

12

STATE OF INDIANA
LAKE COUNTY
FILED FOR RECORD

2013 022588

2013 MAR 27 AM 9:31

MICHAEL S. BROWN
RECORDER

This space reserved for Recorder's use only.

**SEVENTH AMENDMENT TO AGREEMENT FOR PARTICIPATING
LOAN AND MODIFICATION OF LOAN DOCUMENTS**

by
Grant 80-94, LLC, an Indiana limited liability company, and Grant 80-94, Inc., an Indiana corporation,

**This Document is the property of
the Lake County Recorder!**

**WORKERS RETAIL TRUST, L.P.,
a Delaware limited partnership**

STOP

**THIS DOCUMENT PREPARED BY AND
AFTER RECORDING RETURN TO:**

Kenneth W. Funk
Deutsch, Levy & Engel, Chartered
225 W. Washington Street, Suite 1700
Chicago, Illinois 60606



385068-1

AMOUNT \$ 35
CASH CHARGE
CHECK# 116172
OVERAGE
COPY
NON-CONF
DEPUTY AD

Ref 2
€

**SEVENTH AMENDMENT TO AGREEMENT FOR PARTICIPATING
LOAN AND MODIFICATION OF LOAN DOCUMENTS**

THIS SEVENTH AMENDMENT TO AGREEMENT FOR PARTICIPATING LOAN AND MODIFICATION OF LOAN DOCUMENTS (this "Seventh Modification") is entered into this 21 day of February, 2013, but effective as of July 22, 2012, by and between GRANT 80-94, LLC, an Indiana limited liability company (the "Borrower"), GRANT 80-94, INC., an Indiana corporation ("Landlord"), and WORKERS RETAIL TRUST, L.P., a Delaware limited partnership (the "Lender").

RECITALS:

A. Lender has heretofore made a loan (the "WRT Loan") to Borrower in the original principal amount of Four Million Nine Hundred Thirty Thousand and 00/100 Dollars (\$4,930,000.00) pursuant to that certain Agreement for Participating Loan, dated July 22, 2004, as amended by that First Amendment to Agreement for Participating Loan and Modification of Loan Documents, dated on or about December 22, 2006 (the "First Participating Loan Modification"), that Second Amendment to Agreement for Participating Loan and Modification of Loan Documents, dated on or about March 21, 2007 (the "Second Participating Loan Modification"), that Third Amendment to Agreement for Participating Loan and Modification of Loan Documents, dated on or about April 29, 2008 (the "Third Participating Loan Modification"), that Fourth Amendment to Agreement for Participating Loan and Modification of Loan Documents, dated on or about July 2, 2008 (the "Fourth Participating Loan Modification"); that Fifth Amendment to Agreement for Participating Loan and Modification of Loan Documents, dated on or about February 28, 2011 (the "Fifth Participating Loan Modification"); and that Sixth Amendment to Agreement for Participating Loan and Modification of Loan Documents, dated on or about September 30, 2011 (the "Sixth Participating Loan Modification"); collectively, the "Agreement"). The WRT Loan is evidenced by a Promissory Note, dated July 22, 2004, in the principal amount of the WRT Loan made payable by Borrower to the order of Lender (as the same has been, or will be amended, modified or restated from time to time the "Note"). The balance of principal and accrued interest as of June 30, 2012 was Nine Million Seven Hundred Twenty Seven Thousand Two Hundred Thirty One and 00/100 Dollars (\$9,727,231.00). The proceeds of the WRT Loan were used, in part, for purposes of Borrower's purchase of so called "Series B Bonds" issued in connection with the development of the project commonly known as County Market in Gary, Indiana (the "Project").

B. The Note is secured by, among other things, (i) that certain Junior Leasehold Mortgage and Security Agreement, dated July 22, 2004 from Borrower to Lender recorded with the Recorder of Deeds in Lake County, Indiana (the "Recorder's Office") on August 2, 2004, as Document No. 2004 064985, and re-recorded March 11, 2005 as Document No. 2005 017952 as amended by the First Participating Loan Modification, the Second Participating Loan Modification, the Third Participating Loan Modification, the Fourth Participating Loan Modification, the Fifth Participating Loan Modification and the Sixth Participating Loan Modification (as the same has been, or will be amended, modified or restated from time to time the "Mortgage"), which Mortgage encumbers the real property and all improvements thereon legally described on Exhibit "A" hereto ("Property"), (ii) that certain Pledge Agreement, dated

July 22, 2004 from Borrower to Lender pursuant to which the Borrower collaterally assigned to Lender all of Borrower's right, title and interest in and to certain Series B Economic Development Revenue Bonds issued by the City of Gary (the "TIF Bonds Assignment"); (iii) that certain Assignment of Plans, Specifications, Construction and Service Contracts, Licenses and Permits, dated July 22, 2004, from Borrower to Lender (as the same has been, or will be amended, modified or restated from time to time, the "Assignment of Plans"); (iv) that certain Environmental Indemnity Agreement, dated July 22, 2004 from Borrower and Landlord to Lender (as the same has been, or will be amended, modified or restated from time to time, the "Indemnity Agreement"); and (v) certain other loan documents (the Agreement, the Note, the Mortgage, the TIF Bonds Assignment, the Assignment of Plans, the Indemnity Agreement, the other documents evidencing, securing and guarantying the Loan, in their original form and as the same has been, or will be amended, modified or restated from time to time, are sometimes collectively referred to herein as the "WRT Loan Documents").

C. In addition, the WRT Loan and WRT Loan Documents are subject to certain intercreditor and subordination agreements, including but not limited to (i) that certain Intercreditor and Subordination Agreement by and among Senior Lienholder (as hereinafter defined), dated July 22, 2004, as amended pursuant to the terms of that certain First Amendment to Intercreditor and Subordination Agreement, dated on or about December 22, 2006, as amended by the Second Amendment to Intercreditor and Subordination Agreement dated on or about April 29, 2008, as amended by the Third Amendment to Intercreditor and Subordination Agreement dated on or about July 2, 2008, as amended by the Fourth Amendment to Intercreditor and Subordination Agreement dated on or about February 25, 2010 (collectively, the "Intercreditor Agreement"); (ii) that certain Subordination Agreement by and among the Lender, Borrower and the Landlord, dated July 22, 2004 (as the same has been, or will be amended, modified or restated from time to time, the "Landlord Subordination Agreement"); and that certain TIF Bonds Control Agreement, dated July 22, 2004 by and among the Lender, the Senior Lienholder and other (the "TIF Bonds Control Agreement").

D. Borrower has also previously entered into certain loan documents ("Senior Loan Documents"), including that certain Reimbursement Agreement with JP Morgan Chase Bank N.A., as successor to Bank One, N.A., (the "Senior Lienholder"), dated July 1, 2004, with respect to the issuance of a Letter of Credit in the amount of Six Million Four Hundred Eighty-Eight Thousand One Hundred One Hundred Thirty-Seven and 00/100 Dollars (\$6,488,137.00) as collateral for so called "Series A Bonds," issued in connection with the development of the Project, as amended by that First Amendment to Reimbursement Agreement, dated April 18, 2006, and as further amended by that certain Second Amendment to Reimbursement Agreement, Forbearance and Wavier, dated on or about February 24, 2010, and as further amended by that certain Third Amendment to Reimbursement Agreement, Forbearance and Wavier, dated on or about June 21, 2011 (as the same has been, or will be amended, modified or restated from time to time, the "Senior Debt");

E. On or about April 18, 2006, the Senior Lienholder declared Borrower to be in default of its obligations under the Senior Loan Documents ("Disclosed Defaults"), subsequent to which the Borrower and the Senior Lienholder entered into that certain Forbearance

Agreement, dated April 18, 2006, (the “Forbearance Agreement”) pursuant to which Senior Lienholder agreed to forbear from its right to pursue certain remedies through October 2006;

F. On or about December 22, 2006, Senior Lienholder and Borrower agreed to further extend the forbearance period through December 31, 2007, subject to certain terms and conditions, including the deposit of Eight Hundred Eighty Thousand and 00/100 Dollars (\$880,000.00), into a “Second Forbearance Account”, as set forth in that certain Second Forbearance Agreement, dated December 22, 2006, (the “Second Forbearance Agreement”);

G. On or about March 21, 2007, Borrower, Landlord and Lender agreed, pursuant to the Second Amendment to Agreement for Participating Loan and Modification of Loan documents, to further deposit the sum of Two Hundred Forty Eight Thousand One Hundred Fifty One and 52/00 Dollars (\$248,151.52) with Senior Lienholder pursuant to the terms of the Second Forbearance Agreement; On or about August 30, 2007, Borrower, Landlord and Lender deposited an additional One Hundred Thirty Thousand and 00/100 Dollars (\$130,000.00) with Senior Lienholder and on or about November 11, 2007, Borrower, Landlord and Lender deposited an additional Fifty Thousand and 00/100 Dollars (\$50,000.00) with Senior Lienholder;

H. On or about April 29, 2008, Senior Lienholder and Borrower agreed to further extend the forbearance period through May 15, 2008, subject to certain terms and conditions, including the deposit of One Hundred Twenty Thousand and 00/100 Dollars (\$120,000.00) into a “Third Forbearance Account”, as set forth in that certain Third Forbearance Agreement, dated April 29, 2008 (the “Third Forbearance Agreement”);

I. On or about April 29, 2008, Borrower, Landlord and Lender agreed, pursuant to the Third Amendment to Agreement for Participating Loan and Modification of Loan documents, to further deposit the sum of One Hundred Twenty Thousand and 00/00 Dollars (\$120,000.00) with Senior Lienholder pursuant to the terms of the Third Forbearance Agreement; On or about May 28, 2008, Lender advanced the sum of Sixty-Three Thousand Seven Hundred Fifty and 00/100 Dollars (\$63,750.00) to Borrower to finance certain accounts payable;

J. On or about July 2, 2008, Senior Lienholder and Borrower agreed to further extend the forbearance period through December 31, 2008, subject to certain terms and conditions, including the deposit of Eight Hundred Thousand Four Hundred Thirty Seven and 82/100 Dollars (\$803,637.82) in a “Fourth Forbearance Account” as set forth in that certain Fourth Forbearance Agreement, dated July 2, 2009 (the “Fourth Forbearance Agreement”);

K. On or about July 2, 2008, Borrower, Landlord and Lender agreed, pursuant to the Fourth Amendment to Agreement for Participating Loan and Modification of Loan documents, to further deposit the sum of Eight Hundred Thousand Four Hundred Thirty Seven and 82/100 Dollars (\$803,637.82) with Senior Lienholder pursuant to the terms of the Fourth Forbearance Agreement;

L. On or about February 24, 2010, Senior Lienholder and Borrower agreed to further extend the forbearance period in order to provide Borrower with the opportunity to secure Senior

Lienholder's waiver of the Disclosed Defaults, subject to certain terms and conditions, including the deposit of Forty-Six Thousand and 00/100 Dollars (\$46,000.00) in a "Additional Account", as set forth in that certain Second Amendment to Reimbursement Agreement, Forbearance and Wavier of even date hereof (the "Second Amendment to Reimbursement Agreement");

M. Following satisfaction by Borrower of those terms and conditions set forth in the Second Amendment to Reimbursement Agreement, pursuant to notice dated on or about February 24, 2010, Senior Lienholder waived the Disclosed Defaults. Following such waiver of the Disclosed Defaults, the maturity date of the Senior Debt was extended to July 22, 2011.

N. On or about June 21, 2011, Senior Lienholder and Borrower agreed to further extend the forbearance period to July 22, 2012, subject to certain terms and conditions, as set forth in that certain Third Amendment to Reimbursement Agreement, Forbearance and Wavier of even date hereof (the "Third Amendment to Reimbursement Agreement");

O. Lender agrees to modify the WRT Loan Documents in order to provide, among other things, an extension of Maturity Date of the Note, provided that Borrower complies with the terms and conditions set forth in the Agreement and the other WRT Loan Documents, as modified by the First Participating Loan Modification, the Second Participating Loan Modification, the Third Participating Loan Modification, the Fourth Participating Loan Modification, the Fifth Participating Loan Modification, the Sixth Participating Loan Modification and the terms and conditions set forth herein.

NOT OFFICIAL!

AGREEMENTS:

This Document is the property of
the Lake County Recorder!

NOW, THEREFORE, in consideration of (i) the facts set forth hereinabove (which are hereby incorporated into and made a part of this Seventh Modification as representations and warranties of Borrower), (ii) the agreements by Lender to modify the WRT Loan Documents, as provided herein, (iii) the covenants and agreements contained herein, and (iv) for other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Maturity Date.** The Maturity Date of the Note is extended to July 22, 2013. Any reference in the Agreement, the Note, the Mortgage or any of the other WRT Loan Documents to the Maturity Date shall mean July 22, 2013.

2. **Additional Modifications.** Notwithstanding anything contained in Paragraph 3.7 or Section 3.7 of the Agreement, as amended, to the contrary, the first Three Million One Hundred One Thousand Two Hundred Fifty-Five and 00/100 Dollars (\$3,101,255.00)(plus all interest accruing after June 30, 2012) in cash flow from operations, or from a Capital Event, shall be distributed as follows:

- a. Eighty-five percent (85%) to Lender; and
- b. Fifteen percent (15%) to Borrower.

3. **Conditions Precedent.** The agreement of Lender to amend the WRT Loan Documents as set forth herein is subject to the following conditions precedent:

(a) Lender shall have received this Seventh Modification duly executed by an authorized person for each entity, and each individual, that is a party hereto.

(b) Lender shall have received resolutions of Borrower approving the execution of this Seventh Modification in form and content acceptable to Lender.

(c) Borrower shall pay all out-of-pocket costs and expenses incurred by Lender in connection with this Seventh Modification, including, without limitation, title charges, recording fees, appraisal fees and attorneys' fees and expenses.

(d) Borrower shall, at its sole cost and expense, cause Ticor Title Insurance Company to issue an endorsement to Lender's title insurance policy No. 920038451 (the "Title Policy"), as of the date this Seventh Modification is recorded, reflecting the recording of this Seventh Modification and insuring the priority of the lien of the Mortgage, subject only to the exceptions set forth in the Title Policy as of its date of issuance and any other encumbrances expressly agreed to by Lender.

(e) Lender shall have received such other documents as may be reasonably requested by Lender or its counsel.

4. **Representations and Warranties of Borrower.** Borrower hereby represents, covenants and warrants to Lender as follows:

(f) The representations and warranties in the Agreement, the Mortgage and the other WRT Loan Documents are true and correct as of the date hereof (except as otherwise may be provided in this Seventh Modification).

(g) There are currently no other Events of Default (as defined in the Agreement) under the Note, the Mortgage, the other WRT Loan Documents, the Senior Loan Documents, or the Ground Lease or any sublease and Borrower does not know of any event or circumstance which with the giving of notice or passing of time, or both, would constitute an Event of Default under the Note, the Mortgage, the other WRT Loan Documents, the Senior Loan Documents, the Ground Lease or any sublease.

(h) The WRT Loan Documents are in full force and effect and, following the execution and delivery of this Seventh Modification, they continue to be the legal, valid and binding obligations of Borrower enforceable in accordance with their respective terms, subject to limitations imposed by general principles of equity.

(i) As of the date hereof, Borrower has no claims, counterclaims, defenses, or set-offs with respect to the WRT Loan or the WRT Loan Documents as modified herein.

(j) Borrower is validly existing under the laws of the State of its formation or organization and has the requisite power and authority to execute and deliver this Seventh Modification and to perform the Loan Documents as modified herein. The execution and delivery of this Seventh Modification and the performance of the Loan Documents as modified herein have been duly authorized by all requisite action by or on behalf of Borrower. This Seventh Modification has been duly executed and delivered on behalf of Borrower.

5. **Reaffirmation of Lease Agreements.** Borrower and Landlord each ratify and affirm the Grocery Store Ground Lease and the Outlots Ground Lease (each as defined in the Mortgage and together referred to herein as the “Ground Leases”) and agree that the Ground Leases are in full force and effect following the execution and delivery of this Seventh Modification. The representations and warranties of the Borrower and Landlord in the Ground Leases are, as of the date hereof, true and correct and neither the Borrower nor Landlord know of any default thereunder. The Ground Leases continue to be the valid and binding obligation of the Borrower and Landlord, enforceable in accordance with their terms and neither party thereto has any claim or defense to the enforcement of their respective rights and remedies thereunder.

6. **Reaffirmation of Landlord Subordination Agreement.** Landlord ratifies and affirms the Landlord Subordination Agreement and agrees that the Landlord Subordination Agreement is in full force and effect following the execution and delivery of this Seventh Modification. The representations and warranties of Landlord in the Landlord Subordination Agreement are, as of the date hereof, true and correct and Landlord does not know of any default thereunder. The Landlord Subordination Agreement continues to be the valid and binding obligation of the Landlord, enforceable in accordance with its terms and Landlord has no claims or defenses to the enforcement of the rights and remedies of Lender thereunder, except as provided in the Landlord Subordination Agreement. Further, Landlord consents and agrees that, in consideration of the benefits to be derived by Landlord as the result of this Seventh Modification, the encumbrance represented hereby shall also be an encumbrance upon the real estate described on Exhibit “A” and that this Seventh Modification may be recorded by Lender against title to such real estate.

7. **Release of Lender.** As additional consideration for Lender’s entering into this Seventh Modification, the Borrower hereby irrevocably and absolutely releases, discharges and acquits Lender and its nominees and affiliates, and their respective agents, officers, directors, shareholders, attorneys and employees, and their respective successors and/or assigns, of and from all rights, claims, demands, obligations, liabilities, causes of action, breaches, damages, costs and expenses of any kind whatsoever, whether known or unknown, suspected or unsuspected, liquidated or unliquidated, whether heretofore or now existing, whether based on contract, tort, breach of any duty or any other legal or equitable theory of recovery (collectively, the “Potential Claims”) arising on or prior to the date hereof, including, without limitation, any claims that in any way arise or may be conceived or perceived as arising out of, are connected with or relate in any way, shape or form to the Loan, to the Loan Documents, or the transactions contemplated by any of the foregoing. The Potential Claims described herein are not limited to matters known or disclosed.

8. **Miscellaneous.**

(a) Except as expressly provided herein, the WRT Loan Documents shall remain in full force and effect. This Seventh Modification shall not release, discharge or satisfy any present or future debts, obligations or liabilities to Lender of Borrower or any other debtor, guarantor or other person or entity liable for payment or performance of any such debts, obligations or liabilities of Borrower or any mortgage, security interest, lien or other collateral or security for any of such debts, obligations or liabilities of Borrower or such debtors, guarantors, or other persons or entities, or waive any default. Lender expressly reserves all of its rights and remedies with respect to Borrower, and all debtors, guarantors or other persons or entities, and all mortgages, security interests, liens and other collateral and security. Without limiting the generality of the foregoing, the WRT Loan Documents and all extensions, renewals, modifications and refinancings thereof, and all present and future debts, obligations and liabilities of Borrower to Lender, shall continue to be valid, enforceable and secured.

(b) This Seventh Modification has been negotiated, executed and delivered in and shall be deemed to have been made in the State of Illinois and the validity of this Seventh Modification, its construction, interpretation and enforcement and the rights of the parties hereunder and concerning the collateral shall be determined under, governed by and construed in accordance with the internal laws (and not the laws of conflict) of the State of Illinois.

(c) Each provision of this Seventh Modification shall be severable from every other provision of this Seventh Modification for the purpose of determining the legal enforceability of any specific provision. This Seventh Modification may be executed in counterparts, which shall, when delivered, whether by facsimile transmission or otherwise, constitute one document.

(d) This Seventh Modification and the other documents referred to herein contain the entire agreement between the signatories hereto with respect to the subject matter hereof, superseding all previous communications and negotiations, and no representation, undertaking, promise or condition concerning the subject matter hereof shall be binding upon Lender unless clearly expressed in this Seventh Modification or in the other documents referred to herein. All discussions and correspondence about the terms of possible extension, modification and/or restructuring of the WRT Loan Documents will be deemed to be in the nature of settlement and compromise negotiations and will not be admissible in any legal or administrative proceedings, deemed actionable under any theory of law, or utilized for any purpose without the consent of all parties. No agreement which is reached shall give rise to any claim or cause of action except for breach of the express provisions of a legally binding written agreement.

(Signature Page Follows)

IN WITNESS WHEREOF, Lender and Borrower have executed this Seventh Modification as of the date set forth above.

Borrower:

GRANT-80-94, LLC, an Indiana limited liability company

By: Collins Family Limited Partnership, an Indiana limited partnership, its Manager

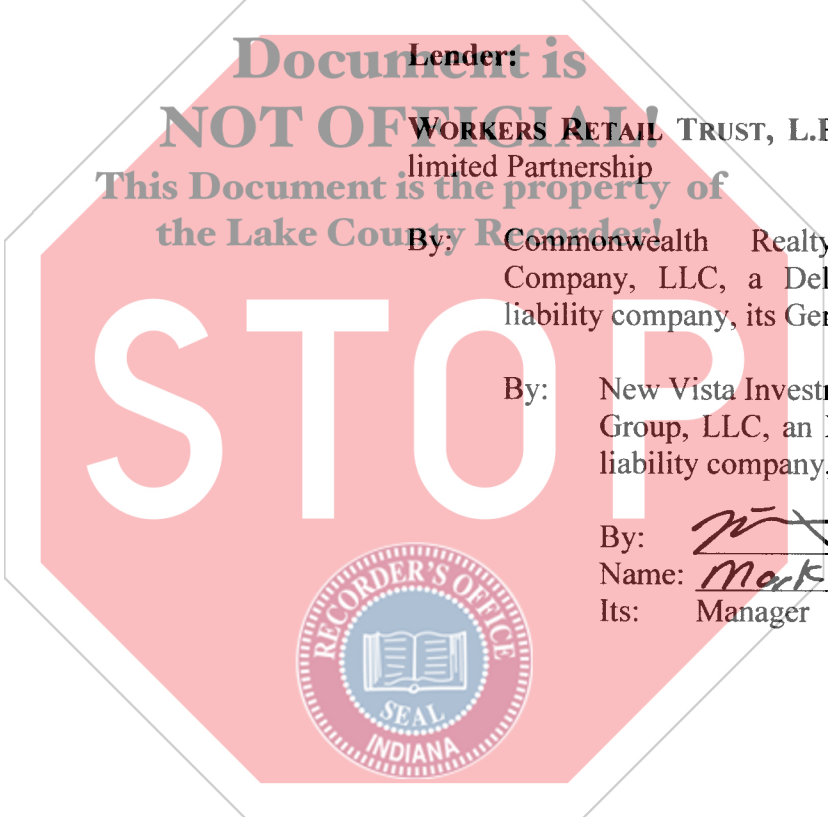
By: E. Thomas Collins, Jr.
E. Thomas Collins, Jr.

Its: General Partner

Landlord/Owner:

GRANT-80-94, INC., an Indiana limited liability company

By: E. Thomas Collins, Jr.
Its: MGR
Name: E. THOMAS COLLINS JR



Lender:

WORKERS RETAIL TRUST, L.P., a Delaware limited Partnership

By: Commonwealth Realty Investment Company, LLC, a Delaware limited liability company, its General Partner

By: New Vista Investment Group, LLC, an Illinois limited liability company, its Manager

By: [Signature]
Name: Mark R. Kinrich
Its: Manager

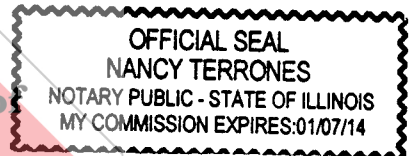
STATE OF ILLINOIS)
) .ss
COUNTY OF COOK)

I Nancy Terrones, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Mark R. Kirsnerich, Manager of New Vista Investment Group, LLC, an Illinois limited liability company, Manager of Commonwealth Realty Investment Group, LLC, a Delaware limited liability company, general partner of **Workers Retail Trust, L.P.**, a Delaware limited partnership, is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered said instrument as his own free and voluntary act, and as the act of New Vista Investment Group, LLC, in its capacity as Manager of Commonwealth Realty Investment Group, LLC, in its capacity as general partner of Workers Retail Trust, L.P., and for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 21 day of February, 2013.

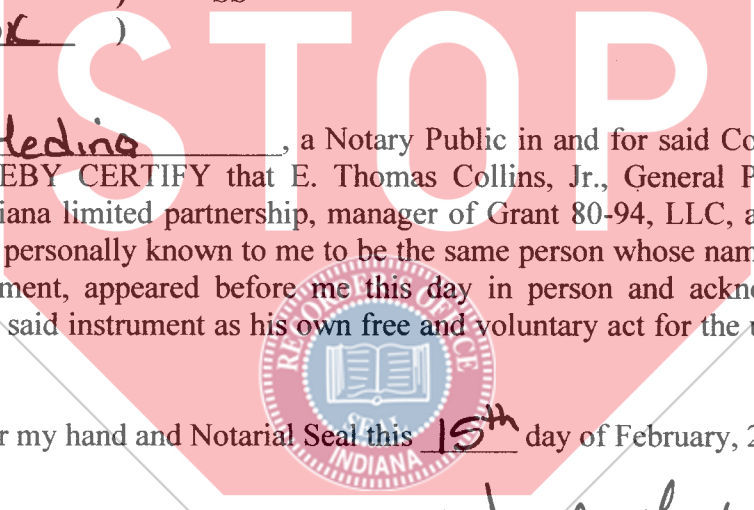
Nancy Terrones
Notary Public

My Commission Expires: 01/07/14



STATE OF ~~INDIANA IL~~)
)
COUNTY OF COOK)

Document is NOT OFFICIAL!
This Document is the property of the Lake County Recorder!

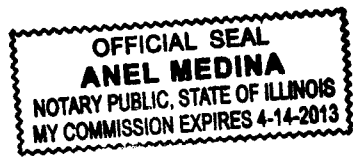


I Anel Medina, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that E. Thomas Collins, Jr., General Partner of Collins Family, L.P., an Indiana limited partnership, manager of Grant 80-94, LLC, an Indiana limited liability company, is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered said instrument as his own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 15th day of February, 2013.

Anel Medina
Notary Public

My Commission Expires: 2/15/13



STATE OF INDIANA IL)
)
COUNTY OF Cooc) SS

I Anel Medina, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that E. Thomas Collins, Jr. being the President of Grant 80-94, Inc., an Indiana corporation, is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered said instrument as his own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this _____ day of February, 2013.



Anel Medina
Notary Public

My Commission Expires: 4/14/13



EXHIBIT "A"

Legal Description

LOTS 1A, 1B, 2, E, EXCEPT THE EAST 78.10 FEET THEREOF, ALL OF LOTS 5, 8, 9 AND 10 IN COUNTY MARKET PLAZA, AN ADDITION TO THE CITY OF GARY, AS PER PLAT THEREOF, RECORDED IN PLAT BOOK 95 PAGE 83, IN THE OFFICE OF THE RECORDER OF LAKE COUNTY, INDIANA.

PROPERTY

ADDRESSES:

2550 Arthur Street, Gary, Indiana 46404

1931-20 W. 25 Avenue, Gary, Indiana 46404

1905-15 W. 25th Avenue, Gary, Indiana 46404

1825-35 W. 25th Avenue, Gary, Indiana 46404

1705-35 W. 25th Avenue, Gary, Indiana 46404

2560 Garfield Street, Gary, Indiana 46404

1901-39 W. 26th Avenue, Gary, Indiana 46404

1801-35 W. 26th Avenue, Gary, Indiana 46404

