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0930829083

Doc#: 0930829083 Fee: \$62.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 11/04/2009 03:20 PM Pg: 1 of 14

Illinois Anti-Predatory Lending Database Program

Certificate of Exemption

Report Mortgage Fraud
800-532-8785

The property identified as: **PIN: 17-33-313-021-0000**

Address:

Street: 3753-59 South Halsted

Street line 2:

City: Chicago

State: IL

ZIP Code: 60609

Lender: Advantage Capital Community Development Fund XXV, L.L.C.

Borrower: 3753-3759 S. Halsted LLC

Loan / Mortgage Amount: \$7,500,000.00

This property is located within Cook County and is exempt from the requirements of 765 ILCS 7770 et seq. because it is commercial property.

Certificate number: 31F20608-DD46-43A4-B83B-B48983E8CD19

Execution date: 10/29/2009

14

4/12/06
183 Jr

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

Armstrong Teasdale LLP
One Metropolitan Square, Suite 2600
St. Louis, Missouri 63102
Attention: Jarrod H. Sharp

Address of Property:

3753-59 South Halsted
Chicago, IL 60609

Permanent Parcel(s) No(s):

17-33-313-021-0000
17-33-313-022-0000
17-33-313-023-0000
17-33-313-024-0000

Space above this line reserved for Recorder's use only.

THIS MORTGAGE AND SECURITY AGREEMENT IS GOVERNED BY A CERTAIN INTERCREDITOR AND SUBORDINATION AGREEMENT DATED OF EVEN DATE HERewith BY AND BETWEEN OLD SECOND NATIONAL BANK AND ADVANTAGE CAPITAL COMMUNITY DEVELOPMENT FUND XXV, L.L.C. (THE "INTERCREDITOR AGREEMENT")

MORTGAGE AND SECURITY AGREEMENT

THIS MORTGAGE AND SECURITY AGREEMENT ("Mortgage") is made and entered into this 29th day of October, 2009, by and between **3753-3759 S. HALSTED LLC**, an Illinois limited liability company whose address or principal place of business is 3737 South Halsted Street, Chicago, Illinois 60609 ("**Grantor**"), and **ADVANTAGE CAPITAL COMMUNITY DEVELOPMENT FUND XXV, L.L.C.**, a Delaware limited liability company with an address of 909 Poydras Street, Suite 2230, New Orleans, Louisiana 70112 ("**Lender**" or "**Grantee**");

WITNESSETH:

That for good and valuable consideration, and to secure (i) all Obligations, as such term is defined in that certain Credit Agreement dated as of even date herewith, by and between THE GREAT STEAKHOUSE STEAKS LLC, an Illinois limited liability company (the "**Borrower**"), and Lender (the "**Credit Agreement**"), including without limitation the obligations under the Note (as defined in the Credit Agreement), and (ii) all Liabilities as such term is defined in that certain Continuing Unlimited Guaranty Agreement (the "**Guaranty**") dated as of even date herewith executed by Grantor (collectively, the Obligations and Liabilities are hereinafter referred to as the "**Secured Indebtedness**"), Grantor does by these presents **MORTGAGE** and **WARRANT** unto Lender the real estate situated in the County of

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Cook, State of Illinois, as more particularly described on Exhibit A, attached hereto and made a part hereof;

TOGETHER with all and singular any and all buildings and improvements now or hereafter situated thereon, and all tenements, hereditaments and appurtenances whatsoever thereunto belonging or in any way appertaining thereto, and the reversions, remainders, rents, revenues, income, issues and profits thereof; and all the right, title, and interest of Grantor in and to the land lying in any street, road, avenue, alley or right-of-way in front of or adjoining said premises and the strips and gores of land adjacent to or adjoining said premises and any and all easements appurtenant to said premises. Also together with all of the right, title and interest of Grantor to: all air rights, water rights, oil, gas, minerals, coal or other substances underlying or relating to the real estate, all fixtures, all timber to be cut, all As-Extracted Collateral, as such term is defined in the Uniform Commercial Code as adopted in State of Illinois, fixed assets, and personalty now or at any time hereafter annexed, affixed or attached to said real estate and/or said buildings, improvements or structures thereon and all personal property now owned or hereafter acquired by Grantor and used or intended to be used in the possession, occupation or enjoyment of the real estate, including (but without limiting the generality of the foregoing) all apparatus, appliances, machinery, equipment, and articles used to supply or provide, or in connection with, heat, gas, air-conditioning, plumbing, water, lighting, power, elevator, sewerage, cleaning, refrigeration, cooling, ventilation and sprinkler systems, water heaters, all window shades, drapes and drapery equipment and apparatus, fire prevention and extinguishing apparatus, security and access control apparatus, all window cleaning apparatus, all furniture, all grounds maintenance equipment, all maintenance supplies, all rugs and carpeting and all construction material; all of Grantor's contract rights under and all receivables now or hereafter owing to Grantor under all existing and future leases of space in any building now or hereafter situated on the real estate and under any extension or renewal of any said leases and under all lease guaranties executed in connection therewith; all existing and hereafter created or acquired deposits, contracts, accounts, goodwill, trademarks, tradenames, general intangibles, books, records, reports, surveys, plats, engineering reports, government permits, escrow deposits, tenant security deposits, soil reports, plans, specifications, files, tests and documents of any kind or nature relating to the real estate and the development thereof; all of Grantor's rights under any existing and future sales contracts affecting all or any portion of the real estate; all replacements, additions or substitutions of or to any of the foregoing and any after acquired title to any of the foregoing; and all products and proceeds of the foregoing, including without limitation, insurance proceeds and all proceeds of any award for the taking of all or any part of the foregoing pursuant to any governmental action.

All of the property described hereinabove, whether real, personal or mixed together with any and all additional interests therein, whether now owned or hereafter acquired, shall be security for the Secured Indebtedness and shall be subject to the lien of this Mortgage and shall hereinafter be referred to as the "Mortgaged Property." To the extent that any portion of the Mortgaged Property may not be deemed to be real property or fixtures, this Mortgage shall constitute a security agreement with Grantor as the debtor and Lender as the secured party. Grantor hereby grants Lender a security interest in the Mortgaged Property to the extent that any of the Mortgaged Property may be deemed personal property or fixtures.

TO HAVE AND TO HOLD THE SAME, unto Lender and its successors and assigns for the uses and purposes hereinafter set forth:

PROVIDED, HOWEVER, that if Borrower and Grantor shall fully pay or cause to be fully paid all the Secured Indebtedness, then, the estate, right, title and interest of Lender in the Mortgaged Property shall cease, and upon proof being given to the satisfaction of Lender that the Secured Indebtedness have been paid or satisfied, and upon payment of all fees, costs, charges, expenses and liabilities chargeable or incurred or to be incurred by Lender, and of any other sums as herein provided, shall release, without warranty, the Mortgaged Property then held hereunder.

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MOREOVER, in further consideration Grantor does for Grantor and Grantor's heirs, representatives, grantees, successors and assigns, hereby expressly warrant, covenant, and agree to and with Lender and its successors and assigns as follows:

1. Title to Mortgaged Property

Grantor is lawfully seized of indefeasible title and estate to the Mortgaged Property and has full right, power and authority to convey the same subject only to encumbrances, easements, reservations and restrictions of record as of this date. With the exception of a mortgage lien in favor of Old Second National Bank, Grantor shall keep the Mortgaged Property free from all other liens and claims of every kind, whether statutory or otherwise, and protect the title and possession thereof. Grantor agrees, at the request of Lender, from time to time, to execute any further assurances of title and to provide Lender with such evidence thereof as Lender shall request.

2. Future Advances

This Mortgage secures future advances and future obligations, and is governed by 765 ILCS 5/39 and 735 ILCS 5/15-1302. The total amount outstanding at any one time which is secured by this Mortgage, excluding any interest and any amounts advanced by Lender in accordance with the terms of this Mortgage to (i) preserve or restore the Mortgaged Property, (ii) preserve the lien of the Mortgage or the priority thereof, or (iii) enforce this Mortgage, shall not exceed Seven Million Five Hundred Thousand Dollars (\$7,500,000.00).

3. Taxes

Grantor shall pay all taxes, assessments, and public charges, general and special, and penalties now existing or hereafter becoming due against the Mortgaged Property before the same become delinquent. Grantor shall deliver to Lender copies of all receipts evidencing such payments prior to the date when the same would be delinquent.

4. Insurance

Grantor shall keep the Mortgaged Property constantly insured against loss or damage by fire and special coverage perils including earthquake, flood and mine subsidence in an amount not less than the greater of (1) the full replacement cost or (2) such other amount as may from time to time be required by Lender, with no co-insurance clauses or deductibles in excess of \$10,000 (\$25,000 for earthquake, flood and mine subsidence) in the policies of insurance unless Lender shall consent thereto in writing. Grantor shall additionally maintain business interruption insurance acceptable to Lender. All such insurance shall be carried by companies authorized to insure in Illinois which have an AM Best rating of AX or better and are otherwise acceptable to Lender, and all such policies shall be in form acceptable to Lender and shall include a standard mortgagee's endorsement and loss payable clause in favor of and in form acceptable to Lender. All such policies of insurance shall require a minimum of thirty (30) days prior written notice to Lender of any cancellation thereof or any changes affecting coverage. Grantor shall keep all such policies of insurance constantly assigned, pledged and delivered to Lender for further securing the Secured Indebtedness and all renewal policies shall be delivered to Lender at least fifteen (15) days before the expiration of the policies then in effect. In the event of loss, Grantor shall promptly give Lender written notice thereof and Lender is hereby authorized and empowered to make proof of loss. Each insurance company is hereby authorized to make payments directly to Lender instead of to Lender and Grantor jointly. Lender is hereby expressly authorized and empowered by Grantor to collect and receive from any insurer issuing policies of any kind covering the Mortgaged Property, all amounts as may be due or payable to Grantor by way of unearned premiums or otherwise, on any such policy or

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policies of insurance should said policy or policies of insurance be at any time cancelled and all such amounts are hereby assigned and pledged to Lender for further securing the Secured Indebtedness. Grantor shall additionally maintain commercial general liability insurance in occurrence form with coverage limits of at least \$2,000,000 aggregate, \$1,000,000 per occurrence or as otherwise acceptable to Lender. Such insurance shall require a minimum of thirty (30) days prior written notice to Lender of any cancellation thereof or any changes affecting coverage and shall name Lender as an additional insured. The insurance provisions herein contained are in addition to and not in limitation of any other insurance requirements contained in other agreements of Grantor to Lender.

Upon the receipt of any such proceeds, unearned premiums, or any amounts otherwise received by Lender as herein provided, Lender is authorized and directed to give a receipt therefor in the name, behalf and stead of Grantor, as its agent. Lender is hereby further expressly authorized and empowered by Grantor to endorse Grantor's name upon any checks or vouchers given in payment of said amounts so that the signature of the Lender shall be taken with the like effect as if the Grantor had individually signed or endorsed said checks or vouchers. Lender shall have the right, as its sole option, to apply all such monies as shall be thus collected and received by Lender toward the payment of the Secured Indebtedness or the cost of rebuilding or restoring the damaged property or the cost of procuring other insurance on the Mortgaged Property, or to apply all or any part of such monies against any part of the Secured Indebtedness, without regard to the maturity thereof, and in any order as Lender shall elect, provided that if the Mortgaged Property can be restored and if the insurance proceeds (along with any other funds deposited by Grantor) are sufficient to pay for such restoration and an Event of Default is not continuing under this Mortgage or the Credit Agreement, Lender shall disburse such insurance proceeds to pay for such restoration.

In the event of foreclosure hereunder, Lender shall have full and complete power to assign to the purchaser or purchasers at such foreclosure sale any and all policies of insurance which may then be in force and effect upon the Mortgaged Property for the full unexpired term of such policy or policies, and Grantor shall not be entitled to have said insurance cancelled nor receive the unearned premium thereon.

5. Secured Indebtedness of Grantor and Borrower

Grantor and/or Borrower shall pay and perform all conditions of the Note and other Secured Indebtedness secured hereby including any future advances or future obligations in accordance with the respective terms of each evidence of indebtedness or obligation, or when the maturity thereof may be accelerated in accordance with the terms thereof or of this Mortgage. Grantor will also duly and promptly pay all indebtedness and perform all obligations secured by any encumbrance affecting the Mortgaged Property. Grantor shall also pay to Lender, upon Lender's request after the occurrence of an Event of Default, together with and in addition to the payments due pursuant to the terms of the Secured Indebtedness, a sum, as estimated by Lender, equal to the taxes and special assessments next due on the Mortgaged Property, plus the premiums that will next become due and payable on insurance policies as may be required hereunder (collectively, the "Reserves"). The Reserves are solely for the added protection of Lender and entail no responsibility on Lender's part beyond the allowing of due credit, without interest, for the sums actually received by it. Upon assignment of this Mortgage by Lender, any Reserves on hand shall be turned over to the assignee and any responsibility of the assignor with respect thereto shall terminate.

6. Alterations/Maintenance

Without the Lender's consent which shall not be unreasonably withheld, conditioned or delayed, Grantor shall not remove, demolish or substantially or structurally alter any building, improvement or parking facility or space now or hereafter situated upon the Mortgaged Property. Grantor shall neither

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commit nor suffer any waste on the Mortgaged Property and shall keep all buildings, improvements, appurtenances, fixtures, parking facilities and spaces and other property now or hereafter situated thereon in sound condition and in good and substantial repair and shall not take or permit any action whereby the Mortgaged Property shall become less valuable. No fixtures shall be removed unless replaced with other fixtures with a value at least equal to that removed and free from any title retention or security agreement or other encumbrance.

7. Compliance with Laws and Indemnifications

Grantor shall comply at all times with all federal and state laws, all local and municipal ordinances and all rules, orders and regulations of any governmental entity having jurisdiction over the Mortgaged Property. Grantor shall protect, indemnify and save harmless Lender from and against any liability, obligation, claim, damage, penalty, cause of action, cost and expense (including without limitation reasonable out of pocket attorneys' fees and expenses), imposed upon, incurred by or asserted against Lender by reason of (a) ownership or use of the Mortgaged Property or any interest therein; (b) any accident, injury to or death of persons or loss of or damage to property occurring in, on or about the Mortgaged Property or any part thereof or on any adjoining sidewalks, curbs, adjacent parking areas, streets or ways; (c) any use, nonuse or condition in, on or about the Mortgaged Property or any part thereof or on any adjoining sidewalks, curbs, adjacent parking areas, streets or ways; (d) any failure on the part of Grantor to perform or comply with any of the terms of this Mortgage; or (e) performance of any labor or services or the furnishing of any materials or other property in respect of the Mortgaged Property or any part thereof. Any amounts payable to Lender by reason of the application of the foregoing shall become immediately due and payable and shall bear interest at a per annum rate equal to the Default Rate (as defined in the Credit Agreement). The obligations of Grantor shall survive any termination or satisfaction of this Mortgage.

8. Advances by Lender

If Grantor fails to pay any claim, lien or encumbrance which shall be prior to the lien of this Mortgage, or to pay, when due, any tax or assessment, or any insurance premium, or to keep the Mortgaged Property in repair as herein required or shall commit or permit any waste, or if there be commenced any action or proceedings affecting the Mortgaged Property or the title hereto, then Lender, at its sole option, shall have the right to pay such claim, lien, encumbrance, tax assessment or premium, with the right of subrogation thereunder, procure such evidence of title as it deems appropriate, make such repairs or take such steps as it deems appropriate to prevent or cure such waste, and take such action therein as it deems advisable, and for any and all of such purposes Lender shall have the right to advance such sums of money as it deems necessary or appropriate. The decision of Lender with respect to the legality, validity and priority of any such claim, lien or encumbrance, tax, assessment and premium, and the amount necessary to be paid in satisfaction thereof shall be final. Grantor shall pay to Lender, immediately and without demand, all sums of money advanced by Lender pursuant to this paragraph, together with interest thereon at the Default Rate, which sums and the interest thereon shall be secured hereby. Notwithstanding anything contained herein to the contrary, Lender shall not be obligated or under any duty to advance any money for any purpose whatsoever mentioned in this Mortgage.

9. Mechanics Liens

Grantor shall promptly pay or cause to be paid all costs for labor and material incurred in connection with the construction, maintenance, repair and operation of the Mortgaged Property, and shall never permit a lien or encumbrance for such labor and material to remain against the Mortgaged Property, except such lien or encumbrance diligently contested by Grantor with sufficient reserves, as determined by Lender in its reasonable discretion, to discharge such lien or encumbrance.

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10. Inspection; Appointment of Managing Agent or Receiver

Lender and any persons authorized by Lender shall have the right to enter and inspect the Mortgaged Property at all reasonable times. Grantor shall pay to Lender or persons designated by Lender an audit fee based on Lender's then current audit rate (which rate is presently \$850.00 per day) plus expenses for each such audit, provided that so long as no Event of Default is continuing, Grantor shall only be obligated to pay for one (1) audit in any calendar year. If, at any time after default, the management or maintenance of the Mortgaged Property shall be determined by Lender to be unsatisfactory, Lender shall have the right to (1) employ for the duration of such default any person from time to time designated by the Lender as a managing agent of the Mortgaged Property, or (2) apply to a court having jurisdiction thereof for the appointment of a receiver for the Mortgaged Property. Grantor hereby expressly covenants and agrees that the court shall forthwith appoint such receiver with the usual powers and duties of receivers and said right to have a receiver appointed shall be without reference to the adequacy of the value of the Mortgaged Property or to the insolvency of Grantor or any party defendant to the suit. Grantor hereby expressly waives its right to object to the appointment of a receiver and hereby expressly consents that such appointment shall be a matter of absolute right to Lender. Nothing herein shall be deemed to cause Lender to be a mortgagee in possession, owner or operator of the Mortgaged Property.

11. Assignment of Rents and Profits

Grantor hereby assigns to Lender all rents and profits now or hereafter accruing on the Mortgaged Property, and hereby authorizes Lender, from the date of any event of default, and while such event is continuing, at Lender's sole option, to collect such rents and profits without taking possession of the Mortgaged Property or to take possession of the Mortgaged Property and rent the same for the account of Grantor and to apply any sums so received (after deducting all costs of collection and administration) against the Secured Indebtedness or any part thereof, without regard to the maturity thereof, in any order the Lender shall elect, and free from any liability except to apply said sums as provided by this Mortgage. Notwithstanding the foregoing, nothing herein shall cause Lender to be deemed a mortgagee in possession, owner or operator of the Mortgaged Property.

12. Renewal, Extension or Modification of Secured Indebtedness

In the event of the renewal, extension or modification of the Secured Indebtedness or any part thereof, all of the provisions of this Mortgage and the lien hereof from its date shall remain in force as fully and with the same affect as if it was made originally to mature at such extended time and to be on the terms as modified.

13. Eminent Domain

If the Mortgaged Property or any part thereof is taken by reason of the exercise by any authority of the right of eminent domain, the alteration of the grade of any street or any other injury to or decrease in the value of the Mortgaged Property, or if the Mortgaged Property or any part thereof is conveyed in lieu of any such taking, alteration or injury, Grantor and Borrower shall continue to pay the Secured Indebtedness according to the terms thereof, until said indebtedness is paid in full. All awards or payments made because of such taking, alteration, or injury, or pursuant to any sale or any conveyance in lieu of such taking, alteration or injury shall, at the sole option of the Lender, be retained and applied by Lender towards the payment of the Secured Indebtedness or any part thereof (whether due or not), without regard to the maturity thereof, and may be applied against the Secured Indebtedness or any part thereof in any order the Lender shall elect, or such award or payment may be paid (and if no Default is in existence) shall be paid over wholly or in part to Grantor for the purpose of altering, restoring or

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rebuilding any part of the Mortgaged Property which may have been altered, damaged or destroyed as a result of any such taking or conveyance. Lender is hereby authorized in the name of Grantor to execute and deliver acquittances for any such award or payment and to collect the same. If any such award or payment has been paid into Court and thereafter the Mortgaged Property shall have been sold by foreclosure of this Mortgage, but such foreclosure shall be prior to the receipt by Lender of any such award or payment, Lender shall have the right to receive said award or payment to the extent any deficiency is due on such sale with interest thereon, at the Default Rate, whether or not a deficiency judgment shall have been sought, recovered or denied and all Lender's reasonable, out of pocket attorneys' fees, costs, and disbursements incurred by Lender in connection with the collection of any such award or payment.

14. Events of Default; Right to Accelerate

The term "Default" as used herein, shall mean the occurrence of any of the following:

- (a) The occurrence of an Event of Default under the Credit Agreement; or
- (b) Subject to any cure rights expressly provided herein, the failure by Grantor to punctually and fully perform and observe each term, covenant, agreement or condition contained in this Mortgage and such failure continues for fifteen (15) days after written notice thereof from Lender or the failure by Grantor to punctually and fully perform and observe each term, covenant, agreement or condition contained in the Guaranty.

Time and the exact performance of Grantor's obligations are material and of the essence hereof. On the happening of any one or more of such Defaults, or at any time during the continuance of such default, Lender, at its sole option, and without notice, demand or presentment, which are hereby waived, shall have the right to declare the Secured Indebtedness or any part thereof immediately due and payable.

15. Foreclosure

If a Default hereunder shall occur, the holder of the Secured Indebtedness shall have the right to proceed directly to foreclose this Mortgage as is then provided by the laws of the State of Illinois. TO THE EXTENT PERMITTED BY LAW, GRANTOR HEREBY WAIVES ANY AND ALL RIGHTS OF HOMESTEAD, REINSTATEMENT AND REDEMPTION FROM SALE UNDER ANY ORDER OR DECREE OF FORECLOSURE OF THIS MORTGAGE, ON BEHALF OF GRANTOR AND ON BEHALF OF EACH AND EVERY PERSON, EXCEPT DECREE OR JUDGMENT CREDITORS OF GRANTOR, ACQUIRING ANY INTEREST IN OR TITLE TO THE MORTGAGED PREMISES SUBSEQUENT TO THE DATE OF THIS MORTGAGE.

Lender shall have the right at any sale to purchase any or all of the Mortgaged Property free from any right of redemption or reinstatement in Grantor. Grantor agrees that Lender or any sheriff or other person conducting any sale hereunder shall be authorized to execute and deliver to the purchaser of such property a sheriff's deed, bill of sale or other document at the time of the sale transferring good title thereunder without any covenants, representations, or warranties express or implied. Any certificate of title or abstract of title to real property furnished in connection herewith may be sold and delivered to the purchaser at the time of such sale.

The whole of the Mortgaged Property, real, personal, and mixed, may be sold in one part as an entirety or the Mortgaged Property may be sold in separate parts and in such order as may be determined by Lender in its discretion, and Grantor hereby waives and releases any right to have the Mortgaged

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Property or any part thereof marshaled upon foreclosure, sale or otherwise. Lender may bid and become the purchaser at any sale hereunder whether by judicial foreclosure or otherwise.

The proceeds from any sale of the Mortgaged Property shall be applied as follows: (i) to the costs and expenses and expenses incurred by Lender in connection with such foreclosure proceedings and sale including Lender's reasonable out of pocket attorney's fees and costs; (ii) to the Lender, upon the usual vouchers therefore, all amounts paid for insurance, taxes, lien claims, and other payments made by Lender as provided herein with interest thereon at a rate per annum equal to (a) the highest rate permitted by applicable law; or (b) the post maturity rate of interest specified in the Note; (iii) the amount due on the Note and the Secured Indebtedness then due and unpaid; (iv) the amount due on any junior encumbrances, with interest; and (v) the remainder of such proceeds, if any, shall be paid to Grantor.

16. Fees and Expenses

Grantor agrees, to the extent permitted by law, to pay all reasonable out of pocket costs and expenses incurred by Lender in connection with the preparation, amending, modifying, recording, collection and enforcement of the Note, this Mortgage and any other instrument now or hereafter evidencing the Secured Indebtedness or the foreclosure of this Mortgage, including but not limited to the cost of procuring evidence of title, expenses and reasonable out of pocket attorneys' fees which sums, together with interest thereon at the Default Rate, shall be secured hereby, whether or not any action or foreclosure proceeding are commenced or continued to judgment, and including representation at all appellate, bankruptcy and other insolvency proceedings.

17. Security Agreement

This Mortgage is intended to be a security agreement pursuant to the Uniform Commercial Code as adopted in the State of Illinois ("UCC") for all of the items specified above as part of the Mortgaged Property which may be subject to a security interest pursuant to the UCC, and Grantor hereby grants Lender a security interest in said items. Grantor agrees that Lender may file this Mortgage, or a reproduction or summary hereof, in the personal property index as a financing statement for any of the items specified above as part of the Mortgaged Property. In addition, this Mortgage shall constitute a financing statement recorded as a fixture filing in the real estate records of the county in which the Mortgaged Property is situated with respect to any and all of the items specified above as part of the Mortgaged Property which may now be or hereafter become affixed to the real estate or the improvements thereon. Grantor's state of incorporation or organization is Illinois and Grantor shall not change its state of incorporation or organization until such time as all Secured Indebtedness to Lender has been satisfied in full. Grantor irrevocably authorizes Lender at any time and from time to time to file financing or continuation statements and/or amendments thereto, without the signature of Grantor, and Grantor shall execute and deliver from time to time such other instruments and documents as may be requested by Lender to perfect, confirm and further evidence the security interest and assignments hereby granted and shall pay the fees incurred in filing all such financing statements or such other instruments or documents. In addition to all other rights and remedies granted hereunder, Lender shall have the remedies of a secured party under the UCC with respect to any of the items specified above as part of the Mortgaged Property which constitute property within the purview of the UCC.

18. Rights and Remedies Cumulative

The rights and remedies of the Lender under this Mortgage are cumulative and are not in lieu of, but are in addition to any other rights or remedies which the Lender shall have under this Mortgage or any other instrument, or at law or in equity.

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19. Failure of Lender to Require Strict Performance Not a Waiver

The acceptance of one or more payments on the Secured Indebtedness made by anyone other than Grantor shall not constitute the Lender's consent to or approval of any sale, transfer, conveyance, lease, contract for deed, or other disposition of all or any part of the Mortgaged Property or any interest therein, nor shall such acceptance constitute Lender's waiver of a Default or any other right it may have hereunder. Further, any failure of Lender to insist upon the strict performance by Grantor of any of the terms and provisions hereof shall not be deemed a waiver of any of the terms and provisions hereof; and Lender, notwithstanding any such failure, shall have the right thereafter to insist upon the strict performance by Grantor of any and all of the terms and provisions of this Mortgage to be performed by Grantor.

20. Successors and Assigns

All rights, powers and privileges herein granted to Lender shall belong to and become vested in any subsequent holder of the Secured Indebtedness whether by assignment or operation of law.

21. Severability

Wherever possible, each provision of this Mortgage shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Mortgage shall be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Mortgage.

22. Headings

The paragraph headings of this Mortgage are for convenience only and shall not limit or define the meaning or content hereof. All pronouns and variations thereof shall be deemed to refer to masculine, feminine, neuter, singular or plural, as the identity of the person or persons may require.

23. Riders

Any and all Riders attached hereto are incorporated herein by this reference.

24. Waiver of Jury Trial

GRANTOR HEREBY WAIVES ANY RIGHT TO TRIAL BY JURY (WHICH LENDER ALSO WAIVES) IN ANY ACTION, SUIT, PROCEEDING OR COUNTERCLAIM OF ANY KIND ARISING OUT OF OR RELATING TO THIS MORTGAGE, THE SECURED INDEBTEDNESS OF GRANTOR HEREUNDER OR LENDER'S CONDUCT IN RESPECT OF ANY OF THE FOREGOING.

25. Notices

Except as otherwise provided herein, all notices, requests and demands to or upon a party hereto to be effective shall be in writing or other record and shall be personally delivered, mailed by certified or registered mail, return receipt requested, sent prepaid by reliable overnight courier or sent by facsimile transmission. Unless otherwise expressly provided herein, notices shall be deemed to have been validly given when delivered against receipt; or, in the case of mailing, three (3) Business Days (as defined in the Credit Agreement) after deposit in the mail in the continental United States, postage prepaid; or, in the

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case of reliable overnight courier, on the Business Day after the courier accepts delivery of such item for next Business Day delivery; or, in the case of facsimile transmission, when sent against confirmation of receipt prior to 5:00 p.m. local time at the recipient's office, in each case addressed as follows:

If to the Lender:

Advantage Capital Community Development Fund XXV, L.L.C.
909 Poydras Street, Suite 2230
New Orleans, Louisiana, 70112
Attention: Michael Johnson
Telecopy No.: (504) 522-4950

and with a copy to:

Armstrong Teasdale LLP
One Metropolitan Square, Suite 2600
St. Louis, Missouri 63102
Attention: Robert C. Graham III
Telecopy No.: (314) 621-5065

If to Grantor:

3753-3759 S. Halsted LLC
3737 South Halsted Street
Chicago, IL 60609
Attention: Robert Hatoff
Telecopy No.: (773) 523-8455

and with a copy to:

Arnstein & Lehr LLP
120 S. Riverside Plaza, Suite 1200
Chicago, IL 60606
Attention: Konstantinos Armiros
Telecopy No.: (312) 876-6272

or to such other address or telecopy number as each party may designate for itself by like notice given in accordance with this Section.

[remainder of page intentionally left blank - signature page follows]

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IN WITNESS WHEREOF, the undersigned has (have) executed this Mortgage as of the day and year first above written.

3753-3759 S. HALSTED LLC

By: *[Signature]*
Print Name: Robert F. Hoff
Title: Manager

Property of Cook County Clerk's Office

[SIGNATURE PAGE TO MORTGAGE AND SECURITY AGREEMENT]

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STATE OF ILLINOIS)
COUNTY OF Cook) SS

On this 29th day of October, 2009, before me appeared Robert Hatoff, to me known to be the person described in and who executed the foregoing instrument, as the Manager of **3753-3759 S. HALSTED LLC**, a limited liability company organized under the laws of the State of Illinois, and acknowledged that he/she executed the same as the free act and deed of said limited liability company and is acting for and on behalf of and as Manager of said limited liability company.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the _____ and State aforesaid on the day and year first above written.

Susan L. Mahon
Notary Public

My Commission Expires: 8.2.10



UNOFFICIAL COPY

EXHIBIT A LEGAL DESCRIPTION

LOTS 47, 48, 49 AND 50 IN BLOCK 2 IN MCPHERSON AND ALLERTON'S ADDITION TO CHICAGO, SAID ADDITION BEING A SUBDIVISION OF BLOCK 25 IN CANAL TRUSTEE'S SUBDIVISION OF SECTION 33, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Property of Cook County Clerk's Office