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Illinois Anti-Predatory Lending Database Program

Certificate of Exemption



Doc#: 114340045 Fee: \$106.00-
Eugene "Gene" Moore RHSP Fee:\$10.00
Cook County Recorder of Deeds
Date: 05/23/2011 11:36 AM Pg: 1 of 36

Report Mortgage Fraud
800-632-8785

The property identified as: PIN: 32-19-220-012-0000

Address:

Street: 515 LINCOLN HIGHWAY

Street line 2:

City: CHICAGO HEIGHTS

State: IL

ZIP Code: 60411

Lender: CHICAGO HEIGHTS MORTGAGE, LP

Borrower: STORAGE PARTNERS-CHICAGO HEIGHTS, LLC

Loan / Mortgage Amount: \$3,750,000.00

This property is located within the program area and is exempt from the requirements of 765 ILCS 7/70 et seq. because it is commercial property.

Box 400-CTCC

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SC
INT

Certificate number: E54D61B1-F743-492F-8001-55483A4740FC

Execution date: 05/12/2011

Property of Cook County Clerk's Office

2
To A... 8851002-24

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Tax Parcel: See Exhibit A for PIN Numbers

Drafted, drawn & prepared for or by,
Recording requested by, and
When recorded return to:

Paul, Hastings, Janotik, & Walker LLP
191 North Wacker Drive, Suite 30
Chicago, IL 60610
Attn: Daniel Perlman, Esquire

**MORTGAGE AND ABSOLUTE ASSIGNMENT OF RENTS AND LEASES AND SECURITY
AGREEMENT (AND FIXTURE FILING)**
COUNTY OF COOK

Parties to the Document:

MORTGAGOR or BORROWER: STORAGE PARTNERS-CHICAGO HEIGHTS, LLC

MORTGAGEE or LENDER: CHICAGO HEIGHTS MORTGAGE, LP

Property: 515 LINCOLN HIGHWAY, CITY OF CHICAGO HEIGHTS, COOK COUNTY,
ILLINOIS 60411-2456

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PURCHASE MONEY MORTGAGE AND ABSOLUTE ASSIGNMENT OF RENTS AND LEASES AND SECURITY AGREEMENT (AND FIXTURE FILING)

The parties to this PURCHASE MONEY MORTGAGE AND ABSOLUTE ASSIGNMENT OF RENTS AND LEASES AND SECURITY AGREEMENT (AND FIXTURE FILING) ("Security Instrument"), dated as of May 12, 2011, are Storage Partners-Chicago Heights, LLC, an Illinois limited liability company ("Borrower"), with a mailing address at Attention: W. Bradford Sherman, 421 Boundary Lane, Carbondale, Colorado 81623 and Chicago Heights Mortgage, LP a South Carolina limited partnership ("Lender"), with a mailing address at 200 Wingo Way, Suite 100, Mt. Pleasant, South Carolina 29464.

RECITALS

A. Borrower proposes to purchase the Property, as defined herein below, from Lender and Lender proposes to sell the Property to Borrower and as a part of the purchase price for the sale of the Property, Lender proposes to lend to Borrower the principal sum of THREE MILLION SEVEN HUNDRED FIFTY THOUSAND AND NO/100THS DOLLARS (\$3,750,000.00) as a loan (the "Loan"). The Loan is evidenced by a promissory note ("Note") executed by Borrower, dated the date of this Security Instrument, payable to the order of Lender in the principal amount of the Loan. The final Maturity Date of the Loan is no later than June 1, 2017.

B. The loan documents include this Security Instrument, the Note and the other documents described in the Note as Loan Documents ("Loan Documents").

ARTICLE 1. SECURITY INSTRUMENT

1.1 **GRANT.** For the purposes of and upon the terms and conditions of this Security Instrument, Borrower irrevocably grants, mortgages, bargains, sells, conveys, and assigns to Lender, with power of sale and right of entry and possession, all estate, right, title and interest which Borrower now has or may hereafter acquire in, to, under or derived from any or all of the following:

- a. That real property ("Land") located in Cook, Illinois and more particularly described on Exhibit A attached hereto;
- b. All appurtenances, easements, rights of way, water and water rights, (including but not limited to wells, canals, and reservoirs) pumps, pipes, flumes and ditches and ditch rights, water stock, ditch and/or reservoir stock or interests, royalties, development rights and credits, air rights, minerals, oil rights, and gas rights, and any fixtures or evidence related thereto, whether now or later used or useful in connection with, appurtenant to or related to the Land, whether appropriated or unappropriated, tributary or non-tributary, and decreed or undecreed;
- c. All buildings, structures, facilities, other improvements and fixtures now or hereafter located on the Land;
- d. All apparatus, equipment, machinery and appliances and all accessions thereto and renewals and replacements thereof and substitutions therefore used in the operation or occupancy of the Land, it being intended by the parties that all such items shall be conclusively considered to be a part of the Land, whether or not attached or affixed to the Land;
- e. All land lying in the right-of-way of any street, road, avenue, alley or right-of-way opened, proposed or vacated, and all sidewalks, strips and gores of land adjacent to or used in connection with the Land;
- f. All additions and accretions to the property described above;

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- g. All licenses, authorizations, certificates, variances, consents, approvals and other permits now or hereafter pertaining to the Land and all estate, right, title and interest of Borrower in, to, under or derived from all trade names or business names relating to the Land or the present or future development, construction, operation or use of the Land; and
- h. All and singular rights, members, hereditaments, and appurtenances belonging, or in any way incident or appertaining thereto;
- i. All proceeds of any of the foregoing.

All of the property described above is hereinafter collectively defined as the "Property". The listing of specific rights or property shall not be interpreted as a limitation of general terms.

TO HAVE AND TO HOLD all the Property to Lender, its successors and assigns, in fee simple forever. PROVIDED ALWAYS, HOWEVER, that if Borrower pays or causes to be paid to Lender the Secured Obligations, debt secured hereby, the estate granted shall cease, determine and be utterly null and void; otherwise said estate shall remain in full force and effect.

IT IS AGREED that Borrower shall be entitled to hold and enjoy the Property until a Default as herein defined has occurred.

ARTICLE 2. OBLIGATIONS SECURED

- 2.1 **OBLIGATIONS SECURED.** Borrower makes the foregoing mortgage, grant and assignment for the purpose of securing the following obligations ("Secured Obligations"):
- a. Full and punctual payment to Lender of all sums at any time owing under the Note;
 - b. Payment and performance of all covenants and obligations of Borrower under this Security Instrument including, without limitation, indemnification obligations and advances made to protect the Property;
 - c. Payment and performance of all additional covenants and obligations of Borrower under the Loan Documents;
 - d. Payment and performance of all covenants and obligations, if any, which any rider attached as an exhibit to this Security Instrument recites are secured hereby;
 - e. Payment and performance of all future advances and other obligations that the then record owner of all or part of the Property may agree to pay and/or perform (whether as principal, surety or guarantor) for the benefit of Lender, when the obligation is evidenced by a writing which recites that it is secured by this Security Instrument; and such future advances shall at no time exceed FIVE MILLION FOUR HUNDRED THOUSAND AND NO/100THS DOLLARS (\$5,400,000.00) plus interest, attorneys' fees, and court costs incurred in collection of amounts due hereunder; TO THE EXTENT PROVIDED IN THE NOTE, INTEREST OR DISCOUNT WILL BE DEFERRED, ACCRUED, OR CAPITALIZED;
 - f. All interest and charges on all obligations secured hereby including, without limitation, prepayment charges, late charges and loan fees;
 - g. All modifications, extensions and renewals of any of the obligations secured hereby, however evidenced, including, without limitation: (i) modifications of the required principal payment dates or interest payment dates or both, as the case may be, deferring or accelerating payment dates

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wholly or partly; and (ii) modifications, extensions or renewals at a different rate of interest whether or not any such modification, extension or renewal is evidenced by a new or additional promissory note or notes; and

h. Payment and performance of any other obligations which are defined as "Secured Obligations" in the Note.

2.2 **OBLIGATIONS.** The term "obligations" is used herein in its broadest and most comprehensive sense and shall be deemed to include, without limitation, all interest and charges, prepayment charges, late charges and loan fees at any time accruing or assessed on any of the Secured Obligations.

2.3 **INCORPORATION.** All terms and conditions of the documents which evidence any of the Secured Obligations are incorporated herein by this reference. All persons who may have or acquire an interest in the Property shall be deemed to have notice of the terms of the Secured Obligations and to have notice that the rate of interest on one or more Secured Obligation may vary from time to time.

ARTICLE 3. ABSOLUTE ASSIGNMENT OF RENTS AND LEASES

3.1 **ASSIGNMENT.** Borrower irrevocably assigns to Lender all of Borrower's right, title and interest in, to and under: (a) all present and future leases of the Property or any portion thereof, all licenses and agreements relating to the management, leasing or operation of the Property or any portion thereof, and all other agreements of any kind relating to the use or occupancy of the Property or any portion thereof, whether such leases, licenses and agreements are now existing or entered into after the date hereof ("Leases"); and (b) the rents, issues, deposit and profits of the Property, including without limitation, all amounts payable and all rights and benefits accruing to Borrower under the Leases ("Payments"). The term "Leases" shall also include all guarantees of and security for the tenants' performance there under, and all amendments, extensions, renewals or modifications thereof which are permitted hereunder. This is a present and absolute assignment, not an assignment for security purposes only, and Lender's right to the Leases and Payments may be exercised upon actual or constructive possession of, the Property.

3.2 **GRANT OF LICENSE.** Lender confers upon Borrower a revocable license ("License") to collect and retain the Payments as they become due and payable, until the occurrence of a Default (as hereinafter defined) and upon Lender acquiring possession of the Property. Upon a Default and Lender acquiring possession of the Property, the License shall be automatically revoked and Lender may collect and apply the Payments pursuant to the terms hereof without. All Payments thereafter collected by Borrower shall be held by Borrower as trustee under a constructive trust for the benefit of Lender. Borrower hereby irrevocably authorizes and directs the tenants under the Leases to rely upon and comply with any notice or demand by Lender for the payment to Lender of any rental or other sums which may at any time become due under the Leases, or for the performance of any of the tenants' undertakings under the Leases, and the tenants shall have no right or duty to inquire as to whether any Default has actually occurred or is then existing. Borrower hereby relieves the tenants from any liability to Borrower by reason of relying upon and complying with any such notice or demand by Lender. Lender may apply, in its sole discretion, any Payments so collected by Lender against any Secured Obligation or any other obligation of Borrower, Borrower or any other person or entity, under any document or instrument related to or executed in connection with the Loan Documents, whether existing on the date hereof or hereafter arising. Collection of any Payments by Lender shall not cure or waive any Default or notice of Default or invalidate any acts done pursuant to such notice. If and when no Default exists, Lender shall re-confer the License upon Borrower until the occurrence of another Default.

3.3 **EFFECT OF ASSIGNMENT.** The foregoing irrevocable assignment shall not cause Lender to be: (a) responsible or liable for the control, care, management or repair of the Property or for performing any of the terms, agreements, undertakings, obligations, representations, warranties, covenants and conditions of the Leases; (b) responsible or liable for any waste committed on the Property by the tenants under any of the Leases or by any other parties; for any dangerous or defective condition of the Property; or for any

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negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any tenant, licensee, employee, invitee or other person; or (c) responsible for or impose upon Lender any duty to produce rents or profits. Lender shall not directly or indirectly be liable to Borrower or any other person as a consequence of: (i) the exercise or failure to exercise any of the rights, remedies or powers granted to Lender hereunder; or (ii) the failure or refusal of Lender to perform or discharge any obligation, duty or liability of Borrower arising under the Leases.

3.4 **COVENANTS-LEASES.** Borrower shall, at Borrower's sole cost and expense:

- a. perform all obligations of the landlord under the Leases and use reasonable efforts to enforce performance by the tenants of all obligations of the tenants under the Leases;
- b. use reasonable efforts to keep the Property leased at all times to tenants which Borrower reasonably and in good faith believes are creditworthy at rents not less than the fair market rental value (including, but not limited to, free or discounted rents to the extent the market so requires); and
- c. promptly upon Lender's request, deliver to Lender a copy of each requested Lease and all amendments thereto and waivers thereof.
- d. Unless consented to in writing by Lender or otherwise permitted under any other provision of the Loan Documents, Borrower shall not:
 - (i) grant any tenant under any Lease any option, right of first refusal or other right to purchase all or any portion of the Property under any circumstances; or
 - (ii) except upon Lender's request, execute any assignment of landlord's interest in any Lease.

Any such attempted action in violation of the provisions of this Section shall be null and void.

3.5 **INTENTIONALLY OMITTED.**

- 3.6 **RIGHT OF SUBORDINATION.** Lender may at any time and from time to time by specific written instrument intended for the purpose unilaterally subordinate the lien of this Security Instrument to any Lease, without joinder or consent of, or notice to, Borrower, any tenant or any other person. Notice is hereby given to each tenant under a Lease of such right to subordinate. No subordination referred to in this Section shall constitute a subordination to any lien or other encumbrance, whenever arising, or improve the right of any junior lien holder. Nothing herein shall be construed as subordinating this Security Instrument to any Lease.

ARTICLE 4. SECURITY AGREEMENT AND FIXTURE FILING

- 4.1 **SECURITY INTEREST.** Borrower grants and assigns to Lender a security interest to secure payment and performance of all of the Secured Obligations, in all of the following described personal property in which Borrower now or at any time hereafter has any interest ("Collateral"):

All goods, building and other materials, supplies, work in process, equipment, machinery, fixtures, furniture, furnishings, signs and other personal property, wherever situated, which are or are to be incorporated into, used in connection with or appropriated for use on the Property; all rents, issues, deposits and profits of the Property (to the extent, if any, they are not subject to the Absolute Assignment of Rents and Leases); all inventory, accounts, cash receipts, deposit accounts, impounds, accounts receivable, contract rights, general intangibles, software, chattel paper, instruments, documents, promissory notes, drafts, letters of credit, letter of credit rights, supporting obligations, insurance policies, insurance and condemnation awards and proceeds, any other rights to the payment of money, trade names, trademarks and service marks arising from or related to the Property or any

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business now or hereafter conducted thereon by Borrower; all permits, consents, approvals, licenses, authorizations and other rights granted by, given by or obtained from, any governmental entity with respect to the Property; all deposits or other security now or hereafter made with or given to utility companies by Borrower with respect to the Property; all advance payments of insurance premiums made by Borrower with respect to the Property; all plans, drawings and specifications relating to the Property; all loan funds held by Lender, whether or not disbursed; all funds deposited with Lender pursuant to any Loan Document; all reserves, deferred payments, deposits, accounts, refunds, cost savings and payments of any kind related to the Property or any portion thereof, including, without limitation, all "Impounds" as defined herein; together with all replacements and proceeds of, and additions and accessions to, any of the foregoing, and all books, records and files relating to any of the foregoing.

As to all of the above-described personal property which is or which hereafter becomes a "fixture" under applicable law, this Security Instrument constitutes a fixture filing under the Illinois Uniform Commercial Code as amended or recodified from time to time ("UCC").

- 4.2 **COVENANTS.** Borrower agrees: (a) to execute and deliver such documents as Lender deems necessary to create, perfect and continue the security interests contemplated hereby; (b) not to change its name, and, as applicable, its chief executive offices, its principal residence or the jurisdiction in which it is organized without giving Lender at least 30 days' prior written notice thereof; and (c) to cooperate with Lender in perfecting all security interests granted herein and in obtaining such agreements from third parties as Lender deems necessary, proper or convenient in connection with the preservation, perfection or enforcement of any of Lender's rights hereunder.
- 4.3 **RIGHTS OF LENDER.** In addition to Lender's rights as a "Secured Party" under the UCC, Lender may, but shall not be obligated to, at any time without notice and at the expense of Borrower: (a) give notice to any person of Lender's rights hereunder and enforce such rights at law or in equity; (b) insure, protect, defend and preserve the Collateral or any rights or interests of Lender therein; and (c) inspect the Collateral. Notwithstanding the above, in no event shall Lender be deemed to have accepted any property other than cash in satisfaction of any obligation of Borrower to Lender unless Lender shall make an express written election of said remedy under the UCC or other applicable law.
- 4.4 **RIGHTS OF LENDER UPON DEFAULT.** Upon the occurrence of a Default, then in addition to all of Lender's rights as a "Secured Party" under the UCC or otherwise at law:
- a. **Disposition of Collateral.** Lender may: (i) upon written notice, require Borrower to assemble any or all of the Collateral and make it available to Lender at a place designated by Lender; (ii) without prior notice, enter upon the Property or other place where the Collateral may be located and take possession of, collect, sell, lease, license and otherwise dispose of the Collateral, and store the same at locations acceptable to Lender at Borrower's expense; or (iii) sell, assign and deliver the Collateral at any place or in any lawful manner and bid and become purchaser at any such sales; and
 - b. **Other Rights.** Lender may, for the account of Borrower and at Borrower's expense: (i) operate, use, consume, sell, lease, license or otherwise dispose of the Collateral as Lender deems appropriate for the purpose of performing any or all of the Secured Obligations; (ii) enter into any agreement, compromise or settlement including insurance claims, which Lender may deem desirable or proper with respect to any of the Collateral; and (iii) endorse and deliver evidences of title for, and receive, enforce and collect by legal action or otherwise, all indebtedness and obligations now or hereafter owing to Borrower in connection with or on account of any or all of the Collateral.

Borrower acknowledges and agrees that a disposition of the Collateral in accordance with Lender's rights and remedies as heretofore provided is a disposition thereof in a commercially reasonable manner and that 5 days' prior notice of such disposition is commercially reasonable notice. Lender shall have no obligation

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to process or prepare the Collateral for sale or other disposition. In disposing of the Collateral, Lender may disclaim all warranties of title, possession, quiet enjoyment and the like. Any proceeds of any sale or other disposition of the Collateral may be applied by Lender first to the reasonable expenses incurred by Lender in connection therewith, including, without limitation, reasonable attorneys' fees and disbursements, and then to the payment of the Secured Obligations, in such order of application as Lender may from time to time elect.

- 4.5 **POWER OF ATTORNEY.** Borrower hereby irrevocably appoints Lender as Borrower's attorney-in-fact (such agency being coupled with an interest), and as such attorney-in-fact, Lender may, without the obligation to do so, in Lender's name or in the name of Borrower, prepare, execute, file and record financing statements, continuation statements, applications for registration and like papers necessary to create, perfect or preserve any of Lender's security interests and rights in or to the Collateral, and upon a Default, take any other action required of Borrower; provided, however, that Lender as such attorney-in-fact shall be accountable only for such funds as are actually received by Lender.

ARTICLE 5. REPRESENTATIONS AND WARRANTIES

- 5.1 **REPRESENTATIONS AND WARRANTIES.** Borrower represents and warrants to Lender that, to Borrower's current actual knowledge after reasonable investigation and inquiry, the following statements are true and correct as of the Effective Date:

- a. **Legal Status.** Borrower is duly organized and existing and in good standing under the laws of the state in which Borrower is organized. Borrower is qualified or licensed to do business in all jurisdictions in which such qualification or licensing is required, specifically including in the state of Illinois.
- b. **Permits.** Borrower possesses all permits, franchises and licenses and all rights to all trademarks, trade names, patents and fictitious names, if any, necessary to enable Borrower to conduct the business(es) in which Borrower is now engaged in compliance with applicable law.
- c. **Authorization and Validity.** The execution and delivery of the Loan Documents have been duly authorized and the Loan Documents constitute valid and binding obligations of Borrower or the party which executed the same, enforceable in accordance with their respective terms, except as such enforcement may be limited by bankruptcy, insolvency, moratorium or other laws affecting the enforcement of creditors' rights, or by the application of rules of equity.
- d. **Violations.** The execution, delivery and performance by Borrower of each of the Loan Documents do not violate any provision of any law or regulation, or result in any breach or default under any contract, obligation, indenture or other instrument to which Borrower is a party or by which Borrower is bound.
- e. **Litigation.** There are no pending or, to the best of Borrower's knowledge, threatened actions, claims, investigations, suits or proceedings before any governmental authority, court or administrative agency which may adversely affect the financial condition or operations of Borrower other than those previously disclosed in writing by Borrower to Lender.
- f. **Financial Statements.** The financial statements of Borrower, of each general partner (if Borrower is a partnership), of each member (if Borrower is a limited liability company) and of each guarantor, if any, previously delivered by Borrower to Lender, if any are provided: (i) are materially complete and correct; (ii) present fairly the financial condition of such party; and (iii) have been prepared in accordance with the same accounting standard used by Borrower to prepare the financial statements delivered to and approved by Lender in connection with the making of the Loan, or other accounting standards approved by Lender. Since the date of such financial statements, there has been no material adverse change in such financial condition, nor have any assets or properties reflected on such financial statements been sold, transferred, assigned,

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mortgaged, pledged or encumbered except as previously disclosed in writing by Borrower to Lender and approved in writing by Lender.

- g. **Reports.** To the best of Borrower's knowledge, all reports, documents, instruments and information delivered to Lender in connection with the Loan: (i) are correct and sufficiently complete to give Lender accurate knowledge of their subject matter; and (ii) do not contain any misrepresentation of a material fact or omission of a material fact which omission makes the provided information misleading.
- h. **Income Taxes.** There are no pending assessments or adjustments of Borrower's income tax payable with respect to any year.
- i. **Subordination.** There is no agreement or instrument to which Borrower is a party or by which Borrower is bound that would require the subordination in right of payment of any of Borrower's obligations under the Note to an obligation owed to another party.
- j. **Title.** To the best of Borrower's knowledge Borrower lawfully holds and possesses fee simple title to the Property without limitation on the right to encumber same. This Security Instrument is a first lien on the Property prior and superior to all other liens and encumbrances on the Property except: (i) liens for real estate taxes and assessments not yet due and payable; (ii) senior exceptions previously approved by Lender and shown in the title insurance policy insuring the lien of this Security Instrument; and (iii) other matters, if any, previously disclosed to Lender by Borrower in a writing specifically referring to this representation and warranty.
- k. **Mechanics' Liens.** To the best of Borrower's knowledge there are no mechanics' or similar liens or claims which have been filed for work labor or material (and no rights are outstanding that under law could give rise to any such liens) affecting the Property which are or may be prior to or equal to the lien of this Security Instrument.
- l. **Encroachments.** Except as shown in the survey, if any, previously delivered to Lender, to the best of Borrower's knowledge, none of the buildings or other improvements which were included for the purpose of determining the appraised value of the Property lies outside of the boundaries or building restriction lines of the Property and no buildings or other improvements located on adjoining properties encroach upon the Property.
- m. **Leases.** To the best of Borrower's knowledge all existing Leases are in full force and effect and are enforceable in accordance with their respective terms. To the best of Borrower's knowledge no material breach or default by any party, or event which would constitute a material breach or default by any party after notice or the passage of time, or both, exists under any existing Lease. None of the landlord's interests under any of the Leases, including, but not limited to, rents, additional rents, charges, issues or profits, has been transferred or assigned.
- n. **Collateral.** To the best of Borrower's knowledge, Borrower has good title to the existing Collateral, free and clear of all liens and encumbrances except those, if any, previously disclosed to Lender by Borrower in writing specifically referring to this representation and warranty. Borrower's chief executive office (or principal residence, if applicable) is located at the address shown on page 1 of this Security Instrument. Borrower is an organization organized solely under the laws of Illinois duly qualified to conduct business in the State of Illinois. All organizational documents of Borrower delivered to Lender are complete and accurate in every respect. Borrower's legal name is exactly as shown on page 1 of this Security Instrument.
- o. **Condition of Property.** Except as shown in the property condition survey or other engineering reports, if any, previously delivered to or obtained by Lender, to the best of Borrower's knowledge the Property is in good condition and repair and is free from any damage that would materially and

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adversely affect the value of the Property as security for the Loan or the intended use of the Property.

- p. **Hazardous Materials.** Except as shown in the environmental assessment report(s), if any, previously delivered to or obtained by Lender, to the best of Borrower's knowledge the Property is not and has not been a site for the use, generation, manufacture, storage, treatment, release, threatened release, discharge, disposal, transportation or presence of Hazardous Materials (as hereinafter defined) except as otherwise previously disclosed in writing by Borrower to Lender.
- q. **Hazardous Materials Laws.** To the best of Borrower's knowledge the Property complies with all Hazardous Materials Laws (as hereinafter defined).
- r. **Hazardous Materials Claims.** There are no pending or, to the best of Borrower's knowledge, threatened Hazardous Materials Claims (as hereinafter defined).
- s. **Wetlands.** To the best of Borrower's knowledge no part of the Property consists of or is classified as wetlands, tidelands or swamp and overflow lands.
- t. **Compliance With Laws.** To the best of Borrower's knowledge all federal, state and local laws, rules and regulations applicable to the Property, including, without limitation, all zoning and building requirements and all requirements of the Americans With Disabilities Act of 1990, as amended from time to time (42 U.S.C. Section 12101 et seq.) have been satisfied or complied with. Borrower is in possession of all certificates of occupancy and all other licenses, permits and other authorizations required by applicable law for the existing use of the Property. All such certificates of occupancy and other licenses, permits and authorizations are valid and in full force and effect.
- u. **Property Taxes and Other Liabilities.** To the best of Borrower's knowledge all taxes, governmental assessments, insurance premiums, water, sewer and municipal charges, and ground rents, if any, which previously became due and owing in respect of the Property have been paid.
- v. **Condemnation.** There is no proceeding pending or, to the best of Borrower's knowledge, threatened for the total or partial condemnation of the Property.
- w. **Homestead.** There is no homestead or other exemption available to Borrower that would materially interfere with the right to sell the Property at a trustee's sale or the right to foreclose.
- x. **Solvency.** None of the transactions contemplated by the Loan will be or have been made with an actual intent to hinder, delay or defraud any present or future creditors of Borrower, and Borrower, on the Effective Date, will have received fair and reasonably equivalent value in good faith for the grant of the liens or security interests effected by the Loan Documents. On the Effective Date, Borrower will be solvent and will not be rendered insolvent by the transactions contemplated by the Loan Documents. Borrower is able to pay its debts as they become due.
- y. **Separate Tax Parcel(s).** The Property is assessed for real estate tax purposes as one or more wholly independent tax parcels, separate from any other real property, and no other real property is assessed and taxed together with the Property or any portion thereof.
- z. **Utilities; Water; Sewer.** The Property is served by all utilities required for the current or contemplated use thereof. All utility service is provided by public utilities and the Property has accepted or is equipped to accept such utility service. The Property is served by public water and sewer systems.
- aa. **ERISA Matters.** Borrower is not 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

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Title I of ERISA, nor a plan as defined in Section 4975(e)(1) of the Internal Revenue Code of 1986, as amended (each of the foregoing hereinafter referred to individually and collectively as a "Plan"). Borrower's assets do not constitute "plan assets" of any plan within the meaning of Department of Labor Regulation Section 2510.3-101. Borrower will not transfer or convey the Property to a Plan or to a person or entity whose assets constitute such "plan assets", and Borrower will not be reconstituted as a Plan or as an entity whose assets constitute "plan assets". No Lease is with a Plan or an entity whose assets constitute such "plan assets", and Borrower will not enter into any Lease with a Plan or an entity whose assets constitute such "plan assets". With respect to the Loan, Borrower is acting on Borrower's own behalf and not on account of or for the benefit of any Plan.

5.2 REPRESENTATIONS, WARRANTIES AND COVENANTS REGARDING STATUS (LEVEL 1/STEP)

Borrower hereby represents, warrants and covenants to Lender as follows:

- a. such entity was organized solely for the purpose of owning the Property;
- b. such entity has not and will not engage in any business unrelated to the ownership of the Property;
- c. such entity has not and will not have any assets other than the Property (and personal property incidental to the ownership and operation of the Property);
- d. such entity has not and will not engage in, seek or consent to any dissolution, winding up, liquidation, consolidation, merger, asset sale, or amendment of its articles of incorporation, articles of organization, certificate of formation, operating agreement or partnership agreement, as applicable;
- e. such entity, without the unanimous consent of all of its directors, general partners or members, as applicable, shall not file or consent to the filing of any bankruptcy or insolvency petition or otherwise institute insolvency proceedings;
- f. such entity has no indebtedness (and will have no indebtedness) other than (i) the Loan; and (ii) unsecured trade debt not to exceed two (2.0%) percent of the Loan amount in the aggregate, which is not evidenced by a note and is incurred in the ordinary course of its business in connection with owning, operating and maintaining the Property and is paid within 30 days from the date incurred;
- g. such entity has not and will not fail to correct any known misunderstanding regarding the separate identity of such entity;
- h. such entity has maintained and will maintain its accounts, books and records separate from any other person or entity;
- i. such entity has maintained and will maintain its books, records, resolutions and agreements as official records;
- j. such entity (i) has not and will not commingle its funds or assets with those of any other entity; and (ii) has held and will hold its assets in its own name;
- k. such entity has conducted and will conduct its business in its own name;
- l. such entity has maintained and will maintain its accounting records and other entity documents separate from any other person or entity;

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- m. such entity has prepared and will prepare separate tax returns and financial statements, or if part of a consolidated group, is shown as a separate member of such group;
- n. such entity has paid and will pay its own liabilities and expenses out of its own funds and assets;
- o. such entity has held and will hold regular meetings, as appropriate, to conduct its business and has observed and will observe all corporate, partnership or limited liability company formalities and record keeping, as applicable;
- p. such entity has not and will not assume or guarantee or become obligated for the debts of any other entity or hold out its credit as being available to satisfy the obligations of any other entity;
- q. such entity has not and will not acquire obligations or securities of its shareholders, partners or members, as applicable;
- r. such entity has allocated and will allocate fairly and reasonably the costs associated with common employees and any overhead for shared office space and such entity has used and will use separate stationery, invoices and checks;
- s. such entity has not and will not pledge its assets for the benefit of any other person or entity;
- t. such entity has held and identified itself and 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;
- u. such entity has not made and will not make loans to any person or entity;
- v. such entity has not and will not identify its shareholders, partners or members, as applicable, or any affiliates of any of the foregoing, as a division or part of it;
- w. such entity has not entered into and will not enter into or be a party to, any transaction with its shareholders, partners or members, as applicable, or any affiliates of any of the foregoing, except in the ordinary course of its business pursuant to written agreements and on terms which are intrinsically fair and are no less favorable to it than would be obtained in a comparable arm's-length transaction with an unrelated third party;
- x. if any such entity is a corporation, the directors of such entity shall consider the interests of the creditors of such entity in connection with all corporate action;
- y. such entity has paid and will pay the salaries of its own employees and has maintained and will maintain a sufficient number of employees in light of its contemplated business operations;
- z. such entity has maintained and will maintain adequate capital in light of its contemplated business operations;
- aa. if any such entity is a partnership with more than one general partner, its partnership agreement requires the remaining partners to continue the partnership as long as one solvent general partner exists; and
- bb. if any such entity is a limited liability company, its operating agreement, if any such entity is a partnership, its partnership agreement and if any such entity is a corporation, to the fullest extent permitted by applicable law, its articles of incorporation, contain the provisions set forth in this Section 5.2 and such entity shall conduct its business and operations in strict compliance with the terms contained therein.

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ARTICLE 6. RIGHTS AND DUTIES OF THE PARTIES

- 6.1 **MAINTENANCE AND PRESERVATION OF THE PROPERTY.** Borrower shall: (a) keep the Property in good condition and repair; (b) complete or restore promptly and in workmanlike manner the Property or any part thereof which may be damaged or destroyed; (c) comply and cause the Property to comply with (i) all laws, ordinances, regulations and standards, (ii) all covenants, conditions, restrictions and equitable servitudes, whether public or private, of every kind and character and (iii) all requirements of insurance companies and any bureau or agency which establishes standards of insurability, which laws, covenants or requirements affect the Property and pertain to acts committed or conditions existing thereon, including, without limitation, any work of alteration, improvement or demolition as such laws, covenants or requirements mandate; (d) operate and manage the Property at all times in a professional manner and do all other acts which from the character or use of the Property may be reasonably necessary to maintain and preserve its value; (e) promptly after execution, deliver to Lender a copy of any management agreement concerning the Property and all amendments thereto and waivers thereof; and (f) execute and acknowledge all further documents, instruments and other papers as Lender deems necessary or appropriate to preserve, continue, perfect and enjoy the benefits of this Security Instrument and perform Borrower's obligations, including, without limitation, statements of the amount secured hereby then owing and statements of no offset. Borrower shall not: (g) remove or demolish all or any material part of the Property; (h) alter either (i) the exterior of the Property in a manner which materially and adversely affects the value of the Property or (ii) the roof or other structural elements of the Property in a manner which requires a building permit without the written consent from Lender; (i) initiate or acquiesce in any change in any zoning or other land classification which affects the Property; (j) materially alter the type of occupancy or use of all or any part of the Property; or (k) commit or permit waste of the Property.
- 6.2 **HAZARDOUS MATERIALS.** Without limiting any other provision of this Security Instrument, Borrower agrees as follows:
- a. **Prohibited Activities.** Borrower shall not cause or permit the Property to be used as a site for the use, generation, manufacture, storage, treatment, release, discharge, disposal, transportation or presence of any of the following (collectively, "Hazardous Materials"): oil or other petroleum products; flammable explosives; asbestos; urea formaldehyde insulation; radioactive materials; hazardous wastes; fungus, mold, mildew, spores or other biological or microbial agents the presence of which may affect human health, impair occupancy or materially affect the value or utility of the Property; toxic or contaminated substances or similar materials, including, without limitation, any substances which are "hazardous substances," "hazardous wastes," "hazardous materials" or "toxic substances" under the Hazardous Materials Laws (defined below) and/or other applicable environmental laws, ordinances or regulations.
- The foregoing to the contrary notwithstanding, (i) Borrower may store, maintain and use on the Property janitorial and maintenance supplies, paint and other Hazardous Materials of a type and in a quantity readily available for purchase by the general public and normally stored, maintained and used by owners and managers of properties of a type similar to the Property; and (ii) tenants of the Property may store, maintain and use on the Property (and, if any tenant is a retail business, hold in inventory and sell in the ordinary course of such tenant's business) Hazardous Materials of a type and quantity readily available for purchase by the general public and normally stored, maintained and used (and, if tenant is a retail business, sold) by tenants in similar lines of business on properties similar to the Property.
- b. **Hazardous Materials Laws.** Borrower shall comply and cause the Property to comply with all federal, state and local laws, ordinances and regulations relating to Hazardous Materials ("Hazardous Materials Laws"), including, without limitation: the Clean Air Act, as amended, 42 U.S.C. Section 7401 et seq.; the Federal Water Pollution Control Act, as amended, 33 U.S.C. Section 1251 et seq.; the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. Section 6901 et seq.; the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (including the Superfund Amendments and Reauthorization Act of 1986, "CERCLA"), 42 U.S.C. Section 9601 et seq.; the Toxic Substances Control Act, as

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amended, 15 U.S.C. Section 2601 et seq.; the Occupational Safety and Health Act, as amended, 29 U.S.C. Section 651; the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. Section 11001 et seq.; the Mine Safety and Health Act of 1977, as amended, 30 U.S.C. Section 801 et seq.; the Safe Drinking Water Act, 42 U.S.C. Section 300f et seq.; and all comparable state and local laws, laws of other jurisdictions or orders and regulations.

- c. **Notices.** Borrower shall immediately notify Lender in writing of: (i) the discovery of any Hazardous Materials on, under or about the Property (other than Hazardous Materials permitted under Section 6.2(a)); (ii) any knowledge by Borrower that the Property does not comply with any Hazardous Materials Laws; (iii) any claims or actions ("Hazardous Materials Claims") pending or threatened against Borrower or the Property by any governmental entity or agency or any other person or entity relating to Hazardous Materials or pursuant to the Hazardous Materials Laws; and (iv) the discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Property that could cause the Property or any part thereof to become contaminated with Hazardous Materials.
- d. **Remedial Action.** In response to the presence of any Hazardous Materials on, under or about the Property, Borrower shall immediately take, at Borrower's sole expense, all remedial action required by any Hazardous Materials Laws or any judgment, consent decree, settlement or compromise in respect to any Hazardous Materials Claims.
- e. **Inspection By Lender.** Upon reasonable prior notice to Borrower, Lender, its employees and agents, may from time to time (whether before or after the commencement of a nonjudicial or judicial foreclosure proceeding), enter and inspect the Property for the purpose of determining the existence, location, nature and magnitude of any past or present release or threatened release of any Hazardous Materials into, onto, beneath, or from the Property.

- 6.3 **COMPLIANCE WITH LAWS.** Borrower shall comply with all federal, state and local laws, rules and regulations applicable to the Property, including, without limitation, all zoning and building requirements and all requirements of the Americans With Disabilities Act of 1990 (42 U.S.C. Section 12101 et seq.), as amended from time to time. Borrower shall possess and maintain or cause Borrower to possess and maintain in full force and effect at all times (a) all certificates of occupancy and other licenses, permits and authorizations required by applicable law for the existing use of the Property; and (b) all permits, franchises and licenses and all rights to all trademarks, trade names, patents and fictitious names, if any, required by applicable law for Borrower to conduct the business(es) in which Borrower is now engaged.
- 6.4 **LITIGATION.** Borrower shall promptly notify Lender in writing of any litigation pending or threatened against Borrower claiming damages in excess of \$5,000 and of all pending or threatened litigation against Borrower if the aggregate damage claims against Borrower exceed \$10,000.
- 6.5 **MERGER, CONSOLIDATION, TRANSFER OF ASSETS.** Borrower shall not: (a) merge or consolidate with any other entity or permit Borrower to merge or consolidate with any other entity; (b) make any substantial change in the nature of Borrower's business or structure; (c) acquire all or substantially all of the assets of any other entity; or (d) sell, lease, assign, transfer or otherwise dispose of a material part of Borrower's assets except in the ordinary course of Borrower's business.
- 6.6 **ACCOUNTING RECORDS.** Borrower shall maintain adequate books and records in accordance with the same accounting standard used by Borrower to prepare the financial statements delivered to and approved by Lender in connection with the making of the Loan or other accounting standards approved by Lender. Borrower shall permit any representative of Lender, at any reasonable time and from time to time, to inspect, audit and examine such books and records and make copies of same.
- 6.7 **COSTS, EXPENSES AND ATTORNEYS' FEES.** Borrower shall pay to Lender the full amount of all costs and expenses, including, without limitation, reasonable attorneys' fees and expenses of Lender's in house or outside counsel, incurred by Lender in connection with: (a) appraisals and inspections of the Property or Collateral required by Lender as a result of (i) a Transfer or proposed Transfer (as defined

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below), or (ii) a Default; (b) appraisals and inspections of the Property or Collateral required by applicable law, including, without limitation, federal or state regulatory reporting requirements; and (c) any acts performed by Lender at Borrower's request or wholly or partially for the benefit of Borrower (including, without limitation, the preparation or review of amendments, assumptions, waivers, releases, reconveyances, estoppel certificates or statements of amounts owing under any Secured Obligation). In connection with appraisals and inspections, Borrower specifically (but not by way of limitation) acknowledges that: (aa) a formal written appraisal of the Property by a state certified or licensed appraiser may be required by federal regulatory reporting requirements on an annual or more frequent basis; and (bb) Lender may require inspection of the Property by an independent supervising architect, a cost engineering specialist, or both. Borrower shall pay all indebtedness arising under this Section immediately upon demand by Lender together with interest thereon following notice of such indebtedness at the rate of interest then applicable to the principal balance of the Note as specified therein.

- 6.8 **LIENS, ENCUMBRANCES AND CHARGES.** Borrower shall immediately discharge by bonding or otherwise any lien, charge or other encumbrance which attaches to the Property in violation of Section 6.15. Subject to Borrower's right to contest such matters under this Security Instrument or as expressly permitted in the Loan Documents, Borrower shall pay when due all obligations secured by or reducible to liens and encumbrances which shall now or hereafter encumber or appear to encumber all or any part of the Property or any interest therein, whether senior or subordinate hereto, including, without limitation, all claims for work or labor performed, or materials or supplies furnished, in connection with any work of demolition, alteration, repair, improvement or construction of or upon the Property, except such as Borrower may in good faith contest or as to which a bona fide dispute may arise (provided provision is made to the satisfaction of Lender for eventual payment thereof in the event that Borrower is obligated to make such payment and that any recorded claim of lien, charge or other encumbrance against the Property is immediately discharged by bonding or otherwise).
- 6.9 **TAXES AND OTHER LIABILITIES.** Borrower shall pay and discharge when due any and all indebtedness, obligations, assessments and taxes, both real and personal and including federal and state income taxes and state and local property taxes and assessments. Borrower shall promptly provide to Lender copies of all tax and assessment notices pertaining to the Property. Borrower hereby authorizes Lender to obtain, at Borrower's expense, a tax service contract which shall provide tax information on the Property to Lender for the term of the Loan and any extensions or renewals of the Loan.
- 6.10 **INSURANCE COVERAGE.** Borrower shall obtain and maintain all insurance coverage required pursuant to that certain Agreement Regarding Required Insurance dated as of the date hereof by and between Borrower and Lender.
- 6.11 **CONDEMNATION AND INSURANCE PROCEEDS.**
- a. **Assignment of Claims.** Borrower absolutely and irrevocably assigns to Lender all of the following rights, claims and amounts (collectively, "Claims"), all of which shall be paid to Lender: (i) all awards of damages and all other compensation payable directly or indirectly by reason of a condemnation or proposed condemnation for public or private use affecting all or any part of, or any interest in, the Property; (ii) all other claims and awards for damages to or decrease in value of all or any part of, or any interest in, the Property; (iii) all proceeds of any insurance policies payable by reason of loss sustained to all or any part of the Property; and (iv) all interest which may accrue on any of the foregoing. Borrower shall give Lender prompt written notice of the occurrence of any casualty affecting, or the institution of any proceedings for eminent domain or for the condemnation of, the Property or any portion thereof. So long as no Default has occurred and is continuing at the time, (i) Borrower shall have the right to adjust, compromise and settle any Claim or group of related Claims of \$10,000 or less without the participation or consent of Lender and (ii) Lender shall have the right to participate in and consent to any adjustment, compromise or settlement of any Claim or group of related Claims exceeding \$10,000. If a Default has occurred and is continuing at the time, Borrower hereby irrevocably empowers Lender, in the name of Borrower, as Borrower's true and lawful attorney in fact, to commence, appear in, defend, prosecute, adjust, compromise and settle all Claims; provided, however, Lender

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shall not be responsible for any failure to undertake any or all of such actions regardless of the cause of the failure. All awards, proceeds and other sums described herein shall, in all cases, be payable to Lender.

- b. **Application of Proceeds; No Default.** So long as no Default has occurred and is continuing at the time of Lender's receipt of the proceeds of the Claims ("Proceeds") and no Default occurs thereafter, the following provisions shall apply:

- (i) **Condemnation.** If the Proceeds are the result of Claims described in clauses 6.11(a)(i) or (ii) above, or interest accrued thereon, Lender shall apply the Proceeds in the following order of priority: First, to Lender's expenses in settling, prosecuting or defending the Claims; Second, to the repair or restoration of the portion of the Property, if any, not condemned or proposed for condemnation and not otherwise the subject of a claim or award; and Third, to the Secured Obligations in any order without suspending, extending or reducing any obligation of Borrower to make installment payments.
- (ii) **Insurance.** If the Proceeds are the result of Claims described in clause 6.11(a)(iii) above or interest accrued thereon, Lender shall apply the Proceeds in the following order of priority: First, to Lender's expenses in settling, prosecuting or defending the Claims; Second, to the repair or restoration of the Property; and Third, (aa) if the repair or restoration of the Property has been completed and all costs incurred in connection with the repair or restoration have been paid in full, to Borrower or (bb) in all other circumstances, to the Secured Obligations in any order without suspending, extending or reducing any obligation of Borrower to make installment payments.
- (iii) **Restoration.** Notwithstanding the foregoing Sections 6.11(b)(i) and (ii), Lender shall have no obligation to make any Proceeds available for the repair or restoration of all or any portion of the Property unless and until all the following conditions have been satisfied: (aa) delivery to Lender of the Proceeds plus any additional amount which is needed to pay all costs of the repair or restoration (including, without limitation, taxes, financing charges, insurance and rent during the repair period); (bb) establishment of an arrangement for lien releases and disbursement of funds acceptable to Lender; (cc) delivery to Lender in form and content acceptable to Lender of all of the following: (1) plans and specifications for the work; (2) a contract for the work, signed by a contractor acceptable to Lender; (3) a cost breakdown for the work; (4) if required by Lender, a payment and performance bond for the work; (5) evidence of the continuation of all Leases unless consented to in writing by Lender; (6) evidence that, upon completion of the work, the size, capacity, value, and income coverage ratios for the Property will be at least as great as those which existed immediately before the damage or condemnation occurred; (7) evidence that the work can reasonably be completed on or before that date which is 6 months prior to the Maturity Date; and (8) evidence of the satisfaction of any additional conditions that Lender may reasonably establish to protect Lender's security. Borrower acknowledges that the specific conditions described above are reasonable.

- c. **Application of Proceeds; Default.** If a Default has occurred and is continuing at the time of Lender's receipt of the Proceeds or if a Default occurs at any time thereafter, Lender may, at Lender's absolute discretion and regardless of any impairment of security or lack of impairment of security, but subject to applicable law governing use of the Proceeds, if any, apply all or any of the Proceeds to Lender's expenses in settling, prosecuting or defending the Claims and then apply the balance to the Secured Obligations in any order without suspending, extending or reducing any obligation of Borrower to make installment payments, and may release all or any part of the Proceeds to Borrower upon any conditions Lender chooses.

6.12 IMPOUNDS.

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- a. **Post-Default Impounds.** If required by Lender at any time after a Default occurs (and regardless of whether such Default is thereafter cured), Borrower shall deposit with Lender such amounts ("Post-Default Impounds") on such dates (determined by Lender as provided below) as will be sufficient to pay any or all "Costs" (as defined below) specified by Lender. Lender in its sole discretion shall estimate the amount of such Costs that will be payable or required during any period selected by Lender not exceeding 1 year and shall determine the fractional portion thereof that Borrower shall deposit with Lender on each date specified by Lender during such period. If the Post-Default Impounds paid by Borrower is not sufficient to pay the related Costs, Borrower shall deposit with Lender upon demand an amount equal to the deficiency. All Post-Default Impounds shall be payable by Borrower in addition to (but without duplication of) any other Impounds (as defined below).
- b. **All Impounds.** Post-Default Impounds and any other impounds that may be payable by Borrower under the Note are collectively called "Impounds". All Impounds shall be deposited into one or more segregated or commingled accounts maintained by Lender or its servicing agent. Except as otherwise provided in the Note, such account(s) shall not bear interest. Lender shall not be a trustee, special depository or other fiduciary for Borrower with respect to such account, and the existence of such account shall not limit Lender's rights under this Security Instrument, any other agreement or any provision of law. If no Default exists, Lender shall apply all Impounds to the payment of the related Costs, or in Lender's sole discretion may release any or all Impounds to Borrower for application to and payment of such Costs. If a Default exists, Lender may apply any or all Impounds to any Secured Obligation and/or to cure such Default, whereupon Borrower shall restore all Impounds so applied and cure all Defaults not cured by such application. The obligations of Borrower hereunder shall not be diminished by deposits of Impounds made by Borrower, except to the extent that such obligations have actually been met by application of such Impounds. Upon any assignment of this Security Instrument, Lender may assign all Impounds in its possession to Lender's assignee, whereupon Lender shall be released from all liability with respect to such Impounds. Within 60 days following full repayment of the Secured Obligations (other than as a consequence of foreclosure or conveyance in lieu of foreclosure) or at such earlier time as Lender may elect, Lender shall pay to Borrower all Impounds in its possession, and no other party shall have any right or claim thereto. "Costs" means (i) all taxes and other liabilities payable by Borrower under Section 6.9, (ii) all insurance premiums payable by Borrower under Section 6.10, (iii) all other costs and expenses for which Impounds are required under the Note, and/or (iv) all other amounts that will be required to preserve the value of the Property. Borrower shall deliver to Lender, promptly upon receipt, all bills for Costs for which Lender has required Post-Default Impounds.
- 6.13 **DEFENSE AND NOTICE OF LOSSES, CLAIMS AND ACTIONS.** Borrower shall protect, preserve and defend the Property and title to and right of possession of the Property, the security of this Security Instrument and the rights and powers of Lender hereunder at Borrower's sole expense against all adverse claims, whether the claim: (a) is against a possessory or non-possessory interest; (b) arose prior or subsequent to the Effective Date; or (c) is senior or junior to Borrower's or Lender's rights. Borrower shall give Lender prompt notice in writing of the assertion of any claim, of the filing of any action or proceeding, of the occurrence of any damage to the Property and of any condemnation offer or action.
- 6.14 **RIGHT OF INSPECTION.** Lender and its independent contractors, agents and employees may enter the Property from time to time at any reasonable time for the purpose of inspecting the Property and ascertaining Borrower's compliance with the terms of this Security Instrument. Lender shall use reasonable efforts to assure that Lender's entry upon and inspection of the Property shall not materially and unreasonably interfere with the business or operations of Borrower or Borrower's tenants on the Property.
- 6.15 **DUE ON SALE/ENCUMBRANCE.**
- a. **Definitions.** The following terms shall have the meanings indicated:

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“**Restricted Party**” shall mean each of (i) Borrower, (ii) any entity obligated under any guaranty or indemnity made in favor of Lender in connection with the Loan and (iii) any shareholder, partner, member or non-member manager, or any direct or indirect legal or beneficial owner of Borrower, or any entity obligated under a guaranty or indemnity made in favor of Lender in connection with the Loan.

“**Transfer**” shall mean any sale, installment sale, exchange, mortgage, pledge, hypothecation, assignment, encumbrance or other transfer, conveyance or disposition, whether voluntarily, involuntarily or by operation of law or otherwise.

b. **Property Transfers.**

(i) **Prohibited Property Transfers.** Borrower shall not cause or permit any Transfer of all or any part of or any direct or indirect legal or beneficial interest in the Property or the Collateral (collectively, a “Prohibited Property Transfer”), including, without limitation, (A) a Lease or all or a material part of the Property for any purpose other than actual occupancy by a space tenant; and (B) the Transfer of all or any part of Borrower’s right, title and interest in and to any Leases or Payments.

(ii) **Permitted Property Transfers.** Notwithstanding the foregoing, none of the following Transfers shall be deemed to be a Prohibited Property Transfer: (A) a Transfer which is expressly permitted under the Note and (B) a Lease which is permitted under Article 3.

c. **Prohibited Equity Transfers.** Borrower shall not cause or permit any Transfer of any direct or indirect legal or beneficial interest in a Restricted Party (collectively, a “Prohibited Equity Transfer”), including without limitation, (A) if a Restricted Party is a corporation, any merger, consolidation or other Transfer of such corporation’s stock or the creation or issuance of new stock in one or a series of transactions; (B) if a Restricted Party is a limited partnership, limited liability partnership, general partnership or joint venture, any merger or consolidation or the change, removal, resignation or addition of a general partner or the Transfer of the partnership interest of any general or limited partner or any profits or proceeds relating to such partnership interests or the creation or issuance of new limited partnership interests; (C) if a Restricted Party is a limited liability company, any merger or consolidation or the change, removal, resignation or addition of a managing member or non-member manager (or if a managing member, any member) or any profits or proceeds relating to such membership interest, or the Transfer of a non-managing membership interest or the creation or issuance of new non-managing membership interests; or (D) if a Restricted Party is a trust, any merger, consolidation or other Transfer of any legal or beneficial interest in such Restricted Party or the creation or issuance of new legal or beneficial interests.

d. **Certificates of Ownership.** Borrower shall deliver to Lender, at any time and from time to time, not more than 5 days after Lender’s written request therefore, a certificate, in form acceptable to Lender, signed and dated by Borrower, listing the names of all persons and entities holding direct or indirect legal or beneficial interests in the Property or any Restricted Party and the type and amount of each such interest.

6.16 **POWERS OF LENDER.** From time to time and without affecting the personal liability of any person for payment of any indebtedness or performance of any Secured Obligation, Lender may, without liability therefore and without notice: (a) after an event of Default reconvey all or any part of the Property; (b) consent to the making of any map or plat of the Property; (c) after an event of Default join in granting any easement on the Property; (d) after an event of Default join in any declaration of covenants and restrictions; or (e) join in any extension agreement or any agreement subordinating the lien or charge of this Security Instrument. Nothing contained in the immediately preceding sentence shall be construed to limit, impair or otherwise affect the rights of Borrower in any respect. Except as may otherwise be required by applicable law, Lender may from time to time apply to any court of competent jurisdiction for aid and direction in the enforcement of the rights and remedies available hereunder, and Lender may obtain orders or decrees

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directing or confirming or approving acts in the enforcement of said remedies. Lender has no obligation to notify any party of any pending sale or any action or proceeding (including, without limitation, actions in which Borrower or Lender shall be a party) unless held or commenced and maintained by Lender under this Security Instrument.

6.17 **INTENTIONALLY OMITTED.**

6.18 **EXCULPATION.** Lender shall not directly or indirectly be liable to Borrower or any other person as a consequence of: (a) the exercise of the rights, remedies or powers granted to Lender in this Security Instrument; (b) the failure or refusal of Lender to perform or discharge any obligation or liability of Borrower under any agreement related to the Property or under this Security Instrument; or (c) any loss sustained by Borrower or any third party resulting from Lender's failure to lease the Property after a Default (hereafter defined) or from any other act or omission of Lender in managing the Property after a Default unless the loss is caused by the willful misconduct and bad faith of Lender and no such liability shall be asserted or enforced against Lender, all such liability being expressly waived and released by Borrower.

6.19 **INDEMNITY.**

- a. Without in any way limiting any other indemnity contained in this Security Instrument, Borrower agrees to defend, indemnify and hold harmless Lender Group from and against any claim, loss, damage, cost, expense or liability directly or indirectly arising out of: (a) the making of the Loan, except for violations of banking laws or regulations by Lender Group; (b) this Security Instrument; (c) the execution of this trust or the performance of any act required or permitted hereunder or by law; (d) any failure of Borrower to perform Borrower's obligations under this Security Instrument or the other Loan Documents; (e) any alleged obligation or undertaking on Lender Group's part to perform or discharge any of the representations, warranties, conditions, covenants or other obligations contained in any other document related to the Property; (f) any act or omission by Borrower or any contractor, agent, employee or representative of Borrower with respect to the Property; or (g) any claim, loss, damage, cost, expense or liability directly or indirectly arising out of: (i) the use, generation, manufacture, storage, treatment, release, threatened release, discharge, disposal, transportation or presence of any Hazardous Materials which are found in, on, under or about the Property (including, without limitation, underground contamination); or (ii) the breach of any covenant, representation or warranty of Borrower under Sections 5.1(p), 5.1(q), 5.1(r), or 6.2 above. The foregoing notwithstanding, this indemnity shall not include any claim, loss, damage, cost, expense or liability directly or indirectly arising out of the gross negligence or willful misconduct of any member of Lender Group or any claim, loss, damage, cost, expense or liability incurred by Lender Group or arising from any act or incident on the Property occurring after the full reconveyance and release of the lien of this Security Instrument on the Property, or with respect to the matters set forth in clause (g) above, any claim, loss, damage, cost, expense or liability incurred by Lender Group resulting from the introduction and initial release of Hazardous Materials on the Property occurring after the transfer of title to the Property at a foreclosure sale under this Security Instrument, either pursuant to judicial decree, or by deed in lieu of such foreclosure. This indemnity shall include, without limitation: (aa) all consequential damages (including, without limitation, any third party tort claims or governmental claims, fines or penalties against Lender Group); (bb) all court costs and reasonable attorneys' fees (including, without limitation, expert witness fees) paid or incurred by Lender Group; and (cc) the costs, whether foreseeable or unforeseeable, of any investigation, repair, cleanup or detoxification of the Property which is required by any governmental entity or is otherwise necessary to render the Property in compliance with all laws and regulations pertaining to Hazardous Materials. "Lender Group", as used herein, shall mean (1) Lender (including, without limitation, any participant in the Loan), (2) any entity controlling, controlled by or under common control with Lender, (3) the directors, officers, employees and agents of Lender and such other entities, and (4) the successors, heirs and assigns of the entities and persons described in foregoing clauses (1) through (3). Borrower shall pay immediately upon Lender's demand any amounts owing under this indemnity together with interest from the date the indebtedness arises until paid at the rate of interest applicable to the principal balance of the Note as specified therein.

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Borrower agrees to use legal counsel reasonably acceptable to Lender Group in any action or proceeding arising under this indemnity.

- b. Without in any way limiting any other indemnity contained in this Security Instrument, Lender agrees to defend, indemnify and hold harmless Borrower from and against any claim, loss, damage, cost, expense or liability directly or indirectly arising out of the gross negligence or willful misconduct of any member of Lender Group. This indemnity shall include, without limitation: (aa) all consequential damages (including, without limitation, any third party tort claims or governmental claims, fines or penalties against Borrower); (bb) all court costs and reasonable attorneys' fees (including, without limitation, expert witness fees) paid or incurred by Borrower. Lender shall pay immediately upon Borrower's demand any amounts owing under this indemnity together with interest from the date the indebtedness arises until paid at the rate of interest applicable to the principal balance of the Note as specified therein. Lender agrees to use legal counsel reasonably acceptable to Borrower in any action or proceeding arising under this indemnity.

THE PROVISIONS OF THIS SECTION SHALL SURVIVE THE TERMINATION AND/OR RECONVEYANCE OR RELEASE AND/OR DISCHARGE OF THIS SECURITY INSTRUMENT, BUT BORROWER'S LIABILITY UNDER THIS INDEMNITY SHALL BE SUBJECT TO THE PROVISIONS OF THE SECTION IN THE NOTE ENTITLED "BORROWER'S LIABILITY."

6.20 **INTENTIONALLY OMITTED.**

- 6.21 **RELEASES, EXTENSIONS, MODIFICATIONS AND ADDITIONAL SECURITY.** Without notice to or the consent, approval or agreement of any persons or entities having any interest at any time in the Property or in any manner obligated under the Secured Obligations ("Interested Parties"), Lender may, from time to time: (a) fully or partially release any person or entity from liability for the payment or performance of any Secured Obligation; (b) extend the maturity of any Secured Obligation; (c) make any agreement with Borrower increasing the amount or otherwise altering the terms of any Secured Obligation; (d) accept additional security for any Secured Obligation; or (e) release all or any portion of the Property, Collateral and other security for any Secured Obligation. None of the foregoing actions shall release or reduce the personal liability of any of said Interested Parties, or release or impair the priority of the lien of this Security Instrument upon the Property.

- 6.22 **SALE OR PARTICIPATION OF LOAN.** Lender may at any time sell, assign, participate or securitize all or any portion of Lender's rights and obligations under the Loan Documents, and that any such sale, assignment, participation or securitization may be to one or more financial institutions or other entities, to private investors, or into the public securities market, in Lender's sole discretion. Borrower further agrees that Lender may disseminate to any such actual or potential purchaser(s), assignee(s) or participant(s) (and to any investment banking firms, rating agencies, accounting firms, law firms and other third party advisory firms and investors involved with the Loan and the Loan Documents or the applicable sale, assignment, participation or securitization) all documents and financial and other information heretofore or hereafter provided to or known to Lender with respect to: (a) the Property and its operation; (b) any party connected with the Loan (including, without limitation, Borrower, any partner or member of Borrower, any constituent partner or member of Borrower, any guarantor and any nonborrower Borrower). In the event of any such sale, assignment, participation or securitization, Lender and the other parties to the same shall share in the rights and obligations of Lender set forth in the Loan Documents as and to the extent they shall agree among themselves. In connection with any such sale, assignment, participation or securitization, Borrower further agrees that the Loan Documents shall be sufficient evidence of the obligations of Borrower to each purchaser, assignee or participant, and Borrower shall, within 15 days after request by Lender; (c) deliver to Lender such information and documents relating to Borrower, the Property and its operation and any party connected with the Loan as Lender or any rating agency may request; (d) deliver to Lender an estoppel certificate for the benefit of Lender and any other party designated by Lender verifying the status and terms of the Loan, in form and content satisfactory to Lender; (e) enter into such amendments to the Loan Documents as may be requested in order to facilitate any such sale, assignment, participation or securitization without impairing Borrower's rights or increasing Borrower's obligations; (f) if, as a

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condition to the closing of the Loan, Borrower was required to be a special-purpose bankruptcy-remote entity, enter into such amendments to the organizational documents of Borrower as any rating agency may request to preserve or enhance Borrower's special-purpose bankruptcy-remote status; and (g) if, as a condition to the closing of the Loan, Borrower was required to provide Lender with any non-consolidation opinions, provide Lender with such amendments and restatements of such opinions as any rating agency may request. The indemnity obligations of Borrower under the Loan Documents shall also apply with respect to any purchaser, assignee or participant.

- 6.23 **RELEASE.** Upon payment in full of the Secured Obligations, and satisfaction of all the covenants, warranties, undertakings and agreements made in this Security Instrument and the other Loan Documents (including, without limitation, repayment in full of the principal, interest and other amounts owing under the Note), and all obligations, if any, of Lender for future advances have been terminated, then, and in that event only, Lender shall release, without warranty, the Property of that portion thereof then held hereunder. The recitals of any matters or facts in any release executed hereunder shall be conclusive proof of the truthfulness thereof. To the extent permitted by law, the release may describe the grantee as "the person or persons legally entitled thereto". Lender shall not have any duty to determine the rights of persons claiming to be rightful grantees of any release. When the Property has been fully released, the last such release shall operate as a reassignment of all future rents, issues and profits of the Property to the person or persons legally entitled thereto.
- 6.24 **SUBROGATION.** Lender shall be subrogated to the lien of all encumbrances, whether released of record or not, paid in whole or in part by Lender pursuant to this Security Instrument or by the proceeds of any loan secured by this Security Instrument.

ARTICLE 1. DEFAULT

- 7.1 **DEFAULT.** For all purposes hereof, "Default" shall mean either an "Optional Default" (as defined below) or an "Automatic Default" (as defined below).
- a. **Optional Default.** An "Optional Default" shall occur, at Lender's option, upon the occurrence of any of the following events:
- (i) **Monetary.** Borrower shall fail to (aa) pay when due any sums which by their express terms require immediate payment without any grace period or sums which are payable on the Maturity Date, or (bb) pay within 7 days when due any other sums payable under the Note, this Security Instrument or any of the other Loan Documents, including without limitation, any monthly payment due under the Note.
 - (ii) **Failure to Perform.** Borrower shall fail to observe, perform or discharge any of Borrower's obligations, covenants, conditions or agreements, other than Borrower's payment obligations, under the Note, this Security Instrument or any of the other Loan Documents, and (aa) such failure shall remain uncured for 30 days after written notice thereof shall have been given to Borrower, as the case may be, by Lender or (bb) if such failure is of such a nature that it cannot be cured within such 30 day period, Borrower shall fail to commence to cure such failure within such 30 day period or shall fail to diligently prosecute such curative action thereafter.
 - (iii) **Representations and Warranties.** Any representation, warranty, certificate or other statement (financial or otherwise) made or furnished by or on behalf of Borrower or a guarantor, if any, to Lender or in connection with any of the Loan Documents, or as an inducement to Lender to make the Loan, shall be false, incorrect, incomplete or misleading in any material respect when made or furnished.
 - (iv) **Condemnation; Attachment.** The condemnation, seizure or appropriation of any material portion (as reasonably determined by Lender) of the Property; or the

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sequestration or attachment of, or levy or execution upon any of the Property, the Collateral or any other collateral provided by Borrower under any of the Loan Documents, or any material portion of the other assets of Borrower, which sequestration, attachment, levy or execution is not released or dismissed within 45 days after its occurrence; or the sale of any assets affected by any of the foregoing.

- (v) **Uninsured Casualty.** The occurrence of an uninsured casualty with respect to any material portion (as reasonably determined by Lender) of the Property unless: (aa) no other Default has occurred and is continuing at the time of such casualty or occurs thereafter; (bb) Borrower promptly notifies Lender of the occurrence of such casualty; and (cc) not more than 45 days after the occurrence of such casualty, Borrower delivers to Lender immediately available funds in an amount sufficient, in Lender's reasonable opinion, to pay all costs of the repair or restoration (including, without limitation, taxes, financing charges, insurance and rent during the repair period). So long as no Default has occurred and is continuing at the time of Lender's receipt of such funds and no Default occurs thereafter, Lender shall make Restoration Funds available for the repair or restoration of the Property. Notwithstanding the foregoing, Lender shall have no obligation to make any funds available for repair or restoration of the Property unless and until all the conditions set forth in clauses (bb) and (cc) of Section 6.11(b)(iii) of this Security Instrument have been satisfied. Borrower acknowledges that the specific conditions described above are reasonable.
- (vi) **Key Person or Entity.** The retirement, death, incapacity or material reduction in current management authority or duties, if any, of Lewis G. Pollack with Borrower's failure to provide a substitute or replacement acceptable to Lender within 30 days after the occurrence of any such event.

b. **Automatic Default.** An "Automatic Default" shall occur automatically upon the occurrence of any of the following events:

- (i) **Voluntary Bankruptcy, Insolvency, Dissolution** (aa) Borrower's filing a petition for relief under the Bankruptcy Reform Act of 1978, as amended or recodified ("Bankruptcy Code"), or under any other present or future state or federal law regarding bankruptcy, reorganization or other relief to debtors (collectively, "Debtor Relief Law"); or (bb) Borrower's filing any pleading in any involuntary proceeding under the Bankruptcy Code or other Debtor Relief Law which admits the jurisdiction of a court to regulate Borrower or the Property or the petition's material allegations regarding Borrower's insolvency; or (cc) Borrower's making a general assignment for the benefit of creditors; or (dd) Borrower's applying for, or the appointment of, a receiver, trustee, custodian or liquidator of Borrower or any of its property; or (ee) the filing by or against Borrower of a petition seeking the liquidation or dissolution of Borrower or the commencement of any other procedure to liquidate or dissolve Borrower.
- (ii) **Involuntary Bankruptcy.** Borrower's failure to effect a full dismissal of any involuntary petition under the Bankruptcy Code or other Debtor Relief Law that is filed against Borrower or in any way restrains or limits Borrower or Lender regarding the Loan or the Property, prior to the earlier of the entry of any order granting relief sought in the involuntary petition or 45 days after the date of filing of the petition.
- (iii) **Partners, Guarantors.** The occurrence of an event specified in Sections (i) or (ii) as to Borrower, any general partner or managing member of Borrower, or any guarantor or other person or entity in any manner obligated to Lender under the Loan Documents.

7.2 **ACCELERATION.** Upon the occurrence of an Optional Default, Lender may, at its option, declare all sums owing to Lender under the Note and the other Loan Documents immediately due and payable. Upon

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the occurrence of an Automatic Default, all sums owing to Lender under the Note and the other Loan Documents shall automatically become immediately due and payable.

7.3 **RIGHTS AND REMEDIES.** In addition to the rights and remedies in Section 7.2 above, at any time after a Default, Lender shall have all of the following rights and remedies:

- a. **Entry on Property.** With or without notice, and without releasing Borrower from any Secured Obligation, and without becoming a mortgagee in possession, to enter upon the Property from time to time and to do such acts and things as Lender deems necessary or desirable in order to inspect, investigate, assess and protect the security hereof or to cure any Default, including, without limitation: (i) to take and possess all documents, books, records, papers and accounts of Borrower, the then owner of the Property which relate to the Property; (ii) to make, terminate, enforce or modify leases of the Property upon such terms and conditions as Lender deems proper; (iii) to make repairs, alterations and improvements to the Property necessary, in Lender's sole judgment, to protect or enhance the security hereof; (iv) to appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Lender hereunder; (v) to pay, purchase, contest or compromise any encumbrance, charge, lien or claim of lien which, in the sole judgment of Lender, is or may be senior in priority hereto, the judgment of Lender being conclusive as between the parties hereto; (vi) to obtain insurance; (vii) to pay any premiums or charges with respect to insurance required to be carried hereunder or under any other Loan Document; (viii) to obtain a court order to enforce Lender's right to enter and inspect the Property for Hazardous Materials, in which regard the decision of Lender as to whether there exists a release or threatened release of Hazardous Materials onto the Property shall be deemed reasonable and conclusive as between the parties hereto; (ix) to have a receiver appointed pursuant to applicable law to enforce Lender's rights to enter and inspect the Property for Hazardous Materials; and/or (x) to employ legal counsel, accountants, engineers, consultants, contractors and other appropriate persons to assist them;
- b. **Appointment of Receiver.** With or without notice or hearing to apply to a court of competent jurisdiction for and obtain appointment of a receiver, trustee, liquidator or conservator of the Property, for any purpose, including, without limitation, to enforce Lender's rights to collect Payments and to enter on and inspect the Property for Hazardous Materials, as a matter of strict right and without regard to: (i) the adequacy of the security for the repayment of the Secured Obligations; (ii) the existence of a declaration that the Secured Obligations are immediately due and payable; (iii) the filing of a notice of default; or (iv) the solvency of Borrower or any other guarantor or other person or entity in any manner obligated to Lender under the Loan Documents;
- c. **Judicial Foreclosure; Injunction.** To commence and maintain an action or actions in any court of competent jurisdiction to foreclose this instrument as a mortgage or to obtain specific enforcement of the covenants of Borrower hereunder, and Borrower agrees that such covenants shall be specifically enforceable by injunction or any other appropriate equitable remedy and that for the purposes of any suit brought under this subparagraph, Borrower waives the defense of laches and any applicable statute of limitations. Lender shall be entitled to collect in such proceedings all expenses of foreclosure, including, but not limited to, reasonable attorneys' fees, all of which shall be additional sums secured by this Security Instrument. At the foreclosure Lender shall be entitled to bid and to purchase the Property and shall be entitled to apply the Secured Obligations, or any portion thereof, in payment for the Property. The remedies provided to Lender in this paragraph shall be in addition to and not in lieu of any other rights and remedies provided in this Security Instrument or by law, all of which rights and remedies may be exercised by Lender independently, simultaneously or consecutively in any order without being deemed to have waived any right or remedy previously or not yet exercised;
- d. **Partial Foreclosure.** In the event the Property is comprised of more than one Parcel of real property, Borrower hereby waives any right to require Lender to foreclose or exercise any of its other remedies against all of the Property as a whole or to require Lender to foreclose or exercise

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such remedies against one portion of the property prior to the foreclosure or exercise of said remedies against other portions of the Property.

Upon sale of the Property at any judicial foreclosure, Lender may credit bid (as determined by Lender in its sole and absolute discretion) all or any portion of the Secured Obligations. In determining such credit bid, Lender may, but is not obligated to, take into account all or any of the following: (i) appraisals of the Property as such appraisals may be discounted or adjusted by Lender in its sole and absolute underwriting discretion; (ii) expenses and costs incurred by Lender with respect to the Property prior to foreclosure; (iii) expenses and costs which Lender anticipates will be incurred with respect to the Property after foreclosure, but prior to resale, including, without limitation, costs of structural reports and other due diligence, costs to carry the Property prior to resale, costs of resale (e.g. commissions, attorneys' fees, and taxes), costs of any Hazardous Materials clean-up and monitoring, costs of deferred maintenance, repair, refurbishment and retrofit, costs of defending or settling litigation affecting the Property, and lost opportunity costs (if any), including the time value of money during any anticipated holding period by Lender; (iv) declining trends in real property values generally and with respect to properties similar to the Property; (v) anticipated discounts upon resale of the Property as a distressed or foreclosed property; (vi) the fact of additional collateral (if any), for the Secured Obligations; and (vii) such other factors or matters that Lender (in its sole and absolute discretion) deems appropriate. In regard to the above, Borrower acknowledges and agrees that: (viii) Lender is not required to use any or all of the foregoing factors to determine the amount of its credit bid; (ix) this paragraph does not impose upon Lender any additional obligations that are not imposed by law at the time the credit bid is made; (x) the amount of Lender's credit bid need not have any relation to any loan-to-value ratios specified in the Loan Documents or previously discussed between Borrower and Lender; and (xi) Lender's credit bid may be (at Lender's sole and absolute discretion) higher or lower than any appraised value of the Property;

- e. **Multiple Foreclosures.** To resort to and realize upon the security hereunder and any other security now or later held by Lender concurrently or successively and in one or several consolidated or independent judicial actions or lawfully taken nonjudicial proceedings, or both, and to apply the proceeds received upon the Secured Obligations all in such order and manner as Lender determines in its sole discretion;
- f. **Rights to Collateral.** To exercise all rights Lender may have with respect to the Collateral under this Security Instrument, the UCC or otherwise at law; and
- g. **Other Rights.** To exercise such other rights as Lender may have at law or in equity or pursuant to the terms and conditions of this Security Instrument or any of the other Loan Documents.

In connection with any sale or sales hereunder, Lender may elect to treat any of the Property which consists of a right in action or which is property that can be severed from the Property (including, without limitation, any improvements forming a part thereof) without causing structural damage thereto as if the same were personal property or a fixture, as the case may be, and dispose of the same in accordance with applicable law, separate and apart from the sale of the Property. Any sale of Collateral hereunder shall be conducted in any manner permitted by the UCC.

- 7.4 **APPLICATION OF FORECLOSURE SALE PROCEEDS.** If any foreclosure sale is effected, Lender shall apply the proceeds of such sale in the following order of priority: First, to the costs, fees and expenses of sale, including, without limitation, the payment of Lender's reasonable attorneys' fees; Second, to the payment of the Secured Obligations which are secured by this Security Instrument, in such order as Lender shall determine in its sole discretion; Third, to satisfy the outstanding balance of obligations secured by any junior liens or encumbrances in the order of their priority; and Fourth, to Borrower or Borrower's successor in interest, or in the event the Property has been sold or transferred to another, to the vested owner of record at the time of the foreclosure sale.

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- 7.5 **WAIVER OF MARSHALING RIGHTS.** Borrower, for itself and for all parties claiming through or under Borrower, and for all parties who may acquire a lien on or interest in the Property, hereby waives all rights to have the Property and/or any other property, including, without limitation, the Collateral, which is now or later may be security for any Secured Obligation, marshaled upon any foreclosure of this Security Instrument or on a foreclosure of any other security for any of the Secured Obligations.
- 7.6 **NO CURE OR WAIVER.** Neither Lender's nor any receiver's entry upon and taking possession of all or any part of the Property, nor any collection of rents, issues, profits, insurance proceeds, condemnation proceeds or damages, other security or proceeds of other security, or other sums, nor the application of any collected sum to any Secured Obligation, nor any the exercise of any other right or remedy by Lender or any receiver shall cure or waive any Default or notice of default under this Security Instrument, or nullify the effect of any notice of default or sale (unless all Secured Obligations then due have been paid or performed and Borrower has cured all other Defaults hereunder), or impair the status of the security, or prejudice Lender in the exercise of any right or remedy, or be construed as an affirmation by Lender of any tenancy, lease or option or a subordination of the lien of this Security Instrument.
- 7.7 **PAYMENT OF COSTS, EXPENSES AND ATTORNEYS' FEES.** Borrower agrees to pay to Lender immediately and upon demand all costs and expenses incurred by Lender in the enforcement of the terms and conditions of this Security Instrument (including, without limitation, statutory master in equity fees, court costs and reasonable attorneys' fees, whether incurred in litigation or not) with interest from the date of expenditure until said sums have been paid at the rate of interest applicable to the principal balance of the Note as specified therein.
- 7.8 **POWER TO FILE NOTICES AND CURE DEFAULTS.** Borrower hereby irrevocably appoints Lender and its successors and assigns, as its attorney-in-fact, which agency is coupled with an interest, to perform any obligation of Borrower hereunder upon the occurrence of an event, act or omission which, with notice or passage of time or both, would constitute a Default, provided, however, that: (a) Lender as such attorney-in-fact shall only be accountable for such funds as are actually received by Lender; and (b) Lender shall not be liable to Borrower or any other person or entity for any failure to act under this Section.
- 7.9 **REMEDIES CUMULATIVE.** All rights and remedies of Lender under this Security Instrument and the other Loan Documents are cumulative and are in addition to all rights and remedies provided by applicable law (including specifically that of foreclosure of this Security Instrument as though it were a mortgage). Lender may enforce any one or more remedies or rights under the Loan Documents either successively or concurrently.

ARTICLE 8. MISCELLANEOUS PROVISIONS

- 8.1 **ADDITIONAL PROVISIONS.** The Loan Documents contain or incorporate by reference the entire agreement of the parties with respect to matters contemplated herein and supersede all prior negotiations. The Loan Documents grant further rights to Lender and contain further agreements and affirmative and negative covenants by Borrower which apply to this Security Instrument and to the Property and such further rights and agreements are incorporated herein by this reference. **THE OBLIGATIONS AND LIABILITIES OF BORROWER UNDER THIS SECURITY INSTRUMENT AND THE OTHER LOAN DOCUMENTS ARE SUBJECT TO THE PROVISIONS OF THE SECTION IN THE NOTE ENTITLED "BORROWER'S LIABILITY".**
- 8.2 **NON-WAIVER.** By accepting payment of any amount secured hereby after its due date or late performance of any other Secured Obligation, Lender shall not waive its right against any person obligated directly or indirectly hereunder or on any Secured Obligation, either to require prompt payment or performance when due of all other sums and obligations so secured or to declare default for failure to make such prompt payment or performance. No exercise of any right or remedy by Lender hereunder shall constitute a waiver of any other right or remedy herein contained or provided by law. No failure by Lender to exercise any right or remedy hereunder arising upon any Default shall be construed to prejudice Lender's rights or remedies upon the occurrence of any other or subsequent Default. No delay by Lender in exercising any such right or remedy shall be construed to preclude Lender from the exercise thereof at any

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time while that Default is continuing. No notice to nor demand on Borrower shall of itself entitle Borrower to any other or further notice or demand in similar or other circumstances.

- 8.3 **CONSENTS AND APPROVALS.** Wherever Lender's consent, approval, acceptance or satisfaction is required under any provision of this Security Instrument or any of the other Loan Documents, such consent, approval, acceptance or satisfaction shall not be unreasonably withheld, conditioned or delayed by Lender unless such provision expressly so provides.
- 8.4 **PERMITTED CONTESTS.** After prior written notice to Lender, Borrower may contest, by appropriate legal or other proceedings conducted in good faith and with due diligence, the amount, validity or application, in whole or in part, of any lien, levy, tax or assessment, or any lien of any laborer, mechanic, materialman, supplier or vendor, or the application to Borrower or the Property of any law or the validity thereof, the assertion or imposition of which, or the failure to pay when due, would constitute a Default; provided that (a) Borrower pursues the contest diligently, in a manner which Lender determines is not prejudicial to Lender and does not impair the lien of this Security Instrument; (b) the Property, or any part hereof or estate or interest therein, shall not be in any danger of being sold, forfeited or lost by reason of such proceedings; (c) in the case of the contest of any law or other legal requirement, Lender shall not be in any danger of any civil or criminal liability; and (d) if required by Lender, Borrower deposits with Lender any funds or other forms of assurance (including a bond or letter of credit) satisfactory to Lender to protect Lender from the consequences of the contest being unsuccessful. Borrower's right to contest pursuant to the terms of this provision shall in no way relieve Borrower of its obligations under the Loan or to make payments to Lender as and when due.
- 8.5 **FURTHER ASSURANCES.** Borrower shall, upon demand by Lender, execute, acknowledge (if appropriate) and deliver any and all documents and instruments and do or cause to be done all further acts reasonably necessary or appropriate to effectuate the purposes of the Loan Documents and to perfect any assignments contained therein.
- 8.6 **ATTORNEYS' FEES.** If any legal action, suit or proceeding is commenced between Borrower and Lender regarding their respective rights and obligations under this Security Instrument or any of the other Loan Documents, the prevailing party shall be entitled to recover, in addition to damages or other relief, costs and expenses, reasonable attorneys' fees and court costs (including, without limitation, expert witness fees). As used herein the term "prevailing party" shall mean the party which obtains the principal relief it has sought, whether by compromise settlement or judgment. If the party which commenced or instituted the action, suit or proceeding shall dismiss or discontinue it without the concurrence of the other party, such other party shall be deemed the prevailing party.
- 8.7 **BORROWER AND LENDER DEFINED.** The term "Borrower" includes both the original Borrower and any subsequent owner or owners of any of the Property, and the term "Lender" includes the original Lender and any future owner or holder, including assignees, pledges and participants, of the Note or any interest therein.
- 8.8 **INTENTIONALLY OMITTED.**
- 8.9 **SEVERABILITY.** If any term of this Security Instrument or any other Loan Document, or the application thereof to any person or circumstances, shall, to any extent, be invalid or unenforceable, the remainder of this Security Instrument or such other Loan Document, or the application of such term to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term of this Security Instrument or such other Loan Document shall be valid and enforceable to the fullest extent permitted by law.
- 8.10 **RELATIONSHIP OF ARTICLES.** The rights, remedies and interests of Lender under the Security Instrument established by Article 1 and the security agreement established by Article 4 are independent and cumulative, and there shall be no merger of any lien created by the Security Instrument with any security interest created by the security agreement. Lender may elect to exercise or enforce any of its rights, remedies or interests under either or both the Security Instrument or the security agreement as Lender may

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from time to time deem appropriate. The absolute assignment of rents and leases established by Article 3 is similarly independent of and separate from the Security Instrument and the security agreement.

- 8.11 **MERGER.** No merger shall occur as a result of Lender's acquiring any other estate in, or any other lien on, the Property unless Lender consents to a merger in writing.
- 8.12 **OBLIGATIONS OF BORROWER, JOINT AND SEVERAL.** If more than one person has executed this Security Instrument as "Borrower", the obligations of all such persons hereunder shall be joint and several.
- 8.13 **SEPARATE AND COMMUNITY PROPERTY.** Any married person who executes this Security Instrument as a "Borrower" agrees that any money judgment which Lender obtains pursuant to the terms of this Security Instrument or any other obligation of that married person secured by this Security Instrument may be collected by execution upon any separate property or community property of that person.
- 8.14 **INTEGRATION; INTERPRETATION.** The Loan Documents contain or expressly incorporate by reference the entire agreement of the parties with respect to the matters contemplated therein and supersede all prior negotiations or agreements, written or oral. The Loan Documents shall not be modified except by written instrument executed by all parties. Any reference in any of the Loan Documents to the Property or Collateral shall include all or any part of the Property or Collateral. Any reference to the Loan Documents includes any amendments, renewals or extensions now or hereafter approved by Lender in writing. When the identity of the parties or other circumstances make it appropriate, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.
- 8.15 **CAPITALIZED TERMS.** Capitalized terms not otherwise defined herein shall have the meanings set forth in the Note.
- 8.16 **SUCCESSORS IN INTEREST.** The terms, covenants, and conditions contained herein and in the other Loan Documents shall be binding upon and inure to the benefit of the heirs, successors and assigns of the parties. The foregoing sentence shall not be construed to permit Borrower to assign the Loan except as otherwise permitted under the Note or the other Loan Documents.
- 8.17 **GOVERNING LAW.** This Security Instrument was accepted by Lender in the state of Illinois and the proceeds of the Note secured hereby were disbursed from the state of Illinois, which state the parties agree has a substantial relationship to the parties and to the underlying transaction embodied hereby. Accordingly, in all respects, including without limiting the generality of the foregoing, matters of construction, validity, enforceability and performance, this Security Instrument, the Note and the other Loan Documents and the obligations arising hereunder and there under shall be governed by, and construed in accordance with, the laws of the state of Illinois applicable to contracts made and performed in such state and any applicable law of the United States of America, except that all times the provisions for enforcement of the liens, assignments and security interests in and to the Property and all other remedies of Lender, including but not limited to foreclosure (as permitted by law) and the creation, perfection and enforcement of the security interests created pursuant hereto and pursuant to the other Loan Documents in any Collateral which is located in the state where the Property is located shall be governed by and construed according to the law of the state where the Property is located. Except as provided in the immediately preceding sentence, Borrower hereby unconditionally and irrevocably waives, to the fullest extent permitted by law, any claim to assert that the law of any jurisdiction other than Illinois governs this Security Instrument, the Note and other Loan Documents.
- 8.18 **CONSENT TO JURISDICTION.** Borrower irrevocably submits to the jurisdiction of: (a) any state or federal court sitting in the state of Illinois over any suit, action, or proceeding, brought by Borrower against Lender, arising out of or relating to this Security Instrument, the Note or the Loan; (b) any state or federal court sitting in the state where the Property is located or the state in which Borrower's principal place of business is located over any suit, action or proceeding, brought by Lender against Borrower, arising out of or relating to this Security Instrument, the Note or the Loan; (c) any state court sitting in the county of the state where the Property is located over any suit, action, or proceeding, brought by Lender to enforce the

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liens, assignments and security interests in and to the Collateral and all other rights or remedies of Lender, including but not limited to foreclosure (as permitted by law). Borrower irrevocably waives, to the fullest extent permitted by law, any objection that Borrower may now or hereafter have to the laying of venue of any such suit, action, or proceeding brought in any such court and any claim that any such suit, action, or proceeding brought in an inconvenient forum.

- 8.19 **EXHIBITS.** Exhibit A is incorporated into this Security Instrument by this reference.
- 8.20 **ADDRESSES; REQUEST FOR NOTICE.** All notices and other communications that are required or permitted to be given to a party under this Security Instrument or the Loan Documents shall be in writing, refer to the Loan number, and shall be sent to such party, either by personal delivery, by overnight delivery service, by certified first class mail, return receipt requested, or by facsimile transmission to the addressee or facsimile number below. All such notices and communications shall be effective upon receipt of such delivery or facsimile transmission. The addresses of the parties are set forth on page 1 of this Security Instrument and the facsimile numbers for the parties are as follows:

Lender:

Chicago Heights Mortgage, LP
 Attn: Timothy J. Walter
 200 Wingo Way, Suite 100
 Mt. Pleasant, South Carolina 29664
 Telephone Number: (843) 724-3405
 Facsimile Number (843) 724-3400
 E-Mail twalter@zpi.net

Borrower:

Storage Partners-Chicago Heights, LLC
 Attn: W. Bradford Sherman
 421 Boundary Lane
 Carbondale, Colorado 81623
 Telephone Number: (970) 672-2018
 Facsimile Number: (970) 797-1508
 E-Mail: bsherman@storesmart.org

Borrower's principal place of business is at the address set forth on page 1 of this Security Instrument.

Any Borrower whose address is set forth on page 1 of this Security Instrument hereby requests that a copy of notice of default and notice of sale be delivered to it at that address. Failure to insert an address shall constitute a designation of Borrower's last known address as the address for such notice. Any party shall have the right to change its address for notice hereunder to any other location within the United States by giving 30 days notice to the other parties in the manner set forth above.

- 8.21 **COMMERCIAL LOAN.** Borrower warrants that the Loan evidenced by the Note and this Security Instrument is being made solely to acquire the Property from Lender and to carry on a business or commercial enterprise, and/or Borrower is a business or commercial organization. Borrower further warrants that all of the proceeds of the Note and this Security Instrument shall be used for commercial purposes and stipulates that the Loan evidenced by the Note and this Security Instrument shall be construed for all purposes as a commercial loan, and is made for other than personal, family or household purposes.

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- 8.22 **COUNTERPARTS.** This Security Instrument may be executed in any number of counterparts, each of which, when executed and delivered, will be deemed an original and all of which taken together, will be deemed to be one and the same instrument.
- 8.23 **INTENTIONALLY OMITTED.**
- 8.24 **WAIVER OF JURY TRIAL.** TO THE EXTENT NOW OR HEREAFTER PERMITTED BY APPLICABLE LAW, LENDER AND BORROWER HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHTS THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH THIS SECURITY INSTRUMENT OR ANY OTHER LOAN DOCUMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF LENDER OR BORROWER. THIS PROVISION IS A MATERIAL INDUCEMENT FOR LENDER TO ENTER INTO THIS SECURITY INSTRUMENT.
- 8.25 **WAIVER OF APPRAISAL, VALUATION, STAY, EXTENSION AND REDEMPTION LAWS.** Borrower agrees to the full extent permitted by law that in case of a Default on its part hereunder, neither Lender nor anyone claiming through or under it shall or will set up, claim or seek to take advantage of any appraisal, valuation, stay, extension or redemption laws now or hereafter in force, in order to prevent or hinder the enforcement or foreclosure of this Security Instrument, or the absolute sale of the Property or the final and absolute putting into possession thereof, immediately after such sale, of the purchaser's thereat, and Borrower, for itself and all who may at any time claim through or under it, hereby waives, to the full extent that it may lawfully so do the benefit of such laws, and any and all right to have the assets comprising the Property marshalled upon any foreclosure of the lien hereof or appraised for the purpose of reducing any deficiency judgment obtained by Lender against Borrower and agrees that Borrower or any court having jurisdiction to foreclose such lien may sell the Property in part or as an entirety. Borrower further waives, to the full extent permitted by law, the right to petition for the appointment of appraisers following foreclosure for the purpose of seeking to reduce a deficiency judgment or for any reason.
- 8.26 **MAXIMUM INDEBTEDNESS.** The maximum of all indebtedness outstanding at any one time secured hereby shall not exceed FIVE MILLION FOUR HUNDRED THOUSAND and NO/100ths DOLLARS (\$5,400,000.00) plus interest thereon, all charges and expenses of collection incurred by Lender including court costs and reasonable attorneys' fees, together with such amounts advanced by Lender under the terms hereof. Interest under the Note will be deferred, accrued or capitalized, but Lender shall not be required to defer, accrue or capitalize any interest except as may be provided in the Note.
- 8.27 **FINAL EXPRESSION/NO ORAL AGREEMENTS.** READ THIS DOCUMENT CAREFULLY. THE WRITTEN LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES.

THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

- 8.28 **WAIVER OF CERTAIN RIGHTS.** BORROWER HEREBY WAIVES ANY RIGHT BORROWER MAY HAVE UNDER THE CONSTITUTION OF THE STATE OF ILLINOIS OR THE CONSTITUTION OF THE UNITED STATES OF AMERICA TO NOTICE OR TO A JUDICIAL HEARING PRIOR TO THE EXERCISE OF ANY RIGHT OR REMEDY PROVIDED TO LENDER BY THIS MORTGAGE, AND BORROWER WAIVES ITS RIGHTS, IF ANY, TO SET ASIDE OR INVALIDATE ANY SALE UNDER POWER DULY CONSUMMATED IN ACCORDANCE WITH THE PROVISIONS OF THIS MORTGAGE ON THE GROUND (IF SUCH BE THE CASE) THAT THE SALE WAS CONSUMMATED WITHOUT PRIOR NOTICE OR JUDICIAL HEARING. THE WAIVERS MADE BY BORROWER IN THIS PARAGRAPH AND ELSEWHERE IN THIS MORTGAGE HAVE BEEN MADE VOLUNTARILY, INTELLIGENTLY AND KNOWINGLY ON BEHALF OF BORROWER BY ITS DULY AUTHORIZED OFFICERS AFTER THEY HAVE READ AND UNDERSTOOD THIS MORTGAGE AND HAVE BEEN AFFORDED AN OPPORTUNITY TO BE INFORMED BY COUNSEL OF BORROWER'S POSSIBLE ALTERNATIVE RIGHTS, AND BY

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EXECUTING THIS MORTGAGE THE DULY AUTHORIZED OFFICERS OF BORROWER ACKNOWLEDGE SO MAKING SUCH WAIVERS ON BEHALF OF BORROWER.

ARTICLE 9. STATE SPECIFIC PROVISIONS

- 9.1 **PRINCIPLES OF CONSTRUCTION.** The provisions of this Article 9.1 are an integral part of this mortgage. In the event of any inconsistencies between the terms and conditions of this Article 9.1 and the other provisions of this mortgage, the terms and conditions of this Article 9.1 shall control and be binding.
- 9.2 **ILLINOIS MORTGAGE FORECLOSURE LAW.** It is the intention of the Borrower and Lender that the enforcement of the terms and provisions of this Mortgage shall be accomplished in accordance with the Illinois Mortgage Foreclosure Law (the "Act"), 735 ILCS 5/15-1101 et seq., and with respect to such Act Borrower agrees and covenants that:
- a. Borrower and Lender shall have the benefit of all of the provisions of the Act, including all amendments hereto 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. Wherever provision is made in this Mortgage or the Loan Agreement for insurance policies to bear mortgage clauses or other loss payable clauses or endorsements in favor of Lender, or to confer authority upon Lender to settle or participate in the settlement of losses under policies of insurance or to hold and disburse or otherwise control use of insurance proceeds, from and after the entry of judgment of foreclosure, all such rights and powers of the Lender shall continue in the Lender as judgment creditor or lender until confirmation of sale;
 - c. All advances, disbursements and expenditures made or incurred by Lender before and during a foreclosure, and before and after judgment of foreclosure, and at any time prior to sale, and, where applicable, after sale, and during the pendency of any related proceedings, for the following purposes, in addition to those otherwise authorized by this Mortgage, or the Loan Agreement or by the Act (collectively "Protective Advances"), shall have the benefit of all applicable provisions of the Act, including those provisions of the Act referred to:
 - (i) all advances by Lender in accordance with the terms of this Mortgage or the Credit Agreement to: (i) preserve, maintain, repair, restore or rebuild the Improvements upon the Property; (ii) preserve the lien of this Mortgage or the priority thereof; or (iii) enforce this Mortgage, as referred to in Subsection (b)(5) of Section 15-1302 of the Act;
 - (ii) payments by Borrower of (i) principal, interest or other obligations in accordance with the terms of any senior mortgage or other prior lien or encumbrance; (ii) real estate taxes and assessments, general and special and all other taxes and assessments of any kind or nature whatsoever which are assessed or imposed upon the Property or any part thereof; (iii) other obligations authorized by this Mortgage; or (iv) with court approval, any other amounts in connection with other liens, encumbrances or interests reasonably necessary to preserve the status of title, as referred to in Section 15-1505 of the Act;
 - (iii) advances by Lender in settlement or compromise of any claims asserted by claimants under senior mortgages or any other prior liens;
 - (iv) attorneys' fees and other costs incurred: (i) in connection with the foreclosure of this Mortgage as referred to in Section 1504(d)(2) and 15-1510 of the Act; (ii) in connection with any action, suit or proceeding brought by or against the Lender for the enforcement of this Mortgage or arising from the interest of the Lender hereunder; or (iii) in

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preparation for or in connection with the commencement, prosecution or defense of any other action related to this Mortgage or the Property;

- (v) Lender's fees, costs and expenses, including attorneys' fees, arising between the entry of judgment of foreclosure and the confirmation hearing as referred to in Section 15-1508(b)(1) of the Act;
- (vi) expenses deductible from proceeds of sale as referred to in Section 15-1512(a) and (b) of the Act;
- (vii) expenses incurred and expenditures made by Lender for any one or more of the following: (i) if the Property or any portion thereof constitutes on or more units under a condominium declaration, assessments imposed upon the unit owner thereof; (ii) if Borrower's interest in the Property is a leasehold estate under a lease or sublease, rentals or other payments required to be made by the lessee under the terms of the lease or sublease; (iii) premiums for casualty and liability insurance paid by Lender whether or not Lender or a receiver is in possession, if reasonably required, in reasonable amounts, and all renewals thereof, without regard to the limitation to maintaining of existing insurance in effect at the time any receiver or mortgagee takes possession of the Property imposed by Section 15-1704(c)(1) of the Act; (iv) repair or restoration of damage or destruction in excess of available insurance proceeds or condemnation awards; (v) payments deemed by Lender to be required for the benefit of the Property or required to be made by the owner of the Property under any grant or declaration of easement, easement agreement, agreement with any adjoining land owners or instruments creating covenants or restrictions for the benefit of or affecting the Property; (vi) shared or common expense assessments payable to any associated or corporation in which the owner of the Property is a member in any way affecting the Property, (vii) if the Loan secured hereby is a construction loan, costs incurred by Lender for demolition, preparation for and completion of construction, as may be authorized by the applicable commitment, loan agreement or other agreement; (viii) payments required to be paid by Borrower or Lender pursuant to any lease or other agreement for occupancy of the Property and (ix) if this Mortgage is insured, payment of FHA or private mortgage insurance required to keep such insurance in force.
- (viii) All Protective Advances shall be so much additional indebtedness secured by this Mortgage, and shall become immediately due and payable without notice and with interest thereon from the date of the advance until paid at the rate of interest payable after default under the terms of the Loan Agreement.
- (ix) This Mortgage shall be a lien for all Protective Advances as to subsequent purchasers and judgment creditors from the time this Mortgage is recorded pursuant to Subsection (b)(5) of Section 15-1302 of the Act.
- (x) All Protective Advances shall, except to the extent, if any, that any of the same is clearly contrary to or inconsistent with the provisions of the Act, apply to and be included in:
 - (1) any determination of the amount of indebtedness secured by this Mortgage at any time;
 - (2) the indebtedness found due and owing to the Lender in the judgment of foreclosure and any subsequent supplemental judgments, orders, adjudications or findings by the court of any additional indebtedness becoming due after such entry of judgment, it being agreed that in any foreclosure judgment, the court may reserve jurisdiction for such purpose;

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- (3) if right of redemption has not been waived by this Mortgage, computation of amounts required to redeem, pursuant to Sections 15-1603(d)(2) and 1603(e) of the Act;
- (4) determination of amounts deductible from sale proceeds pursuant to Section 15-1512 of the Act;
- (5) application of income in the hands of any receiver or mortgagee in possession; and
- (6) computation of any deficiency judgment pursuant to Sections 15-1508(b)(2), 15-1508(e) and 15-1511 of the Act.
- d. in addition to any provision of this Mortgage authorizing the Lender to take or be placed in possession of the Property, or for the appointment of a receiver, Lender shall have the right, in accordance with Sections 15-1701 and 15-1702 of the Act, to be placed in possession of the Property or at its request to have a receiver appointed, and such receiver, or Lender, if and when placed in possession, shall have, in addition to any other powers provided in this Mortgage, all rights, powers, immunities, and duties as provided for in Sections 15-1701 and 15-1703 of the Act; and
- e. Borrower acknowledges that the Property does not constitute agricultural real estate, as said term is defined in Section 15-1201 of the Act or residential real estate as defined in Section 15-1219 of the Act. Pursuant to Section 15-1601(f) of the Act, Borrower hereby waives any and all right of redemption.
- f. At all times, regardless of whether any Loan proceeds have been disbursed, the Mortgage secures (in addition to the amounts secured hereby) the payment of any and all Loan commissions, service charges and fees, liquidated damages, expenses and advances (whether obligatory or at the option of the Lender) due to or incurred by Lender in connection with the Loan, provided, however, that in no event shall the total amount secured hereby exceed two hundred percent (200%) of the face amount of the Note.
- g. As required pursuant to the Collateral Protection Act, 815 ILCS 180.10(?), Borrower is hereby notified that in the event Borrower fails to provide, maintain, keep in force or deliver and furnish to Lender the policies of insurance required by this Mortgage or evidence of their renewal as required herein, Lender may, but shall not be obligated to, procure such insurance at Borrower's expense to protect Lender's interests in the Property. 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 Property. Borrower may later cancel any insurance purchased by Lender, but only after providing Lender with evidence that Borrower has obtained insurance as required by the terms of this Mortgage. If Lender purchases insurance for the Property as set forth herein, Borrower shall pay all amounts advanced by Lender, together with interest thereon at the Default Rate (as defined in the Note) from and after the date advanced by Lender until actually repaid by Borrower, promptly upon demand by Lender. Any amounts so advanced by Lender, together with interest thereon, shall be secured by this Mortgage and by all of the other Loan Documents securing all or any part of the indebtedness evidenced by the Note. The costs of the insurance may be more than the cost of insurance Borrower may be able to obtain on its own.

[NO FURTHER TEXT ON THIS PAGE]

May. 10. 2011 4:46PM

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No. 7782 P. 67/79

IN WITNESS WHEREOF, Borrower has executed this Security Instrument as of the day and year set forth above.

BORROWER:

STORAGE PARTNERS-CHICAGO HEIGHTS, LLC

an Illinois limited liability company

By: StoreSmart Development, LLC, a Florida limited liability company

Its: Manager

By: W. Bradford Sherman

W. Bradford Sherman
Its: Managing Principal

[Signature]
Witness
Printed Name: Tan Bays
[Signature]
Witness
Printed Name: Lizyn L. Free

STATE OF Colorado

COUNTY OF Garfield

SS

I, the undersigned, a Notary Public in and for the County of Garfield, in the State of Colorado DO HEREBY CERTIFY that W. Bradford Sherman personally known to me to be the Managing Principal of StoreSmart Development, LLC, a Florida limited liability company, the Manager of Storage Partners-Chicago Heights, LLC, an Illinois limited liability company, the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person, and severally acknowledged that he/she signed and delivered the foregoing instrument as his/her free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and official seal, this 11 day of May, 2011.

Anne M. Canan

Notary Public

Commission Expires: 12-13-12



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EXHIBIT A

Description Of Land

PARCEL 1:

LOTS 1, 2 AND 3 IN BLOCK 10 IN LINCOLN HIGHLANDS, A SUBDIVISION OF THE WEST 1/2 OF THE NORTHEAST 1/4 OF SECTION 19, TOWNSHIP 35 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN (EXCEPT THE EAST 514.25 FEET OF THE NORTH 3/4 OF THE NORTH 1/2 OF THE WEST 1/2 OF THE NORTHEAST 1/4 OF SAID SECTION AND EXCEPT THAT PART OF THE NORTH 993.79 FEET OF THE WEST 1/2 OF THE NORTHEAST 1/4 OF SAID SECTION, WHICH LIES WEST OF THE EAST 682.25 FEET OF THE WEST 1/2 OF THE NORTHEAST 1/4 OF SAID SECTION), IN COOK COUNTY, ILLINOIS

PARCEL 2:

LOT 5 (EXCEPT THE WEST 37.23 FEET THEREOF) AND ALL OF LOT 6 AND THE WEST 0.90 FEET OF LOT 7 IN BLOCK 10 IN LINCOLN HIGHLANDS, A SUBDIVISION OF THE WEST 1/2 OF THE NORTHEAST 1/4 OF SECTION 19, TOWNSHIP 35 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

PARCEL 3:

LOT 7 (EXCEPT THE WEST 0.90 FEET THEREOF) AND THE WEST 24.57 FEET OF LOT 8 IN BLOCK 10 IN LINCOLN HIGHLANDS, A SUBDIVISION OF THE WEST 1/2 OF THE NORTHEAST 1/4 OF SECTION 19, TOWNSHIP 35 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

PARCEL 4:

LOT 8 (EXCEPT THE WEST 24.57 FEET THEREOF) AND LOT 9 IN BLOCK 10 IN LINCOLN HIGHLANDS, A SUBDIVISION OF THE WEST 1/2 OF THE NORTHEAST 1/4 OF SECTION 19, TOWNSHIP 35 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, (EXCEPT THE EAST 514.25 FEET OF THE NORTH 3/4 OF THE NORTH 1/2 OF THE WEST 1/2 OF THE SOUTHEAST 1/4 OF SAID SECTION AND EXCEPT THAT PART OF THE NORTH 993.79 FEET OF THE WEST 1/2 OF THE NORTHEAST 1/4 OF SAID SECTION, WHICH LIES WEST OF THE EAST 682.25 FEET OF THE WEST 1/2 OF THE NORTHEAST 1/4 OF SAID SECTION) IN COOK COUNTY, ILLINOIS

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PARCEL 5:

THE WEST 82.0 FEET OF THE EAST 282 FEET OF OUT-LOT "A", IN LINCOLN HIGHLANDS, A SUBDIVISION OF THE WEST 1/2 OF THE NORTHEAST 1/4 OF SECTION 19, TOWNSHIP 35 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, (EXCEPT THE EAST 514.25 FEET OF THE NORTH 3/4 OF THE NORTH 1/2 OF THE WEST 1/2 OF THE NORTHEAST 1/4 OF SAID SECTION, AND EXCEPT THAT PART OF THE NORTH 993.79 FEET OF THE WEST 1/2 OF THE NORTHEAST 1/4 OF SAID SECTION; WHICH LIES WEST OF THE EAST 682.25 FEET OF THE WEST 1/2 OF THE NORTHEAST 1/4 OF SAID SECTION), IN COOK COUNTY, ILLINOIS

PARCEL 6:

OUT-LOT "A", (EXCEPT THE EAST 282 FEET OF OUT-LOT "A") IN LINCOLN HIGHLANDS, A SUBDIVISION OF THE WEST 1/2 OF THE NORTHEAST 1/4 OF SECTION 19, TOWNSHIP 35 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, (EXCEPT THE EAST 514.25 FEET OF THE NORTH 3/4 OF THE NORTH 1/2 OF THE WEST 1/2 OF THE NORTHEAST 1/4 OF SAID SECTION, AND EXCEPT THAT PART OF THE NORTH 993.79 FEET OF THE WEST 1/2 OF THE NORTHEAST 1/4 OF SAID SECTION; WHICH LIES WEST OF THE EAST 682.25 FEET OF THE WEST 1/2 OF THE NORTHEAST 1/4 OF SAID SECTION), IN COOK COUNTY, ILLINOIS

PARCEL 7:

LOT 4 AND THE WEST 37.23 FEET OF LOT 5 IN BLOCK 10 IN LINCOLN HIGHLANDS, A SUBDIVISION OF THE WEST 1/2 OF THE NORTHEAST 1/4 OF SECTION 19, TOWNSHIP 35 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 8:

THE NORTH HALF OF THE 20 FOOT ALLEY LYING SOUTH OF, ADJACENT TO AND CONTIGUOUS WITH, LOTS 1 THROUGH 9, IN BLOCK 10, TOGETHER WITH THE SOUTH HALF OF THE 20 FOOT ALLEY LYING NORTH OF, ADJACENT TO AND CONTIGUOUS WITH OUTLOT A, EXCLUDING THE EAST 200 FEET OF THE SOUTH HALF THEREOF, ALL IN LINCOLN HIGHLANDS, BEING A SUBDIVISION OF PART OF THE WEST HALF OF THE NORTHEAST QUARTER OF SECTION 19, TOWNSHIP 35 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED MARCH 11, 1960, AS DOCUMENT NUMBER 17802233, IN COOK COUNTY, ILLINOIS.

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Address:

515 LINCOLN HIGHWAY, CITY OF CHICAGO HEIGHTS, COOK COUNTY, ILLINOIS
60411-2456

Tax Parcel Identification Numbers:

32-19-220-017-0000	32-19-220-018-0000	32-19-220-019-0000
32-19-220-020-0000	32-19-220-021-0000	32-19-220-022-0000
32-19-220-023-0000	32-19-220-024-0000	32-19-220-025-0000
32-19-220-026-0000	32-19-220-027-0000	32-19-220-028-0000
32-19-220-029-0000	32-19-220-030-0000	32-19-220-031-0000
32-19-220-032-0000	32-19-220-033-0000	32-19-220-034-0000
32-19-220-035-0000	32-19-220-036-0000	32-19-220-037-0000
32-19-220-038-0000	32-19-220-039-0000	32-19-220-044-0000
32-19-220-045-0000	32-19-220-046-0000	32-19-220-047-0000
32-19-220-048-0000	32-19-220-050-0000	