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Doc#: 0721460054 Fee: \$88.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 08/02/2007 12:02 PM Pg: 1 of 33

Prepared by,
Record and Return to

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7800 Sears Tower
233 South Wacker Drive
Chicago, IL 60606

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MORTGAGE AND SECURITY AGREEMENT

THE NOTE SECURED BY THIS MORTGAGE
CONTAINS AN ADJUSTABLE INTEREST RATE.

(Loan No. 756157/756159)

A. THIS MORTGAGE AND SECURITY AGREEMENT (as the same may from time to time hereafter be modified, supplemented or amended, this "Mortgage") is made as of July 31, 2007, by and between **KINZIE STREET PARTNERS, LLC**, an Illinois limited liability company, having its principal place of business and post office address at 650 North Dearborn Street, Suite 550, Chicago, IL 60610, as "**Borrower**" ("**Borrower**" to be construed as "**Borrowers**" if the context so requires) for the benefit of **PRINCIPAL COMMERCIAL ACCEPTANCE, LLC**, a Delaware limited liability company, having a post office address at 11050 Roe Avenue, Suite 200, Overland Park, Kansas 66211-1216, as "**Lender**".

WITNESSETH:

B. Borrower is justly indebted to Lender for money borrowed (the "**Loan**") in the original principal sum of Nine Million Two Hundred Thousand and 00/100 Dollars (\$9,200,000.00) (the "**Loan Amount**") evidenced by Borrower's secured promissory note in the principal amount of \$4,600,000.00 and Borrower's secured promissory note in the principal amount of \$4,600,000.00, with each of said notes bearing even date herewith, made payable and delivered to Lender (as may be modified, amended, supplemented, extended or consolidated in writing and any note(s) issued

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in exchange therefor or replacement thereof) (collectively, the “**Note**”), in which Borrower promises to pay to Lender the Loan Amount, together with all accrued and unpaid interest thereon, interest accrued at the Default Rate (if any), Late Charges (if any), and all other obligations and liabilities due or to become due to Lender pursuant to the Loan Documents and all other amounts, sums and expenses paid by or payable to Lender pursuant to the Loan Documents and the Environmental Indemnity (collectively the “**Indebtedness**”) until the Indebtedness has been paid, but in any event, the unpaid balance (if any) remaining due on the Note shall be due and payable on August 1, 2010 unless extended pursuant to the terms of the Note (the “**Maturity Date**”) or such earlier date resulting from the acceleration of the Indebtedness by Lender. All of the terms and conditions of the Note are hereby incorporated by reference as though set forth at length herein. Capitalized terms used herein and not otherwise defined shall have those meanings given to them in the other Loan Documents. Each secured promissory note is equally and ratably secured by this Mortgage, without priority of one over the other. The rate of interest payable by Borrower to Lender may vary as more particularly set forth in the Note.

C. NOW, THEREFORE, to secure the payment of the said Indebtedness in accordance with the terms and conditions of the Loan Documents, and all extensions, modifications and renewals thereof and also to secure the performance of all covenants and agreements contained therein, and also to secure the payment of any and all other Indebtedness, direct or contingent, that may now or hereafter become owing from Borrower to Lender in connection with the Loan Documents, and in consideration of the Loan Amount in hand paid, receipt of which is hereby acknowledged, Borrower does by these presents mortgage and convey unto Lender, its successors and assigns forever, that certain real estate and all of Borrower’s estate, right, title and interest therein, located in the County of Cook, State of Illinois, commonly known as 220-230 W. Kinzie, Chicago, Illinois 60610, more particularly described in Exhibit A attached hereto and made a part hereof (the “**Land**”), which Land, together with the following described property, rights and interests, is collectively referred to herein as the “**Premises**.”

D. Together with Borrower’s interest as lessor in and to all Leases (as defined in the Assignment of Leases and Rents, executed by Borrower in favor of Lender, dated as of even date herewith (the “**Assignment of Leases and Rents**”)) and all Rents (as defined in the Assignment of Leases and Rents), which are pledged primarily and on a parity with the Land and not secondarily.

E. Together with all and singular the tenements, hereditaments, easements, appurtenances, passages, waters, water courses, riparian rights, direct flow, ditch, reservoir, well and other water rights, whether or not adjudicated, whether tributary or nontributary and whether evidenced by deed, water stock, permit or otherwise, sewer rights, rights in trade names, licenses, permits and contracts, and all other rights, liberties and privileges of any kind or character in any way now or hereafter appertaining to the Land, including but not limited to, homestead and any other claim at law or in equity as well as any after-acquired title, franchise or license and the reversion and reversions and remainder and remainders thereof.

F. Together with the right in the case of foreclosure hereunder of the encumbered property for Lender to take and use the name by which the buildings and all other improvements situated on the Premises are commonly known and the right to manage and operate the said buildings under any such name and variants thereof.

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G. Together with all right, title and interest of Borrower in any and all buildings and improvements of every kind and description now or hereafter erected or placed on the said Land and all materials intended for construction, reconstruction, alteration and repairs of such buildings and improvements now or hereafter erected thereon, all of which materials shall be deemed to be included within the Premises immediately upon the delivery thereof to the Premises, and all fixtures now or hereafter owned by Borrower and attached to or contained in and used in connection with the Premises including, but not limited to, all machinery, motors, elevators, fittings, radiators, awnings, shades, screens, and all plumbing, heating, lighting, ventilating, refrigerating, incinerating, air-conditioning and sprinkler equipment and fixtures and appurtenances thereto; and all items of furniture, furnishings, equipment and personal property owned by Borrower used or useful in the operation of the Premises; and all renewals or replacements of all of the aforesaid property owned by Borrower or articles in substitution therefor, whether or not the same are or shall be attached to said buildings or improvements in any manner (collectively, the "Improvements"); it being mutually agreed, intended and declared that all the aforesaid property owned by Borrower and placed by it on the Land or used in connection with the operation or maintenance of the Premises shall, so far as permitted by law, be deemed to form a part and parcel of the Land and for the purpose of this Mortgage to be Land and covered by this Mortgage, and as to any of the property aforesaid which does not form a part and parcel of the Land or does not constitute a "fixture" (as such term is defined in the Uniform Commercial Code ("UCC")), this Mortgage and the other Loan Documents (the terms of which grant a security interest in personal property or real property, the proceeds of which may become personal property) are each hereby deemed to be, as well, a security agreement under the UCC for the purpose of creating a security interest in all items, including, but not limited to all property and rights which Borrower may grant, assign, bargain, sell, transfer, set over, deliver, or otherwise convey to Lender, as secured party, under the terms of this Mortgage or any of the other Loan Documents, including any and all proceeds thereof (as used herein, Borrower shall mean "**Debtor**" under the UCC and Lender shall mean "**Secured Party**" under the UCC). Borrower hereby appoints Lender as its attorney-in-fact to execute such documents necessary to perfect Lender's security interest and authorizes Lender at any time until the Indebtedness is paid in full, to prepare and file, at Borrower's expense, any and all UCC financing statements, amendments, assignments, terminations and the like, necessary to create and/or maintain a prior security interest in such property all without Borrower's execution of the same. Furthermore, upon a default under the Loan Documents, Lender will, in addition to all other remedies provided for in the Loan Documents, have the remedies provided for under the UCC in effect in the state in which the Premises is located.

H. Together with all right, title and interest of Borrower, now or hereafter acquired, in and to any and all strips and gores of land adjacent to and used in connection with the Premises and all right, title and interest of Borrower, now owned or hereafter acquired, in, to, over and under the ways, streets, sidewalks and alleys adjoining the Premises.

I. Together with all funds now or hereafter held by Lender under any Loan Agreement (including any proceeds derived from any letter of credit) or escrow security agreement or under any of the terms hereof or of the Loan Documents, including but not limited to funds held under the provisions of paragraph 5 hereof.

J. Together with all of Borrower's payment intangibles, letter of credit rights, interest rate cap agreements, tenant in common agreement rights, and any other contract rights of Borrower related

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in any manner to the ownership, operation, or management of the Premises, as well as any and all supporting obligations, and all proceeds, renewals, replacements and substitutions thereof.

K. Together with all funds, accounts and proceeds thereof relating to the Premises whether or not such funds, accounts or proceeds thereof are held by Lender under the terms of any of the Loan Documents, including, but not limited to bankruptcy claims of Borrower against any tenant at the Premises, and any proceeds thereof; proceeds of any Rents, insurance proceeds from all insurance policies required to be maintained by Borrower under the Loan Documents and all awards, decrees, proceeds, settlements or claims for damage now or hereafter made to or for the benefit of Borrower by reason of any damage to, destruction of or taking of the Premises or any part thereof, whether the same shall be made by reason of the exercise of the right of eminent domain or by condemnation or otherwise (a **"Taking"**).

L. Together with all right, title and interest of Borrower in and to all goods, accounts, general intangibles (including payment intangibles), deposit accounts (other than security deposit and contract deposit accounts), instruments, investment property, commercial tort claims, letter-of-credit rights, letters of credit, money, documents and chattel paper (as such terms are defined in the UCC) and all other personal property of any kind or character, including such items of personal property as defined in the UCC, now owned or hereafter acquired by Borrower and now or hereafter affixed to, placed upon, used in connection with, arising from or otherwise related to the Land and Improvements or which may be used in or relating to the planning, development, financing or operation of the Premises, including, without limitation, equipment, machinery, money, insurance proceeds, accounts, contract rights, trademarks, goodwill, chattel paper, documents, impact fee credits, trade names, licenses and/or franchise agreements, rights of Borrower under leases of the fixtures or other personal property or equipment, inventory, all refundable, returnable or reimbursable fees, deposits or other funds or evidences of credit or indebtedness deposited by or on behalf of Borrower with any governmental authorities, boards, corporations, providers of utility services, public or private, including specifically, not without limitation, all refundable, returnable or reimbursable tap fees, utility deposits, commitment fees and development costs, and all other agreements, such as construction contracts, architects' agreements, engineers' contracts, utility contracts, maintenance agreements, management agreements, service contracts, permits, licenses, certificates and entitlements in any way relating to the development, construction, use, occupancy, operation, maintenance, enjoyment, acquisition or ownership of the Premises.

M. Together with Borrower's interest in and to all contracts and agreements now or hereafter entered into by Borrower covering any part of the Premises (collectively, the **"Property Agreements"**) and all revenue, income and other benefits thereof, including, without limitation, management agreements, service contracts, franchise agreements, maintenance contracts, equipment leases, personal property leases and any contracts or documents relating to construction, repair or other work on any part of the Premises (including plans, specifications, books, records, drawings, surveys, tests, reports, bonds and governmental approvals) or to the development, construction, use, occupancy, maintenance, enjoyment, acquisition, management or operation of any part of the Premises together with all present and future monetary deposits given to any public or private utility with respect to utility services furnished to any part to the Premises.

N. TO HAVE AND TO HOLD the same unto the Lender, its successors and assigns, in trust with the power of sale and upon the trusts, covenants and agreements herein expressed.

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O. Borrower represents that it is the absolute owner in fee simple of the Premises described as Exhibit A, which Premises are free and clear of any liens or encumbrances except as set forth in the loan policy of title insurance for the Premises issued to Lender, and except for taxes which are not yet due or delinquent. Borrower shall forever warrant and defend the title to the Premises against all claims and demands of all persons whomsoever and will on demand execute any additional instrument which may be required to give Lender a valid first lien on all of the Premises, subject to the “**Permitted Encumbrances**” set forth in the loan policy of title insurance for the Premises issued to Lender.

P. Borrower further represents that (i) the Premises is not subject to any casualty damage; (ii) Borrower has not received any written notice of any eminent domain or condemnation proceeding affecting the Premises; and (iii) to the best of Borrower’s knowledge, following due and diligent inquiry, there are no actions, suits or proceedings pending, completed or threatened against or affecting Borrower or any person or entity owning an interest (directly or indirectly) in Borrower (“**Interest Owner(s)**”) or any property of Borrower or any Interest Owner in any court or before any arbitrator of any kind or before or by any governmental authority (whether local, state, federal or foreign) that, individually or in the aggregate, could reasonably be expected by Lender to be material to the transaction contemplated hereby.

Q. Borrower further represents and warrants that as of the date hereof and until the Indebtedness is paid in full:

- (a) Borrower and each person or entity owning an interest in Borrower is not and will not be (i) identified on the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Assets Control, Department of the Treasury (“**OFAC**”) and/or on any other similar list maintained by OFAC pursuant to any authorizing statute, executive order or regulation (collectively, the “**List**”), (ii) a person or entity with whom a citizen of the United States is prohibited to engage in transactions by any trade embargo, economic sanction, or other prohibition of United States law, regulation, or Executive Order of the President of the United States;
- (b) none of the funds or other assets of Borrower constitute or will constitute property of, or are or will be beneficially owned, directly or indirectly, by any Embargoed Person (as hereinafter defined);
- (c) no Embargoed Person has or will have any interest of any nature whatsoever in Borrower (whether directly or indirectly);
- (d) none of the funds of Borrower have been or will be derived from any unlawful activity with the result that the investment in Borrower is prohibited by law or that the Loan Documents are in or will be in violation of law,
- (e) Borrower has and will continue to implement procedures, and has consistently and will continue to consistently apply those procedures, to ensure the foregoing representations and warranties remain true and correct at all times. The term “**Embargoed Person**” means any person, entity or government subject to trade restrictions under U.S. law, including but not limited to, the International

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Emergency Economic Powers Act, 50 U.S.C. §1701 et seq., The Trading with the Enemy Act, 50 U.S.C. App. 1 et seq., and any Executive Orders or regulations promulgated thereunder with the result that the investment in Borrower is prohibited by law or Borrower is in violation of law;

- (f) Borrower has complied and will continue to comply with all requirements of law relating to money laundering, anti-terrorism, trade embargos and economic sanctions, now or hereafter in effect; and
- (g) Borrower has not and will not use funds from any “**Prohibited Person**” (as such term is defined in the September 24, 2001 Executive Order Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism) to make any payment due to Lender under the Loan Documents.

Borrower will immediately notify Lender in writing if any of the representations, warranties or covenants are no longer true or have been breached or if Borrower has a reasonable basis to believe that they may no longer be true or have been breached. In addition, Borrower will, at the request of Lender, provide such information as may be requested by Lender to determine Borrower’s compliance with the terms hereof.

R. Borrower further represents and warrants that as of the date hereof and until the Indebtedness is paid in full: (i) Borrower is not and will not be an “employee benefit plan” as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”), which is subject to Title I of ERISA; (ii) the assets of Borrower do not and will not constitute “plan assets” of one or more such plans for purposes of Title I of ERISA; (iii) Borrower is not and will not be a “governmental plan” within the meaning of Section 3(32) of ERISA; (iv) transactions by or with Borrower are not and will not be subject to state statutes applicable to Borrower regulating investments of and fiduciary obligations with respect to governmental plans; (v) Borrower has made and will continue to make all required contributions to all employee benefit plans, if any, established for or on behalf of Borrower or to which Borrower is required to contribute; (vi) Borrower has and will continue to administer such plan, if any, in accordance with its terms and the applicable provisions of ERISA and any other federal or state law; and (vii) Borrower has not and will not permit any liability under Sections 4201, 4243, 4062 or 4069 of Title IV of ERISA or taxes or penalties relating to any employee benefit plan or multi-employer plan to become delinquent or assessed, respectively, which would have a material adverse effect upon (i) the business or the financial position or result of operation of Borrower, (ii) the ability of Borrower to perform, or of Lender to enforce, any of the Loan Documents or Environmental Indemnity, or (iii) the value of the Premises.

BORROWER COVENANTS AND AGREES AS FOLLOWS:

1. Borrower shall:
 - (a) pay each item of Indebtedness secured by this Mortgage when due according to the terms of the Loan Documents;

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- (b) pay a Late Charge on any payment of principal, interest, or Indebtedness which is not paid on or before the due date thereof to cover the expense involved in handling such late payment;
- (c) pay on or before the due date thereof any indebtedness permitted to be incurred by Borrower pursuant to the Loan Documents and any other claims which could become a lien on the Premises (unless otherwise specifically addressed in paragraph 1(e) hereof), and upon request of Lender exhibit satisfactory evidence of the discharge thereof;
- (d) complete within a reasonable time, the construction of any Improvements now or at any time in process of construction upon the Land;
- (e) manage, operate and maintain the Premises and keep the Premises, including but not limited to, the Improvements, in good condition and repair and free from mechanics' liens or other liens or claims for liens, provided however, that Borrower may in good faith, with reasonable diligence and upon written Notice to Lender within twenty (20) days after Borrower has knowledge of such lien or claim, contest the validity or amount of any such lien or claim and defer payment and discharge thereof during the pendency of such contest in the manner provided by law, provided that (i) such contest may be made without the payment thereof; (ii) such contest shall prevent the sale or forfeiture of the Premises or any part thereof, or any interest therein, to satisfy such lien or claim; (iii) Borrower shall have obtained a bond over such lien or claim from a bonding company acceptable to Lender which has the effect of removing such lien or collection of the claim or lien so contested; and (iv) Borrower shall pay all costs and expenses incidental to such contest; and further provided, that in the event of a final, non-appealable ruling or adjudication adverse to Borrower, Borrower shall promptly pay such claim or lien, shall indemnify and hold Lender and the Premises harmless from any loss or damage arising from such contest and shall take whatever action necessary to prevent sale, forfeiture or any other loss or damage to the Premises or to the Lender;
- (f) comply, and use commercially reasonable efforts to cause each lessee or other user of the Premises to comply, with all requirements of law and ordinance, and all rules and regulations, now or hereafter enacted, by authorities having jurisdiction of the Premises and the use thereof, including but not limited to all covenants, conditions and restrictions of record pertaining to the Premises, the Improvements, and the use thereof (collectively, "**Legal Requirements**") subject however, to the right of the Borrower, in good faith, and with reasonable diligence and upon written Notice to Lender within ten (10) days after Borrower has knowledge of such alleged non-compliance, to contest any alleged non-compliance; provided that (i) such contest may be made without compliance; (ii) such contest shall not result in the sale or forfeiture of the Premises or any part thereof, or any interest therein, to satisfy such non-compliance; and (iii) Borrower shall pay all costs and expenses incidental to such contest; and further provided, that in the event of a ruling or adjudication adverse to Borrower, Borrower shall promptly comply with such requirements(s), shall indemnify and hold Lender and

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the Premises harmless from any loss for damage arising from such contest and take whatever action necessary to prevent sale, forfeiture or any other loss or damage to the Premises or to the Lender;

- (g) promptly repair, restore or rebuild any Improvements now or hereafter a part of the Premises which may become damaged or be destroyed by any cause whatsoever, so that upon completion of the repair, restoration and rebuilding of such Improvements, there will be no liens of any nature arising out of the construction and the Premises will be of substantially the same character and quality as it was prior to the damage or destruction;
- (h) if other than a natural person, do all things necessary to preserve and keep in full force and effect its existence, franchises, rights and privileges under the laws of the state of its formation and, if other than its state of formation, the state where the Premises is located. Borrower shall notify Lender at least thirty (30) days prior to (i) any relocation of Borrower's principal place of business to a different state or any change in Borrower's state of formation, and/or (ii) if Borrower is an individual, any relocation of Borrower's principal residence to a different state;
- (i) do all things necessary to preserve and keep in full force and effect Lender's title insurance coverage insuring the lien of this Mortgage as a first and prior lien, subject only to the Permitted Encumbrances stated in the title insurance policy issued to Lender and any other exceptions after the date of this Mortgage approved in writing by Lender, including without limitation, delivering to Lender not less than 30 days prior to the effective date of any rate adjustment (other than the rate adjustments specifically provided for by the Note), modification or extension of the Note or any other Loan Document, any new policy or endorsement which may be reasonably required to assure Lender of such continuing coverage;
- (j) execute any and all documents which may be required to perfect the security interest granted by this Mortgage; and
- (k) remain a Single-Purpose Entity (as defined below).

As used herein, the term Single-Purpose Entity means:

a corporation, limited partnership, limited liability company, or business trust which, at all times until the Indebtedness is paid in full (i) will be organized solely for the purpose of owning the Premises, (ii) will not engage in any business unrelated to the ownership of the Premises, (iii) will not have any assets other than those related to the Premises, (iv) will not engage in, seek or consent to any dissolution, winding up, liquidation, consolidation or merger, and, except as otherwise expressly permitted by section 2(f) hereof and the Loan Documents, will not engage in, seek or consent to any asset sale, transfer of partnership, membership, shareholder, beneficial interests, or, except as necessary to accommodate the admission of additional members in compliance with the terms of the Loan Documents (including, without limitation, as a result of Permitted Transfers) and provided that such amendment and/or restatement shall not affect the

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Single-Purpose Entity provisions of the Borrower's operating agreement, amendment of its limited partnership agreement, articles of incorporation, articles of organization, certificate of formation, operating agreement, trust agreement, or trust certificate (as applicable), (v) will not fail to correct any known misunderstanding regarding the separate identity of such entity, (vi) without the unanimous consent of all of the partners, directors, members, beneficial owners and trustees, as applicable, will not with respect to itself or to any other entity in which it has a direct or indirect legal or beneficial ownership interest (a) file a bankruptcy, insolvency or reorganization petition or otherwise institute insolvency proceedings or otherwise seek any relief under any laws relating to the relief from debts or the protection of debtors generally; (b) seek or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian or any similar official for such entity or all or any portion of such entity's properties; (c) make any assignment for the benefit of such entity's creditors; or (d) take any action that might cause such entity to become insolvent, (vii) will maintain its accounts, books and records separate from any other person or entity, (viii) will maintain its books, records, resolutions and agreements as official records, (ix) has not commingled and will not commingle its funds or assets with those of any other person or entity, (x) has held and will hold its assets in its own name, (xi) will conduct its business in its name, (xii) will maintain its financial statements, accounting records and other entity documents separate from any other person or entity, (xiii) will pay its own liabilities out of its own funds and assets, (xiv) will observe all corporate, limited liability company and partnership formalities, as applicable, (xv) has maintained and will maintain an arms-length relationship with its affiliates, (xvi) if such entity owns the Premises, will have no indebtedness other than the Indebtedness and commercially reasonable unsecured trade payables in the ordinary course of business relating to the ownership and operation of the Premises which are paid within sixty (60) days of the date incurred, (xvii) will not assume or guarantee or become obligated for the debts of any other person or entity or hold out its credit as being available to satisfy the obligations of any other person or entity, except for the Indebtedness, (xviii) will not acquire obligations or securities of its partners, members, trustees, beneficial owners or shareholders, (xix) will allocate fairly and reasonably shared expenses, including, without limitation, shared office space and uses separate stationery, invoices and checks, (xx) will not pledge its assets for the benefit of any other person or entity, (xxi) will hold itself out and identify itself as a separate and distinct entity under its own name and not as a division or part of any other person or entity, (xxii) will not make loans to any person or entity, (xxiii) will not identify its partners, members, shareholders, trustees, beneficiaries or any affiliates of any of them as a division or part of it, (xxiv) will not enter into or be a party to, any transaction with its partners, members, shareholders, beneficiaries, trustees or its affiliates except in the ordinary course of its business and on terms which are intrinsically fair and are no less favorable to it than would be obtained in a comparable arms-length transaction with an unrelated third party, (xxv) will pay the salaries of its own employees from its own funds, (xxvi) will maintain adequate capital in light of its contemplated business operations, (xxvii) if such entity is a limited liability company, limited partnership, or business trust then such entity shall continue and not dissolve whether as a consequence of bankruptcy or insolvency of one or more of the members, general partners, or trustees, as applicable, or otherwise, for so long as a solvent managing member, general partner, or

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trustee, as applicable, exists and, subject to applicable law, dissolution of the entity shall not occur so long as the entity remains owner of the Premises subject to the Mortgage.

2. Borrower shall not:

- (a) except as provided in the Loan Agreement and as required by applicable Legal Requirements or otherwise permitted under any Loan Document, construct any building or structure nor make any alteration or addition (other than normal repair and maintenance) to (i) the roof or any structural component of any Improvements on the Premises, or (ii) the building operating systems, including but not limited to, the mechanical, electrical, heating, cooling, or ventilation systems (other than replacement with equal or better quality and capacity), without the prior written consent of Lender not to be unreasonably withheld;
- (b) except as permitted under the Loan Agreement, remove or demolish any material Improvements, or any portion thereof, which at any time constitutes a part of the Premises.

Notwithstanding anything hereinabove to the contrary, Borrower may construct, remove or demolish tenant improvements within the then existing building(s) or other structures to the extent required to make space marketable or if such work is required under the terms of any Leases approved by Lender in accordance with the provisions of the Assignment of Leases and Rents entered into by Borrower on the date hereof, provided (i) no Event of Default exists under the Loan Documents; (ii) the work is completed on a timely basis, in a good, workmanlike, lien-free manner and in accordance with all Legal Requirements and in accordance with the Loan Agreement, and (iii) such work does not negatively affect the structural integrity of the Improvements or the value of the Premises;

- (c) cause or permit any change to be made in the general use of the Premises without Lender's prior written consent, except in accordance with the Loan Agreement;
- (d) initiate any or acquiesce to a zoning reclassification or material change in zoning without Lender's prior written consent. Borrower shall use all reasonable efforts to contest any such zoning reclassification or change;
- (e) make or permit any use of the Premises that could with the passage of time result in the creation of any right of use, or any claim of adverse possession or easement on, to or against any part of the Premises in favor of any person or entity or the public;
- (f) allow any of the following to occur (unless a Permitted Transfer):
 - (i) a Transfer of all or any portion of the Premises or any interest in the Premises;
 - (ii) a Transfer of any ownership interest in Borrower or any entity which owns, directly or indirectly, an interest in Borrower at any level of the ownership structure; or

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- (iii) in addition to (i) and (ii) above, if the Borrower is a trust, or if a trust owns an interest, directly or indirectly, in any entity which owns an interest in Borrower at any level of the ownership structure, the addition, deletion or substitution of a trustee of such trust.

If any of such events occur, it shall be null and void and shall constitute an Event of Default under the Loan Documents.

It is understood and agreed that the Indebtedness evidenced by the Note is personal to Borrower and in reliance upon the ownership structure of Borrower, and in accepting the same Lender has relied upon what it perceived as the willingness and ability of Borrower to perform its obligations under the Loan Documents and the Environmental Indemnity and as lessor under the Leases of the Premises. Furthermore, Lender may consent to a Transfer and expressly waive Borrower's covenants contained in this paragraph 2(f), in writing to Borrower; however any such consent and waiver shall not constitute any consent or waiver of such covenants as to any Transfer other than that for which the consent and waiver was expressly granted. Furthermore, Lender's willingness to consent to any Transfer and waive Borrower's covenants contained in this paragraph 2(f), implies no standard of reasonableness in determining whether or not such consent shall be granted and the same may be based upon what Lender solely deems to be in its best interest.

For purposes of the Loan Documents, the following terms shall have the respective meanings set forth below:

"Transfer" or **"Transferred"** shall mean with respect to the Premises, an interest in the Premises, or an ownership interest or interest therein:

- (i) a sale, assignment, transfer, conveyance or other disposition (whether voluntary, involuntary or by operation of law);
- (ii) the creation, sufferance or granting of any lien, encumbrance, security interest or collateral assignment (whether voluntarily, involuntarily or by operation of law), other than the (iii) lien hereof, the leases of the Premises assigned to Lender, the Permitted Encumbrances and those liens which Borrower is contesting in accordance with the provisions of paragraph 1(e);
- (iv) the issuance or other creation of ownership interests in an entity;
- (v) the reconstitution or conversion from one entity to another type of entity;
- (vi) a merger, consolidation, reorganization or any other business combination; or
- (vii) a conversion to or operation of all or any portion of the Premises as a cooperative or condominium form of ownership.

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“Permitted Transfer” shall mean:

- (i) a minor (as determined by Lender) conveyance of an interest in the Premises by Borrower, such as a utility easement, and for which Lender has given its prior written consent and imposed such conditions as Lender deems advisable and appropriate; and
- (ii) so long as there is no Event of Default under the Loan Documents, Lender shall allow the sale, transfer or conveyance of direct or indirect ownership interests in Borrower (a) among owners of those interests (each a “Borrower Interest Owner”); and (b) to immediate family members (i.e. children, grandchildren, parents, spouses and siblings) (“Immediate Family Members”) of Borrower Interest Owners or to trusts established for the benefit of Borrower Interest Owners and/or Immediate Family Members and (c) up to 49% interests in Borrower to third parties, provided the following conditions are complied with in each instance (a), (b), and (c): (1) Steven Levin and Robert Levinson each maintain at least a 10% direct or indirect ownership interest in Borrower and retain management responsibility for and control of Borrower; (2) Lender receives notice of such Transfer at least thirty (30) days prior to consummation of such Transfer; (3) Lender receives an organizational chart for Borrower which includes ownership breakdowns for all entity levels and is certified by Borrower as true and correct; (4) at Lender’s option, Lender receives an acceptable background and credit check, at Borrower’s cost, for the transferee if upon consummation of the Transfer said transferee’s effective interest in Borrower equals or exceeds 20% and Lender has not already received and approved a background and credit check for said transferee; (5) at Lender’s option, Lender receives an acceptable OFAC report at Borrower’s cost; and (6) Lender receives a reasonable fee for handling each such Transfer, not to exceed \$1,000.00.

3. (a) Borrower shall pay or cause to be paid when due and before any penalty attaches or interest accrues all general taxes, special taxes, assessments (including assessments for benefits from public works or improvements whenever begun or completed), utility charges, water charges, sewer service charges, common area maintenance charges, if any, vault or space charges and all other like charges against or affecting the Premises or against any property or equipment located on the Premises, or which might become a lien on the Premises, and shall, within 30 days following the due date of all such taxes, furnish to Lender a duplicate receipt of such payment. If any such tax, assessment or charge may legally be paid in installments, Borrower may, at its option, pay such tax, assessment or charge in installments. If Borrower desires to contest any tax, assessment or charge relating to the Premises, Borrower may do so by paying the same in full, under protest, in the manner provided by law; provided, however, that:
 - (ii) if contest of any tax, assessment or charge may be made without the payment thereof, and
 - (iii) such contest shall have the effect of preventing the collection of the tax, assessment or charge so contested and the sale or forfeiture of the Premises or any part thereof or any interest therein to satisfy the same,

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then Borrower may in its discretion and upon the giving of written notice to Lender of its intended action and upon the furnishing to Lender of such security or bond as Lender may require, contest any such tax, assessment or charge in good faith and in the manner provided by law. All costs and expenses incidental to such contest shall be paid by Borrower. In the event of a ruling or adjudication adverse to Borrower, Borrower shall promptly pay such tax, assessment or charge. Borrower shall indemnify and save harmless the Lender and the Premises from any loss or damage arising from any such contest and shall, if necessary to prevent sale, forfeiture or any other loss or damage to the Premises or to Lender, pay such tax, assessment or charge or take whatever action is necessary to prevent any sale, forfeiture or loss.

4. Borrower shall at all times keep or cause to be kept in force (i) property insurance insuring all improvements which now are or hereafter become a part of the Premises for perils covered by a causes of loss-special form insurance policy, including coverage against terrorism with an ordinance or law coverage endorsement containing both replacement cost and agreed amount endorsements or equivalent coverage; (ii) commercial general liability insurance naming Lender as an additional insured protecting Borrower and Lender against liability for bodily injury or property damage occurring in, on or adjacent to the Premises in commercially reasonable amounts, with a combined single limit of not less than One Million Dollars (\$1,000,000) per occurrence with not less than a Two Million Dollar (\$2,000,000) aggregate limit and excess umbrella liability insurance of not less than Three Million Dollars (\$3,000,000); (iii) boiler and machinery insurance if the property has a boiler or is an office building; (iv) rental value insurance for the perils specified herein for one hundred percent (100%) of the Rents (including operating expenses, real estate taxes, assessments and insurance costs which are lessee's liability) for a period of twelve (12) months; (v) builders risk insurance during all periods of construction; and (vi) insurance against all other hazards as may be reasonably required by Lender, including, without limitation, insurance against loss or damage by flood, hurricane and windstorm. All insurance (including deductibles and exclusions) shall be in form, content and amounts approved by Lender and written by an insurance company or companies approved by Lender and rated A, class size VIII or better in the most current issue of Best's Insurance Reports and which is licensed to do business in the state in which the Premises are located or a governmental agency or instrumentality approved by Lender. The policies for such insurance shall have attached thereto standard mortgagee clauses in favor of and permitting Lender to collect any and all proceeds payable thereunder and shall include a 30 day (except for nonpayment of premium, in which case, a 10 day) notice of cancellation clause in favor of Lender. All certificates of insurance (or policies if requested by Lender) shall be delivered to and held by Lender as further security for the payment of the Note and any other obligations arising under the Loan Documents, with evidence of renewal coverage delivered to Lender at least 30 days before the expiration date of any policy. Borrower shall not carry or permit to be carried separate insurance, concurrent in kind or form and contributing in the event of loss, with any insurance required in the Loan Documents.

Notwithstanding the above, if neither: (i) property insurance without an exclusion for terrorism, terrorist acts or similar perils ("Terrorism") nor; (ii) a separate policy insuring specifically against Terrorism is available at a cost which in Lender's reasonable opinion

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is commercially reasonable, taking into consideration, among other things: (a) how properties similar in type, size, quality and location are insured with respect to Terrorism; and (b) the amount of coverage, premium and deductible applicable to such insurance, then Lender agrees to waive the requirement to provide insurance covering Terrorism until such coverage again becomes available at a cost, which in Lender's reasonable opinion is commercially reasonable.

5. (a) Borrower shall deposit with and pay to Lender on the Closing Date and/or on each payment date specified in the Note, sums calculated by Lender for payment of the following as they become due and payable: the estimated taxes and assessments assessed or levied against the Premises, (the "Tax Escrow"). The amount deposited on the Closing Date shall be sufficient, when combined with the required monthly tax escrow payments, to pay all of such taxes and assessments when they become due and payable, following the Closing Date (or the duration of the extension period then in effect, as applicable), as calculated by Lender. Lender shall use such deposits, if any, to pay the taxes and assessments when the same become due. If the total payments, if any, made by Borrower under this paragraph plus interest, if any, accrued thereon exceed the amount of payments actually made by Lender for taxes and assessments such excess shall be credited by Lender on subsequent deposits to be made by Borrower. If, however, the deposits are insufficient to pay the taxes and assessments when the same shall be due and payable, Borrower will upon written notice from Lender pay to Lender any amount necessary to make up the deficiency, no later than five (5) business days before the date when payment of such taxes and assessments shall be due. If at any time Borrower shall tender to Lender, in accordance with the provisions of the Note secured by this Mortgage, full payment of the entire Indebtedness represented thereby, Lender shall, in computing the amount of such Indebtedness, credit to the account of Borrower any balance remaining in the funds accumulated and held by Lender under the provisions of this paragraph. If there is an Event of Default resulting in a public sale of the Premises, or if Lender otherwise acquires the Premises after an Event of Default, Lender shall apply, at the time of commencement of such proceedings, or at the time the Premises is otherwise acquired, the balance then remaining in the funds accumulated under this paragraph as a credit toward any delinquent or accrued taxes and then in such priority as Lender elects to the other Indebtedness. Any funds held under this paragraph shall not constitute any deposit or account of the Borrower or monies to which the Borrower is entitled upon demand, or upon the mere passage of time, or sums to which Borrower is entitled to any interest or crediting of interest by virtue of Lender's mere possession of such deposits. Lender shall not be required to segregate such deposits and may hold such deposits in its general account or any other account and may commingle such deposits with any other moneys of Lender or moneys which Lender is holding on behalf of any other person or entity.
6. In the event of any damage to or destruction of the Premises, or any part thereof:
 - (a) Borrower will immediately notify Lender thereof in the manner provided in this Mortgage for the giving of notices. Lender shall have the right (which may be waived by Lender in writing) to settle and adjust any claim under such insurance policies required to be maintained by Borrower. In all circumstances, the proceeds thereof shall be paid to Lender and Lender is authorized to collect and to

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give receipts therefor. Borrower agrees and acknowledges that such proceeds shall be held by Lender without any allowance of interest and that in any bankruptcy proceeding of Borrower, all such proceeds shall be deemed to be "Cash Collateral" as that term is defined in Section 363 of the Bankruptcy Code. Provided that no Event of Default exists, Borrower shall have the right to participate in any settlement or adjustment; provided, however, that any settlement or adjustment where the aggregate amount of such proceeds equals or exceeds \$100,000.00 shall be subject to the written approval of Lender, not to be unreasonably withheld.

- (b) Such proceeds, after deducting therefrom any reasonable expenses incurred by Lender in the collection thereof (including but not limited to reasonable attorneys' fees and costs), shall be applied by Lender to pay the Indebtedness secured hereby, whether or not then due and payable.

Notwithstanding anything hereinabove to the contrary,

- (i) in the event the casualty occurs more than three (3) months prior to the Maturity Date and no Event of Default exists, Lender shall apply such proceeds as follows:
- (A) If the aggregate amount of such proceeds is less than \$100,000.00, Lender shall pay such proceeds directly to Borrower, to be held in trust for Lender and applied to the cost of rebuilding and restoring the Premises.
 - (ii) If the aggregate amount of such proceeds equals or exceeds \$100,000, then Lender, in its sole and absolute discretion may either:
 - (A) declare the entire Indebtedness to be immediately due and payable, in which event all proceeds shall be applied toward payment of the Indebtedness in such priority as Lender elects, or
 - (B) disburse such proceeds as Lender reasonably deems necessary for the repair or replacement of the Premises subject to those conditions set forth in paragraph 6(c) which Lender in its sole and absolute discretion may require.
- (c) (i) In the event that Borrower is to be reimbursed out of the insurance proceeds or out of any award or payment received with respect to a Taking, Lender shall from time to time make available such proceeds, subject to the following conditions: (a) there continues to exist no Event of Default; (b) the delivery to Lender of satisfactory evidence of the estimated cost of completion of such repair and restoration work and any architect's certificates, waivers of lien, contractor's sworn statements, and other evidence of cost and of payment and of the continued priority of the lien hereof over any potential liens of mechanics and materialmen (including, without limitation, title policy endorsements) as Lender may reasonably require and approve; (c) the time required to complete the repair

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and restoration work and for the income from the Premises to return to the level it was prior to the loss will not exceed the coverage period of the rental value insurance required hereunder; (d) the repairs or restoration are commenced within 90 days after the date of the casualty; (e) the repairs or restoration are completed no later than 90 days prior to the Maturity Date (subject to extension to 30 days prior to the Maturity Date for force majeure); (f) Lender approves the plans and specifications of such work before such work is commenced, which approval shall not be unreasonably withheld; (g) if the amount of any insurance proceeds, award or other payment is insufficient to cover the cost of restoring and rebuilding the Premises, Borrower shall pay such cost in excess of such proceeds, award or other payment before being entitled to reimbursement out of such funds; (h) Borrower pays to Lender a non-refundable processing fee equal to the greater of \$5,000.00 or 25% of the amount of such proceeds within sixty (60) days of the occurrence of any such damage or destruction and before Lender disburses any proceeds; and (i) such other conditions to such disbursements, in Lender's reasonable discretion, as would be customarily required by a construction lender doing business in the area where the Premises is located or which are otherwise required by any rating agency rating a securitization transaction with respect to the Loan.

- (ii) No payment made by Lender prior to the final completion of the repair or restoration work shall, together with all payments theretofore made, exceed 90% of the cost of such work performed to the time of payment, and at all times the undisbursed balance of said proceeds shall be at least sufficient to pay for the cost of completion of such work free and clear of all liens. Any proceeds remaining after payment of the cost of rebuilding and restoration shall be paid to Borrower so long as no Event of Default has occurred and is continuing.
 - (iii) Repair and restoration of the Premises shall be commenced promptly after the occurrence of the loss and shall be prosecuted to completion diligently, and the Premises shall be so restored and rebuilt to substantially the same character and quality as prior to such damage and destruction and shall comply with all Legal Requirements.
- (d) Should such damage or destruction occur after foreclosure or sale proceedings have been instituted, the proceeds of any such insurance policy or policies, if not applied in rebuilding or restoration of the Improvements, shall be used to pay (i) the Indebtedness then due and owing in the event of a non-judicial sale in such priority as Lender elects, or (ii) the amount due in accordance with any decree of foreclosure or deficiency judgment that may be entered in connection with such proceedings, and the balance, if any, shall be paid to the owner of the equity of redemption if it shall then be entitled to the same, or otherwise as any court having jurisdiction may direct.

7. In the event of the commencement of a Taking affecting the Premises:

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- (a) Borrower shall notify Lender thereof in the manner provided in this Mortgage for the giving of notices. Lender may participate in such proceeding, and Borrower shall deliver to Lender all documents requested by it to permit such participation.
- (b) Borrower shall cause the proceeds of any award or other payment made relating to a Taking, to be paid directly to Lender. Lender, in its sole and absolute discretion: (i) may apply all such proceeds to pay the Indebtedness in such priority as Lender elects; or (ii) subject to and in accordance with the provisions set forth in paragraph 6(c) above, may disburse such amounts of the proceeds as Lender reasonably deems necessary for the repair or replacement of the Premises.
8. If by the laws of the United States of America or of any state or governmental subdivision having jurisdiction over Borrower or of the Premises or of the Loan evidenced by the Loan Documents or any amendments or modifications thereof, any tax or fee is due or becomes due or is imposed upon Lender or Borrower in respect of the issuance, or the making, executing, delivering, recording and/or registration of this Mortgage or the Note or otherwise in connection with the Loan Documents, the Environmental Indemnity or the Loan, except for Lender's income or franchise tax, Borrower covenants and agrees to pay such tax or fee in the manner required by such law, and to hold harmless and indemnify Lender, its successors and assigns, against any liability incurred by reason of the imposition of any such tax or fee.
9. (a) Upon the occurrence of any Event of Default, and Borrower's failure to cure the same within the applicable grace period, Lender may, but need not, make any payment or perform any act herein required of Borrower, in any form and manner deemed expedient and may, but need not, make full or partial payments of principal or interest on prior encumbrances, if any, and purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof, or redeem from any tax sale or forfeiture affecting said Premises, or contest any tax or assessment. All moneys paid for any of the purposes herein authorized and all reasonable expenses paid or incurred in connection therewith, including but not limited to, reasonable attorneys' fees and costs and reasonable attorneys' fees and costs on appeal, and any other money advanced by Lender to protect the Premises and the lien hereof, shall be so much additional Indebtedness secured hereby and shall become immediately due and payable without notice and with interest thereon at the Default Rate from the date of expenditure or advance until paid.
- (b) In making any payment hereby authorized relating to taxes or assessments or for the purchase, discharge, compromise or settlement of any prior lien, Lender may make such payment according to any bill, statement or estimate secured from the appropriate public office without inquiry into the accuracy thereof or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof or without inquiry as to the validity or amount of any claim for lien which may be asserted.
10. If one or more of the following events (herein called an "**Event of Default**" or "**Events of Default**" as the context so requires) shall have occurred:
- (a) failure to pay when due any principal, interest or other Indebtedness, utilities, taxes or assessments or insurance premiums required pursuant to the Loan

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Documents or the Environmental Indemnity, and such failure shall have continued for five (5) days; or

- (b) Borrower, Interest Owner or any guarantor voluntarily brings or acquiesces to any of the following: (A) any action for dissolution, act of dissolution or dissolution or the like of Borrower, Interest Owner or any guarantor under the Federal Bankruptcy Code as now or hereafter constituted; (B) the filing of a petition or answer proposing the adjudication of Borrower, Interest Owner or any guarantor as a bankrupt or its reorganization or arrangement, or any composition, readjustment, liquidation, dissolution or similar relief with respect to it pursuant to any present or future federal or state bankruptcy or similar law; or (C) the appointment by order of a court of competent jurisdiction of a receiver, trustee or liquidator of the Premises or any part thereof or of Borrower, Interest Owner or any guarantor or of substantially all of the assets of Borrower, Interest Owner or any guarantor; or
- (c) one or more of the items set forth in paragraph 10(b) above occur which were either not (i) voluntarily brought by Borrower, or any guarantor or (ii) acquiesced in by Borrower, or any guarantor, and which are not discharged or dismissed within one hundred twenty (120) days after the action, filing or appointment, as the case may be; or
- (d) With respect to the matters in (b) and (c) above for an Interest Owner only, no Event of Default shall occur until an interested party or Interest Owner asserts a claim or right against Borrower or the Premises which delays or otherwise affects Lender's rights, remedies, or interests granted under the Loan Documents (whether or not such assertion is successful).
- (e) with respect to the matters not described in the other subparagraphs of this paragraph 10, failure to duly observe or perform any covenant, condition or agreement of the Borrower or any guarantor contained in this Mortgage, the Loan Agreement, the Guaranty, the Note or the Assignment of Leases from Borrower to Lender or in any other instrument or agreement which evidences or secures the Loan (the "**Loan Documents**"), or in the Environmental Indemnity, and such failure shall have continued for 30 days after Notice specifying such failure is given by Lender to Borrower; or
- (f) If any failure to observe or perform under (d) above shall be of such nature that it cannot be cured or remedied within thirty (30) days, Borrower shall be entitled to a reasonable period of time to cure or remedy such failure (not to exceed ninety (90) days following the giving of Notice), provided Borrower commences the cure or remedy thereof within the thirty (30) day period following the giving of Notice and thereafter proceeds with diligence, as determined by Lender, to complete such cure or remedy.
- (g) the failure of Borrower to duly observe or perform any of the covenants, conditions and agreements of the Borrower contained in paragraph 2(f) of this Mortgage; or

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- (h) any representation when made by or on behalf of Borrower or any guarantor regarding the Premises, the making or delivery of any of the Loan Documents or the Environmental Indemnity or in any material written information provided by or on behalf of Borrower or any guarantor in connection with the Loan shall prove to be untrue or inaccurate in any material respect; or
- (i) the failure of Borrower to give Notice to Lender within ninety (90) days after the death of any individual who is personally liable for any obligation under the Loan Documents or the Environmental Indemnity, as Borrower, indemnitor or guarantor, whether or not such individual had executed the Note or this Mortgage; or
- (j) subject to the provisions of paragraph 2(f), the failure of Borrower to provide Lender with an assumption agreement in form and substance and executed by a person(s) or entity(ies) acceptable to Lender in its sole discretion to assume the obligations of any deceased individual who is personally liable for any obligation under the Loan Documents or the Environmental Indemnity, as Borrower, indemnitor or guarantor, whether or not such individual had executed the Note or this Mortgage, and such failure shall have continued for ninety (90) days after the death of such individual; or
- (k) the failure of Borrower to remain a Single-Purpose Entity; or
- (l) except as otherwise provided in the Loan Agreement, failure by Borrower to replenish the TI/LC Reserve within twenty (20) days after written notice from Lender in the event that Lender disburses funds with respect to any Disbursement request relating to final and completed Tenant Improvements for a lessee's space, but such lessee does not take occupancy of such lessee's space.

then, in each and every such case, the whole of said principal sum hereby secured shall, at the option of the Lender and without further notice to Borrower, become immediately due and payable together with accrued interest thereon and all other Indebtedness, and whether or not Lender has exercised said option, interest shall accrue on the entire principal balance and any other Indebtedness then due, at the Default Rate until fully paid or if Lender has not exercised said option, for the duration of any Event of Default.

11. Upon the occurrence of any Event of Default, in addition to any other rights or remedies provided in the Loan Documents, at law, in equity or otherwise, Lender shall have the right to foreclose the lien hereof, and to the extent permitted herein and by applicable law to sell the Premises by sale independent of the foreclosure proceedings. To the extent permitted by law, in any suit to foreclose the lien hereof, and in any sale of the Premises, there shall be allowed and included as additional Indebtedness payable by Borrower to Lender and secured hereby all expenditures and expenses which may be paid or incurred by or on behalf of Lender for reasonable attorneys' fees and costs, including attorneys' fees and costs on appeal, appraisers' fees, expenditures for documentary and expert evidence, stenographer's charges, publication and advertising costs, survey costs, environmental audits and costs (which may be estimated as to items to be expended after the entry of any decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, torrens certificates and similar data and

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assurances with respect to title as Lender deems reasonably necessary either to prosecute such suit or to consummate such sale or to evidence to bidders at any sale the true condition of the title to or the value of the Premises. Further, Lender shall have the right, upon the occurrence of an Event of Default, to exercise any or all of the remedies available to a secured party under the Uniform Commercial Code as now or hereafter adopted in the State of Illinois.

12. The proceeds of any foreclosure sale, or other sale of the Premises in accordance with the terms hereof or as permitted by law, shall to the extent permitted by law, be distributed and applied in the following order of priority: first, to the payment of all costs and expenses incident to the foreclosure and/or sale proceedings, including all items as are mentioned in any preceding or succeeding paragraph hereof; second, to the payment of all other items which under the terms hereof constitute secured Indebtedness in addition to that evidenced by the Note, with interest thereon as herein provided; third, to the payment of all principal, accrued interest remaining unpaid on the Note; fourth, any surplus to the Borrower or Borrower's successors or assigns, as their rights may appear.

13. Following the occurrence of an Event of Default and Borrower's failure to cure the same within the applicable grace period, unless the same has been specifically waived in writing, Borrower shall forthwith upon demand of Lender surrender to Lender possession of the Premises, and Lender shall be entitled to take actual possession of the Premises or any part thereof personally or by its agents or attorneys, and Lender in its discretion may, with or without force and with or without process of law, enter upon and take and maintain possession of all or any part of the Premises together with all documents, books, records, papers and accounts of the Borrower or the then owner of the Premises relating thereto, and may exclude Borrower, its agents or assigns wholly therefrom, and may as attorney-in-fact or agent of the Borrower, or in its own name as Lender and under the powers herein granted:

- (a) hold, operate, maintain, repair, rebuild, replace, alter, improve, manage or control the Premises as it deems judicious, insure and reinsure the same and any risks related to Lender's possession, operation and management thereof and receive all Rents, either personally or by its agents, and with full power to use such measures, legal or equitable, as in its discretion it deems proper or necessary to enforce the payment or security of the Rents, including actions for the recovery of Rent, actions in forcible detainer and actions in distress for Rents, hereby granting full power and authority to exercise each and every of the rights, privileges and powers herein granted at any and all times hereafter, without notice to Borrower; and
- (b) conduct leasing activity pursuant to the provisions of the Assignment of Leases.

Lender shall be obligated to perform or discharge, nor does either hereby undertake to perform or discharge, any obligation, duty or liability under any Lease. Except to the extent that the same is caused solely by Lender's gross negligence or willful misconduct, should Lender incur any liability, loss or damage under any Leases, or under or by reason of the Assignment of Leases, or in the defense of any claims or demands whatsoever which may be asserted against Lender by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements in any Lease, the amount thereof, including costs, expenses and reasonable

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attorneys' fees and costs, including reasonable attorneys' fees and costs on appeal, shall be added to the Indebtedness and secured hereby.

14. Upon the occurrence of an Event of Default and Borrower's failure to cure the same within the applicable grace period, Lender in the exercise of the rights and powers conferred upon them shall have the full power to use and apply the Rents, less costs and expenses of collection to the payment of or on account of the items listed in (a) – (c) below, at the election of Lender and in such order as Lender may determine as follows:

- (a) to the payment of (i) the expenses of operating and maintaining the Premises, including, but not limited to the cost of management, leasing (which shall include reasonable compensation to Lender and their agent or agents if management and/or leasing is delegated to an agent or agents), repairing, rebuilding, replacing, altering and improving the Premises, (ii) premiums on insurance as hereinabove authorized, (iii) taxes and special assessments now due or which may hereafter become due on the Premises, and (iv) expenses of placing the Premises in such condition as will, in the sole judgment of Lender, make it readily rentable;
- (b) to the payment of any principal, interest or any other Indebtedness secured hereby or any deficiency which may result from any foreclosure sale;
- (c) to the payment of established claims for damages, if any, reasonable attorneys' fees and costs and reasonable attorneys' fees and costs on appeal.

The manner of the application of Rents, the reasonableness of the costs and charges to which such Rents are applied and the item or items which shall be credited thereby shall be within the sole and unlimited discretion of Lender. To the extent that the costs and expenses in (a) and (c) above exceed the amounts collected, the excess shall be added to the Indebtedness and secured hereby.

15. Upon the occurrence of any Event of Default and Borrower's failure to cure the same within the applicable grace period, unless the same has been specifically waived in writing, Lender may apply to any court having jurisdiction for the appointment of a receiver of the Premises. Such appointment may be made either before or after sale, without notice, without regard to the solvency or insolvency of Borrower at the time of application for such receiver and without regard to the then value of the Premises or the adequacy of Lender's security. Lender may be appointed as such receiver. Borrower hereby consents to the foregoing and waives any right to object to such appointment. The receiver shall have power to collect the Rents during the pendency of any foreclosure proceeding and, in case of a sale, during the full statutory period of redemption, if any, as well as during any further times when Borrower, except for the intervention of such receiver, would be entitled to collect such Rents. In addition, the receiver shall have all other powers which shall be necessary or are usual in such cases for the protection, possession, control, management and operation of the Premises during the whole of said period. The court from time to time may authorize the receiver to apply the net income in its possession at Lender's election and in such order as Lender may determine in payment in full or in part of those items listed in paragraph 14.

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16. (a) Borrower agrees that all reasonable costs, charges and expenses, including but not limited to, reasonable attorneys' fees and costs, incurred or expended by Lender arising out of or in connection with any action, proceeding or hearing, legal, equitable or quasi-legal, including the preparation therefor and any appeal therefrom, in any way affecting or pertaining to the Loan Documents, the Environmental Indemnity, or the Premises, shall be promptly paid by Borrower. Such expenses shall include but not be limited to reasonable expenses (including the reasonable fees and expenses of legal counsel for Lender) incurred in connection with (a) the preservation and enforcement of Lender's liens and security interests under this Mortgage, (b) the protection, exercise or enforcement of Lender's rights with respect to the Premises including (without limitation) Lender's rights to (i) collect or take possession of the Premises and the proceeds thereof, (ii) hold the Premises, (iii) prepare the Premises for sale or other disposition and (iv) sell or otherwise dispose of the Premises, and (c) the assertion, protection, exercise or enforcement of Lender's rights in any proceeding under the United States Bankruptcy Code, including (without limitation) the preparation, filing and prosecution of (i) proofs of claim, (ii) motions for relief from the automatic stay, (iii) motions for adequate protection, and (iv) complaints, answers and other pleadings in adversary proceedings by or against Lender or relating in any way to the Premises. All such sums not promptly paid by Borrower shall be added to the Indebtedness secured hereby and shall bear interest at the Default Rate from the date of such advance and shall be due and payable on demand.
- (b) Borrower hereby agrees that upon the occurrence of an Event of Default and the acceleration of the principal sum secured hereby pursuant to this Mortgage, to the full extent that such rights can be lawfully waived, Borrower hereby waives and agrees not to insist upon, plead, or in any manner take advantage of, any notice of acceleration, any stay, extension, exemption, homestead, marshaling or moratorium law or any law providing for the valuation or appraisal of all or any part of the Premises prior to any sale or sales thereof under any provision of this Mortgage or before or after any decree, judgment or order of any court or confirmation thereof, or claim or exercise any right to redeem all or any part of the Premises so sold and hereby expressly waives to the full extent permitted by applicable law on behalf of itself and each and every person or entity acquiring any right, title or interest in or to all or any part of the Premises, all benefit and advantage of any such laws which would otherwise be available to Borrower or any such person or entity, and agrees that neither Borrower nor any such person or entity will invoke or utilize any such law to otherwise hinder, delay or impede the exercise of any remedy granted or delegated to Lender herein but will permit the exercise of such remedy as though any such laws had not been enacted. Borrower hereby further expressly waives to the full extent permitted by applicable law on behalf of itself and each and every person or entity acquiring any right, title or interest in or to all or any part of the Premises any and all rights of redemption from any sale or any order or decree of foreclosure obtained pursuant to provisions of this Mortgage. To the extent permitted by law, Borrower hereby waives and releases all procedural errors, defects and imperfections in any proceedings instituted by Lender under the terms of this Mortgage, the Note and the other Loan Documents.

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17. Lender, at its option, is authorized to foreclose this Mortgage subject to the rights of any tenants of the Premises, and the failure to make any such tenants parties defendant to any foreclosure proceedings or to foreclose their rights or the failure to disturb the possession of any such tenants after foreclosure will not be, nor may it be asserted by Borrower as, a defense to any proceedings instituted by Lender to collect the sums secured hereby or to collect any deficiency remaining unpaid after the foreclosure sale of the Premises.

18. In accordance with and subject to the terms and conditions of the Assignment of Leases, Borrower hereby assigns to Lender directly and absolutely, and not merely collaterally, the interest of Borrower as lessor under the Leases of the Premises, and the Rents payable under any Lease and/or with respect to the use of the Premises, or portion thereof, including any oil, gas or mineral lease, or any installments of money payable pursuant to any agreement or any sale of the Premises or any part thereof, subject only to a license, if any, granted by Lender to Borrower with respect thereto prior to the occurrence of an Event of Default and Borrower's failure to cure the same within the applicable grace period. Borrower has executed and delivered the Assignment of Leases which grants to Lender specific rights and remedies in respect of said Leases and governs the collection of Rents thereunder and from the use of the Premises, and such rights and remedies so granted shall be cumulative of those granted herein.

The collection of such Rents and the application thereof as aforesaid shall not cure or waive any Event of Default or notice of default hereunder or invalidate any act done pursuant to such notice, except to the extent any such Event of Default is fully cured. Failure or discontinuance of Lender at any time, or from time to time, to collect any such moneys shall not impair in any manner the subsequent enforcement by Lender of the right, power and authority herein conferred on Lender. Nothing contained herein, including the exercise of any right, power or authority herein granted to Lender, shall be, or be construed to be, an affirmation by Lender of any tenancy, Lease or option, or an assumption of liability under, or the subordination of the lien or charge of this Mortgage to any such tenancy, Lease or option. Borrower hereby agrees that, in the event Lender exercises its rights as provided for in this paragraph or in the Assignment of Leases, Borrower waives any right to compensation for the use of Borrower's furniture, furnishings or equipment in the Premises for the period such assignment of rents or receivership is in effect, it being understood that the Rents derived from the use of any such items shall be applied to Borrower's obligations hereunder as above provided.

19. All rights and remedies granted to Lender in the Loan Documents shall be in addition to and not in limitation of any rights and remedies to which it is entitled in equity, at law or by statute, and the invalidity of any right or remedy herein provided by reason of its conflict with applicable law or statute shall not affect any other valid right or remedy afforded to Lender. No waiver of any default or Event of Default under any of the Loan Documents shall at any time thereafter be held to be a waiver of any rights of the Lender hereunder, nor shall any waiver of a prior Event of Default or default operate to waive any subsequent Event of Default or default. All remedies provided for in the Loan Documents are cumulative and may, at the election of Lender, be exercised alternatively, successively or concurrently. No act of Lender shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision or to proceed against one portion of the Premises to the exclusion of any other portion. Time is of the essence under this Mortgage and the Loan Documents.

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20. By accepting payment of any sum secured hereby after its due date, Lender does not waive its right either to require prompt payment when due of all other sums or installments so secured or to declare a default for failure to pay such other sums or installments.
21. The usury provisions of paragraph 7 of the Note and the liability provisions of paragraph 12 of the Note are fully incorporated herein by reference as if the same were specifically stated here.
22. In the event one or more provisions of the Loan Documents shall be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and the Loan Documents shall be construed as if any such provision had never been contained herein.
23. If the payment of the Indebtedness secured hereby or of any part thereof shall be extended or varied, or if any part of the security be released, all persons now or at any time hereafter liable therefor, or interested in said Premises, shall be held to assent to such extension, variation or release, and their liability and the lien and all provisions hereof shall continue in full force, the right of recourse against all such persons being expressly reserved by Lender notwithstanding such variation or release.
24. Upon payment in full of the principal sum, interest and other Indebtedness secured by the Loan documents, these presents shall be null and void, and Lender shall release this Mortgage and the lien hereof by proper instrument executed in recordable form.
25.
 - (a) Borrower hereby grants to Lender and its respective agents, attorneys, employees, consultants, contractors and assigns an irrevocable license and authorization to enter upon and inspect the Premises and all facilities located thereon at reasonable times.
 - (b) In connection with any sale or conveyance of this Mortgage, Borrower grants to Lender and its respective agents, attorneys, employees, consultants, contractors and assigns an irrevocable license and authorization to conduct, at Lender's expense, a Phase I environmental audit of the Premises.
 - (c) In the event there has been an Event of Default or in the event Lender has formed a reasonable belief, based on its inspection of the Premises or other factors known to it, that Hazardous Materials may be present on the Premises, then Borrower grants to Lender and its respective agents, attorneys, employees, consultants, contractors and assigns an irrevocable license and authorization to conduct, at Borrower's expense, environmental tests of the Premises, including without limitation, a Phase I environmental audit, subsurface testing, soil and ground water testing, and other tests which may physically invade the Premises or facilities (the "Tests"). The scope of the Tests shall be such as Lender, in its reasonable discretion, determines is necessary to (i) investigate the condition of the Premises, (ii) protect the security interests created under this Mortgage, or (iii) determine compliance with Environmental Laws, the provisions of the Loan Documents and the Environmental Indemnity and other matters relating thereto.

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- (d) Provided no Event of Default has occurred, Lender will provide Borrower with reasonable notice of Lender's intent to enter, inspect and conduct the Tests provided for in this paragraph. In addition, Lender shall conduct such inspections and Tests during normal business hours and use reasonable efforts to minimize disruption of lessees' business operations.

The foregoing licenses and authorizations are intended to be a means of protection of Lender's security interest in the Premises and not as participation in the management of the Premises.

26. Within fifteen (15) days after any written request by either party to this Mortgage, the requested party shall certify, by a written statement duly acknowledged, the amount of principal, interest and other Indebtedness then owing on the Note, the terms of payment, Maturity Date and the date to which interest has been paid. Borrower shall further certify whether any defaults, offsets or defenses exist against the Indebtedness secured hereby. Borrower shall also furnish to Lender, within thirty (30) days of its request therefor, tenant estoppel letters from such tenants of the Premises as Lender may reasonably require; which Lender shall not request more than one (1) time per annum.

27. (a) Borrower shall furnish to Lender within twenty (20) days after the end of each month, a detailed financial report prepared in accordance with generally accepted accounting principles, consistently applied, or such other reasonable and customary accounting practices and basis as may be reasonably acceptable to Lender, certified by Borrower in a manner and otherwise in form reasonably acceptable to Lender covering the full and complete operation of the Premises for the prior month, including without limitation: (i) unaudited income and expense statements, and (ii) an updated rent roll and a report of the leasing status of the Premises as of the end of such period, identifying the tenant, square footage, rent, lease term, tenant improvement allowance, if any, leasing commissions, if any, rental concessions and/or rental deferments, if any, and (iii) within fifteen (15) days after request by Lender, an aged accounts receivable report and an annual budget. Such reports shall be prepared by an accountant who may be an employee of Borrower, or of an affiliate of Borrower, reasonably acceptable to Lender. In addition to the reports referred to herein, Borrower shall promptly supply any additional information or records relating to the Premises or its operation as Lender may from time to time reasonably request for purposes of verifying net operating income or otherwise. Notwithstanding the foregoing, after the Premises achieve a DSC Ratio of at least 1.05 and after Lender's release of the remaining Interest Reserve as provided in Section 4.4 of the Loan Agreement, Borrower shall have thirty (30) rather than fifteen (15) days to furnish such monthly reports.
- (b) Within thirty (30) days after any written request by Lender, Borrower shall furnish to Lender, for the most recently completed fiscal quarter of Borrower, the report specified in (i) above; and within thirty (30) days following the end of each fiscal quarter, Borrower shall furnish to Lender, for the most recently completed fiscal quarter of Borrower, the report specified in (ii) above.

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- (c) Borrower shall submit to Lender, within fifteen (15) days after any written request by Lender, annual balance sheets and income statements for Borrower and Guarantors and signed federal income tax returns for Borrower.

28. Each notice, consent, request, report or other communication under this Mortgage or any other Loan Document (each a "Notice") which any party hereto may desire or be required to give to the other shall be deemed to be an adequate and sufficient notice if given in writing and service is made by either (i) registered or certified mail, postage prepaid, in which case notice shall be deemed to have been received three (3) business days following deposit to U.S. mail; or (ii) nationally recognized overnight air courier, next day delivery, prepaid, in which case such notice shall be deemed to have been received one (1) business day following delivery to such nationally recognized overnight air courier. All Notices shall be addressed to Borrower at its address given on the first page hereof, with a copy to Steven Levin, President, Brijus Property Company, 14 East Jackson Boulevard, Suite 1323, Chicago, Illinois 60604 or to Lender at 11050 Roe Avenue, Suite 200, Overland Park, Kansas 66211-1216, Attn: Commercial Real Estate Servicing, or to such other place as either party may by written notice to the other hereafter designate as a place for service of notice. Borrower shall not be permitted to designate more than one place for service of Notice concurrently.

29. Borrower has had the opportunity to fully negotiate the terms hereof and modify the draftsmanship of the Loan Documents and the Environmental Indemnity. Therefore, the terms of the Loan Documents and the Environmental Indemnity shall be construed and interpreted without any presumption, inference, or rule requiring construction or interpretation of any provision of the Loan Documents and the Environmental Indemnity against the interest of the party causing the Loan Documents and the Environmental Indemnity or any portion of it to be drafted. Borrower is entering into the Loan Documents and the Environmental Indemnity freely and voluntarily without any duress, economic or otherwise.

30. This Mortgage and all provisions hereof shall inure to the benefit of the heirs, successors and assigns of Lender and shall bind the heirs and permitted successors and assigns of Borrower.

31. This Mortgage shall be governed by, and construed in accordance with, the laws of the State of Illinois, without regard to its conflicts of law principles.

32. As used herein, the term "**Default Rate**" means a rate equal to the lesser of (i) four percent (4%) per annum above the then applicable interest rate payable under the Note or (ii) the maximum rate allowed by applicable law. Borrower acknowledges that the Default Rate is not a penalty, but rather is a rate of interest negotiated by the parties to compensate Lender for the increased credit risk to which Lender is subjected by reason of the occurrence of one or more Events of Default.

33. AFTER CONSULTING WITH COUNSEL AND CAREFUL CONSIDERATION, BORROWER AND LENDER (BY ITS ACCEPTANCE HEREOF) KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE THE RIGHT EITHER OF THEM MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY LITIGATION ARISING OUT OF THIS MORTGAGE OR ANY OTHER INSTRUMENT OR AGREEMENT RELATED TO THE LOAN, OR OUT OF ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (ORAL OR WRITTEN), OR ACTIONS OF BORROWER OR LENDER.

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THIS WAIVER IS A MATERIAL INDUCEMENT TO THE LENDER'S ACCEPTANCE OF THIS MORTGAGE.

34. This Mortgage and the Indebtedness secured hereby is for the sole purpose of conducting or acquiring a lawful business, professional or commercial activity or for the acquisition or management of real or personal property as a commercial investment, and all proceeds of such Indebtedness shall be used for said business or commercial investment purpose. Such proceeds will not be used for the purchase of any security within the meaning of the Securities Exchange Act of 1934, as amended, or any regulation issued pursuant thereto, including without limitation, Regulations U, T and X of the Board of Governors of the Federal Reserve System. This is not a purchase money mortgage where a seller is providing financing to a buyer for the payment of all or any portion of the purchase price, and the Premises secured hereby is not a residence or homestead or used for mining, grazing, agriculture, timber or farming purposes.

35. Unless Lender shall otherwise direct in writing, Borrower shall appear in and defend all actions or proceedings purporting to affect the security hereunder, or any right or power of the Lender. The Lender shall have the right to appear in such actions or proceedings. Borrower shall save Lender harmless from all reasonable costs and expenses, including but not limited to, reasonable attorneys' fees and costs, and costs of a title search, continuation of abstract and preparation of survey incurred by reason of any action, suit, proceeding, hearing, motion or application before any court or administrative body in and to which Lender may be or become a party by reason hereof. Such proceedings shall include but not be limited to condemnation, bankruptcy, probate and administration proceedings, as well as any other action, suit, proceeding, right, motion or application wherein proof of claim is by law required to be filed or in which it becomes necessary to defend or uphold the terms of this Mortgage or the Loan Documents or otherwise purporting to affect the security hereof or the rights or powers of Lender. All money paid or expended by Lender in that regard, together with interest thereon from date of such payment at the applicable interest rate shall be additional Indebtedness secured hereby and shall be immediately due and payable by Borrower without notice.

36. This Mortgage shall constitute a security agreement within the meaning of the Illinois Uniform Commercial Code (the "**Code**") with respect to any and all sums at any time on deposit for the benefit of Lender or held by Lender (whether deposited or on behalf of the Borrower or anyone else) pursuant to the provisions of this Mortgage and with respect to any personal property included in the granting clauses of this Mortgage, and all replacements of such personal property, and the proceeds thereof. Upon default, without limitation of any other remedies, Lender shall have the remedies of a secured party under the Code. This Mortgage is intended to be a financing statement within the purview of the Code with respect to the personal property described herein. Borrower, as debtor, hereby authorizes Lender, as secured party to execute, deliver, file or re-file as secured party without joinder of the Borrower, any financing statement, continuation statement or other instruments that Lender may reasonably require from time to time to perfect or renew such security interest under the Code.

37. Upon the occurrence of an Event of Default, unless the same has been specifically waived in writing, all Rents collected or received by Borrower shall be accepted and held for Lender in trust and shall not be commingled with the funds and property of Borrower, but shall be promptly paid over to Lender.

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38. If more than one, all obligations and agreements of Borrower are joint and several.
39. This Mortgage may be executed in counterparts, each of which shall be deemed an original; and such counterparts when taken together shall constitute but one agreement.
40. Borrower acknowledges receipt of a true and correct copy of this Mortgage and the Note from Lender, without charge.
41. In the event Lender sells or assigns all or any part of its interest in the Note and the other Loan Documents to a person not affiliated with Lender, Lender will use good faith efforts to provide Borrower with notice of such transfer.
42. Special Local Provisions. In the event of any inconsistencies between the terms and conditions of this Section 42 and the terms and conditions of this Mortgage, the terms and conditions of this Section 42 shall control and be binding.
- (a) Illinois Mortgage Foreclosure Law.
 - (i) In the event that any provision in this Mortgage shall be inconsistent with any provision of the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1501 *et seq.* herein called the "**Act**"), the provisions of the Act shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the Act.
 - (ii) If any provision of this Mortgage shall grant to Lender any rights or remedies upon the occurrence and during the continuation of an Event of Default of Borrower which are more limited than the rights that would otherwise be vested in Lender under the Act in the absence of said provision, Lender shall be vested with the rights granted in the Act to the full extent permitted by law.
 - (iii) Without limiting the generality of the foregoing, all expenses incurred by Lender to the extent reimbursable under Sections 15-1510 and 15-1512 of the Act, whether incurred before or after any decree or judgment of foreclosure, and whether or not enumerated in this Mortgage, shall be added to the Debt.
 - (iv) Borrower acknowledges that the transaction of which this Mortgage is a part is a transaction which does not include either agricultural real estate (as defined in Section 15-1201 of the Act) or residential real estate (as defined in Section 15-1219 of the Act), and to the full extent permitted by law, hereby voluntarily and knowingly waives its rights to reinstatement and redemption to the extent allowed under Section 15-1610(b) of the Act, and to the full extent permitted by law, the benefits of all present and future valuation, appraisal, homestead, exemption, stay, redemption and moratorium laws under any state or federal law.

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- (v) Borrower and Lender shall have the benefit of all of the provisions of the Act, including all amendments thereto which may become effective from time to time after the date hereof. In the event any provision of the Act which is specifically referred to herein may be repealed, Lender shall have the benefit of such provision as most recently existing prior to such repeal, as though the same were incorporated herein by express reference.
- (b) Borrower Waivers.
- (i) Borrower agrees, to the fullest extent that Borrower may lawfully so agree, that Borrower will not at any time insist upon or plead or in any manner whatsoever claim the benefit of any valuation, stay, extension, or exemption law now or hereafter in force, in order to prevent or hinder the enforcement or foreclosure of this Mortgage or the absolute sale of the Premises or the possession thereof by any purchaser at any sale made pursuant to any provision hereof, or pursuant to the decree of any court of competent jurisdiction; but Borrower, for Borrower and all who may claim through or under Borrower, so far as Borrower or those claiming through or under Borrower now or hereafter lawfully may, hereby waives the benefit of all such laws. Borrower, to the extent Borrower may lawfully do so, hereby waives any and all right to have the Premises marshaled upon any foreclosure of this Mortgage, or sold in inverse order of alienation, and agrees that Lender or any court having jurisdiction to foreclose this Mortgage may sell the Premises as an entirety. If any law now or hereafter in force referred to in this Paragraph of which Borrower or Borrower's successor or successors might take advantage despite the provisions hereof, shall hereafter be repealed or cease to be in force, such law shall not thereafter be deemed to constitute any part of the contract herein contained or to preclude the operation or application of the provisions of this Paragraph.
- (ii) In the event of the commencement of judicial proceedings to foreclose this Mortgage, Borrower, on behalf of Borrower, its successors and assigns, and each and every person or entity they may legally bind acquiring any interest in or title to the Premises subsequent to the date of this Mortgage: (a) expressly waives any and all rights of appraisal, valuation, stay, extension and (to the extent permitted by law) reinstatement and redemption from sale under any order or decree of foreclosure of this Mortgage; and (b), to the extent permitted by applicable law, agrees that when sale is had under any decree of foreclosure of this Mortgage, upon confirmation of such sale, the officer making such sale, or his successor in office, shall be and is authorized immediately to execute and deliver to any purchaser at such sale a deed conveying the Premises, showing the amount paid therefor, or if purchased by

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the person in whose favor the order or decree is entered, the amount of his bid therefor.

- (c) Maximum Amount Secured. The maximum principal indebtedness secured by this Mortgage, including loan proceeds plus any additional charges shall not exceed two hundred percent (200%) of the face amount of the Note.
- (d) No Lien Management Agreements. Borrower shall include a "no lien" provision in any property management agreement hereafter entered into by Borrower with a property manager for the Premises, whereby the property manager waives and releases any and all mechanics' lien rights that the property manager, or anyone claiming through or under the property manager, may have pursuant to 770 ILCS 60/1. Such property management agreement containing such "no lien" provision or a short form thereof shall, at Lender's request, be recorded with the Recorder of Deeds of Cook County, Illinois, as appropriate.
- (e) Collateral Protection Act. Unless Borrower provides Lender with evidence of the insurance required by this Mortgage or any other Loan Document, Lender may purchase insurance at Borrower's expense to protect Lender's interest in the Premises or any other collateral for the indebtedness secured hereby. This insurance may, but need not, protect Borrower's interests. The coverage Lender purchases may not pay any claim that Borrower makes or any claim that is made against Borrower in connection with the Premises or any other collateral for the indebtedness secured hereby. Borrower may later cancel any insurance purchased by Lender, but only after providing Lender with evidence that Borrower has obtained insurance as required under by this Mortgage or any other Loan Document. If Lender purchases insurance for the Premises or any other collateral for the indebtedness secured hereby, Borrower shall be responsible for the costs of that insurance, including interest in any other charges that Lender may lawfully impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to the indebtedness secured hereby. The costs of the insurance may be more than the cost of insurance that Borrower may be able to obtain on its own.
- (f) Fixture Filing. This Mortgage shall also constitute a "fixture filing" for the purposes of the UCC against all of the Premises which is or is to become fixtures. Information concerning the security interest herein granted may be obtained at the addresses of Debtor (Borrower) and Secured Party (Lender) as set forth in the first paragraph of this Mortgage.
- (g) Future Advances. This Mortgage secures not only present indebtedness but also future advances, whether such future advances are obligatory or are to be made at the option of Lender, or otherwise. The amount of

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indebtedness secured hereby may increase or decrease from time to time, and the rate or rates of interest payable may vary from time to time.

(h) Maturity Date. The Loan shall be due and payable in full on or before August 1, 2010, as more particularly set forth in the Note.

(i) Loan Made for Business Purposes. Borrower acknowledges and agrees that:

(i) The Premises do not constitute agricultural real estate as defined in Section 5/15-1201 of the Act or residential real estate as defined in Section 5/15-1219 of the Act.

(ii) (A) the proceeds of the Loan will be used in conformance with subparagraph (1)(1) of Section 4 of "An Act in relation to the rate of interest and other charges in connection with sales on credit and the lending of money," approved May 24, 1879, as amended (815 ILCS 105/4(1)(1)); (B) the Loan secured hereby has been incurred by Borrower solely for business purposes of Borrower and for Borrower's investment or profit, as contemplated by said Section 4; (C) the Loan secured hereby constitutes a loan secured by real estate within the purview of and as contemplated by said Section 4; and (D) the secured Loan is an exempted transaction under the Truth-In-Lending Act 15 U.S.C. Sec. 1601 *et. seq.* has been entered into solely for business purposes of Borrower and for Borrower's investment or profit, as contemplated by said section.

(Signatures on next page)

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IN WITNESS WHEREOF, Borrower has caused this Mortgage to be duly executed and delivered as of the date first above written.

BORROWER:

KINZIE STREET PARTNERS, LLC,
an Illinois limited liability company

By: *Robert S. Levinson*

Name: Robert S. Levinson

Title: Manager

STATE OF ILLINOIS)

) S

COUNTY OF COOK)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY THAT Robert S. Levinson as Manager of Kinzie Street Partners, LLC, an Illinois limited liability company, who is personally known to me to be the same persons whose name is are subscribed to the foregoing instrument as such Manager of said limited liability company, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as his 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 day of July, 2007.



Mark Beckwith
Notary Public

My Commission Expires: 11/2/09

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Attachment

Additional tax numbers:

17-09-258-006-0000; 17-09-258-007-0000; 17-09-258-008-0000; 17-09-258-009-0000;
17-09-258-017-0000; 17-09-258-018-0000

220 West Kinzie, Chicago, IL 60610 222 West Kinzie, Chicago, IL 60610 226 West Kinzie,
Chicago, IL 60610 230 West Kinzie, Chicago, IL 60610

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