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RECORDING COVER SHEET

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

FREEDOM TITLE CORP.

6708223 2/16

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

1325 S. State LLC, an Illinois limited liability company  
(Borrower)

in favor of

MidFirst Bank, a federally chartered savings association  
(Lender)

Dated: April 27, 2006

Location: 1347 South State Street  
Chicago, Cook County, Illinois

Loan No.: 934430

PREPARED BY, RECORD AND RETURN TO:

MidFirst Bank, a federally chartered savings association  
MidFirst Plaza  
P.O. Box 26750  
Oklahoma City, Oklahoma 73126  
Attention: Closing Department

FTC 6708223  
296

FREEDOM TITLE CORP.

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THIS MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING (the "Security Instrument") is made as of April \_\_, 2006, by 1325 S. State LLC, an Illinois limited liability company ("Borrower"), having its principal place of business at 828 South Wabash Avenue, Suite 200, Chicago, Illinois 60605 in favor of MidFirst Bank, a federally chartered savings association ("Lender"), having a mailing address at MidFirst Plaza, P.O. Box 26750, Oklahoma City, Oklahoma 73126.

## RECITALS:

To secure the payment of an indebtedness in the principal sum of Three Million Five Hundred Thousand and No/100 Dollars (\$3,500,000.00), lawful money of the United States of America, to be paid with interest according to a certain contemporaneously executed Promissory Note made by Borrower to the order of Lender, a copy of which is attached to and made a part hereof as Exhibit A (said Promissory Note, together with all extensions, renewals or modifications thereof, is referred to as the "Note", and said indebtedness, interest and all other sums due hereunder, and under the Note and the Other Security Documents (hereinafter defined), including applicable attorney fees and costs, is collectively referred to as the "Debt"), which Debt in the aggregate shall not at any time exceed the sum of \$100,000,000) Borrower hereby irrevocably mortgages, gives, grants, bargains, sells, alienates, conveys, confirms, pledges, assigns, grants a security interest in, and hypothecates to Lender, its successors and assigns, with the right to entry and possession, all of its estate, right, title and interest in, to, and under any and all of the following described property (collectively the "Mortgaged Property"), whether now owned or held or hereafter acquired:

(a) The real property described in Exhibit B attached hereto (the "Premises") and the buildings, structures, additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter located thereon (the "Improvements");

(b) all easements, rights-of-way, 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, tenements, hereditaments and appurtenances of any nature whatsoever, in any way belonging, relating or pertaining to the Premises 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 Premises 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 Premises and the Improvements and every part and parcel thereof, with the appurtenances thereto;

(c) all other assets of Borrower, of every kind and nature, now existing and hereafter acquired and arising and wherever located, related to the ownership or operation of the Premises, including without limitation, accounts, deposit or reserve accounts, commercial tort claims, letter of credit rights, chattel paper (including electronic chattel paper), documents, instruments, investment property, general intangibles (including payment intangibles), software, goods, inventory, equipment, furniture and fixtures, all supporting obligations of the foregoing, and all cash and noncash proceeds and products (including without limitation insurance proceeds) of the foregoing, and all additions and accessions thereto, substitutions therefor and replacements thereof, and including, without limitation, the following:

(1) all machinery, equipment, fixtures (including but not limited to all heating, air conditioning, plumbing, lighting, communications and elevator fixtures), building equipment, materials and supplies, and other property of every kind and nature, whether tangible or intangible, owned by

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Borrower, or in which Borrower has or shall have an interest, now or hereafter located upon the Premises and the Improvements, or appurtenant thereto, and usable in connection with the present or future operation and occupancy of the Premises and the Improvements (hereinafter collectively called the "Equipment"), including the proceeds of any sale or transfer of the foregoing, and, without limiting the generality of the foregoing, if any such Equipment is subject to any prior security interest or prior security agreement (as such terms are defined in the Uniform Commercial Code, as adopted and enacted in the state or states in which any of the Mortgaged Property is located), then the Mortgaged Property shall include all of the right, title and interest of Borrower in and to any such Equipment, together with all deposits and payments now or hereafter made by Borrower with respect to such Equipment;

(2) all awards, payments or compensation, including interest thereon, heretofore or hereafter made with respect to the Mortgaged Property for any injury or decrease in the value of the Mortgaged Property related to any exercise of the right of eminent domain or condemnation (including without limitation, any transfer made in lieu of or in anticipation of the exercise of said rights or for a change of grade);

(3) all leases, reciprocal easement agreements, and other agreements and arrangements affecting the use, enjoyment or occupancy of, or the conduct of any activity upon or at the Premises and the Improvements heretofore or hereafter entered into (the "Leases"), all income, rents (including, without limitation, all percentage rents), issues, profits and revenues (including all oil and gas or other mineral royalties and bonuses) from the Mortgaged Property (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;

(4) all proceeds of, and any unearned premiums on, any insurance policies covering the Mortgaged 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 Mortgaged Property;

(5) the right, in the name and on behalf of Borrower, to appear in and defend any action or proceeding brought with respect to the Mortgaged Property and to commence any action or proceeding to protect the interest of Lender in the Mortgaged Property; and

(6) all other property or collateral of any nature whatsoever, now or hereafter given as additional security for the payment of the Debt, including without limitation, property management agreements now or hereafter entered into with any person or entity providing management services to the Mortgaged Property, service contracts, common area agreements, licenses, permits, construction warranties and other contracts, agreements and instruments relating to the Mortgaged Property (including, without limitation, agreements pursuant to which Borrower acquired any of the Mortgaged Property, and including any security or indemnities given in connection therewith), security deposits, royalties, refunds, expense reimbursements, reserve or escrow deposits or accounts related to the Mortgaged Property or any Lease and all documents relating to each of the foregoing.

TO HAVE AND TO HOLD the Mortgaged Property unto and to the use and benefit of Lender, and the successors and assigns of Lender, forever to secure the payment to Lender of the Debt at the time and in the manner provided for its payment in the Note, in this Security Instrument or in the Other Security Documents free from all rights and benefits under and by virtue of the Homestead Exemption Laws of the State of Illinois (which rights and benefits are hereby expressly released and waived);

PROVIDED, HOWEVER, these presents are upon the express condition that, if Borrower shall pay to Lender the Debt at the time and in the manner provided in the Note, in this Security Instrument or

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in the Other Security Documents, and shall abide by and comply with each and every covenant and condition set forth herein and in the Note in a timely manner, these presents and the estate hereby granted shall cease, terminate and be void, and Lender shall execute and deliver to Borrower a satisfaction or discharge of this Security Instrument, in recordable form.

Borrower hereby represents and warrants to and covenants and agrees with Lender as follows:

1. Payment of Debt and Incorporation of Covenants, Conditions and Agreements. Borrower will pay the Debt at the time and in the manner provided in the Note, this Security Instrument and the Other Security Documents. All the covenants, conditions and agreements contained in: (a) the Note; and (b) all and any documents (other than the Note or this Security Instrument) (collectively the "Other Security Documents") now or hereafter executed by Borrower and/or others in favor of Lender, which wholly or partially secure or guaranty payment of the Note, provide for any indemnity in favor of or payment to Lender related to the Debt, the Note or the Mortgaged Property, provide for any escrow/holdback arrangements or for any actions to be completed by Borrower subsequent to the date hereof, or are otherwise related to the loan secured by this Security Instrument (the "Loan"), are hereby made a part of this Security Instrument to the same extent and with the same force as if fully set forth herein. Notwithstanding anything herein to the contrary, neither this Security Instrument nor any of the Other Security Documents shall secure the payment of any Environmental Losses (as defined in that certain Environmental Indemnity Agreement executed in favor of Lender contemporaneously herewith).

2. Warranty of Title. Borrower warrants that Borrower has good title to the Mortgaged Property and has the right to mortgage, give, grant a security interest in, bargain, sell, alienate, convey, confirm, pledge, assign and hypothecate the same and that Borrower possesses an unencumbered fee estate in the Premises and the Improvements and that it owns the Mortgaged Property free and clear of all liens, encumbrances and charges whatsoever except for those exceptions shown in the title insurance policy in favor of Lender insuring the lien of this Security Instrument. Borrower shall forever warrant, defend and preserve such title and the validity and priority of the lien of this Security Instrument to Lender against the claims of all persons whomsoever.

3. Insurance Requirements.

(a) Borrower shall keep all of the Mortgaged Property (except land, paving and roads) insured to 100% of its full insurable replacement cost value (without deduction for depreciation, and including the cost of debris removal, but exclusive of the cost of excavations, foundations and footings below the lowest basement floor), under a Special Form (formerly called "all risk") insurance policy or package policy, with a replacement cost endorsement, providing such coverage (but in no event for less than the amount of the Debt secured hereby), against loss by fire and such other hazards, casualties, and contingencies as are customarily insured against by persons owning similar properties in the locality of the Mortgaged Property or customarily required by prudent institutional lenders making loans secured by such properties for such periods and in such amounts as Lender may reasonably require from time to time. Borrower will pay all premiums for such insurance (the "Insurance Premiums") promptly when due and prior to delinquency. Hazards insured against shall include: (i) flood damage, if the improvements located or to be constructed on the Premises, or any part thereof, now or hereafter lie within a "special flood hazard area" as designated on maps prepared by the Department of Housing and Urban Development or Federal Emergency Management Agency; and (ii) if required by Lender, business interruption or rental loss insurance in an amount equal to not less than twelve (12) months' (or such longer period of time as would be required to rebuild and restore the Mortgaged Property in the event of a total loss) income or rentals, which insurance shall increase in coverage as additional portions of the



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Mortgaged Property are leased. Borrower shall, at Borrower's expense, within five (5) days after request therefor, furnish Lender with evidence of insurance coverage and insurable value acceptable to Lender.

(b) Borrower agrees to provide commercial general liability coverage (standard Insurance Services Office form(s) or equivalent, including blanket contractual liability coverage insuring indemnity liability) in a combined single limit amount of not less than \$2,000,000, insuring against loss arising from or caused directly or indirectly by the condition, use or ownership of the Mortgaged Property and the abutting streets, sidewalks and passageways, in amounts and issued by companies approved by Lender, which liability policies shall name Lender as an additional insured. The general liability coverage to be maintained by Borrower shall be primary and not excess over any other valid or collectible insurance available to Lender and, to the extent required by any such policy (including any applicable "additional insured" terms), this provision constitutes a specific contractual requirement that such coverage be primary.

(c) During the course of any construction or repair of improvements of the Mortgaged Property, Borrower agrees to provide (i) commercial general liability and workers' compensation insurance for all employees of Borrower and any contractor engaged on or about the Mortgaged Property, (ii) professional liability coverage for errors and omissions of architects and engineers, and (iii) builder's risk insurance covering Borrower and any contractor against all risks of physical loss, including collapse and transit coverage, during construction of the improvements, with deductibles in amounts satisfactory to Lender, covering the total value of work performed and equipment, supplies and materials furnished.

(d) All casualty policies shall be written in non-reporting form without any co-insurance clause and shall include a lender's loss payable endorsement or standard (Insurance Services Office) mortgagee clause, without contribution, in favor of and in form acceptable to Lender. Should Lender agree to the inclusion of a co-insurance or an average clause, the policy shall also include a stipulated value endorsement for such amount as Lender may require. All policies shall contain an endorsement or agreement by the insurer that (i) any loss shall be payable in accordance with the terms of the policy notwithstanding any act or negligence by Borrower which might otherwise result in forfeiture or cancellation of the policy, and (ii) waiving all rights of setoff, counterclaim, deduction or subrogation against Borrower. Borrower waives any and all right to claim or recover against Lender, its directors, officers, employees, agents and representatives for any loss or damage to Borrower, the Mortgaged Property, or any property of others under Borrower's control resulting from any cause insured against or required to be insured against under this Section 3.

(e) All policies shall be issued by companies approved by Lender with an A- or better rating from the A.M. Best Company, Inc., and shall comply in all respects with Lender's insurance requirements set forth in the Mortgage Loan Commitment Agreement dated December 20, 2005; all policies and renewals thereof are hereby assigned to Lender. All policies shall be delivered to and held by Lender. Each policy shall provide that it may not be canceled, non-renewed, or materially amended (including any reduction in the scope or limits of coverage) without at least fifteen (15) days' prior direct written notice to Lender from the relevant insurance company. If applicable, the insurance coverage must adequately address loss exposures created by building laws and/or ordinances (building law and ordinance coverage). All renewal policies shall be delivered to Lender, premiums prepaid for a term of at least one year, at least ten (10) days before the expiration of the policies being renewed. Acceptance of policies tendered by Borrower shall not preclude Lender from requiring other or additional insurance against the same or other hazards. All policies of insurance and the coverages and endorsements required hereunder are referred to herein as the "Policy" or "Policies".

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(f) Any failure by Lender to insist on full compliance with all of the above insurance requirements at closing does not constitute a waiver of Lender's right to subsequently require full compliance with these requirements.

## 4. Casualty Loss.

(a) If the Mortgaged Property is damaged or destroyed, in whole or in part, by fire or other casualty (a "Casualty"), Borrower shall give prompt notice thereof to Lender. Borrower hereby authorizes and empowers Lender to settle, adjust or compromise any claims for any insurance proceeds arising from any Casualty (the "Insurance Proceeds"), to receive such Insurance Proceeds and to retain and apply such Insurance Proceeds as set forth herein. If no Event of Default (hereinafter defined), or event which with the giving of notice or passage of time, or both, would give rise to an Event of Default, has occurred as of the date of the Casualty or as of the date any Insurance Proceeds are to be paid or disbursed to Borrower, then:

(i) If the value of the Mortgaged Property immediately following such Casualty remains greater than fifty percent (50%) of its value immediately prior to such Casualty, then all Insurance Proceeds from such Casualty shall be paid to Lender; provided, however, that so long as no Event of Default exists and subject to the requirements set forth herein, Lender shall disburse such amounts of the Insurance Proceeds (after deduction for Lender's costs and expenses of collection) as Lender reasonably deems necessary for the repair or replacement of the Mortgaged Property, with any balance remaining after such disbursement being applied by Lender to the Debt in such priority and proportions as Lender deems proper; and

(ii) If the value of the Mortgaged Property immediately following any Casualty (or series of related Casualties) does not exceed fifty percent (50%) of its value immediately prior to such Casualties, then all Insurance Proceeds from such Casualties shall be paid directly to Lender and Lender, at its discretion may declare the entire Debt to be immediately due and payable and apply all such Insurance Proceeds, after deduction for Lender's costs and expenses of collection, to the Debt in such priority and proportions as Lender deems proper. In the event Lender does not declare the entire Debt to be immediately due and payable, Borrower shall promptly repair, replace or rebuild any part of the Mortgaged Property destroyed by such Casualty. In such event, subject to the requirements set forth herein, Lender shall disburse such amounts of the Insurance Proceeds as Lender reasonably deems necessary for the repair or replacement of the Mortgaged Property, with any balance remaining after such disbursement being applied by Lender to the Debt in such priority and proportions as Lender deems proper.

Each insurance company is hereby authorized and directed to make payment for such loss directly to Lender instead of to Borrower or to Borrower and Lender jointly. Irrespective of the dollar amount of the loss or claim, Borrower shall provide Lender with sufficient documentation and information reasonably necessary or required by Lender to verify and confirm the nature and extent of the damage or destruction to the Mortgaged Property and the amount of funds required to repair or rebuild the Mortgaged Property, together with a budget (which shall be subject to Lender's reasonable approval) describing the repair or restoration work to be performed and the costs of labor and material for each stage of repair or restoration work. In the event that proceeds are used for the repair, rebuilding and restoration of the Mortgaged Property, insurance proceeds shall be placed in a segregated account with Lender and used for the repair, rebuilding and restoration of the insured loss, through such procedures and with such safeguards for release of such proceeds and payment of construction and related expenses

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as Lender (or a prudent commercial lending institution located in the jurisdiction in which the Mortgaged Property is situated) customarily imposes for advances of construction loan funds, which may include requirements that: (i) Borrower first expend or deposit into the escrow account any difference between the total cost of repair, rebuilding and restoration and the amount of such Insurance Proceeds; (ii) Borrower, at its expense, promptly prepare and submit to Lender all plans and specifications necessary for the restoration and repair of the damaged Mortgaged Property, together with evidence reasonably acceptable to Lender setting forth the total expenditure needed for the restoration and repair based upon a fixed or guaranteed maximum price contract with a reputable builder; (iii) the plans and specifications, contractor, construction budget and all other aspects of the proposed restoration and repair be subject to Lender's approval in the exercise of its reasonable discretion; (iv) Borrower commence restoration and repair of the damaged Mortgaged Property only after Lender shall have notified Borrower in writing that the use of Insurance Proceeds for restoration and repair is allowable under this paragraph, that the required safeguards, procedures and assignments described in this paragraph are in place and that the plans and specifications, contractor, construction budget and all other aspects of the proposed restoration have been approved by Lender, and Borrower shall thereafter proceed diligently with the restoration and repair until completed; (v) disbursements be made from the escrow account for the restoration and repair in accordance with a disbursement schedule; and (vi) all funds held in the escrow account be assigned to Lender as further security for the Debt. If the casualty insurer requires that it, rather than Lender, act as the construction disbursing agent, the procedures described in this paragraph will be followed to the greatest extent reasonably possible, considering that the insurer, rather than Lender, will hold the construction funds. The Mortgaged Property as rebuilt or restored shall be of at least equal value and substantially identical use and character as prior to the damage or destruction. Any Insurance Proceeds not used for restoration or repair of the Mortgaged Property shall be paid to Lender for application to the principal of the Note in the inverse order of maturity, without the imposition of Prepayment Consideration, as such term is defined in the Note.

(b) Upon (i) the commencement of proceedings for judicial or nonjudicial foreclosure of this Security Instrument, (ii) the taking by Lender (or a receiver) of possession of the Premises, or (iii) a conveyance in lieu of foreclosure, all right, title and interest of Borrower in and to any property damage and Policies then in force, including any right to unearned premiums, shall inure to the benefit of and pass to Lender (or the receiver, as appropriate) and, upon sale to the purchaser of the Mortgaged Property. Borrower hereby irrevocably appoints Lender and its successors and assigns as its duly constituted attorneys-in-fact, with full power of substitution, to transfer and assign such policies upon the occurrence of any such event.

## 5. Payment of Taxes and Other Charges.

(a) Borrower shall pay or cause to be paid and discharged all taxes, assessments, water rates and sewer rents now or hereafter levied or assessed or imposed against the Mortgaged Property or any part thereof (collectively the "Taxes"), and all ground rents, utility charges, maintenance charges, other governmental impositions, and all other liens or charges whatsoever which may be or become a lien or charge against the Mortgaged Property (including without limitation, mechanics and materialmen's liens, vault charges and license fees for the use of vaults, chutes and similar areas adjoining the Premises), now or hereafter related to, or levied, assessed or imposed against, the Mortgaged Property or any part thereof (collectively the "Other Charges") as the same become due and payable. Borrower will deliver to Lender, promptly upon Lender's request, evidence satisfactory to Lender that the Taxes and Other Charges have been paid prior to the same becoming delinquent.

(b) 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

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amount or validity or application in whole or in part of any of the Taxes or Other Charges, provided that: (i) no Event of Default has occurred and shall be continuing; (ii) Borrower is permitted to do so under the provisions of any mortgage, deed of trust, ground lease, or other instrument which creates a superior or junior lien to this Security Instrument (it being understood that no such superior or junior liens will be permitted unless specifically allowed, in writing, by Lender); (iii) 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; (iv) neither the Mortgaged Property nor any part thereof or interest therein will be in danger of being sold, forfeited, terminated, cancelled or lost; (v) Borrower shall have set aside adequate reserves (which Lender may at its option require to be placed in escrow with Lender) for the payment of the Taxes or Other Charges, together with all interest and penalties; and (vi) Borrower shall have furnished such security as may be required in the proceeding, or as may be requested by Lender to insure the payment of any such Taxes or Other Charges, together with all interest and penalties thereon.

6. Escrowed Funds. Borrower shall, at the option of Lender or its designee, pay to Lender or its designee on the first day of each calendar month one-twelfth of an amount which would be sufficient to pay all Insurance Premiums, Taxes and Other Charges payable, or estimated by Lender to be payable, during the next ensuing twelve (12) months at least thirty (30) days prior to their respective due date. (The aggregate of said amounts so held by Lender is hereinafter called the "Escrowed Funds"). Borrower hereby pledges to Lender any and all Escrowed Funds now or hereafter held by Lender as additional security for the payment of the Debt. Lender will apply the Escrowed Funds to payments of Taxes, Other Charges and Insurance Premiums required to be made by Borrower pursuant hereto. If the amount of the Escrowed Funds held by Lender shall exceed the amounts required for the payment of the Taxes, Other Charges and Insurance Premiums described above, Lender shall, in its discretion, return any excess to Borrower or credit such excess against future payments to be made to the Escrowed Funds. If, at any time, the Escrowed Funds are not sufficient to pay the Taxes, Other Charges and Insurance Premiums described above, Borrower shall promptly pay to Lender, upon demand, an amount which Lender shall estimate as sufficient to make up the deficiency. Upon the occurrence of an Event of Default, Lender may apply any Escrowed Funds held by it to the payment of the following items in any order in its sole discretion:

- (a) Taxes and Other Charges;
- (b) Insurance Premiums;
- (c) Interest on the unpaid principal balance of the Note;
- (d) Amortization of the unpaid principal balance of the Note; and

All other sums payable pursuant to the Note, this Security Instrument and the Other Security Documents, including without limitation advances made by Lender pursuant to the terms of this Security Instrument and any applicable Prepayment Consideration.

Until expended or applied as above provided, the Escrowed Funds shall constitute additional security for the Debt. The Escrowed Funds shall not constitute a trust fund and may be commingled with other monies held by Lender. No earnings or interest on the Escrowed Funds shall be payable to Borrower. To the extent Borrower timely deposits all required Escrowed Funds with Lender, Borrower shall be relieved of any further obligation to directly pay, or to deliver to Lender any evidence of the payment of (prior to their expiration or delinquency), any Insurance Premiums, Taxes or Other Charges.

7. Condemnation. Borrower shall promptly give Lender written notice of the actual or threatened commencement of any exercise of a right of condemnation or eminent domain affecting all or any part of the Mortgaged Property (each such event being hereinafter referred to as a "Condemnation"), and shall deliver to Lender copies of any and all papers served in connection with any such

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Condemnation. Notwithstanding any taking (including but not limited to any transfer made in lieu of or in anticipation of the exercise of such taking) of all or any part of the Mortgaged Property through a Condemnation, Borrower shall continue to pay the Debt at the time and in the manner provided for its payment in the Note, this Security Instrument and the Other Security Documents, and the Debt shall not be reduced until any award or payment therefor shall have been actually received and applied by Lender (after deducting any expenses of collection, including reasonable attorney's fees) to the Debt. Lender shall not be limited to the rate of interest paid on any such award or payment from a Condemnation but shall be entitled to receive out of such award or payment interest at the rate then applicable under the Note. Borrower shall cause any award or payment payable to Borrower in any Condemnation to be paid directly to Lender. Lender shall apply, at Lender's discretion, any such award or payment (after deducting any expenses of collection, including reasonable attorney's fees) to (a) the reduction or discharge of the Debt (whether or not then due and payable) or (b) the restoration, repair, replacement, or rebuilding of the portion of the Mortgaged Property remaining after the Condemnation. No Prepayment Consideration shall be payable solely in connection with such application; provided, however, that notwithstanding the foregoing, if an Event of Default is existing as of the date of the Condemnation, or an event has occurred as of the date of the Condemnation that with notice and/or the passage of time, or both, would constitute an Event of Default hereunder, then any Condemnation awards or proceeds applied to the Debt pursuant to this section shall be subject to the Prepayment Consideration computed in accordance with the terms of the Note. If the Mortgaged Property is sold, through foreclosure or otherwise, prior to the receipt by Lender of any such award or payment, Lender shall have the right, whether or not a deficiency judgment on the Note shall have been sought, recovered or denied, to receive said award or payment in an amount sufficient to fully satisfy the Debt.

8. Leases and Rents. Borrower does hereby absolutely and unconditionally assign to Lender 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. The terms and conditions of this assignment shall be governed by the Assignment of Leases and Rents (the "Assignment of Leases") executed by Borrower in favor of Lender contemporaneously with this Security Instrument. Except as permitted pursuant to the Assignment of Leases, Borrower shall not enter into any future Leases of all or any part of the Mortgaged Property.

9. Maintenance, Use and Management of Mortgaged Property.

(a) Borrower shall maintain the Mortgaged Property in good condition and repair and in such a manner as to allow the Mortgaged Property to remain consistently competitive in its market. The Improvements and the Equipment shall not be removed, demolished or materially altered (except for normal replacement of the Equipment) without the consent of Lender, not to be unreasonably withheld. Borrower shall promptly repair, replace or rebuild any part of the Mortgaged Property which may become damaged, worn or dilapidated, and shall also complete and pay for any structure at any time in the process of construction or repair on the Premises. Borrower shall promptly comply with all laws, orders and ordinances affecting the Mortgaged Property, or the use thereof, except that Borrower shall be permitted to contest any change or proposed change thereto under the same terms and conditions as permitted in paragraph 5(b), above.

(b) Without limiting any rights Lender or its selected representatives may possess hereunder, under the Note or under any Other Security Document to inspect the Mortgaged Property, Lender shall have the right to conduct physical inspections of the Mortgaged Property to ensure Borrower is appropriately maintaining the Mortgaged Property. Following any such inspection, should Lender reasonably determine that the Mortgaged Property has not been maintained as required herein, Lender shall have the right to demand that Borrower complete corrective measures within a ninety (90) day

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period of time. Failure of Borrower to complete such corrective measures within such period shall constitute an immediate Event of Default and shall entitle Lender to exercise all remedies available to it, including, without limitation, performing Borrower's obligations hereunder.

(c) Borrower shall use and continuously operate and permit the use and continuous operation of the Premises and the Improvements as provided for in Borrower's original loan application to Lender.

(d) Unless Lender otherwise consents in writing, Borrower shall not initiate, join in, acquiesce in or consent to: (i) the removal or resignation of the property manager for the Mortgaged Property; or (ii) if such property manager is an entity affiliated with Borrower, the transfer of ownership, management or control of such property manager to a person or entity other than Borrower, its managing member, general partner or similar controlling entity in Borrower.

(e) Unless Lender otherwise consents in writing, Borrower shall not initiate, join in or consent to: (i) any change, modification or alteration of the existing access to the Mortgaged Property; (ii) any change in any private restrictive covenant, replat, easement, zoning law or other public or private restriction, limiting or defining the uses which may be made of the Mortgaged Property or any part thereof. If under applicable zoning provisions the use of all or any portion of the Mortgaged Property is or shall become a nonconforming use, Borrower will not cause or permit such nonconforming use to be discontinued or abandoned without the express written consent of Lender.

## 10. Sale of Mortgaged Property or Change in Borrower.

(a) Borrower acknowledges that Lender has examined and relied on the creditworthiness and experience of Borrower in agreeing to make the loan secured hereby, and that Lender has a valid interest in maintaining the value of the Mortgaged Property so as to ensure that should Borrower default in the repayment of the Debt, Lender can recover the Debt by a sale of the Mortgaged Property.

(b) Except as expressly permitted by this Security Instrument or the Assignment of Leases and Rents, Borrower shall not sell, transfer, lease, assign, mortgage, convey, encumber (including granting any easements or other interests affecting title to the Mortgaged Property) or in any manner dispose of any of its interest in all or any portion of the Mortgaged Property, voluntarily, involuntarily or by operation of law, without the prior written consent of Lender, which Lender may withhold in its sole, absolute and exclusive discretion. Lender may require as a condition of its consent the payment of a fee and/or a change in the terms and conditions of repayment of the Debt, including an increase in interest rate payable and/or a reduction in the time remaining prior to the Maturity Date, as defined in the Note. For the purpose of this Section 10, a change in the control or management of Borrower (including any change in the manager or managing member of Borrower), transfer of any ownership or voting interests in a corporation, partnership, joint venture or limited liability company of Borrower or any entity comprising Borrower (including a transfer of any such ownership interest to another holder of an ownership interest in Borrower), or the death or dissolution of Borrower or any Guarantor, shall be deemed a transfer of the Mortgaged Property which gives Lender the right to exercise the remedies set forth herein.

(c) Borrower shall give Lender sixty (60) days' prior written notice of any proposed transaction which requires Lender's consent, and Borrower shall furnish to Lender such information as Lender may reasonably require. Lender may require, as additional conditions of its consent to any transfer or conveyance of the Mortgaged Property or any portion thereof, that: (i) any person succeeding to an ownership interest in the Mortgaged Property or any portion thereof assume personal liability for

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the payment and performance of the Debt, and Lender, in its sole discretion, may require any one or more of the principals of any transferee which constitutes an entity to guaranty the Debt; (ii) Borrower and all Guarantors consent to the transfer and confirm that the transfer will have no effect upon their continuing obligations and liability for the payment and performance of the Debt; (iii) Borrower provide to Lender such documentation, title insurance endorsements, opinions of counsel and other items as Lender may determine are reasonably required or prudent to assure that Lender's rights under the Note, this Security Instrument and the Other Security Documents are maintained in full force and effect and are not impaired; (iv) Borrower or such transferee, as appropriate, authorizes the filing or recording of such financing statements and other documents as Lender may require in its conservative discretion in order to continue the perfected status of its security interests with respect to the Mortgaged Property; (v) Borrower or the transferee pay to Lender a non-refundable transfer fee equal to one percent (1.0%) of the then outstanding principal balance of the Note, but in no event less than \$10,000 (which shall be deemed earned upon Lender's written approval of the transferee), and reimburse Lender for its reasonable legal and other expenses in connection with the consideration and documentation of the transfer and assumption; and (vi) no Event of Default shall then exist. Consent to any one transaction shall not release Borrower or any guarantor from personal liability for the Debt or be deemed to constitute consent to any other transaction, and shall in no way obligate Lender to subordinate the lien of this Security Instrument to any interest created by such sale, transfer, lease, assignment, conveyance, encumbrance or other disposition.

(d) If the ownership of the Mortgaged Property or any portion thereof becomes vested in any person other than Borrower, Lender may deal with such successor(s) in interest with reference to the Debt and this Security Instrument in the same manner as with Borrower, without in any way vitiating or discharging Borrower's liability hereunder or for payment of the Debt. However, the foregoing sentence shall in no way constitute or imply Lender's consent to any transfer of the ownership of the Mortgaged Property or any portion thereof and Borrower's violation of the provisions of this Section 10 shall entitle Lender to accelerate the Debt (and to collect any applicable prepayment premium due upon acceleration under the Note).

## 11. Anti-Terrorism Laws.

(a) Neither Borrower nor any of its affiliates is in violation of any laws or regulations relating to terrorism or money laundering ("Anti-Terrorism Laws"), including Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001 (the "Executive Order") and the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107-56.

(b) Neither Borrower, any of its affiliates, or any of its brokers or other agents acting or benefitting from the Loan is a Prohibited Person. A "Prohibited Person" is any of the following:

- (i) a person or entity that is listed in the Annex to, or is otherwise subject to the provisions of, the Executive Order;
- (ii) a person or entity owned or controlled by, or acting for or on behalf of, any person or entity that is listed in the Annex to, or is otherwise subject to the provisions of, the Executive Order;
- (iii) a person or entity with whom any Lender is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law;

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(iv) a person or entity who commits, threatens or conspires to commit or supports "terrorism" as defined in the Executive Order; or

(v) a person or entity that is named as a "specially designated national and blocked person" on the most current list published by the U.S. Treasury Department Office of Foreign Asset Control at its official website or any replacement website or other replacement official publication of such list.

(c) Neither Borrower, any of its affiliates or any of its brokers or other agents acting in any capacity in connection with the Loan (1) conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any Prohibited Person, (2) deals in, or otherwise engages in any transaction relating to, any property or interests in property blocked pursuant to the Executive Order, or (iii) engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law.

(d) Borrower shall not (1) conduct any business or engage in making or receiving any contribution of funds, goods or services to or for the benefit of any Prohibited Person, (ii) deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked pursuant to the Executive Order or any other Anti-Terrorism Law, or (iii) engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law (and Borrower shall deliver to Lender any certification or other evidence requested from time to time by any Lender in its reasonable discretion, confirming Borrower's compliance herewith).

## 12. Estoppel Certificates and No Default Affidavits.

(a) After request by Lender, Borrower shall within ten (10) business days furnish Lender with a statement, duly acknowledged and certified by Borrower, setting forth: (i) the amount of the original principal amount of the Note; (ii) the unpaid principal amount of the Note; (iii) the rate of interest of the Note; (iv) the date installments of interest and/or principal were last paid; (v) any offsets or defenses to the payment of the Debt, if any; and (vi) that the Note, this Security Instrument and the Other Security Documents are valid, legal and binding obligations and have not been modified, or if modified, giving particulars of such modification. Lender shall, within ten (10) business days after Borrower's written request, furnish to Borrower a statement identifying the unpaid principal amount of the Note.

(b) Within ten (10) business days after request by Lender, Borrower will furnish Lender with estoppel certificates, in form and content satisfactory to Lender, from and executed by all tenants specified by Lender (other than tenants under Leases for residential purposes, congregate care services or mini-warehouse storage rentals where such storage rental is less than ten percent (10%) of the rentable square footage of such storage facility (collectively "Residential Leases")). If any tenant fails to provide such estoppel certificate, Borrower shall provide a certificate with respect to the tenancy of such tenant, in form and substance satisfactory to Lender.

13. Cooperation; Loan Servicing. Borrower acknowledges that Lender and its successors and assigns may: (a) sell or assign this Security Instrument, the Note and any of the Other Security Documents to one or more investors as a whole loan; (b) sell or assign a participation interest in the Debt to one or more investors; (c) deposit this Security Instrument, the Note and any of the Other Security Documents with a trust, which trust may sell certificates to investors evidencing an ownership interest in the trust assets; or (d) otherwise sell or assign the Debt, the Note, this Security Instrument and any of the



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Other Security Documents, or any interest therein to investors. The transactions referred to in subparagraphs (a) through (d) above are hereinafter referred to as "Secondary Market Transactions". Borrower shall cooperate in good faith with Lender in effecting any such Secondary Market Transaction and in addressing such matters as any party involved in a Secondary Market Transaction may require, including the provision of such information and documents relating to Borrower, any Guarantors, the Mortgaged Property and any tenants of the Improvements as Lender may reasonably request in connection with a Secondary Market Transaction. Lender shall have the right to provide to prospective investors any information in its possession, including, without limitation, financial statements relating to Borrower, any Guarantors, the Mortgaged Property and any tenant of the Improvements. Borrower acknowledges that certain information regarding the Loan and the parties thereto and the Mortgaged Property may be included in a private placement memorandum, prospectus or other disclosure documents, to the extent not prohibited by law. Prior to or in connection with a Secondary Market Transaction, Lender may assign or delegate all or part of the responsibility for servicing the Loan to one or more loan servicers. All references to Lender herein, in the Note or any other Security Document, shall include all such loan servicers.

#### 14. Books and Records; Reporting Requirements; Appraisal.

(a) Borrower and Guarantor(s), if any, shall keep complete and accurate books and records of account in accordance with reasonable accounting standards, consistently applied. Borrower shall deliver, or cause to be delivered, the reports and financial statements described below, all in form acceptable to Lender (collectively the "Reports"), within the time period required. Any required certification of such reports and financial statements must be by the chief financial officer (or other person acceptable to Lender) of Borrower or Guarantor, as applicable.

(i) Within ninety (90) days after the close of each fiscal year of Borrower, Borrower shall deliver, or cause to be delivered to Lender: (A) a certified current rent roll; (B) a certified annual operating statement of the Mortgaged Property; and (C) a certified annual balance sheet and profit and loss statement of Borrower. The foregoing may each be certified by Borrower or any Guarantor. If the original principal amount of the Loan was \$20,000,000.00 or more, then all of the foregoing must be delivered within sixty (60) days after the close of each fiscal year of Borrower and must be audited by independent certified public accountants acceptable to Lender.

(ii) Within thirty (30) days after the close of the separate individual fiscal years of any Guarantor, Borrower shall deliver, or cause to be delivered to Lender, a certified annual balance sheet and property schedule form from the tax return of each Guarantor certified by each Guarantor, if any. If the original principal amount of the Loan was \$20,000,000.00 or more, then all of the foregoing must be delivered within sixty (60) days after the close of each fiscal year of Guarantor and must be audited by independent certified public accountants acceptable to Lender.

(iii) Within thirty (30) days after the close of each calendar quarter, Borrower shall deliver, or cause to be delivered to Lender the following: (A) a certified current rent roll; (B) a certified quarterly operating statement of the Mortgaged Property; (C) a certified quarterly balance sheet and profit and loss statement of Borrower.

(iv) Within thirty (30) days after filing, Borrower shall deliver, or cause to be delivered to Lender a certified copy of Borrower's tax return.

#### (b) Intentionally Omitted

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(c) Borrower shall supplement the required Reports and provide such other financial information in respect of Borrower, any Guarantor and the Mortgaged Property as Lender, from time to time, may reasonably request. Borrower agrees that failure to timely deliver any of the Reports shall be an Event of Default hereunder. Notwithstanding the foregoing, with respect to any Report not expressly provided in this Section 14, an Event of Default shall not be deemed to have occurred unless and until the Borrower fails to provide such Report within ten (10) business days after the date of Lender's written request.

(d) Lender shall have the right (but not the obligation), in Lender's discretion, at any time in connection with a foreclosure against the Property or if Lender believes it is required to order an appraisal to comply with applicable regulations, or if Lender believes that the absence of a current appraisal will result in a downgrade of the loan for regulatory purposes, to request and obtain from an appraiser acceptable to Lender, an updated appraisal of the Mortgaged Property, which includes an opinion of value and supporting information reasonably acceptable to Lender. If such an appraisal is obtained, Borrower agrees to cooperate with any appraiser, allow access to the Mortgaged Property and provide copies of leases, operating statements, plans and any other information reasonably requested by such appraiser. Borrower shall pay to Lender, within thirty (30) days following demand, the cost of the updated appraisal; provided, however, that Borrower shall not be required to pay for more than one such appraisal during the term of the Loan if an Event of Default does not then exist. Upon Borrower's payment for the updated appraisal and execution of Lender's then standard form of appraisal indemnity agreement, Borrower may obtain a copy of the updated appraisal if an Event of Default does not then exist.

15. Performance of Other Agreements. Borrower shall observe and perform each and every term to be observed or performed by Borrower pursuant to the terms of any agreement or recorded instrument affecting or pertaining to the Mortgaged Property.

16. Further Acts, Etc. Borrower will, at Borrower's cost, complete and deliver any such further acts or documents required by Lender, from time to time, to correct errors in the documenting of the Loan or to better assure, convey, assign, transfer, perfect or confirm unto Lender the property and rights intended to be given it in this Security Instrument, the Note or any Other Security Document. 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 under the Note, this Security Instrument, the Other Security Documents, at law or in equity, including without limitation the rights and remedies described in this paragraph.

17. Recording of Security Instrument, Etc. Except where otherwise prohibited by law, Borrower will pay all filing, registration or recording fees, and all expenses incident to the preparation, execution, acknowledgment, and subsequent release or reconveyance of this Security Instrument and the Note, any deed of trust or mortgage supplemental hereto, any security instrument with respect to the Mortgaged Property, any instrument of further assurance and all federal, state, county and municipal, taxes, duties, impositions, assessments and charges arising out of or in connection with the same. Borrower shall hold harmless and indemnify Lender, its successors and assigns, against any liability incurred by reason of the imposition of any tax on the making and recording of this Security Instrument.

18. Events of Default. The Debt shall become immediately due and payable at the option of Lender, without notice or demand, upon the occurrence of any one or more of the following events (each an "Event of Default"):

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- (a) if Borrower fails to make the full and punctual payment of any amount payable pursuant to this Security Instrument, the Note or any Other Security Document as and when the same becomes due and payable;
- (b) if Borrower fails to pay the entire outstanding principal balance of the Note, together with all accrued and unpaid interest, on the date when due, whether on the Maturity Date (as defined in the Note), or upon acceleration, or on the Prepayment Date (as defined in the Note);
- (c) if Borrower fails to make the full and punctual payment of Taxes or Other Charges as required hereby, and such failure continues after five (5) days from the date of written notice from Lender;
- (d) if Borrower fails to keep the Policies of insurance required hereby in full force and effect, or fails to promptly deliver copies thereof to Lender upon request;
- (e) if a transfer, sale, encumbrance or pledge of all or any portion of the Mortgaged Property occurs or a change in ownership of the Borrower occurs in violation of the provisions of this Security Instrument, or if Borrower violates or does not comply with the provisions of the Assignment of Leases;
- (f) if any representation or warranty of Borrower or any Guarantor made herein, in any guaranty or indemnity or in any certificate, report, financial statement or other instrument or document furnished to Lender shall have been false or misleading in any material respect when made;
- (g) if Borrower shall make an assignment for the benefit of creditors or if Borrower is not paying debts as and when the same become due;
- (h) if a receiver, liquidator or trustee of Borrower shall be appointed or if Borrower is adjudicated bankrupt or insolvent, or if any petition for bankruptcy, reorganization or arrangement pursuant to federal bankruptcy law, or any similar federal or state law, shall be filed by or against, consented to, or acquiesced in by, Borrower or if any proceeding for the dissolution or liquidation of Borrower shall be instituted; however, if such appointment, adjudication, petition or proceeding was involuntary and not consented to by Borrower, then upon the same not being discharged, stayed or dismissed within sixty (60) days;
- (i) if Borrower shall be in default under any other deed of trust, mortgage or security agreement covering any part of the Mortgaged Property whether it be superior or junior in priority to this Security Instrument (it not being implied by this clause that any such encumbrance will be permitted);
- (j) if the Mortgaged Property becomes subject to any mechanic's, materialman's or other lien (other than a lien for local real estate taxes and assessments not then due and payable, or any lien being contested by Borrower pursuant to its rights hereunder) and such lien shall remain undischarged of record (by payment, bonding or otherwise) for a period of fifteen (15) calendar days;
- (k) the expiration, dismissal or final adjudication of any appeal rights of Borrower in connection with any judgment entered against it in excess of \$100,000.00 which is not fully covered by insurance (other than Borrower's deductible, if any);
- (l) if Borrower fails to promptly and diligently cure any material violations of laws or ordinances affecting the Mortgaged Property, unless Borrower is diligently contesting such violations and satisfying all terms and conditions of Section 5(b)(i)-(vi) hereof;

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(m) Borrower or any Guarantor or the then owner of the Mortgaged Property (i) dies, is dissolved, liquidated or terminated, or otherwise ceases to exist, or (ii) becomes physically incapacitated or mentally incompetent and, in Lender's judgment, such incapacitation or incompetency prevents such party from providing adequate management or administration of the Mortgaged Property;

(n) Intentionally Deleted;

(o) The Note, this Security Instrument or any Guaranty shall, at any time, and for any reason (except as may be approved by Lender), cease to be in full force and effect or shall be declared null and void, or the validity or enforceability thereof shall be contested by Borrower or any Guarantor, or Borrower or any Guarantor shall deny that it has any further liability or obligation thereunder; or

(p) if for more than thirty (30) days after written notice from Lender, Borrower shall fail to perform any other term, covenant or condition of the Note, this Security Instrument or any of the Other Security Documents, provided, however, that if such failure to perform is of a type which cannot be cured within such thirty (30) day period and Borrower diligently commences and prosecutes such cure, Lender shall allow a reasonable additional time period (not to exceed sixty (60) additional days) to complete such cure.

19. Right to Cure Defaults. Upon the occurrence of any Event of Default, or if Borrower fails to make any payment or to do any act as herein required, Lender may do such acts or make such payments in Borrower's stead, in such manner and to the extent that Lender may deem necessary to protect the security hereof. Any such acts or payments by Lender shall be at Lender's sole discretion, may be taken without notice to or demand on Borrower, and will not release Borrower from any obligation hereunder. Lender is authorized to enter upon the Mortgaged Property for such purposes, or appear in, defend or bring any action or proceeding to protect its interest in the Mortgaged Property, to cause this Security Instrument to be foreclosed or to collect the Debt. All such costs and expenses (including attorney fees) incurred by Lender in remedying any such Event of Default, in acting or making payments in Borrower's stead, or in appearing in, defending or bringing any of the foregoing actions or proceedings, shall bear interest at the Default Rate from the date incurred by Lender until the date of payment to Lender. All such costs and expenses incurred by Lender together with interest thereon calculated at the above rate shall be deemed to constitute a portion of the Debt and be secured by this Security Instrument and the Other Security Documents and shall be immediately due and payable upon demand by Lender therefor. All advances, disbursements and expenditures made by Lender before and during a foreclosure and before and after a judgment of foreclosure and at any time prior to sale, and where applicable after sale, shall have the benefit of all applicable provisions of the Illinois Mortgage Foreclosure Act, as amended from time to time.

20. Lender's Remedies.

(a) Upon the occurrence of any Event of Default, Lender may take such action, without notice or demand, as it deems advisable to protect and enforce its rights against Borrower and in and to the Mortgaged Property, including, without limitation, the following actions:

(i) declare the entire Debt to be immediately due and payable;

(ii) institute proceedings to foreclose this Security Instrument, in which case the Mortgaged 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;

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- (iii) 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 Security Instrument for the portion of the Debt then due and payable, subject to the continuing lien of this Security Instrument for the balance of the Debt not then due;
- (iv) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein, in the Note or the Other Security Documents;
- (v) recover judgment on the Note either before, during or after any proceedings for the enforcement of this Security Instrument;
- (vi) apply for and obtain as a matter of strict right the appointment of a trustee, receiver, liquidator or conservator of the Mortgaged Property, without notice and without regard for the adequacy of the security for the Debt or the solvency of Borrower, any Guarantor or of any person, firm or other entity liable for the payment of the Debt and without any showing of fraud or mismanagement on the part of Borrower, to take possession of and to operate the Mortgaged Property, and to collect and apply the rents, issues, profits and revenues thereof;
- (vii) enforce Lender's interest in the Leases and Rents and enter into or upon the Mortgaged Property, either personally or by its agents, nominees or attorneys and dispossess Borrower and its agents and servants therefrom, and thereupon Lender may: (A) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Mortgaged Property and conduct the business thereat; (B) complete any construction on the Mortgaged Property in such manner and form as Lender deems advisable; (C) make alterations, additions, renewals, replacements and improvements to or on the Mortgaged Property; (D) exercise all rights and powers of Borrower with respect to the Mortgaged 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 earnings, revenues, rents, issues, profits and other income of the Mortgaged Property and every part thereof; and (E) apply the receipts from the Mortgaged Property to the payment of the Debt, after deducting therefrom all expenses (including reasonable attorney fees) incurred in connection with the aforesaid operations and all amounts necessary to pay the Taxes, assessments, Insurance Premiums and Other Charges in connection with the Mortgaged Property, as well as just and reasonable compensation for the services of Lender, its counsel, agents and employees; or
- (viii) pursue such other rights and remedies as may then be available at law and in equity. To the extent permitted presently or in the future by laws of the state in which the Premises and Improvements are located, Lender may institute a proceeding or proceedings, judicial, or nonjudicial, by advertisement or otherwise, for the complete or partial foreclosure of this Security Instrument or the complete or partial sale of the Mortgaged Property under a power of sale which power is hereby granted to Lender.

In the event of a sale, by foreclosure or otherwise, of less than all of the Mortgaged Property, this Security Instrument shall continue as a lien on the remaining portion of the Mortgaged Property.

(b) Upon the completion of any sale or sales made under or by virtue of this Security Instrument, an officer of any court empowered to do so shall execute and deliver to the purchaser or purchasers a good and sufficient instrument, or good and sufficient instruments, conveying, assigning and transferring all estate, right, title and interest in and to the property and rights sold. Lender is hereby

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irrevocably appointed the true and lawful attorney of Borrower, in its name and stead, to make all necessary conveyances, assignments, transfers and deliveries of the Mortgaged Property and rights so sold, and for that purpose Lender may execute all necessary instruments of conveyance, assignment and transfer, and may substitute one or more persons with like power, Borrower hereby ratifying and confirming all that Lender shall lawfully do by virtue hereof. Any such sale or sales made under or by virtue of this Security Instrument pursuant to any judicial proceedings or any judgment or decree of foreclosure and sale, shall operate to divest all the estate, right, title, interest, claim and demand whatsoever, whether at law or in equity, of Borrower in and to the properties and rights so sold, and shall be a perpetual bar both at law and in equity against Borrower and against any and all persons claiming or who may claim the same, or any part thereof from, through or under Borrower.

(c) In any suit or proceeding to foreclosure the lien hereof, there shall be allowed and included as additional indebtedness in judgment or decree of foreclosure and sale, all expenditures and expenses which may be paid or incurred by or on behalf of Lender for attorney fees, appraiser fees, outlays for documentary and expert evidence, stenographer charges, publication costs and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies and similar data and assurances with respect to title, as Lender may deem reasonably necessary either to prosecute such suit or to evidence to bidders at sales which may be had pursuant to such decree the true conditions of the title to or the value of the Mortgaged Property. Upon any sale made under or by virtue of this Security Instrument pursuant to any judicial proceedings or any judgment or decree of foreclosure and sale, Lender may bid for and acquire the Mortgaged Property or any part thereof and in lieu of paying cash therefor may make settlement for the purchase price by crediting upon the Debt the net sales price after deducting therefrom, to the extent allowed by applicable law, the expenses of the sale and costs of the action and any other sums which Lender is authorized to deduct under this Security Instrument.

(d) No recovery of any judgment by Lender and no levy of an execution under any judgment upon the Mortgaged Property or upon any other property of Borrower shall affect in any manner or to any extent the lien of this Security Instrument upon the Mortgaged Property or any part thereof, or any liens, rights, powers or remedies of Lender hereunder, but such liens, rights, powers and remedies of Lender shall continue unimpaired as before.

(e) Lender may release, regardless of consideration and without the necessity for any notice to or a consent by any person or entity, any part of the Mortgaged Property without, as to the remainder, in any way impairing, affecting, subordinating or releasing the lien or security interests created in or evidenced by this Security Instrument or the Other Security Documents or their stature as a first and prior lien and security interests in and to the Mortgaged Property. For payment of the Debt, Lender may resort to any security in such order and manner as Lender may elect.

(f) Lender shall have all rights, remedies and recourses granted in this Security Instrument and the Other Security Documents or available at law or equity (including the Uniform Commercial Code), which rights: (i) shall be cumulative and concurrent; (ii) may be pursued separately, successively or concurrently against Borrower or others obligated under the Note, this Security Instrument and the Other Security Documents, or against the Mortgaged Property, or against any one or more of them, at the sole discretion of Lender; (iii) may be exercised as often as occasion therefore shall arise and exercise or failure to exercise any of them shall not be construed as a waiver or release thereof or of any other right, remedy or recourse; and (iv) are intended to be, and shall be, nonexclusive. No enforcement of any rights, remedies or recourse under the Note, this Security Instrument and the Other Security Documents or otherwise at law or equity shall be deemed to cure any Event of Default. The remedies provided for in this Security Instrument may be exercised in any order.

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21. Changes in the Laws Regarding Taxation. If any law is enacted or adopted or amended after the date of this Security Instrument which imposes a tax, either directly or indirectly, on the Debt or Lender's interest in the Mortgaged Property, Borrower will pay such tax, with interest and penalties thereon, if any. In the event Lender is advised by counsel chosen by it that the payment of such tax or interest and penalties by Borrower would be unlawful or taxable to Lender or unenforceable or provide the basis for a defense of usury, then in any such event, Lender shall have the option, by written notice of not less than ninety (90) days, to declare the entire Debt immediately due and payable; provided, however, that no Prepayment Consideration shall be required solely as a result of a prepayment required by any such declaration.

22. Documentary Stamps. 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 or this Security Instrument, or impose any other tax or charge on the same, Borrower will pay for the same, with interest and penalties thereon, if any.

23. Usury Law. This Security Instrument, the Other Security Documents and the Note are subject to the express condition that at no time shall Borrower be obligated or required to pay interest on the Debt or any other charges at a rate which could subject Lender to either civil or criminal liability as a result of being in excess of the maximum interest rate which Borrower is permitted by law to contract or agree to pay. If by the terms of this Security Instrument, the Other Security Documents or the Note, Borrower is at any time required or obligated to pay any such amounts at a rate in excess of such maximum rate, the rate of interest under the Note shall be deemed to be immediately reduced to such maximum rate and the interest payable shall be computed at such maximum rate and all previous payments in excess of such maximum rate shall be deemed to have been payments in reduction of the principal and not on account of the interest due hereunder.

24. Right of Entry. Lender and its agents shall have the right to enter and inspect the Mortgaged Property at all reasonable times.

25. Reasonable Use and Occupancy. In addition to the rights which Lender may have herein, upon the occurrence of any Event of Default, Lender, at its option, may 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 Mortgaged Property as may be occupied by Borrower, or may require Borrower to vacate and surrender possession of the Mortgaged Property to Lender or to such receiver and, in default thereof, Borrower may be evicted by summary proceedings or otherwise.

26. Security Agreement. This Security Instrument is both a real property mortgage and a "security agreement" within the meaning of the Uniform Commercial Code adopted and enacted by the state or states where any of the Mortgaged Property is located (the "Uniform Commercial Code"), made by and between Borrower, as debtor, and Lender, as secured party. Borrower hereby grants to Lender, as security for the Debt, a security interest in the Mortgaged Property to the full extent that the Mortgaged Property may be subject to the Uniform Commercial Code (said portion of the Mortgaged Property so subject to the Uniform Commercial Code being herein referred to as the "Collateral"). If an Event of Default shall occur, 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.

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Upon request or demand of Lender, Borrower shall at its expense assemble the Collateral and make it available to Lender at a convenient place acceptable to Lender. Borrower shall pay to Lender on demand any and all expenses, including legal expenses and attorney fees, incurred or paid by Lender in protecting the interest in the Collateral and in enforcing Lender's rights hereunder with respect to the Collateral. 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 five (5) days prior to such action, shall constitute commercially reasonable notice to Borrower. The Collateral may be sold in such manner, portions, order or parcels as Lender may determine, with or without having first taken possession of same. The right of sale arising out of any Event of Default shall not be exhausted by any one or more sales or attempted sales, any other action, proceeding, or other exercise of a remedy, and the liens granted by this Security Instrument shall continue unimpaired. The proceeds of any disposition of the Collateral, or any part thereof, may be applied by Lender to the payment of the Debt in such priority and proportions as Lender in its discretion shall deem proper.

27. Actions and Proceedings. Lender has the right to appear in and defend any action or proceeding brought with respect to the Mortgaged Property and to bring any action or proceeding, in the name and on behalf of Borrower, which Lender, in its reasonable discretion, decides should be brought to protect its interest in the Mortgaged Property. Lender shall, at its option, be subrogated to the lien of any deed of trust, mortgage or other security instrument discharged in whole or in part by the Debt, and any such subrogation rights shall constitute additional security for the payment of the Debt.

28. WAIVER OF COUNTERCLAIM. 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, AND, TO THE EXTENT PERMITTED BY LAW, WAIVES TRIAL BY JURY IN ANY ACTION OR PROCEEDING BROUGHT BY EITHER PARTY HERETO AGAINST THE OTHER, IN ANY COUNTERCLAIM ASSERTED BY LENDER, OR ITS SUCCESSORS OR ASSIGNS, AGAINST BORROWER OR IN ANY MATTERS WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS SECURITY INSTRUMENT, THE NOTE, ANY OF THE OTHER SECURITY DOCUMENTS OR THE DEBT.

29. 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.

30. Marshalling and Other Matters. Borrower hereby waives, to the extent permitted by law, the benefit of all appraisal, valuation, stay, extension, reinstatement, redemption and similar laws now or hereafter in force and all rights of marshalling in the event of any sale hereunder of the Mortgaged 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 Security Instrument on behalf of Borrower, and on behalf of each and every person acquiring any interest in or title to the Mortgaged Property subsequent to the date of this Security Instrument and on behalf of all persons to the extent permitted by applicable law.

31. Costs and Expenses. Without limiting Lender's rights under any other provision herein or in the Note or any Other Security Document, Borrower agrees that it will reimburse Lender for any and all costs and expenses incurred by Lender in connection with any breach or default of this Security



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Instrument, the Note or any Other Security Document, or in connection with any request that Lender take, or refrain from taking, any action with respect to Borrower or the Mortgaged Property.

## 32. Access Laws.

(a) Borrower agrees that the Mortgaged Property shall at all times comply with the requirements of the Americans with Disabilities Act of 1990, the Fair Housing Amendments Act of 1988, all similar state and local laws and ordinances related to access and all rules, regulations, and orders issued pursuant thereto including, without limitation, the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (collectively the "Access Laws").

(b) Notwithstanding any provisions set forth herein or in any other document regarding Lender's approval of alterations of the Mortgaged Property, Borrower shall not alter the Mortgaged Property in any manner which would increase Borrower's responsibilities for compliance with the applicable Access Laws without the prior written approval of Lender. The foregoing shall apply to tenant improvements constructed by Borrower or by any of its tenants. Lender may condition any such approval upon receipt of a certificate of an architect, engineer or other person acceptable to Lender regarding compliance with applicable Access Laws.

(c) Borrower agrees to give prompt notice to Lender of the receipt by Borrower of any complaints related to any violations of any Access Laws and of the commencement of any proceedings or investigations which relate to compliance with applicable Access Laws.

33. Indemnification. Borrower shall protect, defend, indemnify and save harmless Lender from and against all liabilities, obligations, claims demands, damages, penalties, causes of action, losses, fines, costs and expenses (including without limitation reasonable attorney fees and expenses) (the "Indemnified Obligations"), imposed upon, incurred by or asserted against Lender by reason of: (a) ownership of this Security Instrument, the Mortgaged Property or any interest therein or receipt of any Rents; (b) any accident, injury to or death of persons or loss of or damage to property occurring in, on or about the Mortgaged Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (c) any use, non-use or condition in, on or about the Mortgaged Property or any part thereof or on adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (d) performance of any labor or services or the furnishing of any materials or other property in respect of the Mortgaged Property or any part thereof; and (e) any failure of the Mortgaged Property to comply with any Access Laws. Any amounts payable to Lender by reason of the application of this indemnification shall be secured by this Security Instrument and the Other Security Documents, 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. The obligations and liabilities of Borrower under this paragraph shall survive any termination, satisfaction or assignment of this Security Instrument and the exercise by Lender of any of its rights or remedies hereunder, including, but not limited to, the acquisition of the Mortgaged Property by foreclosure or a conveyance in lieu of foreclosure. The foregoing indemnification shall not relate to Indemnified Obligations arising from Lender's gross negligence or willful misconduct.

34. Notices. Except as otherwise specified herein, any notice, consent, request or other communication required or permitted hereunder shall be in writing and shall be deemed properly given if delivered in accordance with the notice requirements contained in the Note.

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35. Authority.

(a) Borrower (and the undersigned representative of Borrower, if any) has full power, authority and right to execute, deliver and perform its obligations pursuant to this Security Instrument, and to mortgage, give, grant, bargain, sell, alienate, convey, confirm, pledge, hypothecate and assign the Mortgaged Property pursuant to the terms hereof and to keep and observe all of the terms of this Security Instrument on Borrower's part to be performed.

(b) Borrower represents and warrants that Borrower is not a "foreign person" within the meaning of Section 1445(f)(3) of the Internal Revenue Code of 1986, as amended, and the related Treasury Department regulations, including temporary regulations.

36. Waiver of Notice. Borrower shall not be entitled to any notices of any nature whatsoever from Lender except with respect to matters for which this Security Instrument 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 other notice.

37. Remedies of Borrower. In the event that a claim or adjudication is made that Lender has acted unreasonably or unreasonably delayed acting in any case where by law or under the Note, this Security Instrument or the Other Security Documents, it has an obligation to act reasonably or promptly, Lender shall not be liable for any monetary damages, and Borrower's remedies shall be limited to injunctive relief or declaratory judgment.

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

39. Nonwaiver. 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 Security Instrument. Borrower shall not be relieved of Borrower's obligations hereunder by reason of: (a) the failure of Lender to comply with any request of Borrower or any Guarantor to take any action to foreclose this Security Instrument or otherwise enforce any of the provisions hereof, of the Note or the Other Security Documents; (b) the release, regardless of consideration, of the whole or any part of the Mortgaged Property, or of any person liable for the Debt or any portion thereof; or (c) any agreement or stipulation by Lender extending the time of payment or otherwise modifying or supplementing the terms of the Note, this Security Instrument or the Other Security Documents. 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 Security Instrument. The rights and remedies of Lender under this Security Instrument and the Other Security Documents 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.

40. Waiver of Automatic or Supplemental Stay. In the event of the filing of any voluntary or involuntary petition under the Bankruptcy Code by or against Borrower (other than an involuntary

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petition filed by or joined by Lender), Borrower shall not assert, or request any other party to assert, that the automatic stay under § 362 of the Bankruptcy Code shall operate or be interpreted to stay, interdict, condition, reduce or inhibit the ability of the Lender to enforce any rights it has by virtue of this Security Instrument, or any other rights that Lender has, whether now or hereafter acquired, against any Guarantor. Further, Borrower shall not seek a supplemental stay or any other relief, whether injunctive or otherwise, pursuant to §105 of the Bankruptcy Code or any other provision therein to stay, interdict, condition, reduce or inhibit the ability of Lender to enforce any rights it has by virtue of this Security Instrument against any Guarantor. The waivers contained in this paragraph are a material inducement to Lender's willingness to make the Loan, and Borrower acknowledges and agrees that no grounds exist for equitable relief which would bar, delay or impede the exercise by Lender of its rights and remedies against Borrower or any Guarantor. Notwithstanding the foregoing, Borrower makes no representation regarding the validity or enforceability of the rights granted to Lender under this Section

41. Bankruptcy Acknowledgment. In the event the Mortgaged Property or any portion thereof or interest therein becomes property of any bankruptcy estate or subject to any state or federal insolvency proceeding, then to the extent permitted by law Lender shall immediately become entitled, in addition to all other relief to which Lender may be entitled under this Security Instrument, to obtain: (a) an order from the Bankruptcy Court or other appropriate court granting immediate relief from any automatic stay laws (including §362 of the Bankruptcy Code) so to permit Lender to pursue its rights and remedies against Borrower as provided under this Security Instrument and all other rights and remedies of Lender at law and in equity under applicable state law; and (b) an order from the Bankruptcy Court prohibiting Borrower's use of all "cash collateral" as defined under §363 of the Bankruptcy Code. In connection with any such orders, Borrower shall not contend or allege in any pleading or petition that Lender does not have sufficient grounds for relief from the automatic stay. Any bankruptcy petition or other action taken by Borrower to stay, condition, or inhibit Lender from exercising its remedies are presumed to be in bad faith and Borrower further admits that Lender would have just cause for relief from the automatic stay in order to take such actions authorized by state law.

42. No Oral Change. This Security Instrument, 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.

43. Liability. If Borrower consists of more than one person, the obligations and liabilities of each such person hereunder shall be joint and several. This Security Instrument shall be binding upon and inure to the benefit of Borrower and Lender and their respective successors and assigns forever.

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

45. Headings, Etc. The headings and captions of various paragraphs of this Security Instrument 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.

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

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47. Definitions. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Security Instrument (including pronouns) shall include the corresponding masculine, feminine or neuter forms, and the singular form such words shall include the plural and vice versa. The word "Borrower" shall mean "each Borrower and any subsequent owner or owners of the Mortgaged 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 Security Instrument"; the word "person" shall include an individual, corporation, partnership, limited partnership, limited liability partnership, limited liability company, trust, unincorporated association, government, governmental authority and any other entity; and the words "Mortgaged Property" shall include any portion of the Mortgaged Property and any interest therein. Additionally, the word "Guarantor" shall mean any person or entity guaranteeing or indemnifying payment of the Debt or any portion thereof or performance by Borrower of any of the terms of this Security Instrument, the Note or the Other Security Documents, including, without limitation, any person or entity executing a Guaranty or similar agreement delivered to Lender in connection with the Loan.

48. Homestead. Borrower hereby waives and renounces all homestead and exemption rights provided by the constitution and the laws of the United States and of any state, in and to the Mortgaged Property as against the collection of the Debt, or any part hereof.

49. Assignments. Lender shall have the right to assign or transfer its rights under this Security Instrument without limitation. Any assignee or transferee shall be entitled to all the benefits afforded Lender under this Security Instrument.

50. Compliance with Illinois Mortgage Foreclosure Law.

(a) In the event that any provision in this Security Instrument shall be inconsistent with any provision of the Illinois Mortgage Foreclosure Law (Chapter 735, Sections 5/15-1101 et seq., Illinois Compiled Statutes) (the "Act") the provisions of the Act shall take precedence over the provisions of this Security Instrument, but shall not invalidate or render unenforceable any other provision of this Security Instrument that can be construed in a manner consistent with the Act.

(b) If any provision of this Security Instrument shall grant to Lender (including Lender acting as a mortgagee-in-possession) or a receiver appointed pursuant to the provisions of Section 20 of this Security Instrument any powers, rights or remedies prior to, upon or following the occurrence of an Event of Default which are more limited than the powers, rights or remedies that would otherwise be vested in Lender or in such receiver under the Act in the absence of said provision, Lender and such receiver shall be vested with the powers, rights and remedies granted in the Act to the full extent permitted by law.

(c) Without limiting the generality of the foregoing, all expenses incurred by Lender which are of the type referred to in Section 5/15-1510 or 5/15-1512 of the Act, whether incurred before or after any decree or judgment of foreclosure, and whether or not enumerated in this Security Instrument, shall be added to the indebtedness secured by this Security Instrument and/or by the judgment of foreclosure.

51. Integration. This Security Instrument, the Note and the Other Security Documents embody the entire agreement by and between Borrower and Lender with respect to the Loan, and any and all prior correspondence, discussions or negotiations are deemed merged therein; provided, however, that except to the extent inconsistent with the specific terms and provisions of this Security Instrument, the

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Note and the Other Security Documents, all representations, warranties, statements, covenants and agreements of Borrower contained in any loan commitment and/or loan application executed in connection with the Loan shall survive the funding of the Loan, any termination, satisfaction, or assignment of this Security Instrument and the exercise by Lender of any of its rights or remedies hereunder, including but not limited to, the acquisition of the Mortgaged Property by foreclosure or a conveyance in lieu of foreclosure.

52. Applicable Law; Jurisdiction. This Security Instrument shall be governed and construed in accordance with the laws of the state in which the Premises and Improvements encumbered by this Security Instrument are located. Borrower hereby submits to personal jurisdiction in the state courts located in said state and the federal courts of the United States of America located in said state for the enforcement of Borrower's obligations hereunder and waives any and all personal rights under the law of any other state to object to jurisdiction within such state for the purposes of any action, suit, proceeding or litigation to enforce such obligations of Borrower.

53. Single Purpose Entity.

(a) Until the Debt has been paid in full to Lender, Borrower's organizational documents will provide that Borrower's sole business purpose shall be the acquisition, ownership and operation of the Mortgaged Property. Borrower shall at all times during the term of the Note conduct its business affairs in compliance with such organizational documents. In addition, Borrower represents and warrants to, and covenants and agrees with Lender that Borrower has not and shall not: (a) engage in any business or activity other than the ownership, operation and maintenance of the Mortgaged Property, and activities incidental thereto; (b) acquire or own any material assets other than (i) the Mortgaged Property, and (ii) such incidental personal property as may be necessary for the operation of the Mortgaged Property; (c) merge into or consolidate with any person or entity or dissolve, terminate or liquidate in whole or in part, transfer or otherwise dispose of all or substantially all of its assets or change its legal structure, without in each case Lender's prior written consent; (d) fail to preserve its existence as an entity duly organized, validly existing and in good standing (if applicable) under the laws of the jurisdiction of its organization or formation, or without the prior written consent of Lender, amend, modify, terminate or fail to comply with the provisions of Borrower's partnership agreement, articles or certificate of incorporation, articles of organization, operating agreement, or similar organizational documents, as the case may be, as same may be further amended or supplemented, if such amendment, modification, termination or failure to comply would adversely affect the ability of Borrower to perform its obligations hereunder, under the Note or under the Other Security Documents; (e) own any subsidiary or entity without the prior written consent of Lender; (f) commingle its assets with the assets of any of its general partners, managing members, shareholders, affiliates, principals or any other person or entity; (g) incur any indebtedness for borrowed money, secured or unsecured, direct or contingent (including guaranteeing any obligation), other than the Debt, excepting trade payables (which must be paid when due) incurred by Borrower in the ordinary course of its business of owning and operating the Mortgaged Property; (h) fail to maintain its records, books of account and bank accounts separate and apart from those of the general partners, managing members, shareholders, principals and affiliates of Borrower, the affiliates of a general partner or managing member of Borrower, and any other person or entity; (i) enter into any contract or agreement with any general partner, managing member, shareholder, principal or affiliate of Borrower, any Guarantor or any indemnitor, or any general partner, managing member, shareholder, principal or affiliate thereof, except upon terms and conditions that are intrinsically fair and substantially similar to those that would be available on an arms-length basis with third parties other than any general partner, managing member, shareholder, principal or affiliate of Borrower, any Guarantor or any indemnitor, or any general partner, managing member, shareholder, principal or affiliate thereof; (j) seek the dissolution or winding up in whole, or in part, of Borrower; (k) maintain its assets in such a manner that it will be

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costly or difficult to segregate, ascertain or identify its individual assets from those of any general partner, managing member, shareholder, principal or affiliate of Borrower, or any general partner, managing member, shareholder, principal or affiliate thereof or any other person; (l) hold itself out to be responsible for the debts of another person; (m) make any loans to any third party; (n) fail either to hold itself out to the public as a legal entity separate and distinct from any other entity or person or to conduct its business solely in its own name in order not (i) to mislead others as to the identity with which such other party is transacting business, or (ii) to suggest that Borrower is responsible for the debts of any third party (including any general partner, managing member, shareholder, principal or affiliate of Borrower, or any general partner, managing member, shareholder, principal or affiliate thereof); or (o) file or consent to the filing of any petition, either voluntary or involuntary, to take advantage of any applicable insolvency, bankruptcy, liquidation or reorganization statute, or make an assignment for the benefit of creditors.

(b) In addition to the foregoing, if Borrower or its Controlling Entity is a single member limited liability company and the original principal amount of the Loan was \$20,000,000.00 or more, it must be organized under the laws of Delaware, its organizational documents must also contain continuation of existence provisions acceptable to Lender, it must cause an acceptable Delaware counsel to deliver acceptable non-consolidation and non-dissolution opinions to Lender and it must satisfy any other requirements imposed by Lender.

(c) If the original principal amount of the Loan was \$20,000,000.00 or more, then, in addition to the foregoing:

(i) Borrower's organizational documents shall require unanimous consent of all shareholders, members, partners or other owners of an equity ownership interest in Borrower prior to the filing of petition in bankruptcy, or for the dissolution, liquidation, consolidation, merger or sale of all or substantially all of Borrower's assets.

(ii) Borrower must have (A) at least two Independent Controlling Persons (hereinafter defined), and (B) organizational documents requiring the unanimous consent of all directors, members, partners or other persons having similar decision-making authority with respect to Borrower (each, a "Controlling Person") prior to the filing of petition in bankruptcy, or for the dissolution, liquidation, consolidation, merger or sale of all or substantially all of either Borrower's assets. The term "Independent Controlling Person" shall mean a Controlling Person approved by Lender who shall at no time during the term of the Loan be, or have been within the 5 years immediately preceding becoming an Independent Controlling Person, (1) an employee, director, member, stockholder, partner or employee of Borrower or of any of its Affiliates (hereinafter defined), (2) a customer of or supplier to (including any attorney, accountant, broker or banker) to Borrower or any of its Affiliates, or (3) an immediate family member of any such employee, director, member, stockholder, partner, customer or supplier. The term "Affiliate" shall mean any person or entity (I) which owns beneficially, directly or indirectly, ten percent (10%) or more of the outstanding ownership interest in Borrower (each, an "Owning Affiliate"), or (II) of which ten percent (10%) or more of its outstanding ownership interest is owned beneficially, directly or indirectly, by any Owning Affiliate, or (III) which is controlled by any Owning Affiliate, as the term "control" is defined under Section 230.405 of the Rules and Regulations of the Securities and Exchange Commission, 17 C.F.R. Section 230.405, or (IV) any immediate family member of the foregoing.

(iii) Borrower agrees that its Controlling Entity shall also be subject to all of the requirements contained in this section, except that its organizational documents shall prohibit it from engaging

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in any business or activity other than the operation and maintenance of the Mortgaged Property, and activities incidental thereto, or acquiring or owning any material assets other than its interest in Borrower.

54. Fixture Filing. This Security Instrument shall be deemed a fixture filing within the meaning of any applicable uniform commercial code, and for such purpose, the following information is given:

Name, address and  
tax identification  
number of Debtor(s):

1325 S. State LLC  
828 South Wabash Avenue, Suite 200  
Chicago, Illinois 60605  
Tax ID No. 20-3413216

Name and address  
of Secured Party

MidFirst Bank, a federally chartered  
savings association  
MidFirst Plaza,  
P.O. Box 26750  
Oklahoma City, Oklahoma 73126

Description of the type  
(or items) of property:  
Description of real estate  
to which the collateral  
is attached or upon which  
it is or will be located.

See the Recitals herein.

See Exhibit B hereto.

Some of the above described collateral is or is to become fixtures upon the above-described real estate, and this fixture filing is to be filed for record in the public real estate records.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

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IN WITNESS WHEREOF, Borrower has executed this Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing to be effective as of the day and year first above written.

"Borrower"

1325 S. State LLC,  
an Illinois limited liability company

By: Wayne I Chertow

Name: Wayne I. Chertow

Title: Manager

By: Linda R Karp

Name: Linda R. Karp

Title: Manager

Property of Cook County Clerk's Office



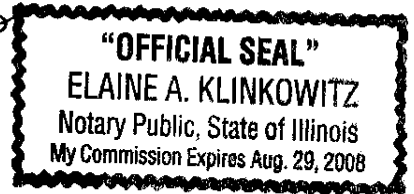
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STATE OF ILLINOIS            )  
  ) SS  
COUNTY OF COOK            )

I, ELAINE A. KLINKOWITZ, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that Linda R. Karp, a Manager of 1325 S. State LLC, an Illinois limited liability company, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Manager, appeared before me this day in person and acknowledged that she signed and delivered the said instrument as her own free and voluntary act and as the free and voluntary act of said limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 26<sup>th</sup> day of April, 2006.

Elaine A. Klinkowitz  
Notary Public  
My Commission Expires:

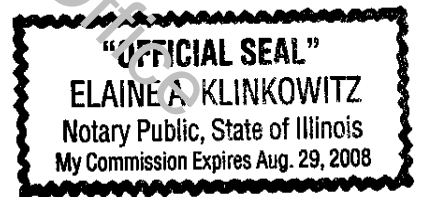


STATE OF ILLINOIS            )  
  ) SS  
COUNTY OF COOK            )

I, ELAINE A. KLINKOWITZ, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that Wayne Chertow, a Manager of 1325 S. State LLC, an Illinois limited liability company, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Manager, appeared before me this day in person and acknowledged that she signed and delivered the said instrument as her own free and voluntary act and as the free and voluntary act of said limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 27<sup>th</sup> day of April, 2006.

Elaine A. Klinkowitz  
Notary Public  
My Commission Expires:



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EXHIBIT A  
Unexecuted Copy of Promissory Note

Property of Cook County Clerk's Office

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## EXHIBIT B Legal Description

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

PARCEL 1: THAT PART OF LOTS 1 TO 7, BOTH INCLUSIVE, AND THAT PART OF A STRIP OF LAND LYING SOUTH OF THE SOUTH LINE OF 13TH STREET AND THE NORTH LINE OF LOT 1, ALL TAKEN AS A TRACT, LYING EAST OF THE EAST LINE OF STATE STREET AS WIDENED, SOUTH OF THE SOUTH LINE OF 13TH STREET, NORTH OF THE SOUTH 31.0 FEET OF SAID TRACT AND WESTERLY OF A LINE DRAWN FROM A POINT IN THE SOUTH LINE OF SAID 13TH STREET, SAID POINT BEING 18.31 FEET EAST OF THE EAST LINE OF STATE STREET AS WIDENED, AS MEASURED ALONG SAID NORTH LINE, TO A POINT IN THE NORTH LINE OF SAID SOUTH 31.0 FEET, SAID POINT BEING 82.95 FEET EAST OF THE EAST LINE OF STATE STREET AS WIDENED, AS MEASURED ALONG SAID NORTH LINE, ALL IN BLOCK 1 IN GARRETT'S SUBDIVISION IN ASSESSOR'S DIVISION OF THE NORTHWEST FRACTIONAL QUARTER OF SECTION 22, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

PARCEL2: THE SOUTH 15.0 FEET OF LOT 7, LOTS 8, 9, 10 AND 11 IN BLOCK 1 IN THE SUBDIVISION OF GARRETT'S SUBDIVISION IN THE ASSESSORS DIVISION IN THE NORTHWEST FRACTIONAL QUARTER OF SECTION 22, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, (EXCEPT FROM SAID PREMISES THAT PART THEREOF TAKEN FOR WIDENING OF STATE STREET AND EXCEPT THAT PART LYING EAST OF THE WESTERLY LINE OF PROPERTY CONDEMNED IN CASE NUMBER 40-C-342 IN THE CIRCUIT COURT), IN COOK COUNTY, ILLINOIS

PARCEL 3: LOTS 1 TO 5, BOTH INCLUSIVE, IN GURLEY'S RESUBDIVISION OF LOT 8 AND LOT 7 (EXCEPT THE SOUTH 40 FEET) IN SHERMAN, MERRITT AND HOGAN'S SOUTH TRACT SUBDIVISION BEING BLOCK 10 IN THE ASSESSOR DIVISION IN THE NORTHWEST FRACTIONAL QUARTER OF SECTION 22, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, (EXCEPT FROM SAID PREMISES THAT PART THEREOF TAKEN FOR WIDENING OF STATE STREET AND EXCEPT THAT PART LYING EAST OF THE WESTERLY LINE OF PROPERTY AS CONDEMNED IN NUMBER 40-C-342 IN CIRCUIT COURT), IN COOK COUNTY, ILLINOIS

PARCEL 4: THE NORTH 1/2 OF LOT 5, ALL OF LOT 6 AND THE SOUTH 40 FEET OF LOT 7 (EXCEPT THAT PART FOR WIDENING OF STATE STREET AND EXCEPT THAT PART LYING EAST OF THE WEST LINE OF PROPERTY AS CONDEMNED IN CASE NUMBER 40-C-342 IN THE CIRCUIT COURT) IN BLOCK 10 IN THE ASSESSORS DIVISION OF THE NORTH 1/2 OF FRACTIONAL SECTION 22, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, ALL IN COOK COUNTY, ILLINOIS

PARCEL 5: THE SOUTH 1/2 OF LOT 5 (EXCEPT THE SOUTH 20 FEET) IN BLOCK 10 IN ASSESSORS DIVISION OF THE NORTHWEST 1/4 (EXCEPT THE STREET AND EXCEPT THE EAST 16.5 FEET) OF SECTION 22, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

Street Address: 1347 South State Street, Chicago, Cook County, Illinois

Property Tax Identification Numbers: 17-22-103-006; 17-22-103-007; 17-22-103-008; 17-22-103-009; 17-22-103-036; 17-22-103-046 and 17-22-103-049