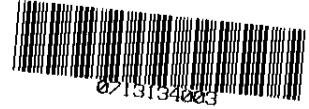


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Doc#: 0713134003 Fee: \$74.00  
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Cook County Recorder of Deeds  
Date: 05/11/2007 11:15 AM Pg: 1 of 26

**DOCUMENT PREPARED BY:**  
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**WHEN RECORDED MAIL TO:**  
CHICAGO TITLE INSURANCE COMPANY  
171 N. CLARK  
CHICAGO, IL 60601

CANAL/TAYLOR SOUTH LLC, a Delaware limited liability company, as Mortgagor  
("Mortgagor")

to

SOUTHGATE TOWER LLC, a Delaware limited liability company,  
as Mortgagee ("Mortgagee")

**MORTGAGE, ASSIGNMENT OF LEASES AND RENTS,  
SECURITY AGREEMENT AND FINANCING STATEMENT**

Dated: As of May 9, 2007

Property Address: 1100 Block of Canal Street, Chicago, IL

County: Cook County, Illinois

File No.: \_\_\_\_\_

Parcel No.: \_\_\_\_\_

Mortgage, Assignment of Leases and Rents, Security Agreement and Financing Statement

Box 400-CTCC

838 3273 Da D6 1 of 3

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**THIS MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FINANCING STATEMENT** (this "Security Instrument") is made as of the 9th day of May, 2007 by and between: CANAL/TAYLOR SOUTH LLC, a Delaware limited liability company, duly organized and validly existing under the laws of the State of Delaware, as Mortgagor (herein, together with its successors and assigns, the "**Mortgagor**"), having its principal offices at c/o JPS Interests, 71 S. Wacker Drive, Chicago, IL 60601, and SOUTHGATE TOWER LLC, a Delaware limited liability company, as mortgagee (herein, together with its successors and assigns, called the "**Mortgagee**") located at c/o BlackRock Realty Advisors, 300 Campus Drive, 3<sup>rd</sup> Floor, Florham Park, New Jersey 07932, Attention: Managing Director — Granite Fund.

**RECITALS:**

This Mortgage, Assignment of Leases and Rents, Security Agreement and Financing Statement is given to secure a loan (the "**Loan**") in the principal sum of **ONE HUNDRED SIX MILLION and NO/100 DOLLARS (\$106,000,000.00)** made pursuant to that certain Loan Agreement, dated as of March 31, 2005 between Mortgagor and Mortgagee (as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, the "**Loan Agreement**") and evidenced by that certain Note, dated the date hereof, made by Mortgagor, payable to the order of Mortgagee, maturing on May [ ], 2012 (such Note, together with all extensions, renewals, replacements, restatements, amendments, supplements, severances or modifications thereof being hereinafter referred to as the "**Note**").

Mortgagor has agreed to secure the payment and performance of the Note and all other obligations of Mortgagor arising under or evidenced by the Loan Agreement and the other "Loan Documents" (defined below), all said indebtedness being herein collectively called the "**Debt**."

This Mortgage, Assignment of Leases and Rents, Security Agreement and Financing Statement is executed pursuant to the Loan Agreement, and payment, fulfillment, and performance by Mortgagor of its obligations thereunder and under the other Loan Documents are secured hereby, and each and every term and provision of the Loan Agreement, the Note, and that certain Assignment of Leases and Rents dated the date hereof made by Mortgagor in favor of Mortgagee delivered in connection with this Mortgage, Assignment of Leases and Rents, Security Agreement and Financing Statement (as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, the "**Assignment of Leases**"), the Environmental Indemnity Agreement (the "**Environmental Indemnity**"), Guaranty of Recourse Obligations (the "**Guaranty**"), the Collateral Assignment of Contracts (the "**Collateral Assignment**"), and the Conditional Assignment of Management Agreement (the "**Management Assignment**"), each being of even date herewith and executed in connection with and as additional security for the Loan, including the rights, remedies, obligations, covenants, conditions, agreements, indemnities, representations and warranties of the parties therein, are hereby incorporated by reference herein as though set forth in full and shall be considered a part of this Mortgage, Assignment of Leases and Rents, Security Agreement and Financing Statement (the Loan Agreement, the Note, this Security Instrument, the Assignment of Leases, the Environmental Indemnity, the Guaranty, the Collateral Assignment, the Management Assignment, and all other documents evidencing or securing the Debt, or executed or delivered in

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connection therewith, are hereinafter referred to collectively as the "Loan Documents"). All capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Loan Agreement.

## ARTICLE 1 - GRANTS OF SECURITY

Section 1.1 PROPERTY MORTGAGED. Mortgagor does hereby irrevocably mortgage, grant, bargain, sell, pledge, assign, warrant, transfer and convey to and grant a security interest to Mortgagee and its successors and assigns in, the following property, rights, interests and estates now owned, or hereafter acquired by Mortgagor (collectively, the "Property"):

(a) Land. The real property described in Exhibit A attached hereto and made a part hereof (the "Land");

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

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

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

(e) Fixtures and Personal Property. All machinery, equipment, fixtures (including but not limited to all heating, air conditioning, plumbing, lighting, communications, elevators, fixtures, inventory and goods), inventory, goods and articles of personal property and accessions thereto and renewals, replacements thereof and substitutions therefor (including, but not limited to, keys or other entry systems, electric and electronic equipment, private telephone switches and systems, fire prevention and extinguishing apparatus, tools, machinery, engines, dynamos, motors, boilers, incinerators, conduits, compressors, floor cleaning, waxing and polishing equipment, call systems, brackets, electrical signs, bulbs, ash and fuel, conveyors, cabinets, lockers, shelving, indoor and outdoor lighting equipment), other tangible property of every kind and nature whatsoever owned by Mortgagor, or in which Mortgagor has or shall have an interest, now or hereafter located upon the Land and the Improvements, or appurtenant thereto, or usable in connection with the present or future operation and occupancy of the Land and the Improvements and all building equipment, materials and supplies of any nature whatsoever owned by Mortgagor, or

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in which Mortgagor has or shall have an interest, now or hereafter located upon the Land and the Improvements, or appurtenant thereto, or usable in connection with the present or future operation and occupancy of the Land and the Improvements (hereinafter collectively called the "**Personal Property**"), including the right, title and interest of Mortgagor in and to any of the Personal Property which may be subject to any security interests, as defined in the Uniform Commercial Code, as adopted and enacted by the state or states where any of the Property is located (the "**Uniform Commercial Code**"), superior in lien to the lien of this Mortgage, Assignment of Leases and Rents, Security Agreement and Financing Statement and all proceeds and products of all of the above;

(f) Leases and Rents. All leases, subleases, rental agreements, and other agreements, whether or not in writing, affecting the use, enjoyment or occupancy of the Land and/or the Improvements heretofore or hereafter entered into and all extensions, amendments and modifications thereto, whether before or after the filing by or against Mortgagor of any petition for relief under Title 11 U.S.C.A. § 101 *et seq.* and the regulations adopted and promulgated thereto (as the same may be amended from time to time, the "**Bankruptcy Code**") (the "**Leases**") and all right, title and interest of Mortgagor, its successors and assigns therein and thereunder, including, without limitation, any guaranties of the lessees' obligations thereunder, cash or securities deposited thereunder to secure the performance by the lessees of their obligations thereunder and all rents, additional rents, payments in connection with any termination, cancellation or surrender of any Lease, revenues, issues, registration fees, if any, and profits (including all oil and gas or other mineral royalties and bonuses) from the Land and/or the Improvements, all income, rents, issues, profits, revenues, deposits, accounts and other benefits from the operation of the Land and/or the Improvements, including, without limitation, all revenues collected from recreational facilities and otherwise, all receivables, installment payment obligations and other obligations now existing or hereafter arising or created out of sale, lease, sublease, license, concession or other grant of the right of the possession, use or occupancy of all or any portion of the Land and/or Improvements, or personalty located thereon, or rendering of services by Mortgagor or any operator or manager of the space located in the Improvements or acquired from others including, without limitation, from the rental of any office space, retail space, commercial space, industrial space, manufacturing space, guest room or other space, halls, stores or offices, including any deposits securing reservations of such space, exhibit or sales space of every kind, license, lease, sublease and concession fees and rentals, food and beverage sales, service charges, vending machine sales and proceeds, if any, from business interruption or loss of rents or other loss of income insurance relating to the use, enjoyment or occupancy of the Land and/or the Improvements whether paid or accruing before or after the filing by or against Mortgagor of any petition for relief under the Bankruptcy Code and all proceeds from the sale or other disposition of the Leases (the "**Rents**") and the right to receive and apply the Rents to the payment of the Debt;

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

(h) Insurance Proceeds. All proceeds of any insurance policies covering the above or hereafter described properties, including, without limitation, the right to receive and apply the proceeds of any insurance, judgments, or settlements made in lieu thereof, for damage to any of said properties;

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

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

(k) Rights. The right, in the name and on behalf of Mortgagor, to appear in and defend any action or proceeding brought with respect to any of the hereinabove or hereinafter described properties and to commence any action or proceeding to protect the interest of Mortgagee in any of the hereinabove or hereinafter described properties;

(l) Agreements. All agreements, contracts, certificates, instruments, franchises, permits, licenses and other documents, now or hereafter entered into, and all rights therein and thereto, respecting or pertaining to the use, occupation, construction, management or operation of the Land and any part thereof and any improvements or respecting any business or activity conducted on the Land and any part thereof and all right, title and interest of Mortgagor therein and thereunder, including, without limitation, the right, upon the happening of any default hereunder, to receive and collect any sums payable to Mortgagor thereunder;

(m) Plans. All rights of the Mortgagor, if any, to plans and specifications, designs, drawings and other documents and matters, now or hereafter existing, prepared in connection with the Improvements or any of the other properties herein described (all of the foregoing herein called the "Plans");

(n) Contracts for Construction or Services. All rights of the Mortgagor, if any, under any contracts executed by the Mortgagor with any provider of goods or services for or in connection with any construction undertaken on, or services performed or to be performed in connection with, the Improvements or the Qualified Leases, including any architect's contract (all of the foregoing is herein referred to collectively as the "Contracts for Construction");

(o) Contracts for Sale or Financing. All rights of the Mortgagor, if any, as seller or Mortgagor under any agreement, contract, understanding or arrangement pursuant to which the Mortgagor has obtained the agreement of any Person to pay or disburse any money for the Mortgagor's sale (or borrowing on the security) of the Improvements or the Leases or any of the above described properties, rights, titles, interests or estates or any part thereof (all of the foregoing is herein referred to collectively as the "Contracts for Sale");

(p) Causes of Action. All causes of action and claims (including, without limitation, all causes of action or claims arising in tort, by contract, by fraud or by concealment of material fact) against any person for damages or injury to any of the properties hereinabove described or in connection with any transactions financed in whole or in part by the proceeds of the Loan ("Cause of Action"); and

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

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Section 1.2 ASSIGNMENT OF LEASES AND RENTS. Mortgagor assigns to Mortgagee absolutely, not only as collateral, all present and future Rent from and all Leases now or hereafter covering the Property or any part thereof. Mortgagor warrants the validity and enforceability of the assignment. Mortgagor may as Mortgagee's licensee collect Rent as long as no Event of Default has occurred. Mortgagor will apply all Rent to payment of the Obligations and the performance of this Mortgage, but if the Rent exceeds the amount due on the Obligations, Mortgagor may retain the excess. If Mortgagor defaults in payment of the Note or any of the other Obligations or performance of this Mortgage, Mortgagee may terminate Mortgagor's license to collect rent and other income and then as Mortgagor's agent may rent the Property and collect all Rent. Mortgagee neither has nor assumes any obligations as lessor or landlord with respect to any occupant of the Property. Mortgagee may exercise Mortgagee's rights and remedies under this paragraph without taking possession of the Property. Mortgagee will apply all Rent collected under this paragraph first to expenses incurred in exercising Mortgagee's rights and remedies and then to Mortgagor's obligations under the Note or any of the other Obligations and this Mortgage in the order determined by Mortgagee. Mortgagee is not required to act under this paragraph, and acting under this paragraph does not waive any of Mortgagee's other rights or remedies. If Mortgagor becomes a voluntary or involuntary debtor in bankruptcy, Mortgagee's filing a proof of claim in bankruptcy will be deemed equivalent to the appointment of a receiver under the law of the jurisdiction in which the Property is located.

Section 1.3 SECURITY AGREEMENT. This Security Instrument is both a real property mortgage and a "security agreement" within the meaning of the Uniform Commercial Code. The Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Mortgagor in the Property. By executing and delivering this Security Instrument, Mortgagor hereby grants to Mortgagee, as security for the Obligations (as herein defined), a security interest in the Property, to the full extent that the Property may be subject to the Uniform Commercial Code.

Section 1.4 PLEDGE OF MONIES HELD. Mortgagor hereby pledges to Mortgagee any and all monies now or hereafter held by Mortgagee, including, without limitation, any sums deposited as additional security for the Obligations until expended or applied as provided in the Loan Agreement or this Security Instrument.

## CONDITIONS TO GRANT

TO HAVE AND TO HOLD the above mortgaged, granted and described Property unto, and to the use and benefit of, Mortgagee and its successors and assigns, forever;

PROVIDED, HOWEVER, these presents are upon the express condition that, if Mortgagor shall well and truly (i) pay to Mortgagee the Obligations at the time and in the manner provided in the Loan Agreement, Note, this Security Instrument and the other Loan Documents, (ii) perform the Other Obligations (as herein defined) as set forth in this Security Instrument, and (iii) abide by and comply with each and every covenant and condition set forth herein, in the Note and in the Loan Agreement and the other Loan Documents, these presents and the mortgage hereby granted shall cease, terminate and be void.

## ARTICLE 2 - DEBT AND OBLIGATIONS SECURED

Section 2.1 DEBT. This Security Instrument and the grants, assignments and transfers

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made in Article 1 are given for the purpose of securing the Debt, including, without limitation,

- (a) the payment of the indebtedness evidenced by the Note in lawful money of the United States of America;
- (b) the payment of interest, default interest, late charges and other sums, as provided in the Note, the Loan Agreement, this Security Instrument or the other Loan Documents;
- (c) the payment of all other moneys agreed or provided to be paid by Mortgagor in the Note, the Loan Agreement, this Security Instrument or the other Loan Documents;
- (d) the payment of all sums advanced pursuant to the Loan Agreement or this Security Instrument to protect and preserve the Property and the lien and the security interest created and granted hereby;
- (e) the payment of all sums advanced and costs and expenses incurred by Mortgagee in connection with the Debt or any part thereof, any modification, amendment, renewal, extension, or change of or substitution for the Debt or any part thereof, or the acquisition or perfection of the security therefor, whether made or incurred at the request of Mortgagor or Mortgagee; and,
- (f) future advances, whether such future advances are obligatory or are to be made at the option of Mortgagee, or otherwise as are to be made within twenty (20) years of the date hereof, subject to the maximum limits contained in Section 18.3 hereof.

Section 2.2 OTHER OBLIGATIONS. This Security Instrument and the grants, assignments and transfers made in Article 1 are also given for the purpose of securing the following (the "**Other Obligations**"):

- (a) the performance of all other obligations of Mortgagor contained herein or in any of the other Loan Documents;
- (b) the performance of each obligation of Mortgagor contained in any other agreement executed by Mortgagor to Mortgagee which is for the purpose of further securing the obligations secured hereby, and any renewals, extensions, substitutions, replacements, amendments, modifications and changes thereto; and
- (c) the performance of each obligation of Mortgagor contained in any renewal, extension, amendment, modification, consolidation, change of, or substitution or replacement for, all or any part of the Note, the Loan Agreement, this Security Instrument or the other Loan Documents.

Section 2.3 DEBT AND OTHER OBLIGATIONS. Mortgagor's obligations for the payment of the Debt and the performance of the Other Obligations shall be referred to collectively hereinafter as the "**Obligations**."

## ARTICLE 3 - MORTGAGOR COVENANTS

Mortgagor covenants and agrees that:

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Section 3.1 PAYMENT OF OBLIGATIONS. Mortgagor will pay the Obligations at the time and in the manner provided in the Note, the Loan Agreement and in this Security Instrument and the other Loan Documents. Mortgagor will pay and perform the Other Obligations at the time and in the manner provided in the respective instruments, agreements and documents evidencing, granting, securing, pertaining, or in any way relating, to the Other Obligations.

Section 3.2 INCORPORATION BY REFERENCE. All the covenants, conditions and agreements contained in the Loan Agreement, the Note and all and any of the other Loan Documents, are hereby made a part of this, Security Instrument to the same extent and with the same force as if fully set forth herein. All the covenants, conditions and agreements contained in the respective instruments, agreements and documents evidencing, granting, securing, pertaining, or in any way relating, to the Other Obligations, are hereby made a part of this Security Instrument to the same extent and with the same force as if fully set forth herein.

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

Section 3.4 PAYMENT OF TAXES, ETC. Mortgagor shall promptly pay all taxes, assessments and charges levied or assessed against the Property or any part thereof (herein called, "Taxes") in accordance with the terms of the Loan Agreement.

Section 3.5 MAINTENANCE AND USE OF PROPERTY. Mortgagor shall cause the Property to be maintained in a good and safe condition and repair in accordance with the terms of the Loan Agreement. Subject to the terms of the Loan Agreement, the Improvements and the Personal Property shall not be removed, demolished or materially altered or expanded (except for normal replacement of the Personal Property) without the consent of Mortgagee. Subject to the terms of the Loan Agreement, Mortgagor shall promptly repair, replace or rebuild any part of the Property which may be destroyed by any Casualty, or become damaged, worn or dilapidated or which may be affected by any Condemnation and shall complete and pay for any structure at any time in the process of construction or repair on the Land. Subject to the terms of the Loan Agreement, Mortgagor shall not initiate, join in, acquiesce in, or consent to any change in any private restrictive covenant, zoning, law or other public or private restriction, limiting or defining the uses which may be made of the Property or any part thereof. If under applicable zoning provisions, the use of all or any portion of the Property is or shall become a nonconforming use, Mortgagor will not cause or permit the nonconforming use to be discontinued or the nonconforming Improvement to be abandoned without the express written consent of Mortgagee.

Section 3.6 WASTE. Mortgagor shall not commit or suffer any waste of the Property or make any change in the use of the Property which will in any way materially increase the risk of fire or other hazard arising out of the operation of the Property, or take any action that might invalidate or give cause for cancellation of any Policy, or do or permit to be done thereon anything that may in any way impair the value of the Property or the security of this Security Instrument. Mortgagor will not, without the prior written consent of Mortgagee, permit any drilling or exploration for or extraction, removal, or production of any minerals from the surface or the subsurface of the Land, regardless of the depth thereof or the method of mining or extraction thereof.

Section 3.7 PAYMENT FOR LABOR AND MATERIALS. Mortgagor will promptly pay when due all bills and costs for labor, materials, and specifically fabricated materials incurred in



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connection with the Property and never permit to exist in respect of the Property or any part thereof any lien or security interest, even though inferior to the liens and the security interests hereof, and in any event never permit to be created or exist in respect of the Property or any part thereof any other or additional lien or security interest other than the liens or security interests hereof, except for the Permitted Exceptions; provided, however, that Mortgagor shall have the right to contest, in good faith, any such bill, lien or security interest, in accordance with the same terms as set forth in the Loan Agreement.

Section 3.8 PERFORMANCE OF OTHER AGREEMENTS. Mortgagor shall observe and perform each and every term to be observed or performed by Mortgagor pursuant to the terms of the Loan Agreement, any other Loan Documents and any agreement or recorded instrument affecting or pertaining to the Property, or granted by Mortgagor to Mortgagee for the purpose of further securing the Obligations and any amendments, modifications or changes thereto; provided, however, pursuant to the terms and conditions of the Loan Agreement, Mortgagor may contest by appropriate legal proceeding promptly initiated and conducted in good faith and with due diligence, the validity of any Laws, the applicability of any Laws to Mortgagor or the Property or any alleged violation of any Laws.

Section 3.9 CHANGE OF NAME, IDENTITY OR STRUCTURE. Except as may be permitted under the Loan Agreement, Mortgagor will not change the State in which it is organized or principally located, nor will it change its name, identity (including its trade name or names) or corporate, partnership or other structure. Mortgagor hereby authorizes Mortgagee, prior to or contemporaneously with the effective date of any such change, to file any financing statement or financing statement change required by Mortgagee to establish or maintain the validity, perfection and priority of the security interest granted herein. At the request of Mortgagee, Mortgagor shall execute a certificate in form satisfactory to Mortgagee listing the trade names under which Mortgagor intends to operate the Property, and representing and warranting that Mortgagor does business under no other trade name with respect to the Property.

Section 3.10 PROPERTY USE. The Property shall be used only for an urban retail center building and any ancillary uses relating thereto, and for no other uses without the prior written consent of Mortgagee, which consent may be withheld in Mortgagee's sole and absolute discretion. The business being operated on the Property is a commercial enterprise being carried on by the Mortgagor for the purpose of profit. All proceeds of the Loan will be used by the Mortgagor solely for its own business purposes and in furtherance of its regular business affairs. The Loan proceeds shall, furthermore, be used for the purposes specified in 815 ILCS 205/4(1)(a) or (c). The Loan constitutes a "business loan" within the purview of that Section. The Loan proceeds shall not be used for the purpose of registered equity securities within the purview of Regulation "U" issued by the Board of Governors of the Federal Reserve System.

Section 3.11 PERSONAL PROPERTY. Mortgagor agrees that, where Personal Property is in the possession of a third party, Mortgagor will join with Mortgagee in notifying that third party of the Mortgagee's interest and obtaining an acknowledgment from such third party that it is holding the Personal Property for the benefit of Mortgagee. Mortgagor also agrees to cooperate with Mortgagee in obtaining control with respect to that Personal Property consisting of deposit accounts, investment property, letter of credit rights and electronic chattel paper.

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## ARTICLE 4 - REPRESENTATIONS AND WARRANTIES

Mortgagor represents and warrants to Mortgagee that:

Section 4.1 WARRANTY OF TITLE. Mortgagor has good title to the Property and has the right to mortgage, grant, bargain, sell, pledge, assign, warrant, transfer and convey the same and that Mortgagor possesses a fee simple absolute estate in the Land and the Improvements and that it owns the Property free and clear of all liens, encumbrances and charges whatsoever except for the Permitted Exceptions. The Permitted Exceptions do not and will not materially adversely affect or interfere with the value, or materially adversely affect or interfere with the current use or operation, of the Property, or the security intended to be provided by this Security Instrument or the ability of Mortgagor to repay the Note or any other amount owing under the Note, this Security Instrument, the Loan Agreement, or the other Loan Documents or to perform its obligations thereunder in accordance with the terms of the Loan Agreement, the Note, this Security Instrument or the other Loan Documents. This Security Instrument, when properly recorded in the appropriate records, together with the Assignment of Leases and any Uniform Commercial Code financing statements required to be filed in connection therewith, will create (i) a valid, perfected first priority lien on the Property, subject only to Permitted Exceptions and (ii) valid, perfected first priority security interests in and to, and perfected collateral assignments of, all Personal Property, all in accordance with the terms thereof, subject only to Permitted Exceptions. The Assignment of Leases, when properly recorded in the appropriate records, creates a valid first priority assignment of, or a valid first priority security interest in, certain rights under the related Leases, subject only to a license granted to Mortgagor to exercise certain rights and to perform certain obligations of the lessor under such Leases, including the right to operate the Property. No Person other than Mortgagor owns any interest in any payments due under such Leases that is superior to or of equal priority with the Mortgagee's interest therein. Subject to the Permitted Exceptions, Mortgagor shall forever warrant, defend and preserve the title and the validity and priority of the lien of this Security Instrument as above represented and shall forever warrant and defend the same to Mortgagee; its successors and assigns, against the claims of all persons whomsoever.

## ARTICLE 5 - OBLIGATIONS AND RELIANCES

Section 5.1 RELATIONSHIP OF MORTGAGOR AND MORTGAGEE. The relationship between Mortgagor and Mortgagee is solely that of debtor and creditor, and Mortgagee has no fiduciary or other special relationship with Mortgagor, and no term or condition of any of the Loan Agreement; the Note, this Security Instrument and the other Loan Documents shall be construed so as to deem the relationship between Mortgagor and Mortgagee to be other than that of debtor and creditor.

Section 5.2 NO RELIANCE ON MORTGAGEE. The members, general partners, principals and (if Mortgagor is a trust) beneficial owners of Mortgagor are experienced in the ownership and operation of properties similar to the Property, and Mortgagor and Mortgagee are relying solely upon such expertise and business plan in connection with the ownership and operation of the Property. Mortgagor is not relying on Mortgagee's expertise, business acumen or advice in connection with the Property.

Section 5.3 NO MORTGAGEE OBLIGATIONS. (a) Notwithstanding the provisions of Section 1.1(f), Section 1.1(l), or Section 1.2, Mortgagee is not undertaking the performance of (i) any obligations under the Leases; or (ii) any obligations with respect to such agreements, contracts,

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certificates, instruments, franchises, permits, trademarks, licenses and other documents.

(b) By accepting or approving anything required to be observed, performed or fulfilled or to be given to Mortgagee pursuant to this Security Instrument, the Loan Agreement, the Note or the other Loan Documents, including without limitation, any officer's certificate, balance sheet, statement of profit and loss or other financial statement, survey, appraisal, or insurance policy, Mortgagee shall not be deemed to have warranted, consented to, or affirmed the sufficiency, the legality or effectiveness of same, and such acceptance or approval thereof shall not constitute any warranty or affirmation with respect thereto by Mortgagee.

Section 5.4 RELIANCE. Mortgagor recognizes and acknowledges that in accepting the Note, the Loan Agreement, this Security Instrument and the other Loan Documents, (i) Mortgagee is expressly and primarily relying on the truth and accuracy of the warranties and representations set forth in Article VI of the Loan Agreement and Articles 3 and 4 hereof without any obligation to investigate the Property and notwithstanding any investigation of the Property by Mortgagee; (ii) that such reliance existed on the part of Mortgagee prior to the date hereof; (iii) that the warranties and representations are a material inducement to Mortgagee in accepting the Note, the Loan Agreement, this Security Instrument and the other Loan Documents; and (iv) that Mortgagee would not be willing to make the Loan and accept this Security Instrument in the absence of the warranties and representations as set forth in Article VI of the Loan Agreement and Articles 3 and 4 hereof.

## ARTICLE 6 - FURTHER ASSURANCES

Section 6.1 RECORDING OF SECURITY INSTRUMENT, ETC. Mortgagor forthwith upon the execution and delivery of this Security Instrument and thereafter, from time to time, will cause this Security Instrument and any of the other Loan Documents creating a lien or security interest or evidencing the lien hereof upon the Property and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect and perfect the lien or security interest hereof and thereof upon, and the interest of Mortgagee in, the Property. Mortgagor will pay all taxes, filing, registration or recording fees, and all expenses incident to the preparation, execution, acknowledgment and/or recording of the Note, the Loan Agreement, this Security Instrument, the other Loan Documents, and any instrument of further assurance, and any modification or amendment of the foregoing documents, and all federal, state, county and municipal taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Security Instrument, the other Loan Documents, or any instrument of further assurance, and any modification or amendment of the foregoing documents, except where prohibited by law, so to do.

Section 6.2 FURTHER ACTS, ETC. Mortgagor will, at the cost of Mortgagor, and without expense to Mortgagee, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, deeds of trust, mortgages, assignments, notices of assignments, transfers and assurances as Mortgagee shall, from time to time, require, for the better assuring, conveying, assigning, transferring, and confirming unto Mortgagee the Property and rights hereby deeded, mortgaged, granted, bargained, sold, conveyed, confirmed, pledged, assigned, warranted and transferred or intended now or hereafter so to be, or which Mortgagor may be or may hereafter become bound to convey or assign to Mortgagee, or for carrying out the intention or facilitating the performance of the terms of this Security Instrument or for filing, registering or recording this Security Instrument, or for complying with all Laws. Mortgagor, on demand, will execute and deliver and hereby authorizes

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Mortgagee to file one or more financing statements or execute in the name of Mortgagor to the extent Mortgagee may lawfully do so, one or more chattel mortgages or other instruments, to evidence more effectively the security interest of Mortgagee in the Property. Mortgagor grants to Mortgagee an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies available to Mortgagee at law and in equity, including without limitation such rights and remedies available to Mortgagee pursuant to this Section 6.2.

## Section 6.3 CHANGES IN TAX, DEBT CREDIT AND DOCUMENTARY STAMP LAWS.

(a) If any law is enacted or adopted or amended after the date of this Security Instrument which deducts the Obligations from the value of the Property for the purpose of taxation or which imposes a tax, either directly or indirectly, on the Obligations or Mortgagee's interest in the Property, Mortgagor will pay the tax, with interest and penalties thereon, if any. If Mortgagee is advised by counsel chosen by it that the payment of tax by Mortgagor would be unlawful or taxable to Mortgagee or unenforceable or provide the basis for a defense of usury, then Mortgagee shall have the option, exercisable by written notice of not less than ninety (90) days to declare the Obligations immediately due and payable.

(b) Mortgagor will not claim or demand or be entitled to any credit or credits on account of the Obligations for any part of the Taxes assessed against the Property, or any part thereof, and no deduction shall otherwise be made or claimed from the assessed value of the Property, or any part thereof, for real estate tax purposes by reason of this Security Instrument or the Obligations. If such claim, credit or deduction shall be required by law, Mortgagee shall have the option, exercisable by written notice of not less than ninety (90) days to declare the Obligations immediately due and payable.

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

Section 6.4 REPLACEMENT DOCUMENTS. Upon receipt of an affidavit of an officer of Mortgagee as to the loss, theft, destruction or mutilation of the Note or any other Loan Document which is not of public record, and, in the case of any such mutilation, upon surrender and cancellation of such Note or other Loan Documents, Mortgagor will issue, in lieu thereof, a replacement Note or other Loan Documents, dated the date of such lost, stolen, destroyed or mutilated Note or other Loan Documents in the same principal amount thereof and otherwise of like tenor. In the event that said affidavit of an officer of Mortgagee states that the Note is lost, stolen or destroyed, then the obligation of Borrower under this Section in respect of executing and delivering a replacement note to Mortgagee, is conditioned upon Mortgagee providing to Mortgagor a written indemnity, defense, and hold harmless agreement in favor of Mortgagor covering any costs, expenses, fees, damages, or liabilities of any nature whatsoever, including court costs and attorneys' fees, incurred by Mortgagor as a result or arising out of the enforcement of payment of the lost, stolen or destroyed Note after Mortgagor has executed and delivered to Mortgagee a replacement Note. Mortgagee's indemnification obligations under any such agreement provided by Mortgagee under this Section shall survive the repayment of the replacement Note for two years following the payment in full of said replacement Note.

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Section 6.5 [RESERVED]

Section 6.6 [RESERVED]

Section 6.7 LEGAL FEES FOR ENFORCEMENT. Mortgagor shall pay to Mortgagee on demand any and all expenses, including reasonable legal expenses and attorneys' fees, incurred or paid by Mortgagee in protecting its interest in the Property or in collecting any amount payable hereunder or in enforcing its rights hereunder with respect to the Property (including commencing any foreclosure action), whether or not any legal proceeding is commenced hereunder or thereunder, together with interest thereon at the Default Rate from the date that is ten (10) days after demand until such expenses are paid by Mortgagor.

## ARTICLE 7 - DUE ON SALE/ENCUMBRANCE

Section 7.1 MORTGAGEE RELIANCE. Mortgagor acknowledges that Mortgagee has examined and relied on the experience of Mortgagor and its partners, members, principals and (if Mortgagor is a trust) beneficial owners in owning and operating properties such as the Property in agreeing to make the Loan, and will continue to rely on Mortgagor's ownership of the Property as a means of maintaining the value of the Property as security for repayment of the Debt and the performance of the Other Obligations. Mortgagor acknowledges that Mortgagee has a valid interest in maintaining the value of the Property so as to ensure that, should Mortgagor default in the repayment of the Debt or the performance of the Other Obligations, Mortgagee can recover the Debt by a sale of the Property.

Section 7.2 NO SALE/ENCUMBRANCE. Mortgagor shall not transfer the Property or any part thereof or any interest therein or permit or suffer the Property or any part thereof or any interest therein to be transferred other than as expressly permitted under the terms of the Loan Agreement.

## ARTICLE 8 - PREPAYMENT

Section 8.1 PREPAYMENT. The Debt, or any portion thereof, may not be prepaid prior to the Final Disbursement Date (as such term is defined in the Loan Agreement). From and after the Final Disbursement Date, Borrower shall have the right to prepay the principal of the Note at par and without penalty.

## ARTICLE 9 - RIGHTS AND REMEDIES

Section 9.1 REMEDIES. When used in this Mortgage, the term "Event of Default" means, collectively, the actions, inactions, events, and conditions defined as such in the Loan Agreement and the actions, inactions, events, and conditions defined as such in the respective instruments, agreements and documents evidencing, granting, securing, pertaining, or in any way relating, to the Other Obligations. Upon the occurrence of any Event of Default, Mortgagor agrees that Mortgagee may take such action, without further notice or demand, as it deems advisable to protect and enforce its rights against Mortgagor and in and to the Property, including, but not limited to, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Mortgagee may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Mortgagee:

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- (a) declare the entire unpaid Obligations to be immediately due and payable;
- (b) institute judicial proceedings for the complete foreclosure of this Security Instrument under any applicable provision of law, in which case the Property or any interest therein may be sold for cash or upon credit in one or more parcels or in several interests or portions and in any order or manner all as determined by Mortgagee;
- (c) with or without entry, to the extent permitted and pursuant to the procedures provided by the Laws, institute judicial proceedings for the partial foreclosure of this Security Instrument for the portion of the Obligations then due and payable, subject to the continuing lien and security interest of this Security Instrument for the balance of the Obligations not then due, unimpaired and without loss of priority;
- (d) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein, in the Note, the Loan Agreement, or in the other Loan Documents;
- (e) recover judgment on the Note either before, during or after any proceedings for the enforcement of this Security Instrument or the other Loan Documents;
- (f) obtain the appointment of a receiver, trustee, liquidator or conservator of the Property and become a mortgagee in possession with all the powers which a receiver would have, without notice and without regard for the adequacy of the security for the Obligations and without regard for the solvency of Mortgagor, any Indemnitor or of any person, firm or other entity liable or to become liable for the payment of the Obligations;
- (g) subject to any Laws, the license granted to Mortgagor under Section 1.2 hereof shall automatically be revoked and Mortgagee may enter into or upon the Property, either personally or by its agents, nominees or attorneys and dispossess Mortgagor and its agents and servants therefrom, without liability for trespass, damages or otherwise and exclude Mortgagor and its agents or servants wholly therefrom, and take possession of all books, records and accounts relating thereto and Mortgagor agrees to surrender possession of the Property and of such books, records and accounts to Mortgagee upon demand, and thereupon Mortgagee may (i) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Property and conduct business thereon; (ii) complete any construction on the Property in such manner and form as Mortgagee deems advisable; (iii) make alterations, additions, renewals, replacements and improvements to or on the Property; (iv) exercise all rights and powers of Mortgagor with respect to the Property, whether in the name of Mortgagor or otherwise, including, without limitation, the right to make, cancel, enforce or modify Leases, obtain and evict tenants, and demand, sue for, collect and receive all Rents of the Property and every part thereof; (v) require Mortgagor to pay monthly in advance to Mortgagee, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Property as may be occupied by Mortgagor; (vi) require Mortgagor to vacate and surrender possession of the Property to Mortgagee or to such receiver and, in default thereof, Mortgagor may be evicted by summary proceedings or otherwise; and (vii) apply the receipts from the Property to the payment of the Obligations, in such order, priority and proportions as Mortgagee shall deem appropriate in its sole discretion after deducting therefrom all expenses (including reasonable attorneys' fees) incurred in connection with the aforesaid operations and all amounts necessary to pay the Taxes, insurance premiums and other expenses for which

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Mortgagor is obligated under the Loan Agreement, as well as just and reasonable compensation for the services of Mortgagee, its counsel, agents and employees;

(h) exercise any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing:

(i) the right to take possession of any Collateral (including, without limitation, the Personal Property) or any part thereof, and to take such other measures as Mortgagee may deem necessary for the care, protection and preservation of the Collateral (including without limitation, the Personal Property), and

(ii) request Mortgagor at its expense to assemble the Collateral, including without limitation, the Personal Property, and make it available to Mortgagee at a convenient place acceptable to Mortgagee. Any notice of sale, disposition or other intended action by Mortgagee with respect to the Collateral, including without limitation, the Personal Property, sent to Mortgagor in accordance with the provisions hereof at least ten (10) days prior to such action, shall constitute commercially reasonable notice to Mortgagor;

(i) apply any sums then held in escrow or otherwise by Mortgagee in accordance with the terms of this Security Instrument, the Loan Agreement, or any other Loan Documents to the payment of the following items in any order in its sole discretion:

- (i) Taxes;
- (ii) Insurance premiums;
- (iii) interest on the unpaid principal balance of the Note;
- (iv) the unpaid principal balance of the Note; or

(v) all other sums payable pursuant to the Note, the Loan Agreement, this Security Instrument and the other Loan Documents, including without limitation advances made by Mortgagee pursuant to the terms of this Security Instrument;

(j) surrender all insurance policies, collect the unearned insurance premiums and apply such sums as a credit on the Obligations in such priority and proportion as Mortgagee in its discretion shall deem proper, and in connection therewith, Mortgagor hereby appoints Mortgagee as agent and attorney-in-fact (which is coupled with an interest and is therefore irrevocable) for Mortgagor to collect such insurance premiums;

(k) foreclose by judicial sale and apply the proceeds of any recovery to the Obligations in accordance with Section 9.2 or to any deficiency under this Security Instrument;

(l) exercise all rights and remedies under any causes of action covered by this Security Instrument, whether before or after any sale of the Property by foreclosure, and apply the proceeds of any recovery to the Obligations in accordance with Section 9.2 or to any deficiency under this Security Instrument; or

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(m) pursue such other remedies as Mortgagee may have under the Laws.

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

Section 9.2 APPLICATION OF PROCEEDS. The purchase money, proceeds and avails of any disposition of the Property, or any part thereof, or any other sums collected by Mortgagee pursuant to the Note, this Security Instrument, the Loan Agreement, or the other Loan Documents, may be applied by Mortgagee to the payment of the Obligations in such priority and proportions as Mortgagee in its discretion shall deem proper.

Section 9.3 RIGHT TO CURE DEFAULTS. Upon the occurrence of any event or condition, which with the giving of notice and failure to cure or passage of time would constitute an Event of Default, or of any Event of Default, Mortgagee may, but without any obligation to do so and without notice to or demand on Mortgagor and without releasing Mortgagor from any obligation hereunder, make or do the same in such manner and to such extent as Mortgagee may deem necessary to protect the security hereof. Mortgagee is authorized to enter upon the Property for such purposes, or appear in, defend, or bring any action or proceeding to protect its interest in the Property or to foreclose this Security Instrument or collect the Obligations. The cost and expense of any cure hereunder (including reasonable attorneys' fees to the extent permitted by law), with interest as provided below, shall constitute a portion of the Obligations and shall be due and payable to Mortgagee upon demand. All such costs and expenses incurred by Mortgagee in remedying such Event of Default or event or condition shall bear interest at the Default Rate for the period after notice from Mortgagee that such cost or expense was incurred to the date of payment to Mortgagee and shall be deemed to constitute a portion of the Obligations and be secured by this Security Instrument and the other Loan Documents and shall be immediately due and payable upon demand by Mortgagee therefor.

Section 9.4 ACTIONS AND PROCEEDINGS. Mortgagee has the right to appear in and defend any action or proceeding brought with respect to the Property and, after the occurrence and during the continuance of an Event of Default, to bring any action or proceeding, in the name and on behalf of Mortgagor, which Mortgagee, in its discretion, decides should be brought to protect its interest in the Property.

Section 9.5 RECOVERY OF SUMS REQUIRED TO BE PAID. Mortgagee shall have the right from time to time to take action to recover any sum or sums which constitute a part of the Obligations as the same become due, without regard to whether or not the balance of the Obligations shall be due, and without prejudice to the right of Mortgagee thereafter to bring an action of foreclosure, or any other action, for a Default or Defaults by Mortgagor existing at the time such earlier action was commenced.

Section 9.6 OTHER RIGHTS, ETC. (a) The failure of Mortgagee to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Security Instrument. Mortgagor shall not be relieved of Mortgagor's obligations hereunder by reason of (i) the failure of Mortgagee to comply with any request of Mortgagor to take any action to foreclose this Security Instrument or otherwise enforce any of the provisions hereof or of the Note or the other Loan Documents, (ii) the release, regardless of consideration, of the whole or any part of the Property, or of any person liable for the Obligations or any portion thereof, or (iii) any agreement or stipulation by



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Mortgagee extending the time of payment or otherwise modifying or supplementing the terms of the Note, the Loan Agreement, this Security Instrument or the other Loan Documents.

(b) It is agreed that the risk of loss or damage to the Property is on Mortgagor, and Mortgagee shall have no liability whatsoever for decline in value of the Property, for failure to maintain the Policies, or for failure to determine whether insurance in force is adequate as to the amount of risks insured. Possession by Mortgagee shall not be deemed an election of judicial relief, if any such possession is requested or obtained, with respect to the Property or any other Collateral not in Mortgagee's possession.

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

Section 9.7 RIGHT TO RELEASE ANY PORTION OF THE PROPERTY. Mortgagee may release any portion of the Property for such consideration as Mortgagee may require without, as to the remainder of the Property, in any way impairing or affecting the lien or priority of this Security Instrument, or improving the position of any subordinate lien holder with respect thereto, except to the extent that the obligations hereunder shall have been reduced by the actual monetary consideration, if any, received by Mortgagee for such release, and may accept by assignment, pledge or otherwise any other property in place thereof as Mortgagee may require without being accountable for so doing to any other lien holder. This Security Instrument shall continue as a lien and security interest in the remaining portion of the Property.

Section 9.8 VIOLATION OF LAWS. If the Property is not in compliance with the Laws, Mortgagee may impose reasonable additional requirements upon Mortgagor in connection herewith including, without limitation, monetary reserves or financial equivalents.

Section 9.9 RIGHT OF ENTRY. Subject to the terms of the Loan Agreement, Mortgagee and its agents shall have the right to enter and inspect the Property at all reasonable times.

Section 9.10 SUBROGATION. If any or all of the proceeds of the Note have been used to extinguish, extend or renew any indebtedness heretofore existing against the Property, then, to the extent of the funds so used, Mortgagee shall be subrogated to all of the rights, claims, liens, titles, and interests existing against the Property heretofore held by, or in favor of, the holder of such indebtedness and such former rights, claims, liens, titles, and interests, if any, are not waived but rather are continued in full force and effect in favor of Mortgagee and are merged with the lien and security interest created herein as cumulative security for the repayment of the Obligations, and the performance and discharge of the Obligations.

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## ARTICLE 10 - INDEMNIFICATIONS

Section 10.1 GENERAL INDEMNIFICATION. Mortgagor shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties (as such term is defined in Section 7.18 of the Loan Agreement) from and against any and all Losses imposed upon or incurred by or asserted against any Indemnified Parties and directly or indirectly arising out of or in any way relating to any one or more of the following: (a) any accident, injury to or death of persons or loss of or damage to property occurring in, on or about the Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (b) any use, nonuse or condition in, on or about the Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (c) performance of any labor or services or the furnishing of any materials or other property in respect of the Property or any part thereof; (d) any failure of the Property to be in compliance with any Laws; (e) ANY AND ALL CLAIMS AND DEMANDS WHATSOEVER WHICH MAY BE ASSERTED AGAINST MORTGAGEE BY REASON OF ANY ALLEGED OBLIGATIONS OR UNDERTAKINGS ON ITS PART TO PERFORM OR DISCHARGE (INCLUDING CLAIMS AND DEMANDS ARISING FROM INDEMNIFIED PARTIES' OWN NEGLIGENCE THAT DOES NOT CONSTITUTE GROSS NEGLIGENCE) ANY OF THE TERMS, COVENANTS, OR AGREEMENTS CONTAINED IN ANY LEASE; or (f) the payment of any commission, charge or brokerage fee to anyone which may be payable in connection with the funding of the Loan evidenced by the Note and secured by this Security Instrument. Any amounts payable to Mortgagee by reason of the application of this Section 10.1 shall become immediately due and payable and shall bear interest at the Default Rate from the date loss or damage is sustained by Mortgagee until paid.

Section 10.2 MORTGAGE AND/OR INTANGIBLE TAX. Mortgagor shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all Losses imposed upon or incurred by or asserted against any Indemnified Parties and directly or indirectly arising out of or in any way relating to any tax on the making and/or recording of this Security Instrument, the Loan Agreement, the Note or any other Loan Document.

Section 10.3 ENVIRONMENTAL INDEMNITY. Simultaneously with this Security Instrument, Mortgagor and Guarantor, as "Indemntor," have executed and delivered the Environmental Indemnity and reference hereby is made thereto for the obligations of Mortgagor which are included among the Obligations secured hereby.

## ARTICLE 11 - WAIVERS

Section 11.1 WAIVER OF COUNTERCLAIM. Mortgagor hereby waives the right to assert a counterclaim, other than a mandatory or compulsory counterclaim, in any action or proceeding brought against it by Mortgagee arising out of or in any way connected with this Security Instrument, the Note, the Loan Agreement, any of the other Loan Documents, or the Obligations.

Section 11.2 MARSHALLING AND OTHER MATTERS. Mortgagor hereby waives, to the extent permitted by law, the benefit of all appraisal, valuation, stay, extension, and redemption laws now or hereafter in force and all rights of marshalling in the event of any sale hereunder of the Property or any part thereof or any interest therein. Further, Mortgagor hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Security

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Instrument on behalf of Mortgagor, and on behalf of each Person acquiring any interest in or title to the Property subsequent to the date of this Security Instrument and on behalf of all persons to the extent permitted by the Laws.

Section 11.3 WAIVER OF NOTICE. Mortgagor shall not be entitled to any notices of any nature whatsoever from Mortgagee except (a) with respect to matters for which this Security Instrument, the Loan Agreement or any other Loan Document, specifically and expressly provides for the giving of notice by Mortgagee to Mortgagor, and (b) with respect to matters for which Mortgagee is required by any of the Laws to give notice, and Mortgagor hereby expressly waives the right to receive any notice from Mortgagee with respect to any matter for which this Security Instrument does not specifically and expressly provide for the giving of notice by Mortgagee to Mortgagor.

Section 11.4 RESERVED.

Section 11.5 SOLE DISCRETION OF MORTGAGEE. Wherever pursuant to this Security Instrument (a) Mortgagee exercises any right given to it to approve or disapprove, (b) any arrangement or term is to be satisfactory to Mortgagee, or (c) any other decision or determination is to be made by Mortgagee, the decision of Mortgagee to approve or disapprove, all decisions that arrangements or terms are satisfactory or not satisfactory and all other decisions and determinations made by Mortgagee, shall be in the sole and absolute discretion of Mortgagee, except as may be otherwise expressly and specifically provided herein or in any of the other Loan Documents.

## ARTICLE 12 - EXCULPATION

Section 12.1 EXCULPATION. Notwithstanding anything to the contrary contained in this Security Instrument, the liability of Mortgagor to pay the Debt and for the performance of the other agreements, covenants and obligations contained herein and in the Note, the Loan Agreement and the other Loan Documents shall be limited as set forth in SECTION 12.17 OF the Loan Agreement.

## ARTICLE 13 - SUBMISSION TO JURISDICTION

Section 13.1 SUBMISSION TO JURISDICTION. With respect to any claim or action arising hereunder or under the Note or the other Loan Documents, Mortgagor (a) irrevocably submits to the nonexclusive jurisdiction of the courts of the State of Illinois and the United States District Court located in the Northern District of Illinois, and appellate courts from any thereof, and (b) irrevocably waives any objection which it may have at any time to the laying on venue of any suit, action or proceeding arising out of or relating to this Security Instrument brought in any such court, irrevocably waives any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum.

## ARTICLE 14 - APPLICABLE LAW

Section 14.1 CHOICE OF LAW. THIS SECURITY INSTRUMENT SHALL BE DEEMED TO BE A CONTRACT ENTERED INTO PURSUANT TO THE LAWS OF THE STATE OF ILLINOIS AND SHALL IN ALL RESPECTS BE GOVERNED, CONSTRUED, APPLIED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF ILLINOIS, PROVIDED

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HOWEVER, THAT WITH RESPECT TO THE CREATION, PERFECTION, PRIORITY AND ENFORCEMENT OF THE LIEN OF THIS SECURITY INSTRUMENT, AND THE DETERMINATION OF DEFICIENCY JUDGMENTS, THE LAWS OF THE STATE WHERE THE PROPERTY IS LOCATED SHALL APPLY.

Section 14.2 PROVISIONS SUBJECT TO APPLICABLE LAW. All rights, powers and remedies provided in this Security Instrument may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of law and are intended to be limited to the extent necessary so that they will not render this Security Instrument invalid, unenforceable or not entitled to be recorded, registered or filed under the provisions of any Laws.

## ARTICLE 15 - DEFINITIONS

Section 15.1 GENERAL DEFINITIONS. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Security Instrument may be used interchangeably in singular or plural form and the word "Mortgagor" shall mean "each Mortgagor and any subsequent owner or owners of the Property or any part thereof or any interest therein," the word "Mortgagee" shall mean "Mortgagee 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 "Property" shall include any portion of the Property and any interest therein, and the phrases "legal fees," "attorneys' fees" and "counsel fees" shall include any and all attorneys', paralegal and law clerk fees and disbursements, including, but not limited to, fees and disbursements at the pre-trial, trial and appellate levels incurred or paid by Mortgagee in protecting its interest in the Property, the Leases and the Rents and enforcing its rights hereunder.

Section 15.2 HEADINGS, ETC. The headings and captions of various Articles and Sections 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.

## ARTICLE 16 - MISCELLANEOUS PROVISIONS

Section 16.1 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 Mortgagor or Mortgagee, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

Section 16.2 LIABILITY. If Mortgagor 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 Mortgagor and Mortgagee and their respective successors and assigns forever.

Section 16.3 INAPPLICABLE PROVISIONS. If any term, covenant or condition of this Security Instrument or any other Loan Document, is held to be invalid, illegal or unenforceable in any respect, the Note and this Security Instrument or the other Loan Documents, as the case may be, shall be construed without such provision.

Section 16.4 DUPLICATE ORIGINALS, COUNTERPARTS. This Security Instrument may

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be executed in any number of duplicate originals and each duplicate original shall be deemed to be an original. This Security Instrument may be executed in several counterparts, each of which counterparts shall be deemed an original instrument and all of which together shall constitute a single Security Instrument. The failure of any party hereto to execute this Security Instrument, or any counterpart hereof, shall not relieve the other signatories from their obligations hereunder.

Section 16.5 NUMBER AND GENDER. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

Section 16.6 NOTICE. All notices required or permitted under this Security Instrument shall be given and be effective in accordance with Section 12.3 of the Loan Agreement.

Section 16.7 SUCCESSORS AND ASSIGNS. The terms, covenants, conditions and warranties contained herein, and the powers granted hereby, shall run with the land, shall insure to the benefit of and bind all parties hereto and their respective heirs, executors, administrators, successors and assigns, and all subsequent owners of the Property, and all subsequent holders of the Note and the Mortgage, subject in all events to the provisions of the Mortgage and the Loan Agreement regarding transfers of the Property by Mortgagor. In this Security Agreement, whenever the context so requires, the masculine gender shall include the feminine and/or neuter and the singular number shall include the plural and conversely in each case. If there is more than one party constituting Mortgagor, all obligations of each Mortgagor hereunder shall be joint and several. Upon the earlier of the Final Disbursement Date and the date upon which the Final Loan Amount is fully disbursed to Mortgagor, Mortgagee shall have the right to assign, transfer, sell, negotiate, pledge or otherwise hypothecate, without Mortgagor's consent, this Security Agreement and any of its rights and security hereunder; provided that the assignee shall assume and agree to perform all of Mortgagee's obligations hereunder and shall, upon such assignment, deliver to Mortgagor an instrument evidencing such transfer and assumption.

## ARTICLE 17 - INTENTIONALLY OMITTED

Section 17.1 INTENTIONALLY OMITTED.

## ARTICLE 18 - STATE SPECIFIC PROVISIONS

Section 18.1 INCONSISTENCIES. In the event of any inconsistencies between the terms and conditions of this Article 18 and the other provisions of this Security Instrument, the terms and conditions of this Article 18 shall control and be binding.

Section 18.2 WAIVER. The Mortgagor acknowledges that the transaction of which this Security Instrument is a part is a transaction which does not include either agricultural real estate as defined in the Illinois Mortgage Foreclosure Law, 735 ILCS 5/15-1101 et seq. (herein the "Act"), or residential real estate (as defined in the Act) and the Mortgagor, on behalf of itself and all Persons now or hereafter interested in the Property to the fullest extent permitted by applicable law hereby waives all rights under all appraisal, homestead, moratorium, valuation, exemption, stay, extension, and redemption statutes, laws or equities now or hereafter existing, and the Mortgagor agrees that no defense, claim or right based on any thereof will be asserted, or may be enforced, in any

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action enforcing or relating to this Security Instrument or any of the Property. Without limiting the generality of the preceding sentence, the Mortgagor, on its own behalf and on behalf of each and every Person acquiring any interest in or title to the Property subsequent to the date of this Security Instrument, hereby irrevocably waives any and all rights of redemption from sale under any order or decree of foreclosure of this Mortgage or under any power contained herein or under any sale pursuant to any statute, order, decree or judgment of any court. The Mortgagor, for itself and for all Persons hereafter claiming through or under it or who may at any time hereafter become holders of liens junior to the lien of this Security Instrument, hereby expressly waives and releases all rights to direct the order in which any of the Collateral shall be sold in the event of any sale or sales pursuant hereto and to have any of the Collateral and/or any other property now or hereafter constituting security for any of the indebtedness secured hereby marshaled upon any foreclosure of this Security Instrument or of any other security for any of said indebtedness.

Section 18.3 MAXIMUM DEBT. As provided in Section 2.1(f), this Security Instrument, among other things, secures future advances as therein stated. Notwithstanding anything in this Security Instrument to the contrary, although the amount of indebtedness secured by this Security Instrument may increase or decrease from time to time, the maximum principal amount of indebtedness secured by this Security Instrument at any one time shall not exceed an amount equal to two times the principal amount of the Loan stated in the Recitals of this Security Instrument, plus all costs of enforcement and collection of this Security Instrument, the Note, and the other Loan Documents, plus the total amount of any advances made pursuant to the Loan Documents to protect the collateral and the security interest and lien created hereby; together with interest on all of the foregoing as provided in the Loan Documents.

## Section 18.4 COMPLIANCE WITH ILLINOIS MORTGAGE FORECLOSURE LAW.

(a) If any provision of this Security Instrument is inconsistent with any applicable provision of 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 fairly be construed in a manner consistent with the Act.

(b) Without in any way limiting or restricting any of the Mortgagee's rights, remedies, powers and authorities under this Security Instrument, and in addition to all of such rights, remedies, powers, and authorities, the Mortgagee shall also have and may exercise any and all rights, remedies, powers and authorities which the holder of a mortgage is permitted to have or exercise under the provisions of the Act, as the same may be amended from time to time. If any provision of this Security Instrument grants to the Mortgagee any rights, remedies, powers or authorities upon default of Mortgagor which are more limited than the rights that would otherwise be vested in the Mortgagee under the Act in the absence of said provision, Mortgagee shall be vested with all of the rights, remedies, powers and authorities granted in the Act to the fullest extent permitted by law.

(c) Without limiting the generality of the foregoing, all expenses incurred by the Mortgagee, to the extent reimbursable under 735 ILCS 5/15-1510 and 735 ILCS 5/15-1512, or any other provisions of the Act, whether incurred before or after any decree or judgment of foreclosure, and whether or not enumerated in any other provision of this Security Instrument, shall be added to the indebtedness secured by this Security Instrument and by the judgment of foreclosure.

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IN WITNESS WHEREOF, THIS SECURITY INSTRUMENT has been executed by Mortgagor on the date set forth in the acknowledgment certificate below, to be effective, however, as of the day and year first above written.

**MORTGAGOR:**

**CANAL/TAYLOR SOUTH, LLC,  
a Delaware limited liability company**

By: Canal/Taylor Venture, an Illinois general partnership, its sole member

By: Sweeney Canal/Taylor Limited Partnership, general partner

By: [Signature]  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: Colum Group Limited Partnership, general partner

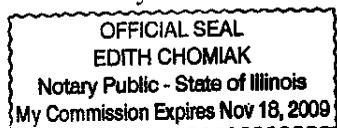
By: [Signature]  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF Illinois

COUNTY OF Cook

I, the undersigned, a Notary Public, do hereby certify that John P. Sweeney personally known to me to be the general partner of Sweeney Canal/Taylor Limited Partnership, one of the general partners of Canal/Taylor Venture, the sole member of Canal/Taylor South LLC, a Delaware limited liability company, and personally known to me to be the same person whose name is subscribed to the foregoing document, appeared before me this day in person and acknowledged that as such John P. Sweeney of Sweeney Canal/Taylor Limited Partnership, one of the general partners of Canal/Taylor Venture, the sole member of said Canal/Taylor South LLC, he signed and delivered the said document on behalf of said limited liability company, pursuant to his authority as the general partner of one of the general partners of the sole member of said limited liability company as his free and voluntary act, and as the free and voluntary act and deed 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, 2007.



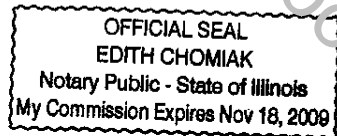
Edith Chomiak  
Notary Public

Type or Print Name: EDITH CHOMIAK  
My Commission Expires: Nov 18, 2009

**UNOFFICIAL COPY**STATE OF IllinoisCOUNTY OF Cook

I, the undersigned, a Notary Public, do hereby certify that Paul Heaver personally known to me to be the general partner of Colum Group Limited Partnership, one of the general partners of Canal/Taylor Venture, the sole member of Canal/Taylor South LLC, a Delaware limited liability company, and personally known to me to be the same person whose name is subscribed to the foregoing document, appeared before me this day in person and acknowledged that as such Paul Heaver of Colum Group Limited Partnership, one of the general partners of Canal/Taylor Venture, the sole member of said Canal/Taylor South LLC, he signed and delivered the said document on behalf of said limited liability company, pursuant to his authority as the general partner of one of the general partners of the sole member of said limited liability company as his free and voluntary act, and as the free and voluntary act and deed 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, 2007.



Edith Chomiak  
Notary Public  
Type or Print Name: EDITH CHOMIAK  
My Commission Expires: Nov 18, 2009



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## EXHIBIT A (Description of Land)

### PARCEL 1:

A PARCEL OF LAND CONSISTING OF PART OF LOT 23 OF THE RAILROAD COMPANIES' RESUBDIVISION OF BLOCKS 62 TO 76, BOTH INCLUSIVE, 78, PARTS OF BLOCKS 61 AND 77 TOGETHER WITH CERTAIN VACATED STREETS, ALLEYS IN THE SCHOOL SECTION ADDITION IN CHICAGO, A PORTION OF THE EAST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 16, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED MARCH 29, 1924 AS DOCUMENT NO. 8339751, IN COOK COUNTY, ILLINOIS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF PREVIOUSLY MENTIONED LOT 23; THENCE NORTH 90 DEGREES 24 MINUTES 43 SECONDS EAST ALONG THE WEST LINE OF SAID LOT 23, SAID WEST LINE ALSO BEING THE EAST RIGHT OF WAY LINE OF SOUTH CANAL STREET (100 FEET IN WIDTH), A DISTANCE OF 217.87 FEET TO A JOG IN THE WEST LINE AFORESAID, THENCE NORTH 89 DEGREES 10 MINUTES 34 SECONDS WEST A DISTANCE OF 20.00 FEET; THENCE NORTH 00 DEGREES 24 MINUTES 43 SECONDS EAST ALONG THE WEST LINE OF SAID LOT 23, ALSO BEING THE EAST RIGHT OF WAY LINE OF SAID SOUTH CANAL STREET (50 FEET IN WIDTH), A DISTANCE OF 598.05 FEET TO A POINT ON A LINE 20 FEET SOUTH OF AND PARALLEL TO THE NORTH LINE OF LOT 23; THENCE SOUTH 89 DEGREES 11 MINUTES 23 SECONDS EAST ALONG A LINE 20 FEET SOUTH AND PARALLEL WITH THE NORTH LINE OF LOT 23 A DISTANCE OF 311.51 FEET; THENCE SOUTH 04 DEGREES 42 MINUTES 15 SECONDS EAST, ALONG A LINE FOLLOWING AND PARALLEL WITH A FUTURE TRACK, A DISTANCE OF 21.50 FEET TO A POINT OF CURVE; THENCE SOUTHERLY ALONG THE ARC OF A CIRCLE CONVEX WESTERLY, HAVING A RADIUS OF 560.69 FEET, A DISTANCE OF 62.24 FEET TO THE POINT OF TANGENCY; THENCE SOUTH 11 DEGREES 03 MINUTES 50 SECONDS EAST, A DISTANCE OF 199.91 FEET TO A POINT OF CURVE; THENCE SOUTHERLY ALONG THE ARC OF A CIRCLE CONVEX EASTERLY, HAVING A RADIUS OF 645.80 FEET, A DISTANCE OF 143.37 FEET TO THE POINT OF TANGENCY; THENCE SOUTH 01 DEGREES 39 MINUTES 20 SECONDS WEST, A DISTANCE OF 25.31 FEET TO A POINT OF CURVE; THENCE SOUTHERLY ALONG THE ARC OF A CIRCLE CONVEX EASTERLY, HAVING A RADIUS OF 645.80 FEET, A DISTANCE OF 71.68 FEET TO THE POINT OF TANGENCY; THENCE SOUTH 08 DEGREES 00 MINUTES 55 SECONDS WEST, A DISTANCE OF 300.64 FEET TO A POINT ON THE SOUTH LINE OF SAID LOT 23; THENCE NORTH 89 DEGREES 10 MINUTES 34 SECONDS WEST ALONG THE SOUTH LINE OF LOT 23 AFORESAID, SAID SOUTH LINE ALSO BEING THE NORTH RIGHT OF WAY LINE OF WEST ROOSEVELT ROAD (118 FEET IN WIDTH), A DISTANCE OF 274.34 FEET; THENCE NORTH 00 DEGREES 12 MINUTES 21 SECONDS WEST, A DISTANCE OF 100.12 FEET; THENCE NORTH 89 DEGREES 09 MINUTES 34 SECONDS EAST, A DISTANCE OF 31.59 FEET; THENCE SOUTH 00 DEGREES 08 MINUTES 35 SECONDS WEST A DISTANCE OF 100.12 FEET; THENCE NORTH 89 DEGREES 10 MINUTES 34 SECONDS WEST ALONG THE SOUTH LINE OF LOT 23 AFORESAID, A DISTANCE OF 2.54 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

### Exhibit A

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## PARCEL 2:

EASEMENT IN FAVOR OF PARCEL 1 AS CREATED BY THE PERMANENT ACCESS EASEMENTS AGREEMENT, DATED MARCH 26, 2005 AND RECORDED APRIL 21, 2005 AS DOCUMENT NUMBER 0511135351 MADE BY AND BETWEEN LASALLE BANK NATIONAL ASSOCIATION, AS TRUSTEE UNDER TRUST AGREEMENT DATED FEBRUARY 12, 1986 AND KNOWN AS TRUST NUMBER 66603, CANAL/TAYLOR CENTRAL, LLC, CANAL/TAYLOR SOUTH, LLC NORTRUST REALTY MANAGEMENT, INC., THE NORTHERN TRUST COMPANY, NORTHERN INVESTMENTS CORPORATION AND THE PRIVATE BANK AND TRUST COMPANY, FOR (A) PEDESTRIAN AND VEHICULAR ACCESS AND EGRESS OVER AND ACROSS THE SOUTHERN 14 FEET OF THE NORTH PARCEL, AS DEFINED THEREIN, AND (B) PEDESTRIAN AND VEHICULAR ACCESS AND INGRESS OVER AND ACROSS ALL THAT PORTION OF THE CENTRAL/TAYLOR STREET PARCEL AS DEFINED THEREIN.

## PARCEL 3:

EASEMENT IN FAVOR OF PARCEL 1 AS CREATED BY THE TEMPORARY CONSTRUCTION AND ACCESS EASEMENT AGREEMENT, DATED MARCH 26, 2005 AND RECORDED APRIL 21, 2005 AS DOCUMENT NUMBER 0511135352 MADE BY AND BETWEEN LASALLE BANK NATIONAL ASSOCIATION, AS TRUSTEE UNDER TRUST AGREEMENT DATED FEBRUARY 12, 1986 AND KNOWN AS TRUST NUMBER 66603, CANAL/TAYLOR CENTRAL, LLC, CANAL/TAYLOR SOUTH, LLC, CANAL/TAYLOR VENTURE, NORTRUST REALTY MANAGEMENT, INC., THE NORTHERN TRUST COMPANY, NORTHERN INVESTMENTS CORPORATION AND THE PRIVATE BANK AND TRUST COMPANY, FOR RIGHT OF ENTRY OVER, UPON AND ACROSS SUCH PORTIONS OF THE NORTH PARCEL AS DESCRIBED THEREIN.

Pin: 17-16-334-006  
17-16-334-007

Exhibit A

Mortgage, Assignment of Leases and Rents, Security Agreement and Financing Statement