township 37 North, Range 10, East of the Third Principal Meridian, according to the plat thereof recorded May 20, 1993 as Document R93-39427, in Will County, Illinois.

Parcel 2

Easements for the benefit of Parcel 1, as granted in an Operation and Easement Agreement dated December 24, 1992 and recorded January 5, 1993 as Document R93-508, and Amendment recorded June 18, 1993 as Document R93-49798 by and between Dayton Hudson Corporation and Firststar Naper Bank, N.A., as Trustee under Trust Number 7-1807, Chicago Title and Trust Company, as Trustee under Trust Agreement dated October 5, 1992 and known as Trust Number 1096860 and Kohls Department Stores, Inc., a Delaware corporation, and in Operation and Easement Agreement between Dayton Hudson Corporation and Jetco Properties, Inc., recorded January 24, 1996 as Document No. R96-7273 and re-recorded April 4, 1996 as Document No. R96-29066, in Will County, Illinois.

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EXHIBIT B

PROPERTY NAMES AND LOCATIONS

PROPERTY NAME	LOCATION
Baytowne Shoppes/Square	Champaign County, IL
CarMax	Schaumburg Cook County, IL
Fairview Heights Office Park	City of Fairview Heights St. Clair County, IL
Orland Greens Shopping Center	Orland Park Cook County, IL
Park Center Plaza	Tinley Park Cook County, IL
Rose Plaza	Elmwood Park Cook County, IL
Staples	Freeport Stephenson County, IL
Two Rivers Plaza	Village of Bolingbrook Will County, IL

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