



20111103000330270 1/10 \$1075.40
Shelby Cnty Judge of Probate, AL
11/03/2011 12:54:09 PM FILED/CERT

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

INLAND AMERICAN BIRMINGHAM SOUTHGATE, L.L.C.,
a Delaware limited liability company,
as mortgagor and borrower

for the benefit of

RBS CITIZENS, N.A. D/B/A CHARTER ONE,
a national banking association,
as mortgagee and lender

Borrower's Organizational No.: 4633196

Dated: As of October 31, 2011
Location: Pelham, Alabama
County: Shelby County, Alabama

PREPARED BY AND UPON
RECORDATION RETURN TO:

Katten Muchin Rosenman LLP
525 W. Monroe Street
Chicago, Illinois 60661-3693
Attention: Andrew Hamm, Esq.

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

This **SECOND MODIFICATION OF MORTGAGE, SECURITY AGREEMENT AND FIXTURE FILING AND ASSIGNMENT OF LEASES AND RENTS** (this "**Modification Agreement**") is entered into as of the 31st day of October, 2011, between **RBS CITIZENS, N.A. D/B/A CHARTER ONE**, a national banking association, having an address at 1215 Superior Avenue, OHS675, Cleveland, Ohio 44114 ("**Lender**"), and **INLAND AMERICAN BIRMINGHAM SOUTHGATE, L.L.C.**, a Delaware limited liability company, having an address at 2901 Butterfield Road, Oak Brook, Illinois 60523 ("**Borrower**").

WITNESSETH:

WHEREAS, Lender made a loan (the "**Loan**") to Borrower and **INLAND AMERICAN COLUMBIA ROSEWOOD, L.L.C.**, a Delaware limited liability company ("**Rosewood**"), **INLAND AMERICAN WOODSTOCK ROSE CREEK, L.L.C.**, a Delaware limited liability company ("**Rose Creek**"), **INLAND AMERICAN TACOMA JAMES, L.L.C.**, a Delaware limited liability company ("**Tacoma James**"), **INLAND AMERICAN PORT CHARLOTTE PEACHLAND, L.L.C.**, a Delaware limited liability company ("**Peachland**"), **INLAND AMERICAN RALEIGH BENT TREE, L.L.C.**, a Delaware limited liability company ("**Bent Tree**") and **INLAND AMERICAN NEWNAN THOMAS, L.L.C.**, a Delaware limited liability company ("**Newnan Thomas**"), **INLAND AMERICAN ERLANGER SILVERLAKE, L.L.C.**, a Delaware limited liability company ("**Silverlake**"), **INLAND AMERICAN COLORADO SPRINGS CHEYENNE, L.L.C.**, a Delaware limited liability company ("**Colorado Springs**"), and **INLAND AMERICAN SAN PEDRO GARDEN, L.L.C.**, a Delaware limited liability company ("**San Pedro**", collectively with Rosewood, Rose Creek, Tacoma James, Peachland, Bent Tree, Newnan Thomas, Silverlake and Colorado Springs are hereinafter referred to collectively as the "**Other Borrowers**" and together with Borrower, the "**Borrowers**"), as evidenced by that certain Amended and Restated Loan Agreement dated March 2, 2010, as amended by that certain First Amendment to Amended and Restated Loan Agreement and other Loan Documents (the "**First Amendment**") dated April 28, 2011 (as amended, the "**Loan Agreement**"), and by that certain Amended and Restated Promissory Note, dated as of even date herewith (the "**Note**").

WHEREAS, the Loan is secured by, among other things, (i) that certain Mortgage, Security Agreement and Fixture Filing made by Borrower to Lender dated September 29, 2009 and filed for record on October 5, 2009 and recorded with the Office of the Judge of Probate for Shelby County, Alabama as Document No. 20091005000376760, as modified by that certain Modification of Mortgage, Security Agreement and Fixture Filing dated March 2, 2010 and filed for record on March 9, 2010 and recorded with the Office of the Judge of Probate for Shelby County, Alabama as Document No. 20100309000068360 (as modified, the "**Mortgage**"), and (ii) that certain Assignment of Leases and Rents, dated September 29, 2009, and filed for record

on October 5, 2009 and recorded with the Judge of Probate for Shelby County, Alabama as Document No. 20091005000376770, as modified by that certain Modification of Assignment of Leases and Rents dated March 2, 2010 and filed for record on March 9, 2010 and recorded with the Judge of Probate for Shelby County, Alabama as Document No. 20100309000068370 (as modified, the "**Assignment of Leases**"); which Mortgage and Assignment of Leases cover the real property described in Exhibit A attached hereto and made a part hereof (the "**Land**"),

WHEREAS, the Mortgage is cross-collateralized and cross-defaulted with the Colorado Springs Mortgage (as defined in the Loan Agreement), Silverlake Mortgage (as defined in the Loan Agreement), the San Pedro Mortgage (as defined in the Loan Agreement), the Rosewood Mortgage (as defined in the Loan Agreement), the Peachland Mortgage (as defined in the Loan Agreement), the Rose Creek Mortgage (as defined in the Loan Agreement), the Tacoma James Mortgage (as defined in the Loan Agreement), the Bent Tree Mortgage (as defined in the Loan Agreement) and the Newnan Thomas Mortgage (as defined in the Loan Agreement) and Borrower and the Other Borrowers are Affiliates (as defined in the Loan Agreement).

WHEREAS, Borrower and Lender have agreed to amend the Loan Agreement and other Loan Documents pursuant to a Second Amendment to Amended and Restated Loan Agreement and other Loan Documents dated as of the date hereof (the "**Second Amendment**").

WHEREAS, in connection with the Second Amendment, Borrower and Lender have agreed to modify certain provisions of the Mortgage and the Assignment of Leases pursuant to this Modification Agreement.

WHEREAS, any defined terms contained in this Modification Agreement not otherwise defined herein shall have the meanings as set forth in the Mortgage.

NOW, THEREFORE, for and in consideration of the covenant and agreements hereinafter set forth, and also in consideration of the sum of Ten Dollars (\$10.00), and other good and valuable consideration in hand paid to Lender by Borrower, the parties hereto agree as follows:

1. **Incorporation of Recitals.** The recitals to this Modification Agreement are hereby incorporated into and made a part of this Modification Agreement, and shall constitute covenants and representations of Borrower and shall be binding upon and enforceable against Borrower.

2. **Global Amendment.** The terms "Mortgage" and "Assignment of Leases" as used in the Loan Documents shall now also include this Modification Agreement.

3. **Amendments to Mortgage and to the Assignment of Leases.**

- (a) The term "Loan" as set forth in the Mortgage and in the Assignment of Leases shall be modified to mean a loan in the principal amount of \$65,600,000.00.
- (b) The term "Loan Agreement" as set forth in the Mortgage and in the Assignment of Leases shall be modified to mean the Loan Agreement as amended by the First Amendment and the Second Amendment.

- (c) The term "Note" as set forth in the Mortgage and in the Assignment of Leases shall be modified to mean that certain Second Amended and Restated Promissory Note dated October 31, 2011 in the principal amount of \$65,600,000.00.

4. **Agreements Continue; Ratification.** Nothing contained in this Modification Agreement is intended to impair or diminish the priority or validity of the liens or the rights granted by the Mortgage and/or the Assignment of Leases. All the terms, provisions, stipulations, powers, and covenants in the Loan Documents shall remain unchanged and unmodified, except as expressly set forth in this Modification Agreement, and the Mortgage and Assignment of Leases, as so changed or modified, are hereby ratified and confirmed and shall remain in full force and effect and shall be binding upon all parties thereto.

5. **No Waiver.** Notwithstanding anything contained in this Modification Agreement or any of the other Loan Documents to the contrary or any prior act of Lender or any procedure established by Lender with regard to the Loan, Borrower acknowledges and agrees that Lender has not heretofore waived any of its rights or remedies under the Loan Documents nor has Lender waived any of the duties or obligations of Borrower thereunder. No waiver by Lender of any covenant or condition under the Loan Documents shall be deemed a subsequent waiver of the same or any other covenant or condition. No covenant, term or condition of the Loan Documents shall be deemed waived by Lender unless waived in writing.

6. **Governing Law.** THIS MODIFICATION AGREEMENT SHALL BE GOVERNED BY, CONSTRUED, APPLIED AND ENFORCED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF ILLINOIS WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES, AND BORROWER AGREES THAT THE PROPER VENUE FOR ANY MATTERS IN CONNECTION HEREWITH SHALL BE IN THE STATE OR FEDERAL COURTS LOCATED IN CHICAGO, ILLINOIS AS LENDER MAY ELECT AND BORROWER HEREBY SUBMITS ITSELF TO THE JURISDICTION OF SUCH COURTS FOR THE PURPOSE OF ADJUDICATING ANY MATTERS RELATED TO THE LOAN, PROVIDED, HOWEVER, THAT TO THE EXTENT THE MANDATORY PROVISIONS OF THE LAWS OF ANOTHER JURISDICTION RELATING TO (i) THE PERFECTION OR THE EFFECT OF PERFECTION OR NON-PERFECTION OF THE SECURITY INTERESTS IN ANY OF THE PROPERTY, (ii) THE LIEN, ENCUMBRANCE OR OTHER INTEREST IN THE PROPERTY GRANTED OR CONVEYED BY THIS MODIFICATION AGREEMENT, OR (iii) THE AVAILABILITY OF AND PROCEDURES RELATING TO ANY REMEDY HEREUNDER OR RELATED TO THIS MODIFICATION AGREEMENT ARE REQUIRED TO BE GOVERNED BY SUCH OTHER JURISDICTION'S LAWS, SUCH OTHER LAWS SHALL BE DEEMED TO GOVERN AND CONTROL. THE INVALIDITY, ILLEGALITY OR UNENFORCEABILITY OF ANY PROVISION OF THIS MODIFICATION AGREEMENT OR THE OTHER LOAN DOCUMENTS SHALL NOT AFFECT OR IMPAIR THE VALIDITY, LEGALITY OR ENFORCEABILITY OF THE REMAINDER OF THIS MODIFICATION AGREEMENT AND THE OTHER LOAN DOCUMENTS, AND TO THIS END, THE PROVISIONS OF THIS MODIFICATION AGREEMENT AND THE OTHER LOAN DOCUMENTS ARE DECLARED TO BE SEVERABLE.

7. **Miscellaneous.**

- (a) This Modification Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute and be taken as one and the same instrument.
- (b) The terms, covenants and conditions of the Mortgage and the Assignment of Rents and Leases shall remain unchanged and unmodified, except as expressly set forth in this Modification Agreement, and the terms, covenants and conditions of the Mortgage and the Assignment of Rents and Leases, as so modified, are hereby ratified and confirmed.
- (c) None of the covenants, terms or conditions of this Modification Agreement shall in any manner be altered, waived, modified, changed or abandoned, except by written instrument, duly signed and delivered by all the parties hereto.
- (d) This Modification Agreement contains the entire agreement between the parties hereto as to the subject matter hereof and there are no other terms, obligations, covenants, representations, warranties, statements or conditions, oral or otherwise, of any kind.
- (e) In the event of any inconsistency between the terms of the Loan Documents and the terms of this Modification Agreement, the terms of this Modification Agreement control.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the undersigned executed or caused this Modification Agreement to be executed as of the day and year first above written.

BORROWER:

**INLAND AMERICAN BIRMINGHAM
SOUTHGATE, L.L.C.**, a Delaware limited
liability company

By: Inland American MAC Corporation, a Delaware
corporation, its sole member

By: Mary J. Pechous
Name: Mary J. Pechous
Title: Assistant Secretary

Address of Borrower:
2901 Butterfield Road
Oak Brook, Illinois 60523

LENDER:

RBS CITIZENS, N.A., d/b/a CHARTER ONE,
a national banking association

By: _____
Name: _____
Title: _____

Address of Lender:
1215 Superior Avenue
OHS675
Cleveland, Ohio 44114



20111103000330270 7/10 \$1075.40
Shelby Cnty Judge of Probate, AL
11/03/2011 12:54:09 PM FILED/CERT

IN WITNESS WHEREOF, the undersigned executed or caused this Modification Agreement to be executed as of the day and year first above written.

BORROWER:

**INLAND AMERICAN BIRMINGHAM
SOUTHGATE, L.L.C.**, a Delaware limited
liability company

By: Inland American MAC Corporation, a Delaware
corporation, its sole member

By: _____
Name: _____
Title: _____

Address of Borrower:
2901 Butterfield Road
Oak Brook, Illinois 60523

LENDER:

RBS CITIZENS, N.A., d/b/a CHARTER ONE,
a national banking association

By: 
Name: ERNEST L. MAHON
Title: VICE PRESIDENT

Address of Lender:
1215 Superior Avenue
OHS675
Cleveland, Ohio 44114

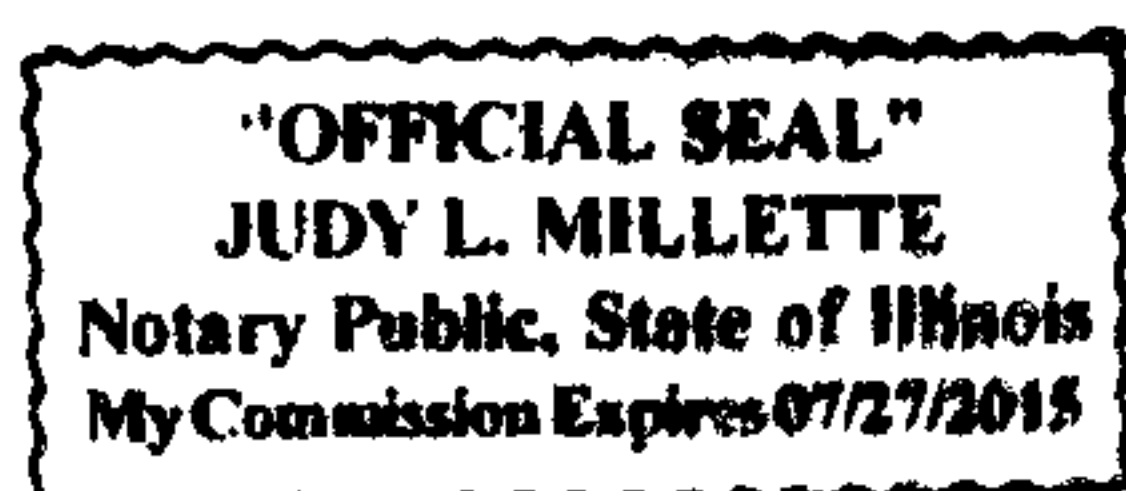
STATE OF ILLINOIS)
COUNTY OF DuPage)

20111103000330270 8/10 \$1075.40
Shelby Cnty Judge of Probate, AL
11/03/2011 12:54:09 PM FILED/CERT

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Mary J. Pechous, whose name as Asst. Secretary of Inland American MAC Corporation, a Delaware corporation, the sole member of Inland American Birmingham Southgate, L.L.C., a Delaware limited liability company, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of such instrument, she/he, as such Asst. Secretary and with full authority, executed the same voluntarily for and as the act of said company.

Given under my hand and official seal this 27th day of October, 2011.

[NOTARIAL SEAL]



Judy L. Millette
Notary Public
My Commission Expires: 7-27-15

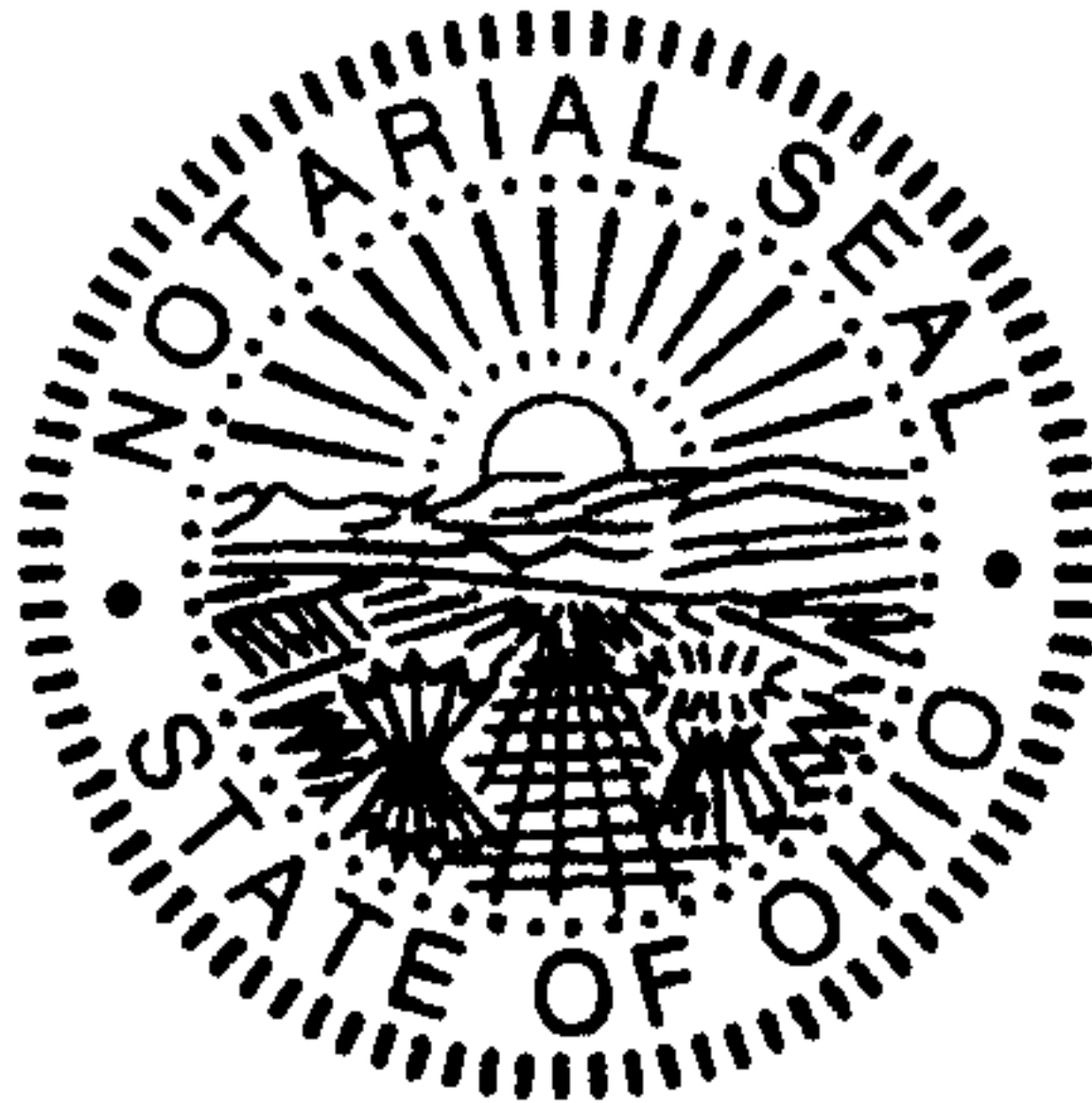
STATE OF Ohio)
COUNTY OF Cuyahoga)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Erin L. Mahon, whose name as Vice President of RBS CITIZENS, N.A., d/b/a CHARTER ONE, a national banking association, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of such instrument, she/he, as such Vice President and with full authority, executed the same voluntarily for and as the act of said company.

Given under my hand and official seal this 27th day of October, 2011.

[NOTARIAL SEAL]

Judith M Paskert
Notary Public
My Commission Expires: 7-25-16



JUDITH M. PASKERT
NOTARY PUBLIC
STATE OF OHIO
Recorded in
Lorain County
My Comm. Exp. 7/25/16

EXHIBIT A

Legal Description

A tract of land situated in the Southeast $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ of Section 25, Township 19 South, Range 3 West, Shelby County, Alabama, and more particularly described as follows:

Commence at the Northeast corner of said $\frac{1}{4}$ - $\frac{1}{4}$ section and run North $87^{\circ}18'38''$ West, along the North line thereof a distance of 422.06 feet; thence run South $01^{\circ}17'56''$ West, for a distance of 412.83 feet to the Point of Beginning; thence run South $87^{\circ}17'54''$ East, for a distance of 417.36 feet to a point on the East line of said $\frac{1}{4}$ - $\frac{1}{4}$ section; thence run South $01^{\circ}57'45''$ West, along said East line a distance of 189.93 feet; thence run South $88^{\circ}02'15''$ East, for a distance of 3.83 feet to a point on the West right of way line of U.S. Highway No. 31; thence run along said right of way South $10^{\circ}40'00''$ West, a distance of 434.26 feet; thence run South $32^{\circ}01'05''$ West, a distance of 188.80 feet to a point on the Northwest right of way line of Alabama Highway No. 261; thence run South $61^{\circ}31'05''$ West, along said right of way a distance of 122.50 feet; thence run North $32^{\circ}30'55''$ West, along the Northeast boundary of Riverchase Animal Clinic property a distance of 141.48 feet; thence run South $57^{\circ}29'05''$ West, along the Northwest line of said property a distance of 100.00 feet to the Northeast right of way line of Valleydale Terrace; thence run North $32^{\circ}30'55''$ West, along right of way line a distance of 25.60 feet to the beginning of a curve to the right, said curve having a radius of 419.64 feet and subtending a central angle of $13^{\circ}13'21''$; thence run Northwest along the arc of said curve a distance of 96.84 feet; thence on a line tangent to curve, continue North $19^{\circ}17'34''$ West, along right of way line a distance of 166.06 feet; thence run North $58^{\circ}04'35''$ East, along right of way a distance of 13.01 feet; thence an angle to the left to tangent of a curve to the left of $77^{\circ}07'41''$, said curve having a radius of 174.25 feet and subtending a central angle of $30^{\circ}07'58''$; thence run along the arc of said curve a distance of 91.61 feet; thence on a line tangent to curve, continue along right of way line North $49^{\circ}11'04''$ West, a distance of 67.40 feet; thence run North $40^{\circ}48'56''$ East, a distance of 147.17 feet; thence run North $50^{\circ}36'35''$ East, a distance of 175.89 feet; thence run North $01^{\circ}17'56''$ East, for a distance of 175.35 feet to the Point of Beginning.

TOGETHER WITH all of owner's right, title and interest in and to that certain Easement dated November 18, 1987, and recorded in Book 161, page 3, in the Probate Office of Shelby County, Alabama.